



**CITY OF BANGOR – AIRPORT COMMITTEE**

Tuesday, September 15, 2015

*Immediately following Infrastructure Committee meeting*

City Council Chambers

**Meeting Agenda**

1. T&T Capital, Inc. lease agreement. (Council Action & Order attached.)
2. Montage Enterprises – mutual cancellation of lease agreement. (Council Action & Order attached.)
3. The Grasshopper Shop lease agreement. (Council Action & Order attached.)
4. LifeFlight of Maine – lease amendment. (Council Action & Order attached.)
5. Airport statistics – AUGUST 2015 (If available - Materials presented at meeting.)
6. Airport Construction projects – update:
  - a. Domestic terminal renovations.
  - b. AIP 66 & 67 taxiway rehab. Projects.

**COUNCIL ACTION**

Item No. \_\_\_\_\_

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

**Item/Subject:** ORDER, Authorizing the City Manager to execute a lease agreement between the City of Bangor and T&T Capital for the rental of Bay #3 within Hangar #123 at Bangor International Airport (BGR).

**Responsible Department:** Airport

**Commentary:**

This Order authorizes a lease agreement between the City of Bangor and T&T Capital. This lease agreement will outline the terms and conditions for the rental of Bay # 3 within Hangar #123, located at Bangor International Airport. Telford Allen, President and Owner of T&T Capital desires to lease this hangar space and keep his aircraft based in Bangor.

If approved, this agreement outlines a one (1) year term, with two (2) one-year options for extensions. The lease rate includes an increase each year, based on the annual CPI change, and shall not exceed 2.5% each year. The lease rate includes the cost of all utilities furnished and consumed on the demised premises, including electricity, gas, heat, water, stormwater and sewer user fees. This lease agreement has been reviewed and approved by City Legal.

\_\_\_\_\_  
Tony Caruso  
Department Head

**Manager's Comments:**

\_\_\_\_\_  
City Manager

**Associated Information:**

**Budget Approval:**

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

**Legal Approval:**

\_\_\_\_\_  
City Solicitor

Introduced for  
 Passage  
 First Reading  
 Referral



# CITY OF BANGOR

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Assigned to Councilor: \_\_\_\_\_

**(TITLE.) ORDER,** Authorizing the City Manager to execute a lease agreement between the City of Bangor and T&T Capital for the rental of Bay #3 within Hangar #123 at Bangor International Airport (BGR).

WHEREAS, the City of Bangor, Maine is the owner of an airport located in Bangor, County of Penobscot, State of Maine, commonly known as Bangor International Airport; and

WHEREAS, T&T Capital has an aircraft currently based at BGR, and they desire to lease hangar space in order to keep their base of operation in Bangor; and

WHEREAS, the City and T&T Capital wish to enter into a lease agreement outlining the terms and conditions for the rental of Bay # 3, within Hangar #123, located at BGR; and

WHEREAS, this leased space will be used exclusively for the aeronautical purposes of T&T Capital.

NOW, THEREFORE, BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF BANGOR,

That Catherine M. Conlow, City Manager, is hereby authorized on behalf of the City of Bangor to execute the lease agreement with T&T Capital for the rental of Bay # 3, within Hangar #123 at Bangor International Airport. Said lease agreement will run for one year, with two one-year extensions if neither party objects. The base rent for the lease will be \$2,015 per month including utility costs, adjusted annually for inflation. The lease agreement shall be in final form as approved by the City Solicitor or Assistant City Solicitor.

**INDENTURE OF LEASE**

This Indenture of Lease, executed in duplicate, is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between:

**CITY OF BANGOR**, a municipal corporation organized and existing under the laws of the State of Maine, and having its principal offices at 73 Harlow Street, Bangor, Maine (hereinafter “Lessor”),

and

**T&T Capital, Inc.**, a Maine corporation having a place of business at 202 C Maine Avenue, Bangor Maine 04401(hereinafter “Lessee”).

**WITNESSETH:**

WHEREAS, the Lessor is the owner of land and an aviation hangar at Bangor International Airport in the City of Bangor, County of Penobscot, State of Maine; and

WHEREAS, T&T Capital desires to lease a hangar to house its aircraft and conduct business, including use of office space; and

NOW, THEREFORE, in consideration of the rents herein reserved and covenants contained herein, the City of Bangor hereby leases to T&T Capital the premises described below upon the following terms and conditions:

**Article I - Premises**

The Lessor, for and in consideration of the rents to be paid and the obligations to be performed by Lessee as hereinafter provided, does hereby demise and lease to Lessee, and the Lessee does hereby take and hire, upon and subject to the terms and conditions hereinafter expressed, the following described premises located off Texas Avenue, in the Bangor International Airport in the City of Bangor, *viz:*

Bay #3 of Building 123 (also known as the Corporate Aviation Hangar), as shown in Exhibit A, said Bay consisting of approximately 3,844 square feet. Exhibit A is attached hereto and hereby incorporated by reference.

**Article II - Term of Lease**

TO HAVE AND TO HOLD the demised premises unto the Lessee for the term of one (1) year, commencing on \_\_\_\_\_, 20\_\_ and terminating on \_\_\_\_\_, 20\_\_, unless sooner terminated in accordance with Article XIX below. At the end of said term this lease shall renew

without further actions of the parties for an additional one-year term unless terminated by either party by giving notice of termination at least ninety (90) days prior to the termination date. At the end of the first renewal term this lease shall renew without further actions of the parties for a second one-year term unless terminated by either party by giving notice of termination at least ninety (90) days prior to the termination date.

### Article III - Rent

Lessee shall pay rent to Lessor in the following amounts:

Year 1-\$2,015/month, \$24,180 annual

Year 2 and subsequent - see below

The rent is payable in twelve (12) equal installments for the use and occupancy of the demised premises, to be paid on the first day of each month, without prior demand therefore. On each annual anniversary of the Lease Commencement Date the base lease rate (as indicated above) then in effect shall be increased by a percentage equal to the percentage increase in the Consumer Price Index (CPI-U), not to exceed 2.5%.

### Article IV - Utilities

Lessor shall pay the cost of all utilities furnished and consumed on the demised premises, including electricity, gas, heat, water, and stormwater and sewer user fees. Lessee accepts all utility fixtures as they exist currently. Lessee is responsible for all rubbish removal.

### Article V - Use, Occupancy & Alteration to Premises

A. Lessee shall have the right to use, occupy and maintain the demised premises in a reasonably businesslike, careful, clean, and reasonably safe manner for the purposes of parking an aircraft owned or operated by Lessee and the storage of parts and materials of use in the operation of said aircraft and for associated office use.

B. Lessee is entitled to park an aircraft outside the hangar at no cost, providing no other aircraft occupies the leased space. Lessor reserves the right to charge parking fees for additional aircraft housed outside of the hangar when another aircraft occupies the leased space.

C. Lessee may wash aircraft within the confines of the leased space provided no pressurized "power washing" system is used and drainage takes place via the installed floor drains. No liquids other than water or water with soap residue shall be directed into the floor drains. Lessee hereby agrees to reimburse the Bangor International Airport for any fines levied against it as the result of Lessee's use of the floor drains.

D. Maintenance activity shall be limited to minor repairs. Major repairs such as airframe or engine overhaul, spray painting (other than minor "touch-ups") is prohibited.

E. Lessee may park up to four (4) vehicles in the “GA Parking Lot,” located adjacent to Building 123, on a limited overnight basis. Extended parking (*i.e.*, more than five nights) must be reported to the Airport’s GA staff. Lessee hereby acknowledges that Lessor is not responsible for any vehicle parked in the GA parking lot. Tenant may park two vehicles adjacent to the hangar facility.

F. Lessee may obtain approval from the Airport Department for ramp access for up to two vehicles. Such vehicles must display the issued decals at all times when used within the Airport’s secured area and may not be operated outside of the immediate vicinity of Building 123. Said vehicles must also be operated or be under the control of a person authorized by the Airport Department to operate Airport access gates. Said vehicles’ access shall be limited to Gate 11. Notwithstanding any other insurance coverage required by this lease, the owners of said vehicles shall cause to be furnished to the Lessor, at the time of application for ramp access, evidence in the form of certificates of insurance of the existence in force of a minimum of \$1,000,000 of liability insurance coverage per vehicle. Said certificates shall name Lessor as an additional insured and loss payee. Lessor shall be notified of any change or discountenances of coverage. Lessor agrees to promptly notify said owners of vehicles in writing of the existence or filing of any claim, demand or action arising out of an occurrence covered hereunder of which Lessor has knowledge.

G. Welding equipment, pressurized air systems, painting equipment, flammable liquids in containers larger than one (1) liter each or five (5) liters aggregate, any equipment or appliances designed to operate with an open flame, and any other items that pose any fire danger are prohibited from being stored or used in the leased area without prior written approval by Airport management.

H. Any and all electrical power or heating equipment used in the leased area must be UL approved.

I. Lessee shall be responsible for the sanding of any walkways directly behind the area leased as necessary during snow or ice events. Lessor shall be responsible for the removal of snow from all areas within the Airport’s security fence and for the sanding of iced apron areas directly in front of the leased area. The Airport will conduct snow removal of the adjacent parking area as available resources permit.

J. Lessee shall have the right to make alterations and improvements to the premises as it may choose, subject to the prior written approval of the Airport Manager, which shall not be unreasonably withheld, and provided that such alterations, additions and improvements do not weaken the structural integrity of the buildings, nor decrease its functional quality or value, and further provided that any such work shall be done entirely at the Lessee’s own expense and will include returning disrupted surfaces to a serviceable and attractive condition.

K. No signs shall be allowed on the demised premises without written approval from the Airport Department and a Sign Permit from the Bangor Code Enforcement Officer. Any sign must comply with the City’s sign ordinance and any applicable F.A.A. regulations.

L. Lessee shall not use, occupy or maintain the demised premises in any manner so as to violate any municipal, state, or federal law, regulation or code, and in particular, regulations of the Federal Aviation Administration relating to the operation of Bangor International Airport as a public airport. Lessee shall make a good faith effort to inform its employees and visitors of the rules and regulations of the Bangor International.

M. Lessor, through its agents, shall have at all reasonable times the right, upon reasonable notification to the Lessee, to go on and inspect the premises with an authorized representative of the Lessee, and the right of access to utility systems located on premises for inspection. For purposes of this paragraph, "reasonable notification" shall include any actual notification to date of inspection. "Reasonable times" shall mean any time during Lessee's regular business hours, or during normal weekday business hours if Lessee shall cease operations or shall maintain other than normal business hours. Lessor reserves the right to effect emergency repairs to any utility systems located on the demised premises at any time, without prior notice or with such notice as is reasonable given the nature of the emergency concerned, and to have access for this purpose.

#### Article VI – Hazardous Waste

Lessee hereby covenants and agrees that it shall not, during the term of this Lease, including any extension or renewal hereof, permanently place, cause to be placed, deposit or discharge any hazardous waste upon the demised premises, or upon any other portion of Lessor's Bangor International Airport, and further expressly agrees that it shall indemnify Lessor from any and all costs, expense or liability, of whatever kind or nature, incurred by the Lessor in detecting, evaluating, removing, treating, disposing of or otherwise responding to any hazardous waste placed or deposited in violation of this Article.

Lessee hereby covenants and agrees that it shall not, during the term of this Lease, including any extension or renewal hereof, violate any local, state or Federal regulation, ordinance or statute pertaining to hazardous waste or hazardous material and further expressly agrees that it shall indemnify Lessor from any and all costs, expense or liability, of whatever kind or nature, incurred by the Lessor for any such violation.

Such costs shall be deemed to include, without limitation, Lessor's costs of defending any suit filed by any person, entity, agency, or governmental authority; paying any fines imposed in settling any damage claims; complying with any order by a court of competent jurisdiction directing the Lessor to take remedial action with respect to such waste; and of all associated attorney's fees and costs.

For this purpose, the term "hazardous materials" shall mean every substance now or hereafter designated as a hazardous material or waste under any provision of State or Federal law, including, but not limited to, flammable explosives, radioactive materials, hazardous materials, hazardous waste, hazardous or toxic substances or matter, oil or other petroleum products, asbestos, chemical pollutants or materials in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sec. 801, et seq.), the Resource Conservation and

Recovery Act, as amended (42 U.S.C. Sec. 691, et seq.), applicable Maine statutes or any similar federal, state or local law, or in the regulations adopted and publications promulgated pursuant thereto, or any other substances or materials constituting a hazard, peril or threat to the health of persons, animals, or plant life and used, placed, stored or disposed of upon the demised premises by Lessee, their contractors, customers, licensees, agents, servants or employees. Lessee's obligations under this Article shall be deemed to survive the expiration or termination of this lease.

Article VII – Liability and Property Damage Insurance

The Lessee, during the entire term of this Lease, or any extension hereof, including any holdover tenancy following regular expiration or early termination hereof, shall maintain, at its sole expense, insurance in the type and amount shown below with companies authorized to do business in the State of Maine for the protection of Lessor against any and all liability, including wrongful death, against all claims, losses, costs or expenses arising out of injuries to persons whether or not employed by Lessee or damage to property whether resulting from acts, omissions, negligence or otherwise of the Lessee, its directors, officers, clients, employees and agents and arising from Lessee's use of the demised premises or any part or portion thereof.

Lessee shall cause to be furnished to the Lessor, at the time of execution of this Lease, evidence in the form of certificates of insurance of the existence in force of the insurance required hereunder. Said certificates shall name Lessor as an additional insured and loss payee. Lessor shall be notified of any changes or discountenances of coverage. Lessor agrees to promptly notify Lessee in writing of the existence or filing of any claim, demand or action arising out of an occurrence covered hereunder of which Lessor has knowledge, and to cooperate with Lessee in the investigation and defense thereof.

The minimum insurance coverage required under this Article shall be deemed to be automatically adjusted whenever the Maine State Legislature shall increase the Lessor's maximum liability beyond such minimums for personal injury, wrongful death or property damage claims brought under the Maine Tort Claims Act. In the event of such an increase, the minimum insurance coverage required shall be no less than the amounts required herein or no less than the Lessor's maximum liability for such claims under the Maine Tort Claims Act, whichever is greater.

<u>Type</u>	<u>Amount</u>
Fire	\$300,000.00
Liability	\$1,000,000.00

Lessor shall maintain comprehensive liability insurance coverage for the building, but shall not be held responsible for any harm or damage caused by an "act of god," including, but not limited to, unusual wind storms, floods, earthquakes, and snow/ice storms.

Article VIII – Indemnity

During the term of this Lease and during any extensions or renewals hereof, including any holdover tenancy following regular expiration or early termination hereof, Lessee shall defend, indemnify, save and hold Lessor, and its inhabitants, officers, employees and agents completely

harmless from and against any and all liabilities, losses, suits, claims, costs, expenses, judgments, fines or demands arising by reason of injury to or death of, or asserted by, any person or persons, including Lessee's agents, clients, invitees or employees, or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorneys' fees, court costs, and expert witness fees), of any nature whatsoever arising out of or incident to this Lease and/or the use, occupancy, conduct, or management of the demised premises or the acts or omissions of Lessee's officers, clients, agents, employees, contractors, subcontractors, licensees, or invitees, unless such injury, death, or damage is caused by the negligent acts or omissions of the Lessor, its agents, employees, clients or invitees. The Lessee shall give to Lessor reasonable notice of any such claim or actions. The Lessee shall also use counsel reasonably acceptable to Lessor in carrying out its obligations under this Article.

During the term of this Lease and during any extensions or renewals hereof, including any holdover tenancy following regular expiration or early termination hereof, Lessee further expressly agrees that it will defend, indemnify, save and hold Lessor harmless from any and all claims made or asserted by the Lessee's agents, servants or employees arising out of the Lessee's activities under this Lease. For this purpose, Lessee hereby expressly waives any and all immunity it may have under Maine's Workers Compensation Act in regard to such claims made or asserted against Lessor by Lessee's agents, servants or employees. For this purpose, Lessee further expressly waives any charitable immunity it may have under applicable law as to any and all claims of any person made or asserted against Lessor arising out of Lessee's use and occupancy of the demised premises or other activity of Lessee under this Lease. The indemnification provided under this Article shall extend to and include any and all costs incurred by the Lessor to answer, investigate, defend and settle all such claims, including but not limited to Lessor's costs for attorneys' fees, expert and other witness fees, the cost of investigators, and payment in full of any and all judgments rendered in favor of the Lessee's agents, invitees, licensees, clients, servants or employees against Lessor in regard to claims made or asserted by such persons.

In exercising the rights granted under this Lease, Lessee shall at all times be regarded as an independent entity conducting its own business and operations and shall not at any time act, hold itself out, or purport to act as an agent, contractor, co-partner, joint venture or employee of Lessor.

#### Article IX – Rules, Regulations, & Laws

A. The premises herein leased are located upon the property of the Lessor and commonly known as Bangor International Airport. Therefore, the Lessee hereby agrees to obey and observe, and to cause all personnel employed by the Lessee to obey and observe all municipal ordinances, and State and Federal laws pertaining to the demised premises. In addition, Lessee shall obey and observe all reasonable orders, rules and regulations of the Airport Manager not inconsistent with this Lease or with the aforesaid rules and regulations which are uniform, and apply to all Lessees, invitees and users of the Airport and their employees.

B. Lessee will not use or permit or suffer the use of the leased property in such a manner as to create electrical interference with radio communication between any installation upon the Airport and aircraft, or as to make it difficult for flyers to distinguish between Airport lights and others, or as to impair visibility in the vicinity of the Airport, or as otherwise to endanger the

landing, taking off or maneuvering of aircraft. Further, Lessor retains a right for the passage of aircraft ("aircraft" being defined as any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air) by whomsoever owned and operated, in the airspace above the property above 342.4' MSL to an infinite height together with the vibrations, fumes, dust, fuel particles and all other effects that may be caused by the operation of aircraft landing at, or takeoff from, or operating at or on the Airport and Lessee does hereby fully waive, remise and release any right or cause of action which they may now have or which they may have in the future against Lessor due to such noise, vibrations, fumes, dust, fuel particles, and all other effects that may be caused by the operation of aircraft landing at or takeoff from or operating at or on the Airport.

#### Article X – Noise Claims

The Lessee specifically agrees to make no claims in any form for damages or reimbursements to the Lessor or to the United States Government for any reason or cause resulting from noise generated from airport uses.

#### Article XI – Taxes

The Lessee agrees to pay, when due, any and all taxes and/or assessments, fees or charges of any kind whatsoever, as may be imposed during the term hereof, or any extension of the term of this Lease, by any governmental authority upon the demised premises, including Lessee's leasehold interest therein, any structures, or improvements thereon, or any personal property located therein. It is expressly agreed that such taxes and assessments shall include all amounts levied as real estate taxes by the Lessor acting in its governmental role on the demised premises, or structures, or improvements thereon, or on any personal property located therein notwithstanding any privileges of exemption arising due to public ownership of the demised premises by the City of Bangor, or otherwise; provided, however, nothing herein shall in any way prohibit the Lessee from exercising its rights under the law to contest the amounts of such taxes, assessments, charges or fees. Lessee also waives all rights under 36 M.R.S.A. § 556 to retain taxes paid by it out of rentals established under this lease.

#### Article XII – Nondiscrimination

Lessee for itself, its personal representatives, successors in interest and assigns, and as part of the considerations hereof, does hereby covenant and agree that (1) no person or group of persons shall be excluded from the demised premises or from employment on the grounds of race, religion, color, gender, age, familial status, national origin, or physical or mental disability, or in any other manner prohibited by law, from participation in, or denied the benefits of, or be otherwise subjected to discrimination in the use or occupancy of said demised premises; and (2) in the construction by Lessee of all improvements, buildings, structures, on, over or under such demised premises and the furnishing of services thereon, no person or group of persons shall be excluded on the grounds of race, religion, color, gender, age, familial status, national origin, or physical or mental disability from participation in, denied the benefits of, or be otherwise subjected to unlawful discrimination. Lessee shall take all steps necessary to provide reasonable accommodation for disabled individuals to access, use and enjoy the benefits of Lessee's operations as required by relevant provisions of

Federal, State and local laws, regulations or ordinances. In the event of breach of any of the above nondiscrimination covenants, the Lessor shall have the right, after failure of Lessee to rectify such breach within thirty (30) days after receipt of notice from Lessor, to terminate this Lease. Provided, however, that Lessor shall not have the right to terminate the Lease under this Article with respect to any complaint of discrimination which is pending final resolution or adjudication before any agency or court of the State of Maine or the United States.

#### Article XIII – Covenant of Quiet Enjoyment

The Lessee, subject to the terms and provisions of this Lease and on payment of the rent, and observing, keeping and performing all the terms and provisions of the Lease on its part to be observed, kept and performed, shall lawfully, peaceably and quietly have, hold, occupy and, enjoy the demised premises during the term hereof without hindrance or rejection by the Lessor or any other persons.

#### Article XIV - Liens

The Lessor and the Lessee agree that each will promptly discharge (either by payment or by filing of the necessary bond or otherwise) any mechanics', materialmen's or other liens against the demised premises, any buildings, structures or improvements thereon, which liens may arise out of any payment due for labor, services, materials, supplies or equipment which may have been furnished to or for the Lessor or the Lessee, respectively.

#### Article XV – Maintenance & Repairs

A Lessee shall, at its sole expense and cost, throughout the term hereof or any extension, keep and maintain the demised premises including building fixtures, equipment, doors, windows, passageways and interior paint surfaces in good order and repair, and in tenantable condition, damage by accidental fire and casualty and reasonable wear and tear, as provided for in this Agreement excepted. The Lessor is responsible for major structural systems to include the roof and exterior walls and hangar door.

B The phrase “reasonable wear and tear” used in paragraph A of this Article as an exception to the obligations of the Lessee shall not be construed to relieve Lessee of the responsibility for providing repairs of a routine and regular nature which may from time to time be necessary, nor to provide maintenance to the demised premises of a nature and degree ordinarily sufficient to prevent damage, breakdown, failures, malfunctions or disrepair; nor shall any exception or special provision of this Agreement be construed to mean that Lessor would be required to carry out maintenance and repairs to the premises. Lessor shall, at its sole expense be responsible for maintenance and repairs to the premises.

#### Article XVI – Removal of Property

A. Ownership of permanent improvements to the demised premises, which may from time to time be made by Lessee that are affixed to the property and are an integral part of the

operating systems of the structures as opposed to removable personal property, shall automatically vest in the Lessor as a consideration of the lease and rental schedule.

B. Any removable personal property that may be financed, erected or installed by Lessee from time to time during the term of this Lease shall remain the property of the Lessee, and, upon termination or expiration of this Lease, lessee shall have the right to remove the same from the demised premises within thirty (30) days of said termination. Any such property not so removed within thirty (30) days from the date of termination shall become the property of the Lessor to be disposed of in such way, as it may deem fit. In the event Lessee elects to remove said improvements and other personal property, the buildings and land appurtenant thereto shall be returned to as near as possible their conditions as at the commencement of this Lease, damage by accidental fire and casualty and reasonable wear and tear excepted.

C. In the event Lessee shall fail to remove any non-permanent improvements or other personal property within thirty (30) days from the date of termination or final expiration of this lease, Lessor shall be entitled to recover from the Lessee, Lessor's reasonable costs incurred in removing or disposing of such non-permanent improvements or personal property. In such event, there shall be deducted from Lessor's costs the fair value to the Lessor actually realized from sale, use or other disposition of the particular improvements or personal property concerned.

#### Article XVII – Surrender of Possession

Subject to the provisions contained in Article XIX, the Lessee shall, upon the termination of this Lease, surrender the quiet and peaceable possession of the demiseds premises.

#### Article XVIII – United States Rights

It is understood and agreed that title to the demised premises is in the city of Bangor, provided, however, that the demised premises are a part of Bangor International Airport and this Lease is specifically made subject to any rights the United States of America or any agency thereof may have under any regulation, law, deed or other existing agreement in or to the leased premises and may exercise in regard to said premises and should the United States of America or any agency thereof exercise any such right or rights in or to said premises, the exercise of such rights shall not be considered to result in a breach by the Lessor of any covenant or agreement hereunder. In the event that the United States of America or any agency thereof exercise any such right or rights in or to said premises, and the exercise of such right or rights makes impractical in the Lessee's sole discretion Lessee's intended use of said premises, then Lessee shall have the right, at its option, to terminate this Agreement without further obligation to the Lessor except for such obligations as shall have been incurred and accrued prior to the exercise of said option.

#### Article XIX – Termination

It is covenanted and agreed that:

A. By Lessor:

(1) If the Lessee shall neglect or fail to pay the rent or other charges payable hereunder and such default shall continue for a period of ten (10) days after written notice thereof by Lessor; or

(2) If Lessee shall neglect or fail to perform or observe any of the other covenants, terms, provisions, or conditions on its part to be performed, or observed, and such neglect or failure shall continue for a period of thirty (30) days after written notice thereof by Lessor, or if such covenants, terms, provisions or conditions cannot be performed or observed within said thirty (30) day period, if Lessee fails to diligently prosecute the curing of such neglect of failure; or

(3) If the estate hereby created shall be taken on execution or by other process of law; or

(4) If any assignment shall be made of the property of the Lessee for the benefit of creditors; or

(5) If a receiver, guardian, conservator, or trustee in bankruptcy or other similar officer shall be appointed to take charge of all or any substantial part of the Lessee's property by a Court of competent jurisdiction;

then the Lessor lawfully may, immediately or at any time thereafter, and without demand or notice, enter into and upon the said premises or any part thereof, in the name of the whole and repossess the same as of the Lessor's former estate, and expel the Lessee and those claiming through or under it and remove its or their effects (forcibly, if necessary) without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant, and upon entry as aforesaid, this Lease shall terminate, and the Lessee covenants and agrees to pay and shall be liable for the days originally fixed herein for the payment thereof, amounts equal the several installments of rents and other charges reserved as they would, under the terms of this Lease, become due if this Lease had not been terminated, or if the Lessor had not entered or reentered as aforesaid.

Notwithstanding the foregoing, Lessee's liability shall not exceed the difference, if any, between the rental which would have been due for such month had there been no such termination, and the amount being received by Lessor as rent from occupants of said premises. In order to mitigate Lessee's damages hereunder, Lessor agrees to make every reasonable effort to secure subsequent Lessees, at a rental equal to the prevailing local rate for the demised premises.

Upon any termination under this Article, the Lessee shall vacate the premises in accordance with the terms and conditions hereof and with all due speed; and within thirty (30) days after such termination, the Lessee shall pay to the Lessor all sums due from the Lessee to the Lessor hereunder prior to termination.

B. By Lessee:

This Lease shall be subject to termination by the Lessee in the event the Lessor shall default in the performance of any of the conditions and covenants of this Lease to be kept and observed by it and such default shall not be remedied within a period of thirty (30) days after written notification by the Lessee to the Lessor of the existence of such default.

#### Article XX - Attorney's Fee

The Lessee shall pay to the Lessor a reasonable attorney's fee in the event the Lessor employs an attorney to collect any rents due hereunder and secures a judgment in connection with collection of said rent, or legal process is levied upon the interest of the Lessee in this Lease or in said Premises, or in the event Lessee violates any of the terms, conditions or covenants on the part of the Lessee herein contained, provided that Lessee fails to promptly correct the violation of any term, condition or covenant after receipt of notice that it is in violation thereof.

In the event Lessor employs its City Solicitor or an Assistant City Solicitor to collect rents or otherwise protect Lessor's interests under this Lease, "reasonable attorneys' fee" under this Article shall mean the reasonable cost of services provided by Lessor's Solicitor or Assistant Solicitor, at the rate charged for similar services by private attorneys in the Bangor area.

#### Article XXI - Assignment, Sale & Subletting

The Lessee shall not at any time assign, sell, convey or transfer this Lease or any interest therein, or sublease or sublet or rent the premises, or any part thereof, without the prior written consent of the Lessor. All provisions of this Lease shall extend to, bind and inure to the benefit of not only the Lessor and Lessee but also their successors and assigns. In no event shall the Lessee named herein be relieved from any obligations under this Lease by virtue of any assignment or subletting.

Lessee shall have the right to assign this Lease to any entities with which it may have become merged, consolidated, or otherwise associated, or to any corporation or holding company having the controlling interest in the Lessee, or to any corporation which may be a subsidiary of the Lessee. In no event, however, shall the Lessee named herein be relieved from any obligations under this Lease by virtue of any such assignment or subletting.

#### Article XXII - Waiver

Failure on the part of the Lessor to complain of any action or non-action on the part of the Lessee no matter how long the same may continue shall never be deemed to be a waiver by the Lessor of any of Lessor's rights hereunder. Further, it is covenanted and agreed that no waiver at any time of any of the provisions hereof by Lessor, shall be construed as a waiver of any other provisions hereunder, and that a waiver at any time of any of the provisions hereof shall not be construed at any subsequent time as a waiver of the same provisions. The approval of Lessor or of any action by the Lessee requiring the Lessor's consent or approval shall not be deemed to waive or render unnecessary the Lessor's consent or approval of any subsequent similar act by the Lessee.

Article XXIII - Notices

Notices to the Lessor provided for in this Lease shall be sufficient if sent by registered or certified mail, return receipt requested, postage prepaid to:

Bangor International Airport  
Attn: Airport Director  
287 Godfrey Blvd.  
Bangor, Maine 04401

and notices to Lessee are to be sent by registered or certified mail, return receipt requested, postage prepaid, addressed to:

T&T Capital, Inc.  
Attn: Telford Allen  
or  
Shelly Grant-O’Kendley  
c/o Bangor International Airport  
202 C Maine Ave.  
Bangor, Maine 04401

or to such other respective addressee as the parties may designate to each other in writing from time to time.

Article XXIV – Invalidity of Particular Provisions

If any term or provisions of this Lease or the application thereof to any person or circumstances is hereafter determined by a court of competent jurisdiction to be to any extent, invalid or unenforceable, the remainder of this Lease or the application of such terms and provisions to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected hereby and such term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

Article XXV - Construction

The headings appearing in the Lease are intended for convenience and reference only and not to be considered in construing this Lease.

Article XXVI – No Partnership or Joint Venture Created

Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties, it being understood and agreed that neither the method of computation of rent nor any other provision contained herein nor any acts of the parties shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant.

Article XXVII – Governing Law

This Lease shall be governed exclusively by the provisions hereof and by the laws of the State of Maine, as the same may from time to time exist.

Article XXVIII – Amendment to Lease

This Lease contains all the terms and conditions between the parties hereto and no alteration, amendment or addition hereto shall be valid unless in writing and signed by both parties hereto.

Article XXIX – Authority to Enter into Agreement

The Lessor hereby represents and warrants that it has taken all necessary procedural and legal steps as required by federal, state and local laws and regulations for the purpose of authorizing the execution of this Lease and that execution of this Lease by the City Manager renders this Lease a valid and binding document on the part of the Lessor and the same is fully enforceable in all of its terms and conditions by the Lessee.

Lessee hereby represents and warrants that it has taken all necessary procedural and legal steps as required under all state, local and federal laws and regulations, and all necessary corporate action to authorize the execution of this Lease by its undersigned corporate officers and that upon such execution this Lease is a valid and binding document on the part of the Lessee and is fully enforceable in all of its terms and conditions by Lessor.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year written above.

CITY OF BANGOR

\_\_\_\_\_  
Witness:

\_\_\_\_\_  
By: Catherine Conlow  
Its: City Manager

T&T Capital

\_\_\_\_\_  
Witness:

\_\_\_\_\_  
By: Telford Allen  
Its:

STATE OF MAINE

Penobscot, ss. \_\_\_\_\_, 2015

Then personally appeared the above-named Catherine Conlow, in her capacity as City Manager, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of said body corporate.

Before me,

\_\_\_\_\_  
Notary Public/Attorney-at-Law  
Printed Name:

STATE OF MAINE

Penobscot, ss. \_\_\_\_\_, 2015

Then personally appeared the above-named \_\_\_\_\_, in his/her capacity as \_\_\_\_\_, and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity, and the free act and deed of said corporation.

Before me,

\_\_\_\_\_  
Notary Public/Attorney-at-Law  
Printed Name:

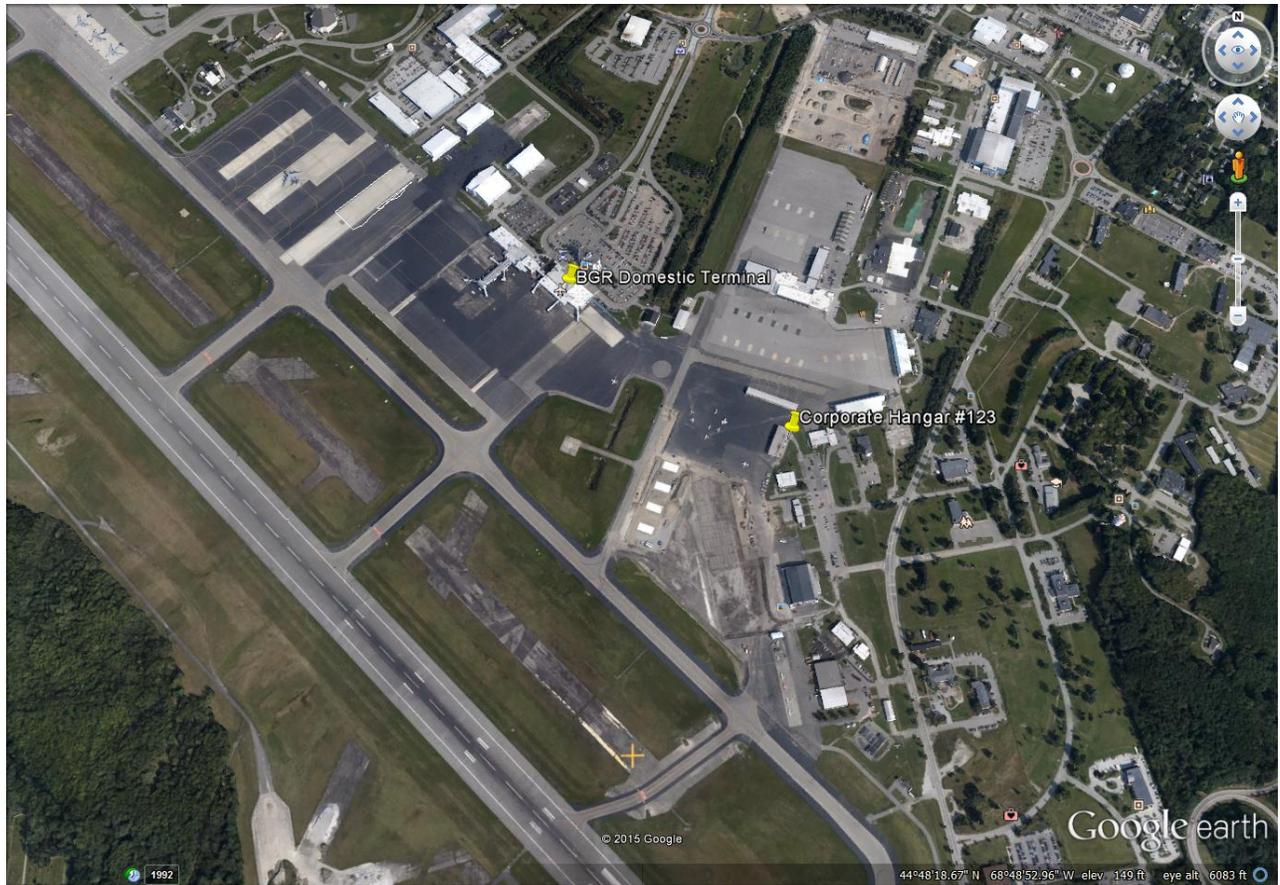


Exhibit A

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

**Item/Subject:** ORDER, Authorizing the City Manager to execute an agreement between Montage Enterprises, d/b/a The Grasshopper Shop, and the City of Bangor for the termination of their lease.

**Responsible Department:** Airport

**Commentary:**

This Order, if approved authorizes an agreement between Montage Enterprises, d/b/a The Grasshopper Shop, and the City of Bangor for the termination of their lease. The Grasshopper Shop operates a retail concession in the domestic terminal at Bangor International Airport. Montage has operated this concession since 1995 and has been an excellent partner with the City of Bangor. They offer Maine specific items to travelers. Montage has always paid their lease on time and has been very responsive to our customers.

The Owners of The Grasshopper Shop, Rick and Laurie Schweikert, recently notified the Airport that they wish to terminate their lease per the current lease terms. They wish to retire and sell their business to the Store Manager, Gary Co-Wallis. Mr. Co-Wallis has agreed to keep all current employees and continue to operate within the airport, under the Grasshopper Shop name. The termination agreement will be in final form as approved by City Legal.

\_\_\_\_\_  
Tony Caruso  
Department Head

**Manager's Comments:**

\_\_\_\_\_  
City Manager

**Associated Information:**

**Budget Approval:**

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

**Legal Approval:**

\_\_\_\_\_  
City Solicitor

Introduced for  
 Passage  
 First Reading  
 Referral



# CITY OF BANGOR

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Assigned to Councilor: \_\_\_\_\_

**(TITLE.) ORDER,** Authorizing the City Manager to execute an agreement between Montage Enterprises, d/b/a The Grasshopper Shop, and the City of Bangor for the termination of their lease.

WHEREAS, The City of Bangor, Maine is the owner of an airport located in Bangor, County of Penobscot, State of Maine, commonly known as Bangor International Airport; and

WHEREAS, The Grasshopper Shop operates a retail concession in the domestic terminal at Bangor International Airport since 1995; and

WHEREAS, The Owners of The Grasshopper Shop, Rick and Laurie Schweikert, recently notified the Airport that they wish to terminate their lease per the current lease terms; and

WHEREAS, The Owners wish to retire and sell their business to the Store Manager, Gary Co-Wallis, who has agreed to keep all current employees and continue to operate within the airport, under the Grasshopper Shop name; and

WHEREAS, The termination agreement will be in final form as approved by City Legal.

NOW, THEREFORE, BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF BANGOR,

That Catherine M. Conlow, City Manager, is hereby authorized on behalf of the City of Bangor to execute an agreement between Montage Enterprises, d/b/a The Grasshopper Shop, and the City of Bangor for the termination of their lease. Said termination agreement shall be in final form as approved by the City Solicitor or Assistant City Solicitor.

**MUTUAL CANCELLATION OF LEASE**

This mutual cancellation of lease (the Agreement) is made and effective January 1, 2016 by and between:

**CITY OF BANGOR**, a municipal corporation organized and existing under and by virtue of the laws of the State of Maine, and having its principle offices located at Bangor City Hall, 73 Harlow Street, Bangor, ME 04401 (hereinafter referred to as 'Lessor');

And

**Montage Enterprises, Inc.**, d/b/a The Grasshopper Shop, a duly authorized and organized Maine corporation having a principle place of business at Bangor, County of Penobscot, State of Maine (hereinafter referred to as 'Lessee' or 'Concessionaire').

WITNESSETH:

WHEREAS, Lessee and Lessor under a certain lease agreement between the Parties dated March 1991, do hereby mutually agree to terminate and cancel said lease effective January 1, 2016; and

WHEREAS, All rights and obligations under said lease shall thereupon be cancelled excepting for any obligations under the lease accruing prior to the effective date of termination; and

WHEREAS, This agreement shall be binding upon both Parties, their successors, assigns and personal representatives.

IN WITNESS WHEREOF, the Parties have executed this agreement as of the date written above.

CITY OF BANGOR:

MONTAGE ENTERPRISES, INC.

\_\_\_\_\_

\_\_\_\_\_

Authorized Signature

Authorized Signature

Catherine M. Conlow, City Manager

Richard Schweikert, President

\_\_\_\_\_

\_\_\_\_\_

Date

Date

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

**Item/Subject:** ORDER, Authorizing the City Manager to execute a lease agreement between the City of Bangor and Gary Co-Wallis, owner of The Grasshopper Shop, for rental of Room #203 within the Domestic Terminal at Bangor International Airport (BGR).

**Responsible Department:** Airport

**Commentary:**

This Order, if approved, authorizes a lease agreement between the City of Bangor and Gary Co-Wallis, owner of The Grasshopper Shop. This lease agreement will outline the terms and conditions for the rental of Room #203 within the Domestic Terminal at Bangor International Airport. Gary Co-Wallis, the new owner of The Grasshopper Shop, desires to operate this gift shop in the domestic terminal at Bangor International Airport, offering gifts, including Maine specific items to travelers. The Grasshopper Shop has operated at the Bangor International Airport under its former owners since 1995. Mr. Co-Wallis will be purchasing the business and has agreed to keep all current employees and continue to operate within the airport, under The Grasshopper Shop name.

This agreement outlines a five (5) year term for the lease of Room #203. The rent is based on a percentage of gross sales due each twelve month period. This lease agreement will be in final form as approved by City Legal.

\_\_\_\_\_  
Tony Caruso  
Department Head

**Manager's Comments:**

\_\_\_\_\_  
City Manager

**Associated Information:**

**Budget Approval:**

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

**Legal Approval:**

\_\_\_\_\_  
City Solicitor

Introduced for  
 Passage  
 First Reading  
 Referral



# CITY OF BANGOR

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Assigned to Councilor: \_\_\_\_\_

**(TITLE.) ORDER,** Authorizing the City Manager to execute a lease agreement between the City of Bangor and Gary Co-Wallis, d/b/a The Grasshopper Shop, for rental of Room #203 within the Domestic Terminal at Bangor International Airport (BGR).

WHEREAS, The City of Bangor, Maine is the owner of an airport located in Bangor, County of Penobscot, State of Maine, commonly known as Bangor International Airport; and

WHEREAS, Gary Co-Wallis, owner of The Grasshopper Shop, wishes to operate a gift shop in the domestic terminal at Bangor International Airport; and

WHEREAS, the City and Gary Co-Wallis wish to enter into a lease agreement outlining the terms and conditions for the rental of Room #203, within the Domestic Terminal, located at the Bangor International Airport; and

WHEREAS, this leased space will be used exclusively for gift shop purposes by The Grasshopper Shop.

NOW, THEREFORE, BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF BANGOR,

That Catherine M. Conlow, City Manager, is hereby authorized on behalf of the City of Bangor to execute the lease agreement between the City of Bangor and Gary Co-Wallis, owner of The Grasshopper Shop, for the rental of Room #203, within the Domestic Terminal at Bangor International Airport. Said lease agreement will run for five (5) years. The rent is based on a percentage of gross sales due each twelve month period. The lease agreement shall be in final form as approved by the City Solicitor or Assistant City Solicitor.

INDENTURE OF LEASE

THIS INDENTURE OF LEASE, executed in duplicate, this \_\_\_\_  
day of \_\_\_\_\_, 20\_\_ by and between:

CITY OF BANGOR, a body politic and corporate duly organized  
and existing under and by virtue of the laws of the State of Maine,  
and having its principal offices at 73 Harlow Street, Bangor, Maine  
(hereinafter sometimes referred to as "Lessor")

AND

\_\_\_\_\_ a body corporate, duly organized  
and existing under and by virtue of the laws of the State of Maine, and having  
a place of business at Bangor International Airport in said Bangor,  
County of Penobscot, State of Maine (hereinafter sometimes referred to as  
"Concessionaire")

WITNESSETH:

WHEREAS, the City of Bangor is the owner of an airport commonly known as "Bangor International Airport", formerly known as Dow Air Force Base, and located in the City of Bangor, County of Penobscot, State of Maine (hereinafter sometimes referred to as the "Airport"); and

WHEREAS, Concessionaire desires to lease certain premises at the Airport for purposes of operating a "Gift Shop";

WHEREAS, both Parties deem it advantageous to operate this concession at the Airport and to grant and lease unto the Concessionaire the area and rights and privileges set forth; and

NOW, THEREFORE, the parties do mutually agree as follows:

ARTICLE I

PREMISES

The Lessor, for and in consideration of the rents to be paid and the obligations to be performed by Concessionaire as hereinafter provided, does hereby demise and lease unto Concessionaire, and the Concessionaire does hereby take and hire, upon and subject to the terms and conditions hereinafter expressed, the following described premises, in its present physical condition, located at Bangor International Airport (hereinafter sometimes referred to as the "Airport"), viz:

Room # 203, approximately 960 sq. ft., located in the second level of the Domestic Terminal Building designated as “The Grasshopper Shop”, as further shown on Exhibit “A” attached hereto.

## ARTICLE II

### TERM

TO HAVE AND TO HOLD the demised premises unto the Concessionaire for the term of five (5) years commencing January 1, 2016 and terminating on December 31, 2021.

## ARTICLE III

### COMPUTATION OF ANNUAL RENTAL

The Concessionaire hereby accepts said grant of a concession and the premises herein leased subject to the terms and conditions contained herein, and does hereby covenant and agree to pay the Lessor the following:

A. As rental, Concessionaire shall pay during each twelve (12) month period to Lessor a percentage of its gross sales from said premises in accordance with the following schedule:

DOLLAR AMOUNT OF GROSS ANNUALIZED SALES (taxes excluded):	10%
--	-----

B. “Gross Sales” as herein used is defined to mean the entire amount of the actual charged sale price of all articles, products and services sold, vended, and otherwise dispensed by the Concessionaire from the premises, but shall not include, however, any sums collected, charged and/or paid out for sales and/or excise taxes imposed by any duly constituted governmental authority. Furthermore, gross sales shall not include the amount for refunds made, or claims paid by the Concessionaire for lost or damaged merchandise.

C. Concessionaire shall pay all rentals herein required, without prior demand therefore, in lawful money of the United States, at the address of the Lessor as set forth herein or at such other reasonable places as the Lessor may designate. Late payments shall be subject to an additional interest charge of eight (8%) per cent per month to the date of payment.

D. Concessionaire will pay to the City the rental which shall be computed for the twelve (12) month period beginning January 1, 2016 and each and every twelve (12) month period thereafter or until the end of the lease term. In any one twelve (12) month period, Concessionaire will pay on a monthly basis the appropriate percentage as rental for every accrued dollar of gross sales. Payment of said monthly rental shall be made to the City no later than the 20<sup>th</sup> day of the following month.

## ARTICLE IV

### RECORDS AND AUDIT

The Concessionaire shall keep separate and accurate records of the gross sales covering all the business done or transacted on or from the leased premises. Concessionaire agrees that the Lessor shall have the right at reasonable times to examine and audit such records. Each source of income shall be documented by cash register tapes and/or serially-numbered tickets or receipts. The concessionaire agrees to submit to the Airport Director within ten (10) days after each month's operation a statement of gross sales for said month.

If Lessor objects to any statement which the Concessionaire is required to submit to Lessor under the terms of this agreement, Lessor shall give notice within thirty (30) days after receipt of such statement to the Concessionaire of such objections. Unless within twenty (20) days after the receipt by the Concessionaire of such notice of objection, the Concessionaire shall satisfy Lessor with respect to such statement thus complained of, Lessor shall have the privilege of having an audit made, at its expense, of the account books and records pertaining to the operation of the America-to-Go shop at the Airport by the Concessionaire. Such audit shall be made by certified public accountants in good standing to be selected by the Lessor. The Concessionaire shall render all reasonable assistance to such accountants and shall give them access to all books of account and other records that may be necessary to enable such accountants to make a full and complete audit.

The Lessor's objection to any statement submitted by the Concessionaire shall not in any way impair Concessionaire's obligation to pay the rentals based on the statement submitted. Lessor's acceptance of such payment shall in no manner constitute a waiver of any right under this agreement or a waiver of the right to receive any "additional rental" ultimately determined to be owing to Lessor by Concessionaire.

## ARTICLE V

### USE, OCCUPANCY AND GRANT OF CONCESSION

A. Concessionaire shall have the right to use, occupy and maintain the demised premises herein leased in a reasonably businesslike, careful, clean, and non-hazardous manner for the purposes of operating the gift shop "The Grasshopper Shop", and for no other purposes whatsoever without the prior written consent of the Lessor.

The Concessionaire agrees that during the term of this lease the concession hereby granted shall be open, equipped, operated and sufficiently staffed by qualified personnel at all times as the Airport Manager may direct or as public need and demand require. The Concessionaire shall furnish all labor, services, materials, supplies and equipment necessary to maintain, in a clean, orderly and inviting condition satisfactory to the Airport Manager, all premises used and occupied by the Concessionaire together with a fifteen foot area immediately surrounding same as affected by said operations. The Airport Manager will

cooperate with the Concessionaire and will advise him whenever possible when large crowds or unusual circumstances that may affect the concession are expected at the Airport.

B. Concessionaire shall not use, occupy or maintain said premises in any manner as to violate any municipal, state, federal law or regulation, and, in particular, regulations of the Federal Aviation Administration relating to the operation of Bangor International Airport as a public airport.

C. Concessionaire shall make a good faith effort to inform its employees and visitors of the rules and regulations of the Bangor International Airport and shall cooperate in every way with the Airport Manager to insure that such rules and regulations are obeyed.

D. Lessor, through its agents, shall have at all reasonable times the right, upon reasonable notification to the Concessionaire, to go on and inspect the premises with an authorized representative of the Concessionaire, and the right of access to utility systems located on the demised premises for the purposes of maintenance, repair, correction, or inspection.

## ARTICLE VI

### ALTERATIONS TO PREMISES

The Concessionaire covenants that it shall not make, or permit to be made, any alterations to the premises herein leased without the prior expressed written consent of the Airport Manager.

## ARTICLE VII

### LIABILITY AND PROPERTY DAMAGE INSURANCE

The Concessionaire during the entire terms of this Agreement, or any extension thereof, shall maintain, at its expense, insurance of the following type with companies authorized to do business in the State of Maine for the protection of the City of Bangor, who shall be named as an insured against all claims, losses, costs or expenses arising out of injuries to persons whether or not employed by Concessionaire or damage to property whether resulting from acts, omissions, negligence or otherwise of the Concessionaire, its directors, officers, employees and agents and arising from Concessionaire's use of the premises or any part of portion of the Airport.

#### Comprehensive Public Liability/Product Liability

Bodily Injury  
\$1,000,000.00 each occurrence

#### Comprehensive Property Damage

\$1,000,000.00 each occurrence

Workmen's Compensation Insurance

Lessor shall not be required to provide insurance coverage on the leasehold improvements or any property owned by the Concessionaire or third parties as may be located within the leased premises. Concessionaire shall cause to be furnished to the Airport Manager evidence in the form of certificates of insurance of the existence and continuance in force of the insurance required hereunder. Lessor shall be notified by any changes or discontinuances of coverage.

ARTICLE VIII

INDEMNITY

Concessionaire shall protect, defend and hold Lessor, and its inhabitants, officers, employees and agents completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to: attorney's fees, court costs, and expert witness fees), of any nature whatsoever arising out of or incident to this agreement and/or the use or occupancy of the leased premises or acts or omissions of Concessionaires officers, agents, employees, contractors, subcontractors, licensees, or invitees, unless such injury, death, or damage is caused by the negligence of the Lessor. The Lessor shall give to Concessionaire reasonable notice of any such claims or actions. The Concessionaire shall also use counsel reasonably acceptable to Lessor in carrying out its obligations hereunder.

ARTICLE IX

RULES, REGULATIONS AND LAWS

A. The premises herein leased are located upon the property of the Lessor and commonly known as Bangor International Airport. Therefore, the Concessionaire hereby agrees to obey and observe, and to cause all personnel employed by the Concessionaire to obey and observe, all municipal ordinances, and State and Federal laws pertaining to the operation of said Airport and Concessionaire's use and occupancy of the demised premises. In addition, Concessionaire shall obey and observe all reasonable orders, rules and regulations of the Airport Manager not inconsistent with this Lease or with the aforesaid rules and regulations which are uniform, and apply to all tenants, invitees and users of the Airport and their employees.

B. Concessionaire will not use or permit or suffer the use of the leased property in such manner as to create electrical interference with radio communication between any installation upon the Airport and aircraft, or as to make it difficult for flyers to distinguish between Airport lights and others, or as to impair visibility in the vicinity of the Airport, or as otherwise to endanger the landing, taking off or maneuvering of aircraft. Further, Lessor retains a right for the passage of aircraft ("aircraft" being defined as any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air) by

whomsoever owned and operated, in the airspace above the property above 342.4' MSL to an infinite height together with the right to cause in all airspace above the property such noise, vibrations, fumes, dust, fuel particles and all other effects that may be caused by the operation of aircraft landing at, or taking-off from, or operating at or on the Airport and Concessionaire does hereby fully waive, remise and release any right or cause of action which they may now have or which they may have in the future against Lessor due to such noise, vibrations, fumes, dust, fuel particles, and all other effects that may be caused by the operation of aircraft landing at or taking-off from or operating at or on the Airport.

## ARTICLE X

### NOISE CLAIMS

The Concessionaire specifically agrees to make no claims in any form for damages or reimbursements to the Lessor or to the United States Government for any reason or cause resulting from noise generated from airport uses.

## ARTICLE XI

### TAXES

The Concessionaire agrees to pay, when due, any and all taxes and/or assessments, fees or charges of any kind whatsoever, as may be imposed during the term hereof, or any extension of the term of this lease, by any governmental authority upon the demised premises, including Concessionaire's leasehold interest therein, any structures, or improvements thereon, or any personal property located therein. Concessionaire further agrees that it does hereby waive any and all rights or privileges of exemption from taxation on the demised premises, or Concessionaire's leasehold interest therein, or on any buildings, structures, or improvements thereon, or on any personal property located therein; provided, however, nothing herein shall in any way prohibit the Concessionaire from exercising its rights under the law to contest the amounts of such taxes, assessments, charges or fees.

## ARTICLE XII

### NONDISCRIMINATION

Concessionaire in the use and occupancy of the leased premises shall not on the grounds of race, color, or national origin, knowingly and willfully discriminate or permit discrimination against any person or group of persons in any manner prohibited by law.

Compliance with American's with Disability Act (ADA): Concessionaire acknowledges that, pursuant to the ADA, programs, services, and other activities provided by Concessionaire, whether directly or through a contractor, must be accessible to the disabled public. Concession shall provide the services specified in this agreement in a manner that complies with the ADA and any and all other applicable Federal, State and Local disability rights regulations. Concessionaire agrees not to discriminate against disabled persons in the

provision of services, benefits or activities provided under this agreement and further agree that any violation of this prohibition on the part of the Concessionaire its employees, agents, or assigns shall constitute material breach of this agreement.

### ARTICLE XIII

#### COVENANTS OF QUIET ENJOYMENT

The Concessionaire, subject to the terms and provisions of this lease on payment of the rent, and observing, keeping and performing all the terms and provisions of the lease on its part to be observed, kept and performed, shall lawfully, peaceably and quietly have, hold, occupy and enjoy the demised premises during the term hereof without hindrance or rejection by the Lessor or any other persons.

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### ARTICLE XIV

#### LIENS

The Lessor and the Concessionaire agree that each will promptly discharge (either by payment or by filing of the necessary bond or otherwise) any mechanics', materialmen's or other liens against the demised premises, which liens may arise out of any payment due for labor, services, materials, supplies or equipment which may have been furnished to or for the Lessor or the Concessionaire, respectively.

### ARTICLE XV

#### MAINTENANCE AND REPAIRS

(A) Lessee shall, at its sole expense and cost, throughout the term hereof or any extension, keep and maintain the demised premises including building fixtures, equipment, operating systems, roof and structure, doors, windows, passageways, interior and exterior paint surfaces, in good order and repair, and in tenantable condition, damage by accidental fire and casualty and reasonable wear and tear, as provided for in this Agreement excepted.

(B) Lessor is responsible for repair and replacement of the building's major structural components: roof, walls, foundation, operating systems, exterior paint surfaces, parking areas, grounds, and landscaping, as a result of, or on account of normal obsolescence.

(C) The phrase "reasonable wear and tear" used in Paragraph A of this Article as an exception to the obligations of the Lessee shall not be construed to relieve Lessee of the responsibility for providing repairs of a routine and regular nature which may from time to time be necessary, nor of the obligation to provide maintenance to the demised premises of a nature and degree ordinarily sufficient to prevent damage, breakdown, failures, malfunctions or disrepairs; nor shall any exception or special provision of this Agreement be construed to mean that Lessor would be required to carry out maintenance

and repairs to the premises, except as indicated in Article (B) above.

#### ARTICLE XVI

##### UTILITIES

The Lessor at its expense shall supply the cost of all heat, electricity, and water consumed on the demised premises. The Concessionaire shall be responsible for all other utility charges including sewer, stormwater user fees and telephone service. Concessionaire accepts all utility fixtures as they now exist. All new utility fixtures shall be installed and maintained by the Concessionaire.

#### ARTICLE XVII

REMOVAL OF PROPERTY: Upon the termination or expiration of this Lease, the improvements and other personal property erected or located upon the demised premises by the Concessionaire shall remain the property of the Concessionaire, and the Concessionaire shall have the right to remove the same from the demised premises within thirty (30) days from the date of termination of said lease. Any such property not so removed within said thirty (30) days shall become the property of the Lessor to be disposed of in such way as it may deem fit. In the event the Concessionaire elects to remove said improvements and other personal property, the buildings and land appurtenant thereto shall be returned to as near as possible its condition as at the commencement of the Lease, ordinary wear and tear accepted.

#### ARTICLE XVIII

##### UNITED STATES RIGHTS

It is understood and agreed that title to the leased premises is in the City of Bangor, provided, however, that the leased premises are a part of Bangor International Airport and this lease is specifically made subject to any rights the United States of America or any agency thereof may have under any regulation, law, deed or other existing Agreement in or to the leased premises and may exercise in regard to said premises and should the United States of America or any agency thereof exercise any such right or rights in or to said premises, the exercise of such right or rights shall not be considered to result in a breach by the City of any covenant or agreement hereunder. In the event that the United States of America or any agency thereof exercise any such right or rights in or to said premises, and the exercise of such right or rights makes impractical in the Concessionaire's sole discretion Concessionaire's intended use of said premises, then Concessionaire shall have the right, at its option, to terminate this Agreement without further obligation to the Lessor except for such obligations as shall have been incurred and accrued prior to the exercise of said option.

#### ARTICLE XIX

##### TERMINATION

It is covenanted and agreed that:

A. By Lessee:

- (1) If the Concessionaire shall neglect or fail to pay the rent or other charges payable hereunder and such default shall continue for a period of ten (10) days after written notice thereof by Lessor; or
- (2) If Concessionaire shall neglect or fail to perform or observe any of the other covenants, terms, provisions, or conditions on its part to be performed, or observed, and such neglect or failure shall continue for a period of thirty (30) days after written notice thereof by Lessor, or if such covenants, terms, provisions or conditions cannot be performed or observed within said thirty (30) day period, if Concessionaire fails to diligently prosecute the curing of such neglect or failure; or
- (3) If the estate hereby created shall be taken on execution or by other process of law; or
- (4) If the Concessionaire shall be declared bankrupt or insolvent according to law; or
- (5) If any assignment shall be made of the property of the Concessionaire for the benefit of creditors; or
- (6) If a receiver, guardian, conservator, or trustee in bankruptcy or other similar officer shall be appointed to take charge of all or any substantial part of the Concessionaire's property by a Court of competent jurisdiction; or
- (7) If a petition shall be filed for a reorganization of the Concessionaire under provisions of the Bankruptcy Act now or hereafter enacted; or
- (8) If the Concessionaire shall file a petition for such reorganization or for arrangements under any provision of the Bankruptcy Act now or hereafter enacted,

Then, in any of the said cases (notwithstanding any license of any former breach of covenant or waiver of the benefit hereof or consent in a former instance), the Concessionaire may be considered in default hereunder, and the Lessor lawfully may, immediately or at any time thereafter, and without demand or notice, enter into and upon the said premises or any part thereof, in the name of the whole and repossess the same as of the Lessor; former estate, and expel the Concessionaire and those claiming through or under it and remove its or their effects (forcibly if necessary) without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant, and upon entry as aforesaid, this Lease shall terminate, and the Concessionaire covenants and agrees to pay and shall be liable for the days originally fixed herein for the payment thereof, amounts equal to the several installments of rents and other charges reserved as they would, under the terms of this Lease, become due if this Lease had not been terminated or if the Lessor had not entered or reentered as aforesaid. Notwithstanding the foregoing,

Concessionaire's liability shall not exceed the difference, if any, between the rental which would have been due for such month had there been no such termination, and the amount being received by Lessor as rent from occupants of said premises. In order to mitigate Concessionaire's damage hereunder, Lessor agrees to make every reasonable effort to secure subsequent tenants, at a rental equal to the prevailing local rate for the demised premises.

#### ARTICLE XX

##### ATTORNEY'S FEE

The Concessionaire shall pay to the Lessor a reasonable attorney's fee in the event the Lessor employs an attorney to collect any rents due hereunder and secures a judgment in connection with collection of said rent, or to protect the interest of the Lessor in the event Concessionaire is adjudged a bankrupt, or legal process is levied upon the interest of the Concessionaire in this Lease or in said premises, or in the event Concessionaire violates any of the terms, conditions or covenants on the part of the Concessionaire herein contained, provided that Concessionaire fails to promptly correct the violation of any term, condition or covenant after receipt of notice that it is in violation thereof. Lessor will pay to Concessionaire a reasonable attorney's fee if Concessionaire employs an attorney in the event the Lessor violates any of the terms, conditions or covenants on the part of the Lessor herein contained, provided said Lessor fails to promptly correct the violation of any term, condition or covenant after receipt of notice that it is in violation thereof

#### ARTICLE XXI

##### ASSIGNMENT, SALE AND SUBLETTING

The Concessionaire shall not at any time assign, sell, convey or transfer this Lease or any interest therein, or sublease or sublet or rent the premises, or any part thereof, without the prior written consent of the Lessor. All provisions of this Lease shall extend to, bind and inure to the benefit of not only the Lessor and Concessionaire but also their successors and assigns. In no event shall the Concessionaire named herein be relieved from any obligations under this Lease by virtue of any assignment or subletting.

#### ARTICLE XXII

##### AUTHORITY TO ENTER INTO AGREEMENT

The Lessor hereby represents and warrants that it has taken all necessary procedural and legal steps as required by federal, state and local laws and regulations for the purpose of authorizing the execution of this agreement and that execution of this agreement by the City Manager renders this agreement a valid and binding document on the part of the City of Bangor and is fully enforceable in all of its terms and conditions by the Concessionaire

Concessionaire hereby represents and warrants that it has taken all necessary procedural and legal steps as required under all state, local and federal laws and regulations,

and all necessary corporate action to authorize the execution of this agreement by its officers and that upon such execution of this agreement is a valid and binding undersigned corporate document on the part of the Concessionaire and is fully enforceable in all of its terms and conditions by the City of Bangor.

### ARTICLE XXIII

#### OPTION TO EXTEND

The Parties mutually shall have the option to extend this Lease for two, 1 year terms. The option to extend provided for by this Article shall be exercised, if at all, as follows and not otherwise: Not less than ninety (90) days before the natural termination of the initial term herein provided for, either Party shall notify the other Party in writing of its election to lease the demised premises for the said additional term, whereupon the parties hereto shall proceed to negotiate between themselves for the purpose of fixing a rental for the said additional extension period. If, upon the expiration of sixty (60) days from and after the date of such notice, the parties hereto shall have failed to agree in writing as to the rental to be paid by the Concessionaire to the Lessor during such additional extension period, then each of the parties hereto shall select an arbitrator to determine the amount of rental, and if the two arbitrators cannot agree, then the two arbitrators shall select a third arbitrator and the findings of the two of the three arbitrators thus selected shall be final and binding upon both parties hereto. Provided, however, that if Concessionaire shall be default of this lease as provided in Article XIX hereof on the date notice of renewal is given or required under this Article, then Concessionaire's option to extend may, in Lessor's sole discretion, be deemed terminated, and the provisions of this Article granting such an option to be of no effect.

### ARTICLE XXIV

#### WAIVER

Failure on the part of the Lessor to complain of any action or non-action on the part of the Concessionaire no matter how long the same may continue, shall never be deemed to be a waiver by the Lessor of any of Lessor's rights hereunder. Further, it is covenanted and agreed that no waiver at any time of any of the provisions hereof by Lessor, shall be construed as a waiver of any of the provisions hereunder, and that a waiver at any time of any of the provisions hereof shall not be construed at any subsequent time of the same provisions. The approval of Lessor or of any action by the Concessionaire requiring the Lessor's consent or approval shall not be deemed to waive or render unnecessary the Lessor's consent or approval to or of any subsequent similar act by the Concessionaire.

### ARTICLE XXV

#### NOTICES

Notices to the Lessor provided for in this Lease shall be sufficient if sent by registered or certified mail, return receipt requested, postage prepaid to: City Manager,

City of Bangor, City Hall, 73 Harlow Street, Bangor, Maine 04401 with a copy to: Airport Manager, Bangor International Airport, 287 Godfrey Blvd., Bangor, ME 04401; and notices to Concessionaire, are to be sent by registered or certified mail, return receipt requested, postage prepaid, addressed to: \_\_\_\_\_ or to such other respective addressed as the parties may designate to each other in writing from time to time.

#### ARTICLE XXVI

#### INVALIDITY OF PARTICULAR PROVISIONS

If any term or provisions of this Lease or the application thereof to any person or circumstances to any extent, be invalid or unenforceable, the remainder of this Lease or the application of such terms and provisions to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected hereby and such term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

#### ARTICLE XXVII

#### CONSTRUCTION

The headings appearing in the Lease are intended for convenience and reference only, and not to be considered in construing this Lease.

Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of rent nor any other provision contained herein or any acts of the parties hereto shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant.

#### ARTICLE XXVIII

#### GOVERNING LAW

This Lease shall be governed exclusively by the provisions hereof and by the laws of the State of Maine, as the same may from time to time exist.

#### ARTICLE XXIX

#### AMENDMENT TO LEASE

This lease contains all the terms and conditions between the parties hereto and no alteration, amendment or addition thereto shall be valid unless in writing and signed by the party against whom enforcement may be sought.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year written above.

WITNESS:

\_\_\_\_\_

\_\_\_\_\_

Date

WITNESS:

\_\_\_\_\_

\_\_\_\_\_

Date

CITY OF BANGOR:

BY: \_\_\_\_\_

Catherine M. Conlow  
Its City Manager

\_\_\_\_\_

Date

THE GRASSHOPPER SHOP:

BY: \_\_\_\_\_

Title:

\_\_\_\_\_

Date





Date: September 28, 2015

**Item/Subject:** ORDER, Authorizing the City Manager to execute an amendment to the lease agreement between the City of Bangor and LifeFlight of Maine, LLC. for the rental of Hangar #600 at Bangor International Airport (BGR).

**Responsible Department:** Airport

**Commentary:**

This Order authorizes an amendment to the lease between the City of Bangor and LifeFlight of Maine, LLC. for the rental of Hangar #600. In May of this year, the City approved a new lease agreement with LifeFlight to help support their fleet expansion and consolidation of operations. LifeFlight now leases a majority of Hangar #600, and as part of this expansion, they are making improvements to the facility. LifeFlight is requesting to lease additional space, make further improvements to the facility, and address additional code requirements discovered during the construction. The additional space will support a medical simulation lab and a medical equipment storage area.

If approved, this amendment outlines the lease of the additional space, extends the lease term, and identifies the list of additional improvements that will comply with code requirements and will mutually benefit both Parties, and adjusts the rental payment terms to incorporate the additional improvements. This lease amendment has been reviewed and approved by City Legal.

Tony Caruso  
Department Head

**Manager's Comments:**

\_\_\_\_\_  
City Manager

**Associated Information:**

**Budget Approval:**

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

**Legal Approval:**

\_\_\_\_\_  
City Solicitor

Introduced for  
 Passage  
 First Reading  
 Referral



# CITY OF BANGOR

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Assigned to Councilor: \_\_\_\_\_

**(TITLE.) ORDER,** Authorizing the City Manager to execute an amendment to the lease agreement between the City of Bangor and LifeFlight of Maine, LLC. for the rental of Hangar #600 at Bangor International Airport (BGR).

WHEREAS, The City of Bangor, Maine is the owner of an airport located in Bangor, County of Penobscot, State of Maine, commonly known as Bangor International Airport; and

WHEREAS, LifeFlight currently leases a majority of the Hangar #600 and they request to lease additional space to support a medical simulation lab and medical equipment storage area; and

WHEREAS, this leased space will be used exclusively for the purposes of LifeFlight of Maine, LLC. to support their emergency aviation operations.

NOW, THEREFORE, BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF BANGOR,

That Catherine M. Conlow, City Manager, is hereby authorized on behalf of the City of Bangor to execute an amendment to the Indenture of Lease of June 1, 2015 between the City of Bangor and LifeFlight of Maine, LLC. for the rental of Hangar #600 at Bangor International Airport. The amendment shall outline the lease of the additional space, extend the lease term, and identify the list of additional improvements that will comply with code requirements and will mutually benefit both Parties, and adjust the rental payment terms to incorporate the additional improvements. The amendment will be in final form as approved by the City Solicitor or Assistant City Solicitor.

## FIRST AMENDMENT TO INDENTURE OF LEASE

This Amendment to Indenture of Lease, executed in duplicate, this \_\_\_\_ day of \_\_\_\_\_, 2015 by and between the **City of Bangor** and **LIFELIGHT OF MAINE, LLC**.

WITNESSETH:

WHEREAS, the Lessor is the owner of an Airport, commonly known as “Bangor International Airport”, formerly known as Dow Air Force Base and located in the City of Bangor, County of Penobscot, State of Maine (hereinafter sometimes referred to as the “Airport”); and

WHEREAS, the City of Bangor and LifeFlight of Maine, LLC are parties to a lease dated June 1, 2015 wherein LifeFlight of Maine, LLC leases certain facilities, also known as Hangar 600, from the City of Bangor; and

WHEREAS, LifeFlight of Maine desires to lease additional office space for its emergency operations, and for further improvements to be made to the facility;

NOW, THEREFORE, the parties agree to amend the Indenture of Lease by and between the parties dated June 1, 2015 as follows:

- (1) By adding the following to Article I: Premises, between the third-to-last and second-to-last paragraphs of that Article:

Additional area, as per Exhibit D (attached hereto):

- a. Additional office space, Section 1: 1,655 sq.ft. (Portion of West hangar.)
- b. Build and lease of an additional restroom, Section 1: 64 sq ft. (Portion of West hangar.)

- (2) By replacing Article II: Term with the following:

TO HAVE AND TO HOLD the demised premises as described herein for a period of fifteen (15) years, commencing on June 1, 2015 and terminating on May 31, 2030. Provided that Lessee is not in default of the terms and conditions of this Lease at the time Lessee exercises an option to renew, Lessee and Lessor will negotiate an option to renew the Lease for a five (5) year period.

- (3) By replacing Article III: Rental, Section A, with the following:

- A. The rental to be paid by Lessee to Lessor during the term of this Lease shall be:
  - a. Office space: \$41,618 annual / \$3,468 monthly.
  - b. Hangar space: \$58,013 annual / \$4,835 monthly.

- c. Lessor has agreed to provide Lessee with a rental credit for defined facility improvements, as specified in Appendix 1 (as amended). Based on the cost of improvements, not to exceed \$145,440, Lessor will provide a credit of \$24,240 per year for Years 1 through 6 of the lease agreement.
  - i.  $\$99,631 \text{ annual} - (\$24,240 \text{ credit}) = \$75,391 \text{ annual} / \$6,282 \text{ monthly}$ , for Years 1 through 6.
  - ii. At Year 7 of the lease agreement, the rate will increase to the original amounts listed in sections (a) and (b) above.

(4) By replacing Article III: Rental, Section F, with the following:

Lessee shall pay a penalty for early cancellation prior to Year 7 of the agreement. This fee shall be equal to a one (1) year rental fee of the current contract year, provided that this penalty shall be offset to the extent that revenue is accrued from the hangar being leased to another Party within the year following the date of Lessee's early cancellation.

(5) By replacing Article IV: Use, Occupancy and Improvements of Premises, Section D, Subsections (ii) and (iii) with the following:

- (ii) Appendix 1 (as amended) provides the list of agreed improvements, which will mutually benefit both Parties.
- (iii) The cost of the improvements described in Appendix 1 (as amended) shall not exceed a cost of one hundred and forty five thousand, four hundred and forty dollars (\$145,440) for the purposes of the rental credit.

(6) By replacing Appendix 1 with the amended version of the same attached to this First Amendment to Indenture of Lease.

In all other respects the Indenture of Lease between the parties remains in full force and effect.

IN WITNESS WHEREOF, the parties have set their hands and seals this \_\_\_ day of \_\_\_\_\_, 2015.

LIFELIGHT OF MAINE, LLC.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
By: Tom Judge  
Its: Chief Executive Officer

CITY OF BANGOR

\_\_\_\_\_  
Witness

\_\_\_\_\_  
By: Catherine M. Conlow  
Its: City Manager

**Amended: August 2015**

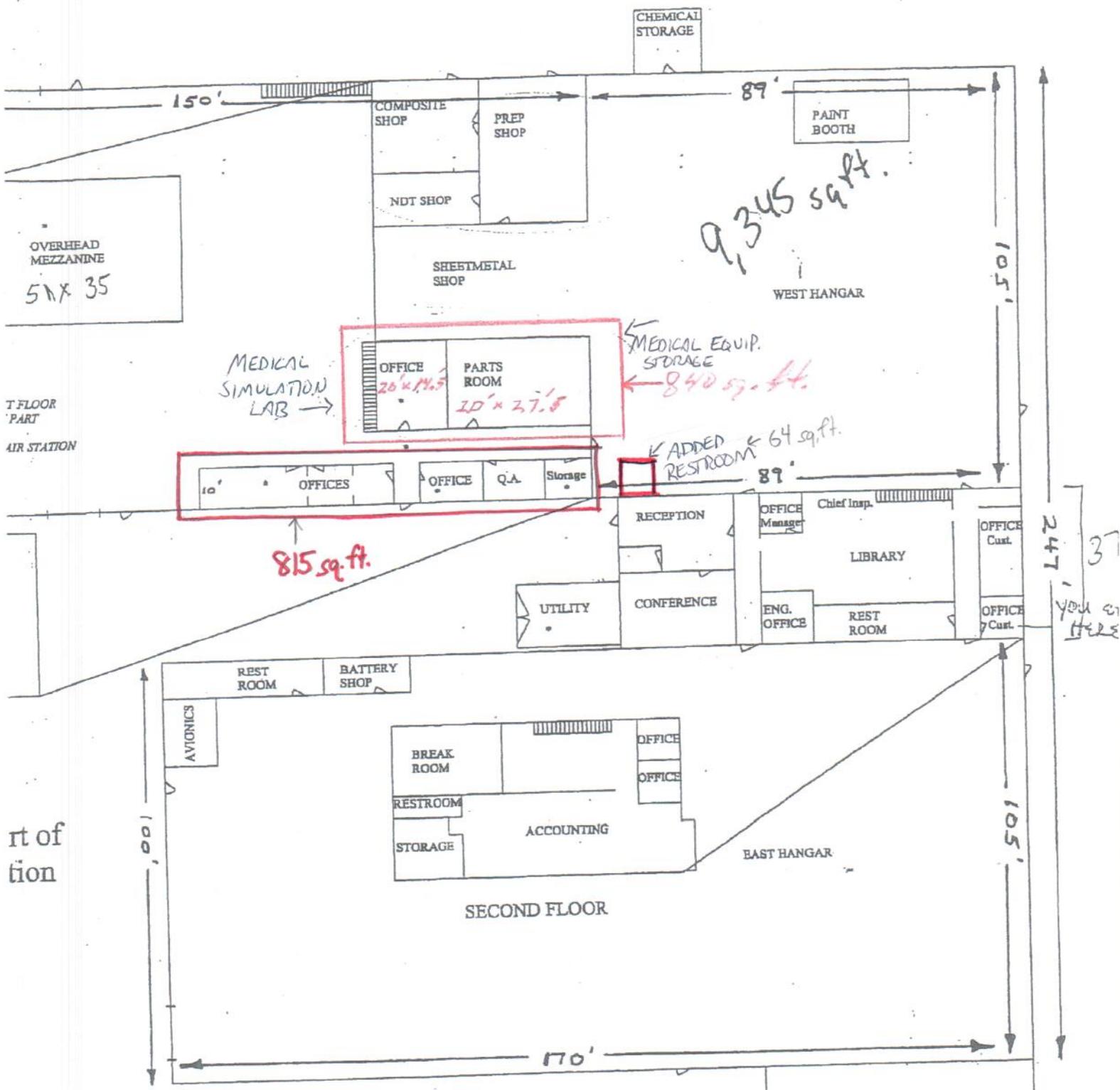
LifeFlight of Maine, LLC. Lease agreement

- Upgrade and meet code requirements for building fire suppression system within offices and hangar.
- Upgrade and meet code requirements for HVAC system within the facility.
- Install of generator with outside enclosure to operate full facility; build base/foundation.
- Upgrade and meet code requirements for electrical service throughout facility.
- Upgrade and meet code requirements for plumbing service throughout facility.
- Improve the IT infrastructure within the facility.
- Build of two (2) additional restroom facilities. (1<sup>st</sup> and 2<sup>nd</sup> floors.)
- Upgrade of existing two (2) restroom facilities.
- Remove and relocate existing metal emergency stairs to meet code requirements; add required handrails.
- Build of secondary emergency stairs (egress) to meet code requirements; add required handrails.
- Build of additional office space on 1<sup>st</sup> and 2<sup>nd</sup> floors; within defined library and accounting space as depicted on Exhibit A; new flooring in office areas.
- Install of sound board under-drywall and install of 2-hour fire rated doors on specified locations.
  - 3 egress doors separating office area and hangar area.
  - At offices adjacent to hangar area.
- Install of insulation within offices spaces on 1<sup>st</sup> and 2<sup>nd</sup> floors. (Currently there is minimal, or no insulation within these areas.)
- Add/install new roll-up door in hangar.
- Improve security access; cypher locks installed.

**Amended: August 2015**

**Items added with amendment –**

- Upgrade and meet code requirements on floor support for second floor offices.
- Additional fire suppression needs for the additional offices in West hangar sections.
- Build of an additional restroom in West hangar section.
- Renovate and meet code requirements for additional office space rental, to include lighting, electrical, plumbing and HVAC system.
- Redesign and construction of emergency egress stairs in West hangar section.
- Additional access security systems for West hangar sections.



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## MEMORANDUM

To: Airport Committee

From: Tony Caruso, Airport Director

CC: Cathy Conlow, City Manager

Re: AIP # 66 and # 67 update

Date: September 15, 2015

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**AIP # 66:** Reconstruct and narrowing of taxiway N, to rehabilitate a portion of taxiway A, and to rehabilitate dock area taxi lanes at Bangor International Airport (BGR).





**AIP # 67:** ASR mitigation at gates 4 and 6 trench drains and rehabilitation of the south entrance to the general aviation ramp at Bangor International Airport (BGR)



These projects are included in BGR's FAA approved five-year Capital Improvement Plan (CIP). This grant will fund 90% of the project with the additional 5% coming from the State and 5% coming from the airport.