

**DANBURY AVIATION COMMISSION**  
**REGULAR MEETING**  
**MINUTES**

Danbury Aviation Commission -- 7:00 p.m.  
Danbury City Hall: 155 Deer Hill Ave., Danbury, CT 06810  
Third Floor / Room 3C / Tuesday, September 21, 2010

- 01 Meeting Called to Order at 7:00 p.m. By Chairman Ashkar.**
- 02 Roll Call:**  
Present: Commissioners Ashkar, Zilinek, Opperman  
Absent: Frizzell, Baker
- 03 Motion made to accept the minutes of the Regular Meeting held on June 15, 2010 and the Minutes of the Special Meeting held on July 13, 2010 as printed by Commissioner Zilinek, seconded by Commissioner Opperman, and unanimously approved.**
- 04 Liaison Report:**  
No liaison report was given.
- 05 Administrator's Monthly Report:**  
Mr. Paul Estefan stated he will submit his monthly report during Old Business.
- 06 Public speaking session of items listed on agenda**

**Old Business**

***Westconn Aviation, LLC – Purchase of Sadler Aircraft Center***

Mr. Paul Estefan addressed the commission by submitting a copy of the appraisal done at Sadler Aircraft Center which states a recommendation of \$6,000 per acre, submitted a copy of the Tweed/New Haven Ingress/Egress Agreement, Houlton International Airport Ingress/Egress Agreement, and the FAA Memorandum draft copy of the Compliance Guidance Letter 2009-1. Mr. Estefan stated that at the airport we have through the fence operations at Sadler Aircraft Center. According to the FAA, our Minimum Standards are outdated and are the only ones that have Permit Fees which need to be updated to FAA standards. Our through the fences operations are Sadler, Curtiss, Reliant, Conanicaut and the Macton building. The FAA wants us to now have Ingress and Egress Agreements and to have a balance of payments between all FBO's on the field. The attached Ingress/Egress agreements are samples requested from the FAA. The FAA wants the people on private property paying basically what the people on the airport property are paying. Mr. Estefan requested from the commission authorization to go forward with the Minimum Standards review and to look at ingress and egress agreements and be authorized to work with Attorney Pinter to create such agreements. Mr. Estefan advised we will hire a consultant to revise the Minimum Standards and will request a grant from the FAA to pay for the consultant.

Attorney Pinter stated this was new information from the FAA and have not examined thoroughly as of yet. This was brought to our attention by the FAA due to the proposed new lease by Westconn Aviation. The proposed purchaser of this property is concerned if there is a large time delay or if there will be an ingress and/or egress fee he may not be able to do the proposed deal. Mr. Estefan advised the permit fees might revert to the ingress and egress agreement for those that are off the airport.

Attorney Pinter advised that the lease that was recommended to the Council went to the committee of the council which in turn sent it back to you, the Commission, because of this issue of ingress/egress. The committee also recommended that you lease Westconn Aviation the full size parcel of 1.75 acres instead of the 1.4 acres and that the term that you approved of 30 years plus 30, the FAA says no it's too long and wants 25 years plus 5 years renewal. Mr. Estefan recommended the commission adopt the 25 plus 5 and the 1.75 acres. Attorney Pinter concurred and advised we sent this lease back to the committee with the changes.

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**Motion was made by Commissioner Oppermann that we affirm the FAA request to increase the mandatory acreage for Sadler to remain as is and the term of the lease to reflect the FAA's recommendation of 25 years with 5 years renewal and all subject to other FAA requirements, seconded by Commissioner Zilinek, and unanimously approved.**

Mr. Santo Silvestro, Danbury Aviation, advised that Dooney Aviation in Westerly, Rhode Island just went through this process and now pay the State of Rhode Island ingress and egress fees.

Chairman Ashkar commented that we really want to have this deal go through due to all the problems we had with Sadler. Commissioner Oppermann stated the difference in the acreage would be the ingress and egress fee for this year only.

**Motion was made by Commissioner Oppermann to authorize the equivalent of an access fee in the amount of the difference between the rent for the 1.459 and 1.75 acres for the land lease and advise the FAA, seconded by Commissioner Zilinek, opposed by Commissioner Baker, motion approved.**

#### **New Business**

##### ***Executive Air Service – Determination of Show Cause Hearing***

Chairman Ashkar stated the Show Cause Hearing result was to take no action at this time.

**Motion was made by Commissioner Baker as all the evidence was heard we closed the Show Cause Hearing taking no action at this time, seconded by Commissioner Zilinek, and unanimously approved.**

**Motion made to adjourn, seconded, and unanimously approved.**

**Ald**

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04/19/2001

## TWEED-NEW HAVEN AIRPORT INGRESS/EGRESS AGREEMENT

The Tweed-New Haven Airport Authority hereinafter referred to as THE AUTHORITY, hereby grants to Northeast Ramp, LLC, its successors or assigns hereinafter referred to as PERMITTEE, right of ingress to and egress from the Tweed New Haven Airport, on the terms and conditions in this agreement.

### Definitions

"Airport" - Tweed-New Haven Airport, the boundaries of which are shown on "Property Map, Tweed-New Haven Airport, Greiner, Date Nov. 1989, revised 7/17/95, Scale 1"=400', sheet 1 of 5."

"Public Use Area" - All portions of the Airport as are available for public use as permitted by THE AUTHORITY, as such may change from time to time

"Adjacent Property" - That certain 2.775 acre contiguous parcel of improved real property known as 134 Victor Street in the Town of East Haven, formerly owned by Alfred and Paul Mennone, owned by PERMITTEE and located adjacent to the Airport, as described on the attached Exhibit "A".

"Point of Ingress/Egress" - The point where the Airport's taxi way adjoins and abuts the Adjacent Property, as depicted on the attached Exhibit "B", a site plan entitled "Proposed Airplane Hangars, 134 Victor Street, East Haven, Connecticut, Criscuolo Shepard Associates, P.C. dated 5/27/99 rev. 8120199, Scale 1" = 40', sheet 1 of 2".

### Recitals

A. THE AUTHORITY leases from the City of New Haven the Airport and manages and operates the Airport pursuant to a Lease and Operating Agreement dated July 1, 1998 by and between the Authority and the City of New Haven. Any reference to THE AUTHORITY shall refer not only to the existing Tweed-New Haven Authority but also to any successors or assigns.

B. PERMITTEE owns the Adjacent Property from which aircraft are planned to access the Airport.

C. PERMITTEE desires to obtain rights of ingress/egress to the Airport for itself and its employees, agents, contractors, unit owners, and invitees;

- C. THE AUTHORITY is willing to allow such rights of ingress/egress, on the terms set forth in this agreement.

## SECTION 1

### Grant, Scope, Term, Representatives

1.1 Grant. THE AUTHORITY grants to PERMITTEE non-exclusive rights of ingress and egress at the Point of Ingress/Egress, to and from the Public Use Area of the Airport; provided, however, that THE AUTHORITY reserves the rights: (i) to deny access to anyone at the Point of Ingress/Egress if it determines that entry poses a risk to the safe operation of the Airport as determined by the Airport manager, and (ii) to relocate the Point of Ingress/Egress upon sixty (60) days' written notice to PERMITTEE along the boundary between the Adjacent Property and the Airport subject to Article 4.3.4. and; (iii) to purchase the Adjacent Property in accordance with Article 3.16 or Article 4.7. This grant is contingent upon the continued ownership and operation of the Airport by THE AUTHORITY, and upon the continued compliance by PERMITTEE with all of the conditions of this agreement.

1.2 No Rights In Real Property. PERMITTEE acknowledges that the rights granted pursuant to this agreement are personal to the parties herein and do not create any real property rights and shall neither burden the Airport nor benefit the Adjacent Property.

1.3 Term. This agreement will be in full force and effect for a period of thirty (30) years, commencing on May 1, 2000 and ending on May 1, 2030 ("Term").

1.4 Authorized Representative. Upon signing this agreement, PERMITTEE hereby names as authorized representative to act in each of their behalf to carry out their responsibilities and obligations under the terms of this agreement the signatories identified on the signature page of this agreement. Such representatives may be changed at any time, by written notice as set forth in Section 3.18 of this agreement.

## SECTION 2

### Payment for and Use of Airport Access

#### 2.1 Consideration.

(a) For the period May 1, 2000 to May 1, 2005, PERMITTEE shall pay to THE AUTHORITY the amount of Seven Thousand Five Hundred Sixty Dollars (\$7,560.00) per year for ingress/egress privileges and initial construction of the access ramp on the Airport from the Adjacent Property ("Access Fee"). The Access Fee shall be made up of two parts: a) the Tie Down Fee which shall be fifty-seven (57) percent of the Access Fee, and b) the Amortization Fee which shall be forty-three (43) percent of the Access Fee. The Tie Down Fee shall be increased during the May 1, 2000 to May 1, 2005 by the same percentage as any increase in the on field Tie Down Fee charged by THE AUTHORITY whenever said fee is changed by THE AUTHORITY from time to time. The

Access Fee shall be payable in equal monthly installments, in advance on the first day of each calendar month during the Term.

(b) For the remaining 25 years of the agreement, the Access Fee shall be computed as follows: for the period of May 1, 2005 to May 1, 2010, the Access Fee shall be a sum, which is the product of the multiplication of the annual payment under this Agreement, multiplied by a fraction, the numerator of which is the then most recent available Consumer Price Index for all urban workers in the New Haven Metropolitan Area (CPI-U) and the denominator is the CPI-U for May 2000, for each successive five (5) year period, the Access Fee shall be a sum which is the product of the multiplication of the cumulative Access Fee for each period, using as the numerator, the CPI-U for December of the year in which said five (5) year period commences and the denominator is the CPI-U for May 2000. Notwithstanding anything herein contained to the contrary, in no event shall the Access Fee paid hereunder during any renewal be less than the Access Fee for the previous term. In the event the U.S. Department of Labor shall discontinue the maintenance of the CPI-U, the rate shall be computed using similar statistical data maintained by a government agency.

(c) There shall be added and included in the Access Fee a monthly payment that amortizes any expenditure by the Authority for extraordinary repairs of the ramp located at the Point of Ingress/Egress that links the pavement at the boundary line of the Adjacent Property to the existing pavement on the Airport ("the Ramp"). Should THE AUTHORITY determine that extraordinary repairs need to be made to the ramp THE PERMITTEE shall be assessed the costs associated with the extraordinary repairs. The cost of the extraordinary repairs shall be amortized over the remaining months in the Term following the expenditure with an interest rate at ten percent (10%) per annum on the unpaid balance.

## 2.2 Penalties.

(a) If any payment under this permit remains unpaid ten (10) days after its due date, an administrative charge of \$50.00 shall be added to the amount due.

(b) In the event that any check to THE AUTHORITY for any payment under this agreement is returned to THE AUTHORITY by PERMITTEE'S bank unpaid for any cause, PERMITTEE shall pay THE AUTHORITY the amount of any administrative fee charged by THE AUTHORITY'S bank.

2.3 Possession and Use. PERMITTEE is granted the non-exclusive right to use, in a lawful manner and in common with others, all of the Public Use Area, as such may change from time to time, including but not limited to landing, taxiing, parking areas and other common use facilities.

2.4 Posting at the Point of Ingress/and Egress. PERMITTEE shall post and control the Point of Ingress/Egress to prevent use by persons not allowed under this agreement. Signs shall be placed on PERMITTEE'S property. Such signs shall be placed as not to interfere with or be an obstruction to taxiing aircraft. THE AUTHORITY shall have the

right to require PERMITTEE to add signs or replace or remove signs which THE AUTHORITY determines to be inadequate, improper or a safety hazard.

**2.5 Limited Access to Adjacent Property.** PERMITTEE shall fence the Adjacent Property with the exception of the Point of Ingress/Egress and install a breakaway gate from Victor Street for access by Town fire and emergency vehicles only. Said fence shall meet the specifications of THE AUTHORITY.

**2.6 Prohibited Uses of Airport.** PERMITTEE shall not use or permit to be used any portion of the Airport property for storage of non-aviation related personal property except in areas allowed and designated by THE AUTHORITY. PERMITTEE understands that if Airport property is used for such storage, THE AUTHORITY may demand and compel its removal upon forty-eight (48) hour notice. If such personal property is not removed within the specified time after such demand then THE AUTHORITY may remove the same and charge the cost of the removal to PERMITTEE. PERMITTEE agrees that its use of the Airport, and that of its employees, agents, unit owners, and contractors shall be confined to the Public Use Area and the Point of Ingress/Egress and PERMITTEE shall allow use of the Airport only by aircraft meeting the Airport's design criteria. No automobiles, bicycles, trucks, motorcycles or other power driven vehicles, pedestrians, or animals, shall be allowed on the Airport Public Use Area or the Point of Ingress/Egress except for vehicles authorized by THE AUTHORITY and vehicles for which THE AUTHORITY has provided an access card. Notwithstanding anything to the contrary herein, PERMITTEE shall be subject to all rules, laws and regulations applicable to other users of the Airport, including but not limited to the "Minimum Standards and Regulations for the Development and Operations of Aviation Facilities at the Tweed-New Haven Airport", as amended from time to time.

**2.7 Restricted Use of Adjacent Property.** PERMITTEE'S use of the Adjacent Property shall be limited to aircraft storage and an office/aircraft owners lounge.

**2.8 Assignment.** This agreement may be assigned from Northeast Ramp, Ltd., to a condominium association. Thereafter, this agreement shall not be assigned. However, THE AUTHORITY acknowledges that PERMITTEE will be a condominium and that each member of the condominium association will own his or her own hangar, pay a portion of the access fee paid by PERMITTEE, and be permitted to transfer his or her hangar at his or her discretion, subject only to the bylaws of the condominium association. THE AUTHORITY shall be notified in writing at the completion of each transfer and the name, address and aircraft registration number of each transferee before said transferee may exercise the privilege of access provided for herein.

**2.9 No Exclusive Right.** Nothing herein contained shall be construed to grant or authorize the granting of an exclusive right forbidden by Section 308 of the Federal Aviation Act of 1958.

### SECTION 3 Duty to Comply

- 3.1 Records.** PERMITTEE shall keep proper books of account and other records pertaining to its operation. The books and records shall be available at all time during normal business hours to THE AUTHORITY and its authorized representatives, which may inspect all such books and records to ascertain compliance with the terms and conditions of this agreement.
- 3.2 Entry onto the Adjacent Property.** Subject to advance notice unless an emergency exists, representatives of THE AUTHORITY may enter the ingress/egress area and/or the Adjacent Property at any time for the purpose of determining compliance with the terms and conditions of this agreement.
- 3.3 Airport Regulations.** PERMITTEE'S exercise of its rights under this agreement is subject to all applicable existing and future federal and state regulations adopted by the Connecticut Department of Transportation relative to the operation of Tweed-New Haven Airport, and PERMITTEE agrees to comply with all of the provisions of such regulations. The flights conducted at the Airport shall conform to all applicable Federal Aviation Regulations, Connecticut statutes, and traffic patterns as established at the Airport by THE AUTHORITY.
- 3.4 Construction or Alteration.** PERMITTEE agrees that no structure, building or other facility which violates the navigable airspace as defined in Federal Aviation Regulations (FAR), Part 77, shall be constructed or permitted to be constructed on the Adjacent Property. THE AUTHORITY shall retain the right to require its prior written approval of any construction on the Adjacent Property by PERMITTEE. THE AUTHORITY shall not unreasonably withhold its approval.
- 3.5 Protection of the Airport's Navigable Airspace.** THE AUTHORITY shall have the right to take any action it considers necessary to protect the Airport's navigable airspace, as defined by FAR, Part 77, against obstructions, together with the right to prevent PERMITTEE from erecting, or permitting to be erected, any building or other structure on the airport which, in the opinion of THE AUTHORITY, would limit the efficiency of the Airport or constitute a hazard to aircraft.
- 3.6 Access and Automobile Parking.** No motor vehicle belonging to PERMITTEE and its unit owners, except aircraft shall be allowed on the airport runway, taxiway, or adjacent airport land, except in areas specifically designated for motor vehicle use.
- 3.7 Maintenance.** PERMITTEE shall maintain the Adjacent Property and the Point of Ingress/Egress, as shown on Exhibit "B", in a safe condition at all times. PERMITTEE shall be responsible for snow removal on the Adjacent Property and shall maintain the Adjacent Property in a reasonably clean and neat fashion and shall not permit the accumulation of rubbish, junk, aircraft or automobile parts or any other material. THE AUTHORITY shall have no obligation to maintain said Point of Ingress/Egress or the Adjacent Property unless otherwise agreed. THE AUTHORITY shall be responsible for maintaining the Ramp in a safe condition the same as other taxiways or ramps on Airport property and for snow removal.

**3.8 Hazardous Substances.** For the purposes of this agreement, the following are collectively included as Hazardous Substances: environmentally hazardous or toxic materials, substances, compounds, mixtures, wastes, oils or any other substances defined as a pollutant or contaminant by any federal, state or local law, rule or regulations. PERMITTEE represents, warrants and covenants that it has not and shall not nor shall it allow anyone else, either willfully or negligently to store, dispose of, or release any Hazardous Substance on any portion of the Airport property. PERMITTEE shall indemnify and hold THE AUTHORITY harmless from any and all claims, losses, damage, cleanup costs, attorney fees and other expenses resulting from the presence of any Hazardous Substances in, on, upon or under the Point of Ingress/Egress or any portion of the Adjacent Property or the Airport if such damage to the airport results from PERMITTEE'S actions or failure to act. All costs associated with the use of Hazardous Substances or petroleum products, including by not limited to costs of cleanup, removal, remediation, and compliance with federal, state and local environmental requirements, shall be the primary responsibility of PERMITTEE. All Hazardous Substances and petroleum products shall be used, handled, cleaned up, removed and remediated in accordance with federal, state and local requirements.

**3.9 Compliance with Law.** PERMITTEE shall observe and obey all laws, ordinances, rules and regulation promulgated by any lawful authority of the United States, the State of Connecticut, or any political subdivision of the State having authority over or jurisdiction of the premises, including but not limited to safety, health, sanitary, fire electrical and building codes, zoning and state and local comprehensive plans and criminal laws, relating to its use of the Airport and the Adjacent Property under this Agreement.

**3.10 Organized Public Activities.** In the event that any organized public activity using the airport's airspace or aircraft operational areas is planned by PERMITTEE at the Tweed-New Haven Airport Authority, PERMITTEE shall request approval from THE AUTHORITY in writing not less than (30) days prior to any scheduled activity.

**3.11 Insurance.** PERMITTEE shall secure, at its own expense, carry and keep in effect during the term of this agreement, as a minimum, liability insurance for personal injury, property damage and contractual liability covering all of the PERMITTEE'S activities under this agreement. THE AUTHORITY, its officers, agents and employees, AMPORT, or its successor operator, its officers, agents and employees, the City of New Haven, and the Town of East Haven, shall be named as additional insureds. Coverage limits shall not be less than One Million Dollars (\$1,000,000) combined single limit for each occurrence. Said insurance is to be obtained from an insurance company authorized to do business in the State of Connecticut, shall be in a form satisfactory to THE AUTHORITY, AMPORT, or its successor operator, the City of New Haven and/or Town of East Haven, and shall cover any and all losses due to maintenance, operations, use of the Airport, or activities conducted or sponsored by the PERMITTEE, its unit owners, employees, agents or any contractors. These limits of insurance shall be primary and exclusive of any carried by THE AUTHORITY and shall be exhausted first.

Before this agreement is executed, PERMITTEE shall furnish to THE AUTHORITY and THE AUTHORITY shall approve a Certificate of Insurance as evidence of the insurance coverage and limits required by this agreement. Insurance coverage shall not be amended, altered, modified or canceled without at least thirty (30) days prior written notice to THE AUTHORITY, and this shall be so stated in the Certificate of Insurance.

The parties hereto agree that in the event the insurance limitations required herein are determined by legislation, court action or otherwise to be inadequate, the insurance requirement shall be appropriately amended within 30 days.

Failure to keep required insurance in effect or failure to provide proof, upon request by THE AUTHORITY, of continuance of such insurance is a breach of this agreement and is grounds for default and termination pursuant to the provisions of SECTION IV, paragraphs 4.1 and 4.3.

**3.12 Responsible Party.** PERMITTEE is responsible for any damage caused by its employees, agents, contractors, and unit owners, and PERMITTEE shall indemnify THE AUTHORITY from and against any and all costs, damage or liability actions resulting from the conduct of any PERMITTEE'S unit owners, their invitees, lessees and assigns.

**3.13 No Waiver.** The covenants of this agreement are continuing covenants and the waiver, whether express or implied by THE AUTHORITY or PERMITTEE, of breaches of these covenants shall not be deemed a waiver of subsequent breaches thereof.

**3.14 Amendment.** Any future agreement between the parties of this agreement hereinafter made shall be ineffective to modify or discharge this agreement, in whole or in part, unless such agreement is in writing and executed with the same formalities as this instrument.

**3.15 Subordinations.** The provisions of this agreement shall be subordinate to the existing Lease and Operating Agreement by and between the Authority and the City of New Haven dated July 1, 1998 and to any future agreement between THE AUTHORITY and the City of New Haven and to any said existing or future agreement between THE AUTHORITY and the United States relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the receipt of federal funds for the development of the Airport. Failure of PERMITTEE to comply with any of the requirements of any said existing or future agreement shall be cause for immediate termination of PERMITTEE'S rights hereunder. During a time of war or national emergency, THE AUTHORITY shall have the right to lease the landing area or any part therefore to the United States government for military or other federal government purposes, and, if such lease is executed, the provisions of this agreement, insofar as they are inconsistent with the provisions of the lease to the government, shall be suspended and reinstated as such time as the lease with the federal government is terminate. Suspended time shall be considered as part of the term of this lease and will not extend the expiration date of this agreement. The ingress/egress fee to be paid by PERMITTEE to THE AUTHORITY shall be waived during such time as any lease with the federal government is in effect.

**3.16 The Authority's Right to Develop the Airport.** THE AUTHORITY reserves its right to further alter, develop or improve the Airport. In the event THE AUTHORITY decides, in its sole discretion, that the Adjacent Property is necessary to alter, develop or improve the Airport for a public purpose, THE AUTHORITY shall acquire the Adjacent Property for the fair market value as provided in Section 4.7.

**3.17 Maintenance of Airport.** THE AUTHORITY shall maintain the runways, public taxiway, and aircraft parking area. It is mutually understood that THE AUTHORITY retains sole authority to determine the methods and schedules by which any maintenance or necessary construction is to be performed. THE AUTHORITY shall have the right to close the Airport whenever it deems it necessary for reasons of public safety or convenience. No advance notice shall be necessary when closure of the Airport is by reason of weather, acts of God, or other unforeseen circumstance.

**3.18 Standard Notices.** For any terms of this agreement which require notice, written notice sent certified mail with postage affixed and mailed to the address provided in the signature portion of this agreement shall be deemed sufficient. Notice shall be deemed received the third day after the mailing date. Either party may, by notice in writing to the other, change the address to which notices to that party are to be given.

**3.19 Authority.** Any and all power and authority conferred upon PERMITTEE by this agreement shall be strictly construed, and no other powers may be lawfully exercised by PERMITTEE without THE AUTHORITY'S prior written consent. PERMITTEE shall not have any authority to act on behalf of THE AUTHORITY, or to bind THE AUTHORITY.

**3.20 No Agency.** The parties hereto understand and agree that the requirements imposed on PERMITTEE by terms of this agreement shall not be construed to make PERMITTEE an officer, employee or agent of THE AUTHORITY.

#### SECTION 4 Termination and Default

**4.1 Events of Default.** Any one or more of the following events shall constitute a default under this agreement and entitled THE AUTHORITY to pursue the remedies set forth in this Section IV.

4.1.1. PERMITTEE fails to make payment when due of any ingress/egress fee when and as due, and such failure continues for more than ten (10) days.

4.1.2. PERMITTEE fails to comply with any of the covenants, agreements, terms of conditions contained in this agreement, and such failure continues for more than thirty (30) days after written notice is give to PERMITTEE by THE AUTHORITY, in the manner set forth in Section 3.18.

4.1.3. PERMITTEE files a voluntary petition of bankruptcy, or has filed against it an involuntary petition of bankruptcy or makes any assignment of the property for the benefit of creditors;

4.1.4. PERMITTEE abandons use of the Adjacent Property as an airplane storage facility for more than thirty (30) days; or

4.1.5. PERMITTEE fails to comply with all applicable federal and Connecticut laws, and/or local permits, licenses or ordinances.

4.2 Remedies. Upon the occurrence of any one or more Events of Default and after giving PERMITTEE written notice as provided in Section 3. 18, THE AUTHORITY may exercise any one or more of the remedies, or any other remedy available under applicable law or in equity,

4.2.1. Remove or occupy any property of either PERMITTEE or PERMITTEE'S unit owners located on any portion of the Airport;

4.2.2. Deny PERMITTEE or PERMITTEE'S unit owners any of their rights under the terms of this agreement, including the rights of ingress and egress to and from the Point of Ingress/Egress;

4.2.3. Recover all unpaid fees due under this agreement, and damages caused by the default including attorney fees, including an administrative fee equal to 10% of such past due fees or amounts; or

4.2.4. Terminate this agreement by written notice mailed to PERMITTEE at the address set forth in the signature section of this agreement, and pursue all additional remedies available at law or in equity.

4.3 Termination; Survival. Upon termination of this agreement PERMITTEE shall immediately cease use of the Point of Ingress/Egress between the Adjacent Property and the Airport. Unless otherwise specified in this agreement, all fees, charges or liabilities owing or arising under this agreement shall survive termination of this agreement. This agreement shall terminate upon:

4.3.1. Mailing of THE AUTHORITY'S termination notice, for any of the conditions and upon the procedure set forth in Section 4.2.4;

4.3.2. Mutual written agreement of THE AUTHORITY and PERMITTEE;

4.3.3. Discontinuance of PERMITTEE'S use of the Adjacent Property for aircraft storage purposes;

4.3.4. Sixty (60) days' written notice to PERMITTEE from THE AUTHORITY that THE AUTHORITY has determined to (i) close or sell the Airport, or (ii) require relocation of the Point of Ingress/Egress as provided in Section 3. 16, provided however, that in the

event of relocation of the point of Ingress/Egress for good cause, THE AUTHORITY shall make a determination regarding relocating the Point of Ingress/Egress in a manner which would afford PERMITTEE access to the Public Use Area from the Adjacent Property. If THE AUTHORITY offers a substitute Point of Ingress/Egress not agreeable to PERMITTEE, PERMITTEE, shall have ten (10) days to either accept or reject such offer in writing and, if it accepts, this agreement shall remain in full force and effect and PERMITTEE'S obligation to pay any fee under this agreement shall be waived for the amount of time PERMITTEE is required to suspend operation as a result of such relocation. Access at such relocated area shall be made available based on the fee schedule in Section 2.1 of this agreement. If the PERMITTEE rejects such offer, the agreement is terminated.

**4.4 Declaration of Termination and No Warranty of Non-interference.** The parties hereto understand and recognize that the actions of local governmental units, parties holding land or living adjacent to the Tweed New Haven Airport, and governmental entities not subject to the influence and control of THE AUTHORITY may have, in the future, adverse impacts upon the number and character of flights and other operations at the Airport. In such event, PERMITTEE has the option of declaring this agreement terminated on ninety (90) days' written notice to THE AUTHORITY and the provisions of SECTION 4.3, shall apply. PERMITTEE agrees not to seek to recover any damages from THE AUTHORITY in the event of such a termination.

**4.5 Non-Exclusive Right and Remedies.** The rights and remedies provided in the above provisions relating to default, including breach of contract, shall not be exclusive, and are in addition to any rights and remedies provided by law or in equity or otherwise under this agreement.

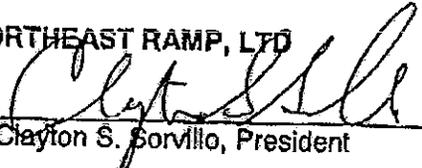
**4.6 Holding Over.** Any holding over after the expiration of the Term, shall be allowed only with payment of ingress/egress fees at a monthly rate to be determined by THE AUTHORITY, but not substantially exceeding the amount of the Access Fee set forth in Section 2.1 for the applicable month immediately prior to the expiration of the Term. Holding over creates a month-to-month permit subject to the terms and conditions of this agreement at the sufferance of THE AUTHORITY.

**4.7 The Authority's Purchase Option.** In the event that this agreement is terminated under Section 4.3 and PERMITTEE decides to sell the Adjacent Property or in the event the Term expires, the Adjacent Property, at the option of THE AUTHORITY or its successor, shall be transferred to THE AUTHORITY or its successor for a purchase price that shall be the fair market value of the Adjacent Property as used to store eighteen (18) aircraft with access to the Airport. Said option shall be exercised by written notice to PERMITTEE at least two hundred (200) days prior to the end of the Term or within thirty (30) days after the termination date, whichever deadline is applicable. The fair market value shall be established by a disinterested appraiser mutually selected by the PERMITTEE and THE AUTHORITY. If the PERMITTEE and THE AUTHORITY are unable to agree on a disinterested appraiser, then within thirty (30) days of determining that the parties are unable to so agree, the PERMITTEE and the THE AUTHORITY shall each select a disinterested appraiser and if the disinterested

appraisers selected are not able to agree as to the fair market value of the Adjacent Property, then within thirty (30) days of the appraisers' determination that they are unable to reach agreement, the two (2) disinterested appraisers shall select a third disinterested appraiser who shall determine the fair market value. The determination of the fair market value by the appraiser or appraisers shall be conclusive and binding on all parties. All costs of an appraiser mutually selected by the PERMITTEE and THE AUTHORITY or the two disinterested appraisers, as the case may be, shall be shared equally by the PERMITTEE and THE AUTHORITY. All costs of an individually selected appraiser shall be borne by the party selecting such appraiser. Said transfer of title to the Adjacent Property shall be in compliance with all applicable federal and state statutes and regulations and local ordinances and customs, and shall be contingent upon the availability or appropriation of funds by THE AUTHORITY or its successor, and the closing shall take place within sixty (60) days of the determination of fair market value.

**4.8 Right of First Refusal.** In the event that a transfer under Section 4.7 has not taken place, PERMITTEE shall give THE AUTHORITY notice as provided in Section 3.18 of a bona fide offer to purchase by a third party and THE AUTHORITY shall have thirty (30) days from the date of said notice to match that offer and enter into a contract to purchase on the terms and conditions of the bona fide offer. The thirty-day deadline shall be extended if federal, state or local authorities request an extension, which extension shall not exceed thirty (30) days.

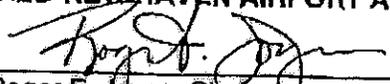
NORTHEAST RAMP, LTD

By:   
Clayton S. Sorvillo, President

Date: 11/29/99

Mailing Address:  
83 Hemingway Avenue  
East Haven, CT 06512

TWEED-NEW HAVEN AIRPORT AUTHORITY

By:   
Roger F. Joyce, Chairman

Date: 11/29/99

Mailing Address:  
Tweed-New Haven Airport  
155 Burr Street  
New Haven, CT 06512

Tweed-New Haven Airport Ingress/Egress Agreement  
With Northeast Ramp, Ltd.

Exhibit A  
Property Description  
134 Victor Street, East Haven, Connecticut

VOL. PAGE  
1042 073

A certain piece or parcel of land, together with any improvements thereon, situated in the Town of East Haven, County of New Haven and State of Connecticut, containing 2.775 acres and shown as Parcel "B" on a map entitled, "Property Survey, Land of Albert & Paul Mennoni, 134 Victor Street, East Haven, Connecticut" by LWF Land Surveying, scale 1" = 40', dated February 1993, revised May 11, 1995, said parcel being more particularly bounded and described as follows:

Commencing at a point which is the most northerly corner of said Parcel "B", which point also marks the most easterly corner of Parcel "A" as shown on said map, said point lying in the southwesterly boundary of land now or formerly of Robert Celentano, as shown on said map;

Thence running S 33°-33'-30" E, 314.23 feet, along land now or formerly of Robert Celentano, as shown on said map;

Thence running S 40°-40'-40" E, 304.38 feet, along land now or formerly of Thomas F. and Shirley G. Sklbitcky, as shown on said map;

Thence running S 41°-34'-40" W, 63.61 feet, along land now or formerly of Frank and Barbara P. Camara, as shown on said map;

Thence running S 42°-02'-50" W, 51.03 feet, along Victor Street, as shown on said map;

Thence running S 44°-16'-00" W, 101.34 feet, along land now or formerly of Anthony and Carmel Garrida, as shown on said map;

Thence running N 37°-54'-30" W, 203.31 feet, and N 51°-15'-10" W, 201.78 feet, along land now or formerly of the City of New Haven, as shown on said map; and

Thence running N 14°-07'-10" E, 233.82 feet, along land shown as Parcel "A" on said map, to the point and place of commencement.

SAID PREMISES ARE SUBJECT TO THE FOLLOWING:

1. Building lines, if established, and any and all provisions of any federal, state or municipal law, ordinance, regulations or executive order, including building and zoning ordinances affecting said premises.
2. Taxes due the Town of East Haven on the List of October 1, 1998, not yet due and payable, which taxes the grantees herein assume and agree to pay as part of the consideration for this deed.

Received for record JUN 2 1999  
at 2:10 P.M. and recorded by  
Cynthia C. Kelly, Town Clerk

**Tweed-New Haven Airport Ingress/Egress Agreement  
With Northeast Ramp, Ltd.**

**Exhibit B  
Site Plan**

**HOULTON INTERNATIONAL AIRPORT**  
**INGRESS/EGRESS AGREEMENT**

The Town of Houlton, hereinafter referred to as THE TOWN, hereby grants to Beals Aviation, its successors or assigns hereinafter referred to as PERMITTEE, right of ingress to and egress from the Houlton International Airport, on the terms and conditions in this agreement.

**Definitions**

“Airport” – Houlton International Airport, the boundaries of which are shown on Town of Houlton tax maps.

“Public Use Area” – All portions of the Airport as are available for public use as permitted by THE TOWN, as such may change from time to time.

“Adjacent Property” – That certain 0.73 acre parcel of improved real property known as 19 Industrial Drive in the Town of Houlton, owned by PERMITTEE and located adjacent to the Airport, and identified on Town map/lot 036-0-002-000-000.

“Point of Ingress/Egress” – The point where the Airport’s taxi way adjoins and abuts the Adjacent Property, as depicted on the attached Exhibit “A”.

**Recitals**

- A. THE TOWN operates the Houlton International Airport.
- B. PERMITTEE owns the Adjacent Property from which aircraft are planned to access the Airport.
- C. PERMITTEE desires to obtain rights of ingress/egress to the Airport for For itself and its employees, agents, contractors, unit owners, and invitees to operate a commercial aeronautical activity offering services to the public;
- D. THE TOWN is willing to allow such rights of ingress/egress, on the terms set forth in this agreement.

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**SECTION 1**  
**Grant, Scope, Term, Representatives**

1.1 **Grant.** THE TOWN grants to PERMITTEE non-exclusive rights of ingress and egress at the Point of Ingress/Egress, to and from the Public Use Area of the Airport; provided, however, that THE TOWN reserves the rights: (i) to deny access to anyone at

the Point of Ingress/Egress if it determines that entry poses a risk to the safe operation of the Airport as determined by the Airport manager, and (ii) to relocate the Point of Ingress/Egress upon sixty (60) days' written notice to PERMITTEE along the boundary between the Adjacent Property and the Airport subject to Article 4.3.4. and; (iii) to purchase the Adjacent Property in accordance with Article 3.16 or Article 4.7. This grant is contingent upon the continued ownership and operation of the Airport by THE TOWN, and upon the continued compliance by PERMITTEE with all of the conditions of this agreement.

1.2 **No Rights In Real Property.** PERMITTEE acknowledges that the rights granted pursuant to this agreement are personal to the parties herein and do not create any real property rights and shall neither burden the Airport nor benefit the Adjacent Property.

1.3 **Term.** This agreement will be in full force and effect for a period of thirty (30) years, commencing on \_\_\_\_\_ and ending on \_\_\_\_\_ ("Term").

1.4 **Authorized Representative.** Upon signing this agreement, PERMITTEE hereby names as authorized representative to act in each of their behalf to carry out their responsibilities and obligations under the terms of this agreement the signatories identified on the signature page of this agreement. Such representatives may be changed at any time, by written notice as set forth in Section 3.18 of this agreement.

## SECTION 2 Payment for and Use of Airport Access

### 2.1 Consideration.

(a) For the period \_\_\_\_\_ to \_\_\_\_\_, PERMITTEE shall pay to THE TOWN the amount of One Hundred Ninety Sixty Dollars (\$196.00) per year for ingress/egress privileges. This Access Fee shall be based upon the rate of \$0.02 per square foot of each and all buildings located upon the described property. The Access Fee shall be payable in advance on the first day of each year of the Agreement Term.

(b) This agreement shall be subject to a Consumer Price Index adjustment which shall occur on each five-year anniversary or the original effective date. The adjustment shall be the percentage by which the Consumer Price Index for the time of the adjustment exceeds the Consumer Price Index at the commencement date of the agreement. For the purpose of this paragraph the Consumer Price Index shall be that reported by the Wall Street Journal (Eastern Edition) for all urban consumers.

2.2 **Possession and Use.** PERMITTEE is granted the non-exclusive right to use, in a lawful manner and in common with others, all of the Public Use Area, as such may change from time to time, including but not limited to landing, taxiing, parking areas and other common use facilities.

**2.3 Posting at the Point of Ingress/and Egress.** PERMITTEE shall post and control the Point of Ingress/Egress to prevent use by persons not allowed under this agreement. Signs shall be placed on PERMITTEE'S property. Such signs shall be placed as not to interfere with or be an obstruction to taxiing aircraft. THE TOWN shall have the right to require PERMITTEE to add signs or replace or remove signs which THE TOWN determines to be inadequate, improper or a safety hazard.

**2.4 Prohibited Uses of Airport.** PERMITTEE shall not use or permit to be used any portion of the Airport property for storage of non-aviation related personal property except in areas allowed and designated by THE TOWN. PERMITTEE understands that if Airport property is used for such storage, THE TOWN may demand and compel its removal upon forty-eight (48) hour notice. If such personal property is not removed within the specified time after such demand then THE TOWN may remove the same and charge the cost of the removal to PERMITTEE. PERMITTEE agrees that its use of the Airport, and that of its employees, agents, unit owners, and contractors shall be confined to the Public Use Area and the Point of Ingress/Egress and PERMITTEE shall allow use of the Airport only by aircraft meeting the Airport's design criteria. No automobiles, bicycles, trucks, motorcycles or other power driven vehicles, pedestrians, or animals, shall be allowed on the Airport Public Use Area or the Point of Ingress/Egress except for vehicles authorized by THE TOWN and vehicles for which THE TOWN has provided an access card. Notwithstanding anything to the contrary herein, PERMITTEE shall be subject to all rules, laws and regulations applicable to other users of the Airport, including but not limited to the "Minimum Standards and Regulations for the Development and Operations of Aviation Facilities at the Houlton International Airport", as amended from time to time.

**2.5 SUBLETTING Assignment:** The PERMITTEE shall not at any time assign, sell, or convey, or sublet this lease agreement or any part thereof, without the prior written consent of the Town of Houlton Any consent shall provide that:

A. PERMITTEE shall notify the Town of the name and address of the proposed sublessee or tenant permittee.

B. Any agreement between PERMITTEE and such assignee or sublessee shall require full compliance by such party with the obligations on the part of this agreement lessee to be performed thereunder.

**2.6 2.6-No Exclusive Right.** Nothing herein contained shall be construed to grant or authorize the granting of an exclusive right forbidden by Section 308 of the Federal Aviation Act of 1958.

**2.7** The permittee assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates the p or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to

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provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the Provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this Provision binds the contractors from the bid solicitation period through the completion of the contract.

2.8 The permittee will provide aeronautical services to the public and agrees that it will:

(1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and

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

2.9 The grantee will provide aeronautical services to the public and agrees that it will:

(1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and

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

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### SECTION 3 Duty to Comply

3.1 **Entry onto the Adjacent Property.** Subject to advance notice unless an emergency exists, representatives of THE TOWN may enter the ingress/egress area and/or the Adjacent Property at any time for the purpose of determining compliance with the terms and conditions of this agreement.

3.2 **Airport Regulations.** PERMITTEE'S exercise of its rights under this agreement is subject to all applicable existing and future federal and state regulations relative to the operation of Houlton International Airport, and PERMITTEE agrees to comply with all of the provisions of such regulations.

3.3 **Construction or Alteration.** PERMITTEE agrees that no structure, building or other facility which violates the navigable airspace as defined in Federal Aviation

Regulations (FAR), Part 77, shall be constructed or permitted to be constructed on the Adjacent Property. THE TOWN shall retain the right to require its prior written approval of any construction on the Adjacent Property by PERMITTEE. THE TOWN shall not unreasonably withhold its approval.

**3.4 Protection of the Airport's Navigable Airspace.** THE TOWN shall have the right to take any action it considers necessary to protect the Airport's navigable airspace, as defined by FAR, Part 77, against obstructions, together with the right to prevent PERMITTEE from erecting, or permitting to be erected, any building or other structure on the airport which, in the opinion of THE TOWN, would limit the efficiency of the Airport or constitute a hazard to aircraft

**3.5 Access and Automobile Parking.** No motor vehicle belonging to PERMITTEE and its unit owners, except aircraft shall be allowed on the airport runway, taxiway, or adjacent airport land, except in areas specifically designated for motor vehicle use.

**3.6 Maintenance.** PERMITTEE shall maintain the Adjacent Property and the Point of Ingress/Egress, as shown on Exhibit "A", in a safe condition at all times. PERMITTEE shall be responsible for snow removal on the Adjacent Property and shall maintain the Adjacent Property in a reasonably clean and neat fashion and shall not permit the accumulation of rubbish, junk, aircraft or automobile parts or any other material. THE TOWN shall have no obligation to maintain said Point of Ingress/Egress or the Adjacent Property unless otherwise agreed. THE TOWN shall be responsible for maintaining the Ramp in a safe condition the same as other taxiways or ramps on Airport property and for snow removal.

**3.7 Hazardous Substances.** For the purposes of this agreement, the following are collectively included as Hazardous Substances: environmentally hazardous or toxic materials, substances, compounds, mixtures, wastes, oils or any other substances defined as a pollutant or contaminant by any federal, state or local law, rule or regulations. PERMITTEE represents, warrants and covenants that it has not and shall not nor shall it allow anyone else, either willfully or negligently to store, dispose of, or release any Hazardous Substance on any portion of the Airport property. PERMITTEE shall indemnify and hold THE TOWN harmless from any and all claims, losses, damage, cleanup costs, attorney fees and other expenses resulting from the presence of any Hazardous Substances in, on, upon or under the Point of Ingress/Egress or any portion of the Adjacent Property or the Airport if such damage to the airport results from PERMITTEE'S actions or failure to act. All costs associated with the use of Hazardous Substances or petroleum products, including but not limited to costs of cleanup, removal, remediation, and compliance with federal, state and local environmental requirements, shall be the primary responsibility of PERMITTEE. All Hazardous Substances and petroleum products shall be used, handled, cleaned up, removed and remediated in accordance with federal, state and local requirements.

**3.8 Compliance with Law.** PERMITTEE shall observe and obey all laws, ordinances, rules and regulation promulgated by any lawful TOWN of the United States, the State of

Maine, or any political subdivision of the State having TOWN over or jurisdiction of the premises, including but not limited to safety, health, sanitary, fire, electrical and building codes, zoning and state and local comprehensive plans and criminal laws, relating to its use of the Airport and the Adjacent Property under this Agreement.

**3.9 Organized Public Activities.** In the event that any organized public activity using the airport's airspace or aircraft operational areas is planned by PERMITTEE, the PERMITTEE shall request approval from THE TOWN in writing not less than (30) days prior to any scheduled activity.

**3.10 Insurance.** PERMITTEE shall secure, at its own expense, carry and keep in effect during the term of this agreement, as a minimum, liability insurance for personal injury, property damage and contractual liability covering all of the PERMITTEE'S activities under this agreement. THE TOWN, shall be named as an additional insured. Coverage limits shall not be less than One Million Dollars (\$1,000,000) combined single limit for each occurrence. Said insurance is to be obtained from an insurance company authorized to do business in the State of Maine, shall be in a form satisfactory to THE TOWN, and shall cover any and all losses due to maintenance, operations, use of the Airport, or activities conducted or sponsored by the PERMITTEE, its unit owners, employees, agents or any contractors. These limits of insurance shall be primary and exclusive of any carried by THE TOWN and shall be exhausted first.

The parties hereto agree that in the event the insurance limitations required herein are determined by legislation, court action or otherwise to be inadequate, the insurance requirement shall be appropriately amended within 30 days.

Failure to keep required insurance in effect or failure to provide proof, upon request by THE TOWN, of continuance of such insurance is a breach of this agreement and is grounds for default and termination pursuant to the provisions of SECTION IV, paragraphs 4.1 and 4.3.

**3.11 Responsible Party.** PERMITTEE is responsible for any damage caused by its employees, agents, contractors, and unit owners, and PERMITTEE shall indemnify THE TOWN from and against any and all costs, damage or liability actions resulting from the conduct of any PERMITTEE'S unit owners, their invitees, lessees and assigns.

**3.12 No Waiver.** The covenants of this agreement are continuing covenants and the waiver, whether express or implied by THE TOWN or PERMITTEE, of breaches of these covenants shall not be deemed a waiver of subsequent breaches thereof.

**3.13 Amendment.** Any future agreement between the parties of this agreement hereinafter made shall be ineffective to modify or discharge this agreement, in whole or in part, unless such agreement is in writing and executed with the same formalities as this instrument.

3.14 **Maintenance of Airport.** THE TOWN shall maintain the runways, public taxiway, and aircraft parking area. It is mutually understood that THE TOWN retains sole authority to determine the methods and schedules by which any maintenance or necessary construction is to be performed. THE TOWN shall have the right to close the Airport whenever it deems it necessary for reasons of public safety or convenience. No advance notice shall be necessary when closure of the Airport is by reason of weather, acts of God, or other unforeseen circumstance.

3.15 **Standard Notices.** For any terms of this agreement which require notice, written notice sent certified mail with postage affixed and mailed to the address provided in the signature portion of this agreement shall be deemed sufficient. Notice shall be deemed received the third day after the mailing date. Either party may, by notice in writing to the other, change the address to which notices to that party are to be given.

3.16 **Authority.** Any and all power and authority conferred upon PERMITTEE by this agreement shall be strictly construed, and no other powers may be lawfully exercised by PERMITTEE without THE TOWN'S prior written consent. PERMITTEE shall not have any authority to act on behalf of THE TOWN, or to bind THE TOWN.

3.17 **No Agency.** The parties hereto understand and agree that the requirements imposed on PERMITTEE by terms of this agreement shall not be construed to make PERMITTEE an officer, employee or agent of THE TOWN.

#### **Section 4 Termination and Default**

4.1 **Events of Default.** Any one or more of the following events shall constitute a default under this agreement and entitled THE TOWN to pursue the remedies set forth in this Section IV.

4.1.1. PERMITTEE fails to make payment when due of any ingress/egress fee when and as due, and such failure continues for more than ten (10) days.

4.1.2. PERMITTEE fails to comply with any of the covenants, agreements, terms of conditions contained in this agreement, and such failure continues for more than thirty (30) days after written notice is give to PERMITTEE by THE TOWN, in the manner set forth in Section 3.18.

4.1.3. PERMITTEE files a voluntary petition of bankruptcy, or has filled against it an involuntary petition of bankruptcy or makes any assignment of the property for the benefit of creditors;

4.1.4. PERMITTEE fails to comply with all applicable federal and Maine laws, and/or local permits, licenses or ordinances.

**4.2 Remedies.** Upon the occurrence of any one or more Events of Default and after giving PERMITTEE written notice as provided in Section 3.18, THE TOWN may exercise any one or more of the remedies, or any other remedy available under applicable law or in equity.

4.2.1. Deny PERMITTEE or PERMITTEE'S unit owners any of their rights under the terms of this agreement, including the right of ingress and egress to and from the Point of Ingress/Egress;

4.2.2. Recover all unpaid fees due under this agreement, and damages caused by the default including attorney fees, including an administrative fee equal to 10% of such past due fees or amount; or

4.2.3. Terminate this agreement by written notice mailed to PERMITTEE at the address set forth in the signature section of this agreement, and pursue all additional remedies available at law or in equity.

**4.3 Termination; Survival.** Upon termination of this agreement PERMITTEE shall immediately cease use of the Point of Ingress/Egress between the Adjacent Property and the Airport. Unless otherwise specified in this agreement, all fees, charges or liabilities owing or arising under this agreement shall survive termination of this agreement. This agreement shall terminate upon:

4.3.1. Mailing of THE TOWN'S termination notice, for any of the conditions and upon the procedure set forth in Section 4.2.4;

4.3.2. Mutual written agreement of THE TOWN and PERMITTEE;

4.3.3. Discontinuance of PERMITTEE'S use of the Adjacent Property for aircraft storage purposes;

4.3.4. Sixty (60) day's written notice to PERMITTEE from THE TOWN that THE TOWN has determined to (i) close or sell the Airport, or (ii) require relocation of the Point of Ingress/Egress as provided in Section 3.16, provided however, that in the event of relocation of the point of Ingress/Egress for good cause, THE TOWN shall make a determination regarding relocating the Point of Ingress/Egress in a manner which would afford PERMITTEE access to the Public Use Area from the Adjacent Property. If THE TOWN offers a substitute Point of Ingress/Egress not agreeable to PERMITTEE, PERMITTEE, shall have ten (10) days to either accept or reject such offer in writing and, if it accepts, this agreement shall remain in full force and effect and PERMITTEE'S obligation to pay any fee under this agreement shall be waived for the amount of time PERMITTEE is required to suspend operation as a result of such relocation. Access at such relocated area shall be made available based on the fee schedule in Section 2.1 of this agreement. If the PERMITTEE rejects such offer, the agreement is terminated.

**4.4 Declaration of Termination and No Warranty of Non-interference.** The parties hereto understand and recognize that the actions of local governmental units, parties holding land or living adjacent to the Houlton International Airport, and governmental entities not subject to the influence and control of THE TOWN may have, in the future, adverse impacts upon the number and character of flights and other operations at the Airport. In such event, PERMITTEE has the option of declaring this agreement terminated on ninety (90) days' written notice to THE TOWN and the provisions of SECTION 4.3, shall apply. PERMITTEE agrees not to seek to recover any damages from THE TOWN in the event of such a termination.

**4.5 Non-Exclusive Right and Remedies.** The rights and remedies provided in the above provisions relating to default, including breach of contract, shall not be exclusive, and are in addition to any rights and remedies provided by law or in equity or otherwise under this agreement.

**4.6 Holding Over.** Any holding over after the expiration of the Term, shall be allowed only with payment of ingress/egress fees at a monthly rate to be determined by THE TOWN, but not substantially exceeding the amount of the Access Fee set forth in Section 2.1 for the applicable month immediately prior to the expiration of the Term. Holding over creates a month-to-month permit subject to the terms and conditions of this agreement at the sufferance of THE TOWN.

**4.7 The Town's Purchase Option.** In the event that this agreement is terminated under Section 4.3 and PERMITTEE decides to sell the Adjacent Property or in the event the Term expires, the Adjacent Property, at the option of THE TOWN or its successor, shall be transferred to THE TOWN or its successor for a purchase price that shall be the fair market value of the Adjacent Property. Said option shall be exercised by written notice to PERMITTEE at least two hundred (200) days prior to the end of the Term or within thirty (30) days after the termination date, whichever deadline is applicable. The fair market value shall be established by a disinterested appraiser mutually selected by the PERMITTEE and THE TOWN. If the PERMITTEE and THE TOWN are unable to agree on a disinterested appraiser, then within thirty (30) days of determining that the parties are unable to so agree, the PERMITTEE and the THE TOWN shall each select a disinterested appraiser and if the disinterested appraisers selected are not able to agree as to the fair market value of the Adjacent Property, then within thirty (30) days of the appraisers' determination that they are unable to reach agreement, the two (2) disinterested appraisers shall select a third disinterested appraiser who shall determine the fair market value. The determination of the fair market value by the appraiser shall be conclusive and binding on all parties. All costs of an appraiser mutually selected by the PERMITTEE and THE TOWN or the two disinterested appraisers, as the case may be, shall be shared equally by the PERMITTEE and THE TOWN. All costs of an individually selected appraiser shall be borne by the party selecting such appraiser. Said transfer of title to the Adjacent Property shall be in compliance with all applicable federal and state statutes and regulations and local ordinances and customs, and shall be contingent upon the availability or appropriation of

funds by THE TOWN or its successor, and the closing shall take place within sixty (60) days of the determination of fair market value.

4.8 **Right of First Refusal.** In the event that a transfer under Section 4.7 has not taken place, PERMITTEE shall give THE TOWN notice as provided in Section 3.18 of a bona fide offer to purchase by a third party and THE TOWN shall have thirty (30) days from the date of said notice to match that offer and enter into a contract to purchase on the terms and conditions of the bona fide offer. The thirty-day deadline shall be extended if federal, state or local authorities request an extension, which extension shall not exceed thirty (30) days.

#### **BEALS AIRCRAFT**

By: \_\_\_\_\_  
Terry Beals, President

Date: \_\_\_\_\_

Mailing Address:  
19 Industrial Drive  
Houlton, Maine 04730

#### **TOWN OF HOULTON – HOULTON INTERNATIONAL AIRPORT**

By: \_\_\_\_\_  
Douglas Hazlett, Town Manager

Date: \_\_\_\_\_

Mailing Address:  
21 Water Street  
Houlton, Maine 04730



# Federal Aviation Administration

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## Memorandum

Date:

To: ACO-1, ACO-100, Regional and Airports District Managers and Compliance Specialists

From: Charles C. Erhard, Manager of Airport Compliance & Field Operations

Subject: Compliance Guidance Letter 2009-1 - Through-the-Fence and On-Airport Residential Access to Federally Obligated Airports

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**I. – SUMMARY AND DEFINITIONS:** This Compliance Guide Letter (CGL) is to provide guidance to FAA Airports personnel regarding an airport sponsor's Federal obligations as it relates to an airport residential development and through-the-fence and on-airport residential access to federally obligated airports. The CGL is consistent with Order 5190.6B, FAA Airport Compliance Manual. For purposes of this CGL:

- Airport Property – all property identified on an airport's Exhibit A property map.
- Through-the-Fence (TTF) Access – is access to the public landing area by aircraft based on off-airport land adjacent to the airport property.
- Residential Use – includes single or multi-family dwellings; duplexes; apartments; primary or secondary residences even when collocated with a hangar, aeronautical facility, or business; hangars that incorporate living quarters for permanent or long-term use; and time-share hangars with living quarters for variable occupancy on a weekly or monthly basis.

**II. – BACKGROUND:** As a general principle, FAA does not support agreements that grant access to the public landing areas by aircraft stored and serviced off-site on adjacent property. This type of agreement is to be avoided since these agreements can create situations that lead to violations of the sponsor's federal obligations. It has been the FAA's experience that sponsors find it difficult to correct FAA grant assurance violations that result from TTF access. The inability to correct such violations can result in an airport losing its eligibility to receive Airport Improvement Program (AIP) grant funds.

Specifically, TTF agreements can have the effect of:

A. Placing contractual and legal encumbrances or conditions upon the airport property that cedes control of airport access to a TTF operator in violation of Grant Assurance 5, *Preserving Rights and Powers*. The sponsor must maintain the necessary rights and powers to comply with the grant assurances. The sponsor cannot relinquish its rights and powers to a private third party;

B. Limiting the sponsor's ability to ensure safe operations in both movement and non-movement areas, in violation of Grant Assurance 19, *Operation and Maintenance*. TTF access may bring both aircraft and uncontrolled vehicular traffic to the airfield creating unsafe conditions;

C. Creating unjustly discriminatory conditions for on-airport commercial tenants and other users by granting access to off-airport competitors or users in violation of Grant Assurance 22, *Economic Nondiscrimination*;

D. Effectively granting an exclusive right to the TTF operator in violation of Grant Assurance 23, *Exclusive Rights*, if the operator conducts a commercial business and no on-airport operator is able to compete because the terms given to the TTF operator are so much more favorable;

E. Affecting the airport's ability to be self-sustaining in violation of Grant Assurance 24, *Fee and Rental Structure*, because the airport may not be in a position to charge TTF operators adequately for the use of the airfield;

F. Weakening the sponsor's ability to remove and mitigate hazards and incompatible land uses, in violation of Grant Assurance 20, *Hazard Removal and Mitigation*, and Grant Assurance 21, *Compatible Land Use*;

G. Making it more difficult for an airport sponsor to implement future security requirements that may be imposed on airports.

Airport sponsors have no federal obligation to provide airport access to off-airport enterprises or individuals. In fact, the sponsor may simply deny TTF access if it chooses. In addition, TTF users are not protected by the sponsor's federal obligations to the FAA. *M. Daniel Carey and Cliff Davenport v. Afton-Lincoln County Municipal Airport Joint Powers Board* (FAA Docket 16-06-06, January 19, 2007). Therefore, FAA will not consider complaints from off-airport entities attempting to establish TTF access or who have issues with their existing TTF access agreements (e.g. terms and conditions, or rates and charges). However, an improperly structured TTF agreement may subject a sponsor to a formal complaint by on-airport tenants under 14 CFR Part 16 (Part 16), *Rules of Practice for Federally Assisted Airport Enforcement Proceedings* alleging violations of the sponsor's grant obligations or federal property conveyances.

**III. – SCOPE:** The following is a discussion of FAA's position on various types of TTF access and on-airport residential development.

- A. Non-Residential Compatible Through-the-Fence Access:** On occasion, an off-airport entity with a compatible use will request TTF access to the airport. The primary driver for such agreements would be a use whose space requirements surpass the airport's ability to offer an on-airport site or the need would absorb so much airport property that it would limit future aeronautical development. Sponsors may face this situation when an industrial airpark or manufacturing facility is developed in conjunction with the airport and seeks access to the airfield solely for aircraft use without offering any aeronautical services to the public. While FAA does not encourage TTF access, a properly structured agreement with a compatible industry may be acceptable. *Sponsors should seek review of proposed TTF agreements by FAA Airports District Offices (ADOs) or Regional Division Offices (ROs) in advance of signing to ensure compliance with the sponsor's grant obligations and property conveyances. The access should be identified on the Airport Layout Plan and approved by the FAA.* The information below under "Procedures for Establishing TTF Access" will assist airport sponsors in developing a compliant TTF access agreement.
- B. Fixed Base Operations (FBO) and Other Aeronautical Service Providers**  
**TTF:** The FAA does not support airport sponsors entering into TTF agreements with an FBO, or other aeronautical service providers, that compete with on-airport FBO's and aeronautical service providers. Such agreements can undermine the sponsor's rights and powers to operate the airport and impede compliance with its federal obligations. *JetAway Aviation, LLC's Board of County Commissioners, Montrose County, Colorado* (FAA Docket 16-06-01). In addition, it can undermine the financial viability of on-airport aeronautical businesses and undermine an airport in becoming self-sustaining. *If an airport sponsor elects to enter into a TTF access agreement with an FBO or other aeronautical service provider, the sponsor should seek review of the proposed TTF agreement by the FAA ADO or RO in advance of signing to ensure compliance with the sponsor's grant obligations and property conveyances. The access point should be identified on the Airport Layout Plan and approved by FAA.* The information below under "Procedures for Establishing TTF Access" will assist sponsors in developing a compliant TTF access agreement.
- C. Residential Through-the-Fence Access:** *There are no acceptable forms of residential TTF agreements.* Residential use adjacent to an airport is an incompatible land use and in accordance with Grant Assurance 21, *Compatible Land Use*. Airport sponsors must take appropriate action, including the adoption of zoning laws, to restrict the use of land, to the extent reasonable, next to or near the airport to uses that are compatible with normal airport operations. (Title 49 § 47107(a)(10)). When an airport allows or promotes adjacent residential use by granting TTF access, it violates Grant Assurance 21 and jeopardizes its eligibility to receive AIP grant funding. *Carey v. Afton-Lincoln County* (FAA Docket 16-06-06, Jan. 19, 2007).

***On-Airport Residential Use:*** FAA ADOs and ROs are responsible for ensuring residential developments are not approved when reviewing ALPs. There is no justification for the introduction of residential development inside a federally obligated airport. It is the sponsor's federal obligation not to make or permit any changes or alterations in the airport or any of its facilities that are not in conformity with the ALP, as approved by the FAA, and that might, in the opinion of the FAA, adversely affect the safety, utility, or efficiency of the airport.

The FAA differentiates between a typical pilot resting facility or crew quarters and a hangar residence or hangar home. The FAA recognizes that certain aeronautical uses – such as commercial air taxi, charter, and medical evacuation services – may have a need for limited and short-term flight crew quarters for temporary use, including overnight and on-duty times. There may be a need for aircraft rescue and fire fighting (ARFF) quarters if there is a 24-hour coverage requirement. Moreover, an airport manager or a fixed-base operator (FBO) duty manager may have living quarters assigned as part of his or her official duties. Living quarters in these cases would be airport-compatible if an airport management or FBO job requires an official presence at the airport at off-duty times, and if the specific circumstances at the airport reasonably justify that requirement.

However, other than the performance of official duties in running an airport or FBO, the FAA does not consider permanent or long-term living quarters to be an acceptable use of airport property at federally obligated airports. This includes developments known as airparks or fly-in communities, and any other full-time, part-time, or secondary residences on airport property – even when co-located with an aviation hangar or aeronautical facility. While flight crew or caretaker quarters may include some amenities, such as beds, showers, televisions, and refrigerators, these facilities are designed to be used for overnights and resting periods, not as permanent or even temporary residences for flight crews, aircraft owners or operators, guests, customers, or the families or relatives of same.

Allowing residential development on federally obligated airports is incompatible with aircraft operations and conflicts with several grant assurance and surplus property requirements as mentioned above. Residential development inside federally obligated airports is inconsistent with federal obligations regarding the use of airport property.

**Access Not Permitted:** No exception will be made to permit TTF access for certain purposes:

1. The FAA will not approve TTF access for residential airpark purposes since that use is an incompatible land use.
2. The FAA will not approve a release of airport land for TTF access by aircraft, because airport land may only be released if the land no longer has an airport purpose. If the land would be used for the parking and operation of aircraft, it would not qualify for a release. A release of airport land for an aeronautical

use would simply serve to reduce the sponsor's control over the use and its ability to recover airport costs from the user.

#### IV. – PROCEDURES FOR ESTABLISHING THROUGH THE FENCE ACCESS

A. The FAA ADOs or ROs will determine whether arrangements granting access to the airfield from off-site locations are consistent with applicable federal law and policy. If the FAA ADO or RO determines that such an agreement lessens the public benefit for which the airport was developed, it will notify the sponsor that the airport may be in violation of its federal obligations if it grants TTF access. Therefore, sponsors should seek review of proposed TTF access agreements to the FAA in advance of the sponsor's signing the agreement to ensure compliance with its federal obligations.

**B. Access Agreement Provisions:** Sponsors should consider the following provisions in preparing a TTF access agreement:

1. The access agreement should be a written legal document with an expiration date and signed by the sponsor and the TTF operator. It may be recorded. Airports should never grant deeded access to the airport or grant a right of access in perpetuity.
2. The right of access should be explicit and apply only to the TTF operation (i.e. right to taxi its aircraft to and from the airfield).
3. The TTF operator shall not have a right to grant or sell access through its property so other parties may gain access to the airfield from adjacent parcels of land. Only the airport sponsor may grant access to the airfield, which should be consistent with Transportation Security Administration requirements.
4. The access agreement should have a clause making it subordinate to the sponsor's grant assurances and federal obligations. Should any provision of the access agreement violate the sponsor's grant assurances or federal obligations, the sponsor shall have the unilateral right to amend or terminate the access agreement to remain in compliance with its grant assurances and federal obligations.
5. The TTF operator shall not have a right to assign its access agreement without the express prior written approval of the sponsor. The sponsor should have the right to amend the terms of the access agreement to reflect a change in condition or value to the aeronautical portion of off-airport property if the TTF access is to continue.
6. The fee to gain access to the airfield should, at minimum, reflect the airport fees charged to similarly situated on-airport tenants and aeronautical users. For example, landing fees, ground rent, or tie-down fees paid to the sponsor by on-airport aeronautical users or tenants to recover the capital and operating costs of the airport should be reflected in the access fee assessed comparable TTF operators. In addition, if the TTF operator is granted the right to conduct a commercial business catering to aeronautical users either on or off the airport, the sponsor shall assess the same concession terms and fees to the TTF operator as assessed to all similarly situated on-airport commercial operators. As previously

stated, the FAA does not support the granting of TTF access to aeronautical commercial operators that compete with on-airport operators.

7. The access agreement should contain termination and insurance articles to benefit the sponsor.
8. The expiration date of the access agreement should not extend beyond a reasonable period from the sponsor's perspective. It may not depend upon the full depreciation of the TTF off-airport investment (i.e. 30 years), as would be the case had the investment been made inside the airport. In any case, it should not exceed the appraised useful life of the off-airport facility. Should the access agreement be renegotiated at its expiration, the new access fee may reflect an economic rent for the depreciated off-airport aeronautical facilities (i.e. hangar, ramp, etc); comparable to what would be charged by the sponsor for similar on-airport facilities. That is, when on-airport facilities are fully amortized and title now vests with the airport instead of the tenant, the airport may charge a higher economic rent for the lease of its aeronautical facility. The access fee for the aeronautical portion of a depreciated off-airport facility should be adjusted in a similar fashion notwithstanding that title still vests with the off-airport operator. However, other than achieving parity with on-airport tenants and aeronautical users, there is no upper or maximum limitation on what the airport sponsor may charge for TTF access.

#### **V. – FAA REVIEW OF THROUGH-THE-FENCE AGREEMENTS**

Sponsors shall submit new, revised or renewed TTF access agreements to the FAA ADO or RO for review to ensure compliance with the grant obligations and federal property conveyances prior to the sponsor signing the agreement. In addition, the TTF access points must be noted on the new, revised or renewed Airport Layout Plan (ALP). If a sponsor enters into a new, revised or renewed TTF access agreement that the FAA has objected to based on a grant assurance or federal property conveyance violation (e.g., residential use, access via perpetual easement, etc.) the sponsor risks enforcement action by FAA. Such action may lead to the loss of grant funding, especially if the violation has compromised the utility of the federal investment in the airport or if the sponsor has granted rights to a private party that undermines the sponsor's ability to comply with the grant assurances.

If the airport has existing TTF access, it must identify all access points on the ALP at the next update and provide a copy of the TTF access agreements for review by the FAA ADO or RO. Approval of the ALP change will be conditioned on the TTF access agreement complying with the sponsor's federal grant obligations.

#### **VI. - FAA ACTIONS ON CORRECTIVE ACTION PLANS**

The FAA ADO and RO will work closely with the sponsor to develop a corrective action plan that provides for (1) preventing future residential building on properties with TTF

access, (2) preventing further residential TTF, and (3) seeking ways to convert noncompatible residential use to compatible or aeronautical use at the expiration of the TTF agreement. FAA will not require sponsor's to terminate existing TTF access agreements. FAA seeks, in most cases, to convert noncompatible residential use only after the TTF agreement has expired under its own terms. This does not apply to grants of TTF access in perpetuity. Such TTF agreements must be amended as they may undermine a sponsor's ability to comply with the FAA grant assurances.

In reviewing a corrective action plan, the FAA is open to considering new avenues for resolution such as participating in purchasing the property and making it part of the airport if it is eligible for AIP funding. After the purchase, the property shall be converted to compatible aeronautical use.

**References:**

*M. Daniel Carey and Cliff Davenport v. Afton-Lincoln County Municipal Airport Joint Powers Board* (FAA Docket 16-06-06, January 19, 2007)  
*JetAway Aviation, LLC v. Board of County Commissioners, Montrose County, Colorado* (FAA Docket 16-06-01, November 6, 2006)  
Title 49 USC 47107 (a) (10), (13), (16)  
FAA Grant Assurances  
Surplus Property Act of 1944 as amended by Public Law 80-289  
Advisory Circular 150/5190-7, *Minimum Standards for Commercial Aeronautical Activities*  
FAA Airport Compliance Manual, Order 5190.6B