



U.S. Department
of Transportation
Federal Aviation
Administration

Office of Airport Safety and
Standards

800 Independence Ave., S.W.
Washington, D.C. 20591

APR 14 2008

APR 11 2008

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Dear Messrs. Watsky and Lehane:

FAA Docket Number 16-07-03

Enclosed is a copy of the Director's Determination in the above-captioned formal complaint under 14 C.F.R Part 16.

We find that the Town of Norwood, Massachusetts, is in violation of Title 49 United States Code §§ 40103(e) and 47107(a)(1) and *General Written Assurances* on Exclusive Rights, Economic Nondiscrimination, and Preserving Rights and Powers.

The Town has 30 days to submit a corrective action plan that (1) provides access for BAC to conduct self-fueling operations consistent with state and local regulations; (2) ends the practice of awarding long-term leases of the federally-funded ramps that had the effect of granting one party control over the majority of the ramps on the Airport; (3) puts in place a short-term ramp leasing permit policy for the Airport to assert more control of the federally-funded ramps and (4) regain the Airport's rights and powers to access the "1100 Foot Strip" to provide power to the Airport ramps for Airport tenants.

Failure to submit a corrective action plan acceptable to the FAA within the time provided, unless extended by the FAA, will lead to suspension of future grant applications for AIP discretionary grants.

Sincerely,

J. R. White for

Kelvin Solco
Acting Director, Office of Airport
Safety and Standards

Enclosure

**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC**

BOSTON AIR CHARTER

COMPLAINANT

V.

**NORWOOD AIRPORT COMMISSION
NORWOOD, MASSACHUSETTS**

RESPONDENT

**Docket No. 16-07-03
FINAL
APRIL 11, 2008**

DIRECTOR'S DETERMINATION

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) based on the formal complaint filed in accordance with the FAA Rules of Practice for Federally Assisted Airport Proceedings (FAA Rules of Practice), Title 14 Code of Federal Regulations (CFR) Part 16.

Boston Air Charter (Complainant/BAC) has filed a formal complaint pursuant to Title 14 CFR Part 16 against the Town of Norwood (Respondent/Town) owner, sponsor and operator of Norwood Memorial Airport (Airport), Norwood, Massachusetts. Complainant alleges that the Respondent is engaged in economic discrimination and has granted a fixed-base operator¹ an exclusive right in violation of Title 49 United States Code (U.S.C.) §§47107(a) and 40103(e) and the respective FAA Grant Assurances, 22 *Economic Nondiscrimination* and 23, *Exclusive Rights*.

Complainant, a Part 135 operator² on the Airport, identifies the issues to be resolved as:

- Whether the Town of Norwood, as the property owner, discriminated against the Complainant by failing to provide access to permit the installation of electric utilities for the Complainant to operate a fueling facility for its personal use at Norwood Memorial Airport. Complainant alleges such an action constitutes unreasonable denial of access and unjust discrimination in violation of Title 49 U.S.C. § 47107(a)(1), and related Federal Grant Assurance 22, *Economic Nondiscrimination*.

¹ A fixed-base operator (FBO) is a commercial entity, providing aeronautical services, such as maintenance, storage, ground and flight instruction, etc. to the public. [FAA Order 5190.6A, Appendix 5]

² A Part 135 operator holds an Air Carrier Certificate and provides passenger service as a commuter or on-demand service

- Whether the Town of Norwood granted an exclusive right to Eastern Air Center to operate a fueling facility and sell general aviation and jet fuel to the public and in the process, ceding control of the only power source to operate a fueling facility on the Airport ramps to Eastern Air Center and Boston Metropolitan Airport, Incorporated. Complainant alleges that the Town of Norwood granted an exclusive right by failing to provide access to electrical utilities required to operate a fueling facility, in violation of Title 49 U.S.C. § 40103(e), and related Federal Grant Assurance 23, *Exclusive Rights*.

Summary of Issues and Findings

The Complainant alleges that the Town of Norwood violated Federal law and policy when the Town failed to provide the Complainant access for the installation of electric service underground conduits to support its aviation fuel facility. This underground conduit must go through the leasehold of Eastern Air Center, the existing fixed base operator, who opposes the Complainant providing aircraft fueling services. The Complainant contends the Town of Norwood engaged in discriminatory practices and granted an exclusive right by not requiring Eastern Air Center to provide access for the underground conduit to obtain power for its fueling facility. Furthermore Complainant believes that it was prohibited from performing self-service fueling.

The Town argues that it can not be expected to take sides in a private dispute between two tenants over rights of access, despite its desire to encourage competition. The Town of Norwood says it does not have the right to force Eastern Air Center to provide access for utilities through its leasehold, it does not have an exclusive agreement with Eastern Air Center to provide fixed base operator services including fueling, and the existence of one fixed base operator does not constitute an exclusive right. Furthermore, since the Complainant does not have a lease, this issue is moot and the complaint should be dismissed. The Town contends it is under no obligation to enter into a lease with the Complainant.

Under the particular circumstances existing at the Airport and the evidence of record, as discussed below, the FAA concludes that:

- The Town is in violation of Grant Assurance 5, *Preserving Rights and Powers*, when it signed a Lease agreement with Boston Metropolitan Airport, Incorporated, a tenant, depriving the Town of certain rights and powers necessary to comply with its Federal obligations under the FAA grant assurances.
- The Town is in violation of Title 49 U.S.C. §47107(a)(1), and related Federal Grant Assurance 22, *Economic Nondiscrimination*, as it has denied the Complainant reasonable use and access to the Airport on reasonable terms for the purpose of conducting a commercial aeronautical activity, and the Town's actions in this regard constitute an unreasonable denial of access and unjust economic discrimination.
- The Town is in violation of Title 49 U.S.C. § 40103(e), and the related Federal Grant Assurance 23, *Exclusive Rights*, as it has granted an exclusive right, to Eastern Air Center, constructively or directly, to operate a fueling facility on the Airport by entering into leases with Eastern Air Center and Boston Metropolitan Airport,

Incorporated, enabling Eastern Air Center to control the only source of power to the Airport ramps to operate a fueling facility. By denying Complainant access to power to install a fueling facility, the Town has granted Eastern Air Center the exclusive right to operate a fueling facility on the Airport.

The FAA's decision in this matter is based on applicable Federal law and FAA policy, review of the pleadings and supporting documentation submitted by the parties, reviewed by the FAA, which comprises the Administrative Record reflected in the attached FAA Exhibit 1.

II. THE AIRPORT

The planning and development of the Airport has been financed, in part, with funds provided by the FAA under the Airport Improvement Program (AIP), authorized by the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. § 47101, *et seq.*

Norwood Memorial Airport is a general aviation airport. The Town of Norwood is the Airport owner and sponsor responsible for compliance with all the FAA Grant Assurances. The Town has delegated daily operation of the Airport to the Norwood Airport Commission.

During the last reported twelve-month period ending in March 2007, there were 240-based aircraft and 100,000 annual operations at the Airport.³ Since 1982, the Town of Norwood, the airport sponsor, has received 27 grants totaling \$11,577,569 in Federal financial assistance for airfield improvements. The Airport received an \$844,715 grant for apron rehabilitation in FY 2006.⁴

III. BACKGROUND

In March 2004, Boston Air Charter (BAC), a Part 135 operator serving Norwood Municipal Airport, proposed to construct a commercial aircraft fueling facility on the Airport's 19,072 square foot DC-3 Ramp. BAC planned to fuel its aircraft conducting a Part 135 charter operation and eventually wanted to become a fixed base operator offering aircraft fueling service to the public. The Record indicates the DC-3 Ramp was the only ramp the Town offered BAC.

The aircraft fueling facility would consist of two above ground aviation fuel storage tanks with a capacity of 12,000 gallons each, and a spill containment system. The fueling facility requires electric service and the DC-3 Ramp does not have access to an electric utility power source. The available power source is a transformer located on the Gate 3 taxilane side of a building in the leasehold known as the "1100 Foot Strip".⁵ An underground conduit between the "1100 Foot Strip" and the DC3-Ramp must be installed to provide electrical service for the operation of BAC's proposed fueling facility. The underground conduit would run from the DC-3 Ramp across the backside of the West Apron ramp adjacent to and into the Gate 3 taxilane and penetrate the "1100 Foot Strip" leasehold by ten feet to connect to the transformer. [See map on pages 9 and 10]

³ FAA Exhibit 1, Item 1 provides a copy of the most recent FAA Form 5010 for the Airport.

⁴ FAA Exhibit 1, Item 2 provides the Airport Sponsor's AIP Grant History listing the federal airport improvement assistance provided by the FAA to the Airport Sponsor from 1982 to the date of this decision.

⁵ The building is depicted as an orange strip on the *Compiled Lease Area Plan* dated December 17, 2007, page 9.

NORWOOD AIRPORT LEASE PLAN^{6,7}

<u>LOT</u>	<u>LESSEE</u>	<u>LEASE EXTENSION PERIOD</u>	<u>DIMENSIONS</u>
ABC	EASTERN AIR CENTER	1 NOVEMBER 2004 to 31 OCTOBER 2009	85,860 SQFT
WXY	EASTERN AIR CENTER	16 NOVEMBER 1988 to 30 NOVEMBER 2008 1 DECEMBER 2008 to 30 NOVEMBER 2028	111,292 SQFT
LOT 6	EASTERN AIR CENTER	1 JANUARY 2001 to 31 DECEMBER 2020 30 SEPTEMBER 2006 to 31 OCTOBER 2026	210,180 SQFT
LOT 7	EASTERN AIR CENTER	1 JANUARY 2001 to 31 DECEMBER 2020 30 SEPTEMBER 2006 to 31 OCTOBER 2026	135,360 SQFT
WEST APRON	TOWN CONTROLLED	N/A	95,381 SQFT
DC-3 APRON	BOSTON AIR CHARTER (Tenant at will)	N/A/	19,072 SQFT
THE 1100 FOOT STRIP	BOSTON METROPOLITAN AIRPORT, INC (EASTERN AIR CENTER, sublessee)	1967 to 2047	330,000 sqft

The Town owns the “1100 Foot Strip” and has leased it to Boston Metropolitan Airport, Incorporated (BMA) for a term of up to 80 years. BMA, in turn, subleases the “1100 Foot Strip” to Eastern Air Center (EAC), the Airport’s only fixed base operator. EAC controls most of the ramp space on Norwood Memorial Airport under long term leases. EAC is also an opponent of BAC’s plan to self-fuel. EAC believes BAC’s self fueling operation would be detrimental to its business.

EAC leased the DC-3 Ramp until August 2003, when the Town reclaimed it over EAC’s objections, and leased six tie-down positions to BAC.⁸ BAC leases the six tie-down spaces on the DC-3 Ramp on a month to month basis. [FAA Exhibit 1, Item 11, exhibit 3].

The Town and BAC attempted to negotiate a long term lease agreement for the DC-3 Ramp of three terms of ten years each. The agreement would give BAC control over the entire 19,072 square foot DC-3 Ramp. The lease would permit BAC to construct an above ground fuel storage facility for the purpose of dispensing aviation fuels. [FAA Exhibit 1, Item 3, exhibit C]

⁶ See map on page 9.

⁷ AIP Project 3-25-0037-26-2005 authorized the expenditure of \$589,004 for the rehabilitation of airport aprons including two aprons (Lots 6 and 7) leased to EAC. Over the past twenty years, the FAA has provided \$3,108,914 in Federal financial assistance for rehabilitation and construction of all the aprons and ramps excluding the “1100 Foot Strip”.

⁸ Eastern Air Center requested the Town to convert its lease for the DC-3 Ramp to a long term lease; the Town rejected this request and leased the DC-3 Ramp tiedowns to BAC. [Exhibit 1, Item 11, exhibit 1]

Summary of BAC's Permit and Construction Sequence⁹

The Town and BAC entered negotiations to lease the DC-3 Ramp and erect a fueling facility in 2004. By the close of 2004, BAC had received approval or tentative approval for most of the permits required to construct the aircraft fuel facility.

1. On May 5, 2004, the Town of Norwood Board of Selectman tentatively approved the Volatile Inflammable Fluids (VIF) License pending approval by the State Fire Marshal. This license was needed for the storage of flammables. [FAA Exhibit 1, Item 11, exhibit 119]
2. On May 5, 2004, Norwood Conservation Commission –approved and issued its *Order of Conditions* required for the operation of the fuel facility. [FAA Exhibit 1, Item 11, exhibit 11]
3. On June 11, 2004, the State Fire Marshal approved the type of storage tanks and equipment BAC proposed to use. [FAA Exhibit 1, Item 11, exhibit 9]
4. On June 15, 2004, Norwood Airport Commission issued a temporary 30 day fueling permit authorizing BAC to self-fuel its aircraft; the permit is renewed monthly until December 2005. [FAA Exhibit 1, Item 11, exhibit 120]
5. On November 2, 2004, FAA issued Form 7460 –Aeronautical Study for the proposed fuel facility. [FAA Exhibit 1, Item 11, item 123]
6. On November 30, 2004 Commonwealth of Massachusetts, State Department of Environmental Protection issued its *Superseding Order of Conditions*. [FAA Exhibit 1, Item 11, exhibit 11]
7. On April 8, 2005, Commonwealth of Massachusetts, Department of Environmental Protection issued its decision on the Appeal of Superseding Order of Conditions. [FAA Exhibit 1, Item 11, exhibit 18]
8. During the summer 2005, an AIP apron rehabilitation project begins and BAC fails to participate financially in the project, to have the underground conduit and trench drains installed because the Town's quoted price was too high. [See footnote 12]
9. During late 2005 and early 2006, Norwood Airport Commission reviews construction plans for the fuel facility; there is no indication that the plans were approved
10. During late 2005, BAC inquiries about the status of Norwood Airport Commission's development and approval of BAC's lease agreement. [FAA Exhibit 1, Item 11, exhibit 39]
11. During February 2006, Norwood Fire Department requires an approved lease before it can issue a permit; this step was not completed. [FAA Exhibit 1, Item 11, exhibit 62]

Issue of Leasehold Encroachment

On January 11, 2006, The Town of Norwood, Board of Selectmen, gave BAC a 90-day extension to complete the necessary permits for the installation of the fuel facility or face revocation of the Town-issued Volatile Inflammable Fluids (VIF) license. [FAA Exhibit 1, item 11, exhibit 50]. The Town of Norwood had issued BAC, a VIF license to operate an above ground fuel facility pending approval of the State Fire Marshal.¹⁰

⁹ This is an approximation of the steps, BAC must pursue to begin operation; it does not include the time limit on some of the permits and approvals. Some permits are valid for one year, BAC must reapply or resubmit its application.

¹⁰ State Fire Marshal approved plans for the aircraft fuel facility on June 11, 2004 [FAA Exhibit 1, Item 11, exhibit 9]

During a Norwood Airport Commission (NAC) meeting on BAC's proposal, EAC raised objections to the construction of an aircraft fueling operation on the DC-3 Ramp. EAC stated:

Neither NAC nor BAC has the right to dig, construct or otherwise utilize the so-called Gate 3 access to the Airport, which is situated on land we control, in any manner other than to allow a vehicle, aircraft and/or a pedestrian to pass through for the lawful purpose of gaining access to the Airport.

[FAA Exhibit 1, Item 11, exhibit 51]

In a January 30, 2006, letter to the Town, EAC indicated that it will not grant permission for anyone to dig, install or construct utility lines through the "1100 Foot Strip" without its prior written consent. BMA, the Town's lessee, indicated it would join with EAC in seeking to bar BAC from installing underground conduit for electrical service through "1100 Foot Strip" leasehold. [FAA Exhibit 1, Item 3, exhibit C, exhibit 1.]. EAC indicates that it informed BAC and its Counsel as early as 2004 that BAC did not have the authority to install conduit on land controlled by EAC. [FAA Exhibit 1, Item 11, exhibit 65].

EAC opposes BAC's request to self-fuel and refuses to grant its consent for an underground conduit to access its leasehold. EAC believes that another fixed base operator providing fuel would result in additional competition.¹¹

BAC requested the Town of Norwood to install, either at its own cost or at cost to BAC, underground conduit for electric service to its proposed fueling facility. [FAA Exhibit 1, Item 3, exhibit B]. BAC contends that the Town has the responsibility as the airport operator and owner to undertake the installation. The Town informed BAC that it does not have a right to grant an easement or enter into the leasehold under its 1967 Lease with BMA, and it will not "take sides" in a dispute between two tenants. The Town encouraged both parties to reach a mutually acceptable agreement regarding access across the "1100 Foot Strip". [FAA Exhibit 1, Item 3].

The Town says that BAC was given the opportunity to install electrical service and trench drains during a federally funded project to reconstruct a runway and rehabilitate two public aircraft parking aprons leased by EAC. BAC chose not to act.¹² However, the Town has not made clear how BAC could have gained power to the DC-3 Ramp by installing underground conduit through Lots 6 and 7.

¹¹ Eastern Air Center, the only aircraft fueling service on the Airport, believes that an FBO competitor would threaten its investment at the Airport. [FAA Exhibit 1, Item 11, exhibits 1, 2, 5, 6, 7, 16, 18, 51, and 55].

¹² The fueling facility requires electrical service and a spill containment system that includes concrete pads, trench drains and catch basins to capture fuel spills. The work had to be coordinated with the federally funded apron construction project since both projects were being done on the same site. The Town's contractor working on the apron reconstruction project, offered to construct the spill containment system for \$55,800. Another contractor selected by BAC submitted an offer for \$29,185.00. BAC believed that the Town contractor's price was too high, BAC decided to wait until the apron reconstruction project was completed. But once the apron project was completed, the Town engineer refused to allow BAC's work to proceed because he didn't want the newly paved surface of the ramp to be cut. The Administrative Record indicates that BAC's concern about the Town contractor's pricing of the work was conveyed to the Town engineer. [FAA Exhibit 1, Item 9 and Item 11, exhibit 57]

On February 21, 2006, the Town imposed an additional requirement for BAC to receive its VIF License and operating permit for the aircraft fuel facility. BAC must have an approved lease from the Town for the use of the property.

As a non-owner applicant of the property you shall provide authorization from the owners that storage of each inflammable fluid is permitted under the terms of the lease. This authorization is required before any operation of the tank farm can occur.

[FAA Exhibit 1, Item 11, exhibit 62]

Two days later, the Town advised BAC that it was unable to approve the lease agreement for the DC-3 Ramp because: (1) the VIF license would expire in less than 90 days; and (2) the proposed route of the underground conduit for electrical service through the BMA/EAC leasehold no longer made the project viable. The Town indicated:

BAC's electrical schematic, in its current draft, does not address what appears to be leasehold encroachment proposed by, but not effectively resolved by, the current plan...This conflict is further underscored and amplified by correspondence recently sent to the NAC by Eastern Air Center, indicating that BAC will not be issued a right of way onto said leasehold. Subsequent conversations with the EAC official who stated in writing his company's position only appear to reaffirm EAC's expected intransigence on this matter. It is therefore incumbent upon BAC to explain how your company will reconcile this right-of-way matter.

In short, BAC must demonstrate that it possesses the legal right, and ability, to bring this project to completion by providing electrical power to the proposed fuel farm-without encroaching on the aforementioned leasehold.

[FAA Exhibit 1, Item 11, exhibit 63].

In a separate letter to the Town Selectman, EAC indicated that it had told BAC as early as 2004 that it would not authorize access to its leasehold for the purpose of installing underground conduit. EAC further indicated:

The undersigned (EAC) further confirmed that neither BAC; nor the Town of Norwood; or even Norwood Light-Electric, for that matter, had any right to arbitrarily encroach on land controlled by EAC and/or its affiliates.

[FAA Exhibit 1, Item 11, exhibit 65]

On May 4, 2006, the Town suspended all lease negotiations with BAC. The Town suspended negotiations because BAC had failed to submit documentation regarding BAC's claim that trench drains were not required and evidence that BAC had obtained all required permits and licenses to operate the proposed above ground aircraft fuel storage facility, including a plan to bring power to the DC-3 Ramp.¹³ [FAA Exhibit 1, Item 11, exhibit 75].

¹³ The timing and need for construction of the trench drains was an issue due to the Town Engineer's desire to postpone cutting the new pavement for at least three years. Toomey-Munson, consulting engineer (for BAC), contended the drains were redundant due to existing catch basins. This issue wasn't clarified until January 17, 2007, when the State Department of Environmental Protection indicated that trench drain installation could be delayed 18 months or BAC could seek an Amended Final Order permitting permanent substitution of the catch basin for the trench drains. [FAA Exhibit 1, Item 11, exhibit 114]. The Airport's Counsel indicates "...NAC

The Town states that BAC's complaint should be dismissed because there is no lease or local approvals for the aircraft fuel storage facility. The Town argues that the issue of BAC's need to construct utility access to the proposed aircraft fuel storage facility is moot because lease negotiations with BAC have been terminated. Furthermore, BAC withdrew its application for a license to operate an aircraft fuel storage facility and has failed to secure the necessary local and state approvals.¹⁴ The Town states that BAC was an "at will" tenant with a month to month aircraft tie-down contract and no lease agreement for the DC-3 Ramp ever existed. BAC could not get electrical service because EAC, the fixed base operator refused to grant it the right to install underground conduit on its leasehold to gain access to power (transformer).

The Town states that its actions do not violate Grant Assurances 22 and 23 and BAC's allegations are without merit and are merely a dispute amongst tenants at the Airport. The Town argues that it cannot be expected to take sides in a dispute between tenants over rights of access, despite its desire to encourage competition. In its defense, the Town cites FAA Airport Compliance Requirements, FAA Order 5190.6A, para. 3-9(a) says:

The presence on an airport of only one enterprise engaged in any aeronautical activity will not be considered a violation of this policy if there is no understanding, commitment, express agreement, or apparent intent to exclude other reasonably qualified enterprises.

(Airport) is more than willing to allow Mr. Bishop (BAC) to install the trench drains as required by the SOC (Department of Environmental Protection's Superseding Order of Conditions), however if BAC undertakes construction on the airport parking apron, it will be incumbent upon BAC to restore the ramp to the current condition. [FAA Exhibit 1, Item 11, exhibit 112]. This is not a cost the Airport has to incur. FAA expects that BAC would pay for the construction and repair and restore the ramp to its current condition.

¹⁴ According to BAC's Counsel, it withdrew its VIF license application rather than have the Board of Selectman vote on revocation. If BAC can resolve the electric service issue, it can resubmit its application to the Board.

The Town contends that it has no exclusive agreement with any tenant on Airport to provide fueling. It will allow the Complainant to operate an aircraft fuel storage facility as soon as it demonstrates compliance with the applicable state laws and obtains permission from EAC to construct an underground conduit for access to electrical service. The Town also contends that the complaint filed by the Complainant is moot.

Temporary Self Fueling Permit

On April 13, 2004, BAC requested the Town's approval to self-fuel its aircraft using a 5,100 gallon Jet A fuel truck until completion of its proposed aircraft fuel storage facility. On June 15, 2004, the Town gave BAC permission to self-fuel for a 30-day period as long as they complied with local, state and federal rules and regulations regarding the transportation of aviation fuel. The Record shows BAC conducted aircraft fueling operations with the Town's consent and knowledge. The Town extended the permit on a monthly basis until October 5, 2005, when it threatened to terminate the permit due to BAC's housekeeping practices.¹⁵ The permit was extended until the November 1, 2005 airport commission meeting after BAC took action to correct the deficiencies.

The Town originally consented to the temporary fueling arrangement because they believed that construction and operation of the fuel facility was imminent. Eighteen months of temporary fueling operations combined with concerns about the Town's liability were major factors in terminating BAC's self-fueling operation. At the November 1, 2005 commission meeting, the Town terminated BAC's temporary self-fueling operation upon 30 day notice, effective immediately.

After BAC continued to fuel its aircraft, the Town issued a violation notice ordering BAC to terminate its temporary fueling operation. The Town found the operation to be a violation of state fire prevention regulations and inconsistent with BAC's VIF license which permitted the operation of an above ground aircraft fuel storage facility. BAC stopped fueling operations after the Town issued a second order with a threat of legal action.

On August 4, 2006, BAC informed the Town of its intention to re-commence self-fueling of its aircraft on or about September 1, 2006. The Town advised BAC that it could not conduct self-fueling operations without a VIF License and permit issued by the Town.

BAC contends that by the Town denying it the right to self-fuel its aircraft and denying it the right to install underground conduit to gain electrical power from the "1100 Foot Strip" to its proposed aircraft fuel storage facility, the Town has granted EAC an exclusive right to operate a fueling facility and a monopoly on fuel sales on Norwood Municipal Airport. Furthermore, BAC believes that EAC has refused permission to install underground conduit for electric service through its leasehold to prevent the BAC from servicing its aircraft and offering fueling services to the public.

¹⁵ Airport staff found drip pans full of aviation fuel underneath the BAC fuel truck; the contents of the pans should have been properly disposed of. Staff also found residual fuel stains on the pavement from BAC's parked Citation Jet. [FAA Exhibit 1, Item 11, exhibit 122]

The Town contends that BAC has failed to comply with state licensing requirements regarding the use of fuel trucks at the Airport, has repeatedly refused to provide information requested by the Town and has been cited for fueling violations.¹⁶ The Town contends it is under no obligation to enter into a lease with the Complainant.

The 1100 Foot Strip

Eastern Air Center subleases an area called the “1100 Foot Strip” from Boston Metropolitan Airport, Incorporated (BMA) who once owned the land and is now a lessee of the Town of Norwood. The “1100 Foot Strip” consists of 330,000 square feet.

In 1967, the FAA directed the Town of Norwood to acquire this 1100 foot strip. The FAA imposed this requirement as part of Amendment Number One to Federal Grant Agreement for Federal Aid Airport Program (FAAP) 9-19-019-0803 dated August 15, 1967. This requirement is outlined in Special Condition 17 which states:

It is understood and agreed that the sponsor will acquire the following property interests: Parcel 2 as shown on Exhibit A—Fee simple title, free and clear of all liens and encumbrances determined objectionable by the FAA...

[FAA Exhibit 1, Item 10.]

The Town of Norwood acquired Parcel 2 (1100 Foot Strip) and Parcel 4 (aviation easement) from Boston Metropolitan Airport, Inc.¹⁷ On December 28, 1967, the Town Counsel signed a certificate affirming that the Town of Norwood holds interest in Parcel 2 (1100 foot strip) and 4 (aviation easement) shown on the Exhibit A property plan attached to Federal Grant Agreement for Federal Aid Airport Program (FAAP) 9-19-019-0803. The certificate indicated that the Town holds fee simple title, free and clear of all liens, encumbrances and adverse interests, subject to a reversionary interest held by Boston Metropolitan Airport that would revert the property to Boston Metropolitan Airport, if the property is no longer needed for airport purposes. (FAA Exhibit 1, Item 10)

BMA transferred title to the “1100 Foot Strip” to the Town of Norwood in return for a leaseback arrangement that gave BMA an executed lease with a twenty year term and three

¹⁶ Fueling violations are for drip pans and fuel stains on the pavement.

¹⁷ Title 49 U.S.C. Section 47106(b)(1) states that no project grant application for airport development may be approved by the Secretary until the Secretary is satisfied that the sponsor, a public agency, or the United States Government holds good title to the areas of the airport used or intended to be used for the landing, taking off, or surface maneuvering of aircraft, or gives assurance to the Secretary that good title will be acquired. The AIP Handbook, Order 5100.38C further clarifies Title for landing and building areas, “Title with respect to lands to be used for landing area or building area purposes can be either fee simple title (free and clear of any and all encumbrances), or title with certain rights excepted or reserved. Any encumbered title must not deprive the sponsor of possession or control necessary to carry out all obligations under the grant. A deed containing a reversionary clause, for “so long as the property is being used for airport purposes”, does not negate good title provided the other conditions are satisfied. Where rights excepted or reserved would prevent the sponsor from carrying out its obligations under the grant, such rights must be extinguished or subordinated prior to approval of the project.”

20 year options to renew and a reversionary interest in the property should the Airport cease to exist.¹⁸ BMA has exercised the first renewal option. [FAA Exhibit 1, Item 7.]

According to the Town, this leaseback arrangement allowed the Town of Norwood to acquire the "1100 Foot Strip" without actually purchasing the land.¹⁹ The 1967 Lease does not contain any provisions for utility easements and is silent on the Town's right of entry to maintain or install utilities. [FAA Exhibit 1, Item 7.]

FAA Investigation

On July 14, 2006, BAC filed an informal complaint with the FAA New England Regional Headquarters. The result of FAA's investigation determined that the Town had not violated its Federal obligations. According to the Regional Headquarters:

The review indicates that the Town of Norwood intended to allow BAC to install and operate a fuel farm at Norwood Memorial Airport, if BAC could negotiate with EAC to run electrical service across EAC's leasehold. The Town's ability to force EAC to permit the electrical line is outside FAA's purview.

[FAA Exhibit 1, Item 11, exhibit 91]

However, the FAA did direct the Town to ensure that any future Airport leases must provide the right to install utility lines across leased premises.

On April 2, 2007, BAC filed a formal complaint under Title 14 Part 16 with the Federal Aviation Administration.

BAC requests the FAA direct the Town and EAC to provide access to permit the installation of electric utilities for BAC's operation and grant a long term lease on fair terms to operate its fueling facility. BAC requests the FAA to issue a finding that the Town is obligated to:

- Enter into a lease on reasonable terms, as agreed;
- Either grant BAC the right to install the necessary electrical conduits or for the Town to install those conduits itself; and
- To take any other action necessary to enable BAC to immediately be able to exercise its rights under the Grant Assurances to fuel its aircraft, either from its own truck on a temporary basis, or through installation of the fueling facility.

IV. ISSUES

Upon review of the allegations and the relevant airport-specific circumstances, summarized above, the FAA has determined that the following issues require analysis in order to provide a complete review of the Town's compliance with applicable Federal law and policy:

¹⁸ The renewal options are at the sole discretion of BMA.

¹⁹ FAA did not approve the lease back arrangement. FAA accepted the Town Counsel's representation that the Town had acquired Good Title to the property.

- Whether the Town is in violation of Grant Assurance 5, *Preserving Rights and Powers*, when it signed a Lease agreement with Boston Metropolitan Airport, Incorporated, a tenant, depriving the Town of certain rights and powers necessary to comply with its Federal obligations under the FAA grant assurances.
- Whether the Town is in violation of Title 49 U.S.C. §47107(a)(1), and related Federal Grant Assurance 22, *Economic Nondiscrimination*, as it has denied the Complainant reasonable use and access to the Airport on reasonable terms for the purpose of conducting a commercial aeronautical activity, and whether the Town's actions in this regard constitute an unreasonable denial of access and or unjust economic discrimination.
- Whether the Town is in violation of Title 49 U.S.C. § 40103(e), and the related Federal Grant Assurance 23, *Exclusive Rights*. Whether it has granted an exclusive right, to Eastern Air Center, constructively or directly, to operate a fueling facility on the Airport by entering into leases with Eastern Air Center and Boston Metropolitan Airport, Incorporated, enabling Eastern Air Center to control the only source of power to the Airport ramp to operate a fueling facility. Whether by denying Complainant access to power to install a fueling facility, the Town has granted Eastern Air Center the exclusive right to operate a fueling facility on the Airport.

FAA's decision in this matter is based on the applicable Federal law and FAA policy, review of the arguments and supporting documentation submitted by the parties reviewed by the FAA, which comprises the Administrative Record reflected in the attached FAA Exhibit 1.

V. APPLICABLE FEDERAL LAW AND FAA POLICY

The Federal role in civil aviation has been augmented by various legislative actions that authorize programs for providing Federal funds and other assistance to local communities for the development of airport facilities. In each such program, the airport sponsor assumes certain obligations, either by contract or by restrictive covenants in property deeds and conveyance instruments, to maintain and operate its airport facilities safely and efficiently and in accordance with specified conditions. Commitments assumed by airport sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation and maintenance, as well as ensuring the public fair and reasonable access to the airport.

The following is a discussion pertaining to the Airport Improvement Program, Airport Sponsor Assurances, the FAA Airport Compliance Program, and enforcement of Airport Sponsor Assurances.

A. The Airport Improvement Program

Title 49 U.S.C. § 47101, *et seq.*, provides for Federal airport financial assistance for the development of public-use airports under the Airport Improvement Program (AIP) established by the Airport and Airway Improvement Act of 1982, as amended. Title 49 U.S.C. § 47107, *et seq.*, sets forth assurances to which an airport sponsor agrees as a condition of receiving Federal financial assistance. Upon acceptance of an AIP grant, the

• Whether the Town is in violation of Grant Assurance 2, Airway Rights and Powers when it signed a lease agreement with Boston Metropolitan Airport, Incorporated, a tenant, depriving the Town of certain rights and powers necessary to comply with its Federal obligations under the FAA grant assurances.

• Whether the Town is in violation of Title 49 U.S.C. § 47107(a)(1) and related Federal Grant Assurance 23, Airway Rights and Powers, as it has denied the Complainant reasonable use and access to the Airport on reasonable terms for the purpose of conducting a commercial aeronautical activity, and whether the Town's actions in this regard constitute an unreasonable denial of access and/or unjust economic discrimination.

• Whether the Town is in violation of Title 49 U.S.C. § 40103(c) and the related Federal Grant Assurance 23, Airway Rights and Powers, if it has granted an exclusive right to Eastern Air Center, collectively or directly, to operate a fueling facility on the Airport by entering into leases with Eastern Air Center and Boston Metropolitan Airport, Incorporated, enabling Eastern Air Center to control the only source of power to the Airport ramp to operate a fueling facility. Whether by denying Complainant access to power to install a fueling facility, the Town has granted Eastern Air Center the exclusive right to operate a fueling facility on the Airport.

FAA's decision in this matter is based on the applicable Federal law and FAA policy, review of the arguments and supporting documentation submitted by the parties reviewed by the FAA, which comprises the Administrative Record reflected in the attached FAA Exhibit 1.

V. APPLICABLE FEDERAL LAW AND FAA POLICY

The Federal role in civil aviation has been augmented by various legislative actions that authorize programs for providing Federal funds and other assistance to local communities for the development of airport facilities. In each such program, the airport sponsor assumes certain obligations, either by contract or by resolution, covering in proper deeds and conveyance instruments to maintain and operate its airport facilities safely and efficiently and in accordance with specified conditions. Commitments assumed by airport sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation and maintenance, as well as ensuring the public fair and reasonable access to the airport.

The following is a discussion pertaining to the Airport Improvement Program (AIP) Sponsor Assurances, the FAA Airport Compliance Program, and enforcement of Airport Sponsor Assurances.

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assurances become a binding contractual obligation between the airport sponsor and the Federal government. The assurances made by airport sponsors in AIP grant agreements are important factors in maintaining a viable national airport system.

B. Airport Sponsor Assurances

As a condition precedent to providing airport development assistance under the Airport Improvement Program, 49 U.S.C. § 47107, *et seq.*, the Secretary of Transportation and, by extension, the FAA must receive certain assurances from the airport sponsor. Title 49 U.S.C. § 47107(a) sets forth the statutory sponsorship requirements to which an airport sponsor receiving Federal financial assistance must agree.

The FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances.²⁰ FAA Order 5190.6A, *Airport Compliance Requirements* (Order), issued on October 2, 1989, provides the policies and procedures to be followed by the FAA in carrying out its legislatively mandated functions related to compliance with Federal obligations of airport sponsors. The FAA considers it inappropriate to provide Federal assistance for improvements to airports where the benefits of such improvements will not be fully realized due to inherent restrictions on aeronautical activities.

Three Federal grant assurances apply to the circumstances set forth in this Complaint: (1) Grant Assurance 5, *Preserving Rights and Powers*, (2) Grant Assurance 22, *Economic Nondiscrimination*; (3) Grant Assurance 23, *Exclusive Rights*.

1. Preserving Rights and Powers

Grant Assurance 5, *Preserving Rights and Powers*, implements the provisions of Title 49 U.S.C 47107, and requires, in pertinent part, that the sponsor of a federally obligated airport

“...will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor.

A sponsor cannot take any action that may deprive it of its rights and powers to direct and control airport development and comply with the grant assurances. Of particular concern to the FAA is granting a property interest to tenants on the airport. These property interests may restrict the sponsor's ability to preserve its rights and powers to operate the airport in compliance with its federal obligations

2. Economic Nondiscrimination

The owner of any airport developed with Federal grant assistance is required to operate the airport for the use and benefit of the public and to make it available to all types, kinds, and

²⁰ See, e.g., the Federal Aviation Act of 1958, as amended and recodified, Title 49 U.S.C. §§40101, 40113, 40114, 46101, 46104, 46105, 46106, 46110; and the Airport and Airway Improvement Act of 1982, as amended and recodified, Title 49 U.S.C. §§ 47105(d), 47106(d), 47107(k), 47107(l), 47111(d), 47122.

classes of aeronautical activity on fair and reasonable terms, and without unjust discrimination. Federal Grant Assurance 22, *Economic Nondiscrimination*, deals with both the reasonableness of airport access and the prohibition of adopting unjustly discriminatory conditions as a potential for limiting access. Grant Assurance 22 of the prescribed sponsor assurances implements the provisions of 49 U.S.C. § 47107(a)(1) through (6), and requires, in pertinent part, that the sponsor of a federally-obligated airport

...will make its airport available as an airport for public use on reasonable terms, and without unjust discrimination, to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport. [Assurance 22(a)].

...may establish such fair, equal, and not unjustly discriminatory conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport. [Assurance 22(h)].

...may...limit any given type, kind, or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public. [Assurance 22(i)].

Subsection (h) qualifies subsection (a) and subsection (i) represents an exception to subsection (a) to permit the sponsor to exercise control of the airport sufficient to preclude unsafe and inefficient conditions that would be detrimental to the civil aviation needs of the public.

In all cases involving restrictions on airport use imposed by airport owners for safety and efficiency reasons, the FAA will make the final determination on the reasonableness of such restrictions when those restrictions deny or limit access to, or use of, the airport. [See FAA Order 5190.6A, para. 4-8].

The owner of an airport developed with Federal assistance is responsible for operating the aeronautical facilities for the benefit of the public. [See FAA Order 5190.6A, Sec. 4-7(a).] This means, for example, that the owner should adopt and enforce adequate rules, regulations, or ordinances as necessary to ensure the safe and efficient operation of the airport. [See Order, Secs. 4-7 and 4-8].

Federal Grant Assurance 22, *Economic Nondiscrimination*, also satisfies the requirements of Title 49 U.S.C. § 47107 (a)(5), which requires that fixed-base operators similarly using the airport must be subject to the same charges. Assurance 22 provides, in pertinent part, that the sponsor of a federally obligated airport will ensure that:

“...each fixed-base operator at any airport owned by the sponsor shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-base operators making the same or similar uses of such airport and utilizing the same or similar facilities.” [Assurance 22(c)].

FAA Order 5190.6A describes the responsibilities under Grant Assurance 22 assumed by the owners of public use airports developed with Federal assistance. Among these is the obligation to treat in a uniform manner those users making the same or similar use of the airport and to make all airport facilities and services available on fair and reasonable terms without unjust discrimination. [See Order, Secs. 4-14(a)(2) and 3-1].

The FAA considers it inappropriate to provide Federal assistance for improvements to airports where the benefits of such improvements will not be fully realized due to inherent restrictions on aeronautical activities. [See Order, Sec. 3-8(a)].

3. Restrictions on Air Carrier Self-servicing of Aircraft

Grant Assurance 22(d) provides, in pertinent part, that “each air carrier using such airport shall have the right to service itself...”49 U.S.C. § 47107(a)(1) through (6), and requires, in pertinent part, that the sponsor of a federally-obligated airport

...will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform. [Assurance 22(f)].

The FAA considers the right to self-service as prohibiting the establishment of any unreasonable restriction on the owners or operators of aircraft regarding the servicing of their own aircraft and equipment. *See Order, Sec 3-9(e)(1)*

Aircraft owners must be permitted to fuel, wash, repair and otherwise take care of their own aircraft with their own personnel, equipment and supplies. The sponsor, however, is obligated to operate the airport in a safe and efficient manner. The establishment of fair and reasonable rules, applied in a not unjustly discriminatory manner, governing the introduction of equipment, personnel or practices which would be unsafe, unsightly, detrimental to the public welfare, or which would affect the efficient use of airport facilities by others, would not be unreasonable. *See Order, Sec. 3-9(d)(2).*

4. Exclusive Rights

Title 49 U.S.C. § 40103(e), provides, in relevant part, that “there shall be no exclusive right for the use of any landing area or air navigation facility upon which Federal funds have been expended.”

Title 49 U.S.C. § 47107(a)(4), similarly provides, in pertinent part, that “there will be no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public.”

Grant Assurance 23, *Exclusive Rights*, of the prescribed sponsor assurances implements both statutory provisions requiring, in pertinent part, that the sponsor of a federally obligated airport

“...will permit no exclusive right for the use of the airport by any persons providing, or intending to provide, aeronautical services to the public...and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under the Airport and Airway Improvement Act of 1982.”

FAA policy on exclusive rights broadly identifies aeronautical activities as subject to the statutory prohibition against exclusive rights. While public use airports may impose qualifications and minimum standards upon those who engage in aeronautical activities, we have taken the position that the application of any unreasonable requirement or standard that is applied in an unjustly discriminatory manner may constitute a constructive grant of an exclusive right. Courts have found the grant of an exclusive right where a significant burden has been placed on one competitor that is not placed on another. [*See e.g. Pompano Beach v FAA*, 774 F.2d 1529 (11th Cir, 1985)].

FAA Order 5190.6A (Order) provides additional guidance on the application of the statutory prohibition against exclusive rights and FAA policy regarding exclusive rights at public-use airports. [*See* Order, Ch. 3].

5. Leasing General Aviation Apron Constructed with Federal Assistance

FAA Order 5190.6A, Para. 4-17(k) in pertinent part, states:

The airport owner has responsibility for the management and operation of the airport and ultimately must assure that it is operated in accordance with all aspects of the grant assurances. ...Therefore, the airport owner should not enter into unconditional leasing of apron areas constructed with Federal airport grant assistance because this could result in reducing the airport owners ability to carry out their obligations under their agreements with the Federal Government.

The airport owner may in reality only want an FBO to manage tie-down spaces, maintain the apron area, remove snow, and similar functions. Para. 4-17(k)(1)

Tie-downs or spaces on the apron can be leased by the airport owner to individual aircraft owners and/or to the FBO for space necessary to serve the needs of their aircraft in their business. Also, the apron area in the immediate vicinity of an FBO can be leased to the FBO to permit the exercise of a proprietorship over the public-use ramp area. Apron areas can be leased provided the terms of the lease will not restrict the airport owner from carrying out their grant obligations. ...A demonstrated immediate need for the space to be leased shall be documented by the FBO to preclude attempts to limit competition or create an exclusive right. Para. 4-17(k)(2).

C. The FAA Airport Compliance Program

The FAA discharges its responsibilities for ensuring airport owners' compliance with their Federal obligations through its Airport Compliance Program. The FAA's airport compliance efforts are based on the contractual obligations an airport owner accepts when receiving Federal grant funds or the transfer of Federal property for airport purposes. These obligations

are incorporated in grant agreements and instruments of conveyance in order to protect the public's interest in civil aviation and to ensure compliance with Federal laws.

The FAA Airport Compliance Program is designed to ensure the availability of a national system of safe and properly maintained public-use airports operated in a manner consistent with the airport owners' Federal obligations and the public's investment in civil aviation.

The Airport Compliance Program does not control or direct the operation of airports. Rather, it monitors the administration of the valuable rights pledged by airport sponsors to the people of the United States in exchange for monetary grants and donations of Federal property to ensure that the public interest is being served. FAA Order 5190.6A sets forth policies and procedures for the FAA Airport Compliance Program. The Order establishes the policies and procedures to be followed by FAA personnel in carrying out the FAA's responsibilities for ensuring airport compliance. It provides basic guidance for FAA personnel in interpreting and administering the various continuing commitments made to the United States by airport owners as a condition of receiving a grant of Federal funds or the conveyance of Federal property for airport purposes. The Order analyzes the various obligations set forth in the standard airport sponsor assurances, addresses the nature of those assurances, addresses the application of those assurances in the operation of public-use airports, and facilitates interpretation of the assurances by FAA personnel.

The FAA Compliance program is designed to achieve voluntary compliance with federal obligations accepted by owners and/or operators of public-use airports developed with FAA-administered assistance. Therefore, in addressing allegations of noncompliance, the FAA will make a determination as to whether an airport sponsor is *currently* in compliance with the applicable federal obligations. Consequently, the FAA will consider the successful action by the airport to cure any alleged or potential past violation of applicable federal obligation to be grounds for dismissal of such allegations. [*See e.g. Wilson Air Center v. Memphis and Shelby County Airport Authority*, FAA Docket No. 16-99-10, (8/30/01) *Wilson Air Center, LLC v FAA*, 372 F.3d 807 (6th Cir. 2004).

D. FAA Enforcement Responsibilities

The Federal Aviation Act of 1958, as amended (FAAct), 49 U.S.C. § 40101, et seq., assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety, security, and development of civil aeronautics. The federal role in encouraging and developing civil aviation has been augmented by various legislative actions, which authorize programs for providing funds and other assistance to local communities for the development of airport facilities. In each such program, the airport owner or sponsor assumes certain obligations, either by contract or by restrictive covenants in property deeds and conveyance instruments, to maintain and operate its airport facilities safely, efficiently, and in accordance with specified conditions. Commitments assumed by airport owners or sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation and maintenance, as well as ensuring the public reasonable access to the airport. Pursuant to 49 U.S.C. § 47122, the FAA has a statutory mandate to ensure that airport owners comply with their federal grant assurances.

VI. ANALYSIS AND DISCUSSION

The Complainant alleges the Town of Norwood violated Title 49 U.S.C. §47107, and Federal Grant Assurance 22, *Economic Nondiscrimination* and Title 49 U.S.C. § 40103(e), and Federal Grant Assurance 23, *Exclusive Rights* by denying the Complainant access to install an underground conduit for electric service for its proposed aircraft fueling facility.

The Town of Norwood argues that it cannot be held responsible for Boston Metropolitan Airport, Incorporated's (BMA) decision not to grant BAC access through its leasehold for the purpose of installing an underground conduit to provide electrical service to BAC's proposed aircraft fueling facility. The Town argues it does not have express authority under its lease with BMA to permit BAC to install underground conduit through its leasehold.

The Town has terminated negotiations with BAC regarding the long-term leasing of the DC-3 Ramp and the construction of a fueling facility because of BAC's failure to obtain the required permits and approvals and its past performance during a temporary truck fueling operation that the Town terminated. The Town states that it is under no obligation to enter into a long-term lease agreement with BAC for the DC-3 Ramp.

The Town indicates that BAC has no lease, it is a tenant at will on a month-to-month basis and the issues raised in the complaint are moot and should be dismissed.

FAA has construed the complaint to involve an examination of Grant Assurance 5, *Preserving Rights and Powers*, in addition to the alleged violations of Title 49 U.S.C. §47107, Grant Assurance 22, *Economic Nondiscrimination*; Title 49 U.S.C. § 40103(e), Grant Assurance 23, *Exclusive Rights*. These issues are analyzed and discussed separately below.

A. Property Interest

Rights and Powers

Issue: Whether the Town has surrendered its rights and powers to develop and manage the Airport by permitting a tenant lease to subordinate the Town's Federal obligations in violation of Federal Grant Assurance 5, *Preserving Rights and Powers*.

Grant Assurance 5, *Preserving Rights and Powers*, prohibits the airport sponsor from entering into an agreement that would deprive it of any of its rights and powers that are necessary to perform all of the conditions of its grant agreements and other Federal obligations. The grant assurance specifically states:

The airport sponsor will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

The Town of Norwood argues that it doesn't have the authority to enter Boston Metropolitan Airport, Incorporated (BMA) "1100 Foot Strip" leasehold for the purpose of installing an underground conduit on behalf of Complainant.²¹ To address this issue, we must first determine if the Town ever had a right of access through the BMA leasehold under the 1967 Lease with BMA.

It appears that prior to 1967, the Town of Norwood and BMA jointly and separately owned land that was considered Norwood Municipal Airport. FAA believes that dual property ownership interests on a public airport may restrict or conflict with the airport sponsor's ability to preserve its rights and powers to operate the airport in compliance with its federal obligations.

As a result, and in order for the FAA to fund airport improvements, the FAA required the Town of Norwood to acquire and control all Airport property, in fee. The FAA directed the Town of Norwood to acquire the "1100 Foot Strip" owned by BMA or future Federal financial assistance would not be provided. The FAA imposed this requirement as part of Amendment Number One to FAA Grant Agreement for Federal Aid Airport Program (FAAP) 9-19-019-0803. This requirement is outlined in the Grant Agreement FAAP9-19-019-0803 Special Condition 17 which states:

It is understood and agreed that the sponsor will acquire the following property interests: Parcel 2 as shown on Exhibit A—Fee simple title, free and clear of all liens and encumbrances determined objectionable by the FAA...

The Town of Norwood acquired Parcel 2 ("1100 Foot Strip") and Parcel 4 (avigation easement) from BMA.

On December 28, 1967, the Town Counsel signed a certificate affirming that the Town of Norwood holds interest in Parcel 2 ("1100 Foot Strip") and 4 (avigation easement) shown on the Exhibit A property plan attached to Federal Grant Agreement for Federal Aid Airport Program (FAAP) 9-19-019-0803. The certificate indicated that the Town holds fee simple title, free and clear of all liens, encumbrances and adverse interests, subject to a reversionary interest held by BMA that would revert the property to BMA, if the property is no longer needed for airport purposes. [FAA Exhibit 1, Item 10]

Fee simple ownership represents absolute ownership of real property. Upon acquiring the title to the property, the Town became the property owner and had all rights associated with the property with the exception of the reversionary interest. The Town Counsel's certificate indicated that the Town of Norwood had fee simple title, free and clear of all liens, encumbrances and adverse interests with the exception of the reversionary interest of BMA. The Town had the right to access the property, the right to lease the property, the right to develop the property, and the right to grant easements. The Town had all rights associated with fee simple ownership subject to the reversionary interest.

In December 1967, BMA transferred title to the "1100 Foot Strip" to Norwood Airport Commission in return for a lease arrangement that gave BMA a lease with a twenty year term

²¹ The Town of Norwood is the property owner of the "1100 Foot Strip"; it leases the ramp to BMA who in turn subleases to EAC, a fixed base operator.

and three 20 year renewal options for a total of 80 years. FAA did not require the Town to enter into a leaseback arrangement with BMA, FAA required the Town to acquire the property. The Administrative Record does not provide any evidence to indicate that the land was appraised or a market value was identified for the property other than to indicate that the length of term of 80 years was needed to realize the fair market value of the property. BMA has exercised the first renewal option. [FAA Exhibit 1, Item 7.]

According to the Town, this leaseback arrangement allowed the Town of Norwood to acquire the "1100 Foot Strip" without actually purchasing the land. The 1967 Lease does not contain provisions for utility easements and is silent on the Airport's right of entry to the property, or a right to maintain and install utilities on the property. [FAA Exhibit 1, Item 7.]

The Town opines that since the 1967 Lease is silent on the Town's right of access to the property and is silent on any right for utility easements or maintenance and installation of utilities, the Town has therefore transferred those rights to the BMA.

The right of access and the right to grant utility easements and maintain and install utilities by an airport sponsor on an airport leasehold are essential rights integral to the operation and development of any public use airport. A sponsor must have control of its land in order to support development and growth of the airport. Specifically, in the case of the Town of Norwood, these were rights to be retained by the Town as a result of the Town Counsel's affirmation of the Town's fee simple ownership of the land and its compliance with Special Condition 17 of FAAP 9-19-019-0803. FAA required the Town to acquire the land; it did not require the Town to enter into a lease agreement with BMA that was inconsistent with its Federal obligations and contradictory to the purpose of Special Condition 17. The terms of the 1967 Lease appear to undermine Special Condition 17 as the 1967 Lease relinquishes certain rights and powers gained by the Town when it assumed fee interest in the property.

The Administrative Record indicates that EAC opposes BAC's plan to construct an aircraft fuel facility. EAC believes that another fixed base operator providing fuel would threaten its investment at the Airport and result in additional competition. The Record also indicates that EAC monitored BAC's progress through the permitting process and in some instances took an active and vocal position to stop the completion of the aircraft fuel facility.

However, the owner of an airport developed with Federal financial assistance is required to operate the airport for the use and benefit of the public and to make it available to all types, kinds and classes of aeronautical activity on reasonable terms without unjust discrimination. Specifically, in the case of air carriers, those using the Airport shall have the right to self-service their aircraft or to use any fixed base operator authorized by the Airport. The investigation reveals that the Town of Norwood attempted to comply with this obligation by permitting BAC to install and operate a fuel farm at Norwood Memorial Airport and that it took steps to support BAC's proposal such as authorizing temporary mobile fueling.

The Town's Federal obligation to provide BAC access came in direct conflict with EAC's desire to limit competition on the Airport when EAC refused to grant both the Town and BAC access to the power transformer located on the "1100 Foot Strip". BMA and EAC employed the 1967 Lease between the Town and BMA to prohibit access by the Town for the purpose of installing utilities. EAC stated:

Neither NAC nor BAC has the right to dig, construct or otherwise utilize the so-called Gate 3 access to the Airport, which is situated on land we control, in any manner other than to allow a vehicle, aircraft and/or a pedestrian to pass through for the lawful purpose of gaining access to the Airport.

[FAA Exhibit 1, Item 11, exhibit 65]

EAC further indicated:

The undersigned (EAC) further confirmed that neither BAC; nor the Town of Norwood; or even Norwood Light-Electric, for that matter, had any right to arbitrarily encroach on land controlled by EAC and/or its affiliates.

[FAA Exhibit 1, Item 11, exhibit 65]

Apparently, EAC was not interested in permitting potential competition on the Airport, and the Town's right to grant BAC access for the purpose of receiving electric service to the DC-3 Ramp was effectively blocked by the Town's 1967 Lease agreement with BMA. The Town put BAC on notice it was unable to approve the long-term lease agreement for the DC-3 Ramp and that it must find another way get electric service without encroaching on the EAC leasehold. The Record provides no evidence that the Town offered BAC an alternative course of action. The Town argues that BAC had the option of installing the electrical service during the AIP-funded project. BAC claims that it didn't do the work because of the cost. [See page 7, footnote 11]. EAC states that BAC didn't have the right to access its property. Consequently, BAC installing a electrical service conduit through EAC's leasehold was not an option.

FAA finds that the 1967 Lease does not excuse the Town from complying with its Federal obligations. FAA also finds that terms contained in the 1967 Lease including the reversionary interest, the 80 year total term, the lack of the Town's right of access to the property, the lack of the right to grant utility easements, and maintain and install utilities, and the lack of the right to approve or disapprove the assignment of the Lease are a sufficient indication that the Town, as airport sponsor, has taken actions that deprive it of its rights and powers to direct and control a significant portion of the aeronautical infrastructure on the Airport and to comply with the FAA grant assurances. Of particular concern to the FAA is the granting of a superior property interest to BMA for Airport property that restricts the Town's ability to preserve its rights and powers to operate the Airport in compliance with its Federal obligations

The airport sponsor must take the actions necessary to regain its rights and powers including extinguishing rights of other parties that prevent the sponsor from complying with its Federal obligations. Sponsors should place a subordination clause in all of its tenant leases and agreements that subordinate the terms of the leases and agreements to the grant assurances and surplus property obligations of the sponsor. A subordination clause may assist the sponsor in amending a tenant lease or agreement that otherwise deprives the sponsor of its rights and powers. A typical subordination clause will state that if there is a conflict between the terms of a lease and the FAA grant assurances, the grant assurances shall take precedence and govern.

FAA finds that the Town of Norwood is in violation of Grant Assurance 5, *Preserving Rights and Powers*, for surrendering significant rights and powers to BMA in the lease of the “1100 Foot Strip”. FAA also finds that the 1967 Lease with BMA effectively violates (FAAP) 9-19-019-0803, Special Condition 17 that required the Town to gain control of all Airport property.

B. Discriminatory Practices

Reasonable Access and Not Unjustly Discriminatory Terms

Issue: Whether the Town has discriminated against the Complainant, by denying the Complainant reasonable use and access to the Airport on reasonable terms and conditions in violation of Title 49 U.S.C. § 47107(a)(1), and related Federal Grant Assurance 22, *Economic Nondiscrimination* for the purpose of conducting a commercial aeronautical activity.

Title 49 U.S.C. § 47107(a)(1) and Grant Assurance 22, *Economic Nondiscrimination* provides in pertinent part, that the sponsor of a federally obligated airport will ensure that

...the airport will be available for public use on reasonable conditions and without unjust discrimination. [Assurance 22(a)].

The Director believes that the Town of Norwood intended to allow BAC to install and operate an aircraft fuel facility at Norwood Municipal Airport. The Town took steps toward that end such as: immediately leasing the aircraft tie-downs on the DC-3 Ramp to BAC over EAC's objections, authorizing BAC to conduct temporary truck self-fueling operations, and entering into initial negotiations with BAC for construction of the aircraft fuel facility and a long-term lease of the DC-3 Ramp. [FAA Exhibit 1, Item 11, exhibit 1]

The Administrative Record indicates that at the time BAC submitted its proposal for an aircraft fuel facility, the Airport suffered from high fuel prices. A fact that even EAC, the Airport's only fuel provider, admitted. [FAA Exhibit 1, Item 11, exhibit 4] In a letter to the Chairman of the Town's Airport Commission, the BAC stated:

...fuel pricing at the Norwood Airport has been such that many owners and operators are fueling elsewhere where fuel prices are more competitive.

While BAC initially wanted to self-service its aircraft involved in its Part 135 operation, eventually it wants to become a fixed base operator selling fuel to the public. BAC believed that a second fixed base operator would recapture traffic volume that left the Airport due to fuel pricing and that competition would increase fuel volume.

In addition to being the Airport's only fuel provider, EAC controlled a majority (88%) of the ramp space on the Airport with the exception of the Town controlled West Apron and the DC-3 Ramp. EAC acknowledged that it would adjust pricing to recapture business lost to high fuel prices. However, EAC was opposed to the Complainant's fueling proposal. In the Airport Commission meeting, EAC indicated:

With two FBO's, it will jeopardize Eastern's (EAC) investment. If BAC comes on the field, it won't gain new business. Eastern is trying to regain old business. Space is short at the Airport and ramp space being taken up for a fuel farm will create a bigger space problem. EAC will have a new fuel price that will be as competitive...EAC reiterates that they have always been open to doing business with BAC. ...BAC refused.

[FAA Exhibit 1, Item 11, exhibit 5]

The Town's position regarding BAC changed when EAC indicated that the Town and BAC did not have the right to access BMA/EAC leasehold without prior permission and that neither BMA nor EAC would approve the installation of underground conduits through its leasehold to provide electric service to BAC's aircraft fuel facility.

The Town informed BAC that its 1967 Lease with BMA doesn't provide for a right of access or the authority to grant an easement through the property.

The Town argues that it can not be expected to take sides in a private dispute between two tenants over access. Furthermore, the Town expects both parties to resolve their differences. BAC must get permission from BMA and EAC to access the "1100 Foot Strip" for power.

FAA disagrees with the Town's perception of its role as an airport sponsor. An owner of an airport developed with Federal grant assistance is required to operate the airport for the use and benefit of the public and to make it available to all types, kinds and classes of aeronautical activity on fair and reasonable terms, and without unjust discrimination. See Order, Sec. 4-13(a).

The Record clearly indicates that EAC was opposed to the BAC's plan to construct an aircraft fuel facility and become a fixed base operator. EAC has voiced its concerns and objections at Airport Commission meetings and in correspondence to the Town and State agencies at various stages throughout BAC's permit process. EAC made it very clear that it considers a second fixed base operator as a threat to its investment on the Airport. BAC had planned to become a competitor of EAC. EAC was also selling fuel to BAC, business that EAC would lose if BAC opened its own fuel facility. EAC has a vested interest to ensure BAC not be granted the right to install a fuel farm.

Over the past twenty years, FAA has provided Federal financial assistance to the Airport in the amount of \$3,108,914 for the rehabilitation, construction and expansion of the Airport's ramps and aprons. [FAA Exhibit 1, Item 2]. Most of these ramps and aprons are either under lease to BMA, subleased by EAC, or directly leased to EAC. [See Page 4]

The Town indicates that BAC had an opportunity to install the conduits during a federally funded apron construction project, but chose not to do so. The Record indicates that BAC didn't proceed with the installation due to the quoted costs provided by the Airport's contractor. It should be noted the installation of underground conduits as part of a federally

ORDER

ACCORDINGLY, the Director finds the Town of Norwood is in violation of Federal law and the Federal grant obligations. The Town has 30 days to submit a corrective action plan that (1) provides access for BAC to conduct self-fueling operations consistent with state and local regulations; (2) ends the practice of awarding long-term leases of the federally-funded ramps that had the effect of granting one party control over the majority of the ramps on the Airport; (3) puts in place a short-term ramp leasing permit policy for the Airport to assert more control of the federally-funded ramps and (4) regain the Airport's rights and powers to access the "1100 Foot Strip" to provide power to the Airport ramps for Airport tenants.

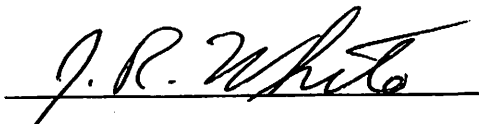
Failure to submit a corrective action plan acceptable to the FAA within the time provided, unless extended by the FAA for good cause, will lead to suspension for grant applications for AIP discretionary grants **under 49 U.S.C §47115 and general aviation airport grants under 49 U.S.C. §47114(d)** .

All Motions not expressly granted in this Determination are denied.

These Determinations are made under 49 U.S.C. § 40103(e), and 49 U.S.C. § 47107(a)(1)(4)(5) and the instruments of surplus property conveyance pursuant to Title 49 U.S.C. § 47152 and related Federal Grant Assurance 22, *Economic Nondiscrimination*.

RIGHT OF APPEAL

This Director's Determination is an initial agency determination and does not constitute a final agency action and order subject to judicial review. [14 CFR 16.247(b)(2)]. A party to this Complaint adversely affected by the Director's Determination may appeal the initial determination to the FAA Associate Administrator for Airports pursuant to 14 CFR 16.33(b) within thirty (30) days after service of the Director's Determination.



Kelvin Solco
Acting Director,
Office of Airport Safety and Standards

Date: 4/23/08

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on, April 23, 2008, I placed in the United States mail (first class, postage paid) a true copy of the foregoing document addressed to:

Norwood Airport Commission
Norwood Memorial Airport
125 Access Road
Norwood, MA 02062

Michael C. Lehane, Esquire
Murphy, Hesse, Toomey & Lehane, L.L.P.
300 Crown Colony Drive
Quincy, MA 02269

Matthew Watsky, Esquire
Eastbrook Executive Park
30 Eastbrook Road
Suite 301
Dedham, MA 02026

FAA Part 16 Airport Proceedings Docket
Federal Aviation Administration (AGC-610)
800 Independence Avenue, S.W.
Washington, D.C. 20591



Nikita Bright
FAA, Airports Division



The Town of Norwood

Commonwealth of Massachusetts

80

NORWOOD AIRPORT COMMISSION

CERTIFIED MAIL

Bryan H. Corbett, *Chairman*
Mark P. Ryan, *Vice Chairman*
Leslie W. LeBlanc
Kevin J. Shaughnessy
Thomas J. Wynne

May 16, 2008

U.S. Department of Transportation
Federal Aviation Administration
Attn: Kelvin Solco, Acting Director
Office of Airport Safety and Standards
800 Independence Ave., S.W.
Washington, D.C. 20591

Dear Mr. Solco:

FAA Docket Number 16-07-03

Per the above-captioned formal complaint, under 14 C.F.R. Part 16, the Town of Norwood, Massachusetts, acting through the Norwood Airport Commission (NAC), has received your Determination, dated April 11, 2008, and the April 23, 2008 Errata.

To comply with your Determination, and without waiving its right of appeal, the NAC respectfully submits a corrective action plan that will address each of the four required components. These issues are as follows: (1) providing access to BAC to conduct self-fueling operations consistent with state and local regulations; (2) ending the practice of awarding long-term leases of the federally funded ramps that have the effect of granting one party control over the majority of the ramps on the airport; (3) putting in place a short-term ramp leasing permit policy to assert more control of the federally funded ramps; and (4) re-gaining the Airport's rights and powers to access the "1,100 foot strip" to provide power to the Airport ramps for Airport tenants. Separately, the NAC is currently preparing its appeal of your April 11, 2008 Determination, as amended by the April 23, 2008 Errata, because it disagrees with the findings and conclusions contained therein.

CORRECTIVE ACTION PLAN

1. NAC must provide access to BAC, to conduct self-fueling operations

As of January 2008, *Flight Level* Norwood, LLC (*Flight Level*) acquired *Eastern Air Center's* (EAC) interests at Norwood Airport (Airport). At the time that EAC assigned its interests to *Flight Level*, the parties had already submitted their pleadings and documentary materials in the above-captioned formal complaint and your Determination remained pending.

Due to the EAC assignment, *Flight Level* is the current sub-lessee of the 1,100 foot strip. At the request of both *Boston Air Charter* (BAC) and *Flight Level*—which effectively replaced EAC as a fixed-base operator— NAC has approved BAC's self-fueling arrangement with *Flight Level*. This action was voted favorably and unanimously by the NAC at its March 12, 2008 public meeting. I've enclosed a copy of the "Self-Fueler Operations Agreement" executed by *Flight Level* and BAC and the minutes from the NAC's March 12, 2008 meeting. As a result, BAC has been self-fueling for approximately eight weeks and now has access to conduct self-fueling operations.

Concurrently, through the Town of Norwood's Light Department, the NAC is pursuing alternative options to accessing power on the Airport's northwest quadrant. As a potential electrical source, one locus being investigated is sited at the Airport's centerfield windsock, east of the Gate 3/Taxiway B intersection, where power is available. This area in question is not currently encumbered by leasehold.

2. NAC must no longer award long-term leases on federally-funded ramps

The awarding of short-term leases on federally-funded apron projects, except for fuel farms, is reflected both by the NAC's prior conduct and in its recent formalized policy. During its most recent lease negotiations, which occurred during 2005 and concerned Airport Lots A, B, C, the NAC awarded a five-year only lease to EAC. This action was taken contrary to the vigorous arguments of EAC, which wanted a 20-year lease with options to renew.¹ At that time, the Commission expressed a re-direction of its leasing policy, with a focus on shorter lease terms. A copy of the NAC minutes pertaining to the lease of Lots A, B, C is attached hereto.

The Commission also articulated its interest in effectively "un-encumbering" land so that prospective lessees, other than EAC, may also bid on future leaseholds. During a May 14, 2008 public meeting, the NAC voted to both formalize, and further on a broader basis, the actions the NAC had taken on Lots A, B, C—by affirming a shorter term leasing policy for all land it leases at the Airport. In so doing, the NAC expressed an interest in seeking to prevent the granting of one party control over the majority of the airport ramps.

3. NAC must have a short-term leasing policy to assert more control of the ramps

During its May 14, 2008 public meeting, the NAC voted to formalize into future practice a shorter term leasing policy that will seek to prevent the granting of one party control over the majority of the airport ramps. This short-term leasing policy also includes the NAC's intention to implement subordination agreement and non-exclusivity clauses in all future leases. In particular, the proposed subordination agreement clause provides that any term or condition of

¹ Any long-term leases of the Airport were executed many years ago. In recent years, the Commission has consistently declined to grant long-term leases. As a case in point, in November 2007, during construction on a site adjacent to Lots A, B, C, EAC attempted to leverage a 20-year lease on Lots A, B, C by withholding agreement to a "safety zone" on the leased parcel on a federally funded project. The Commission strongly resisted and held fast to a five-year only lease on that EAC leasehold, subsequently entering into litigation against EAC rather than agree to make such a long-term lease. As a result of the Commission's position, the Town of Norwood incurred additional delay costs for the project, totaling more than \$35,000. However, the five-year only lease on Lots A,B,C remained unchanged once the issue was finally resolved.

the lease in conflict or inconsistent with any Federal Aviation Administration (FAA) and/or Massachusetts Aeronautics Commission grant assurances shall be subordinated to such grant assurance. By contrast, the proposed non-exclusivity clause provides explicitly that any commercial activities carried on pursuant to the lease shall be subject to competition from others and the lessee shall not have exclusive access or monopolistic rights on or to the Airport.

4. NAC must regain the Airport's rights and powers to access the "1,100 foot strip"

The Town of Norwood has had a long-standing interest in regaining rights and powers to access the 1,100 foot strip. Some 14 months ago, in March 2007, the NAC completed Phase II of the Norwood Airport Master Plan (Master Plan). The FAA reviewed and subsequently approved Phase II of the Master Plan, which was funded under a federal Airport Improvement Program (AIP) grant. Several sections specifically address the Town of Norwood's interest in buying out the *Boston Metropolitan Airport* (BMA) lease. Included within the options identified in Section 3.16 *Facility Needs* (p. 3-19) is a buyout of the BMA lease. Additionally, in the Master Plan's Section 4.0 *Alternatives Analysis* (p. 4-29), under *Land Acquisition*, the action alternative proposes as follows: "The BMA lease parcel is at the heart of the Airport's upland area and should be acquired as part of a long-range effort . . . Acquisition of the BMA parcel would enable a clean-slate approach to plan for a more efficient and self-sustaining Airport . . . Due to the financial and legal issues attendant to acquiring the BMA parcel, this would be a long-term, low priority alternative on the five to ten-year time frame." By comparison, the NAC deemed the No Action Alternative, which would maintain the existing land holdings and pattern of leases at the Airport, as unacceptable.

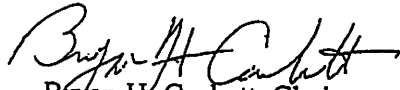
Nevertheless, following your recent Determination, the NAC pursued emergency funding through the FAA New England Region to hasten the acquisition of the 1,100 foot strip. However, according to administration officials, FAA does not have the monies to participate in such a request. A similar appeal—to include multi-year AIP funding for an appraisal and purchase of the BMA leasehold years remaining—was discouraged by FAA regional officials.

In response, the NAC is now negotiating with BMA to gain a utilities easement on that portion of the Gate 3 taxi-lane overlapped by the 1,100 foot strip currently leased by BMA. If these negotiations are unsuccessful, the NAC will consider its other options, including but not limited to a declaratory judgment action concerning the NAC's rights under its lease with BMA.

Further, the approved Master Plan also acknowledges the NAC's willingness to provide fuel vendor competition at the Airport in Section 6.3.3 *Future Revenue Enhancement Options* (pp. 6-10 to 6-12). To that end, the Commission is evaluating the establishment of a second aviation fuel facility at the Norwood Airport.

In closing, the Town of Norwood, through its Airport Commission, respectfully submits this corrective action plan, to comply with each component of the Order contained in your Determination. Please feel free to contact Airport Manager Russ Maguire at (781) 255-5616 if you have any questions or concerns regarding this corrective action plan.

Sincerely,



Bryan H. Corbett, Chairman
Norwood Airport Commission

Enclosures

cc: Michael C. Lehane, Esquire
Matthew Watsky, Esquire
LaVerne Reid

MURPHY, HESSE, TOOMEY & LEHANE, LLP
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Please Respond to Quincy

May 23, 2008

Office of Chief Counsel
FAA Part 16 Airport Proceedings Docket
AGC-610
Federal Aviation Administration
800 Independence Ave., SW
Room #925I
Washington, DC 20591

Re: Docket No. 16-07-03
In the Matter of Boston Air Charter and Norwood Airport Commission

Dear Sir or Madam:

Enclosed please find an original and three copies of the Appeal of the Norwood Airport Commission Pursuant to 14 C.F.R., § 16.33 and Request for Hearing in the above-captioned matter.

Thank you for your attention to this correspondence.

Very truly yours,


Michael C. Lehane

MCLjfs

Enclosures

cc: Matthew Watsky, Esq.
Donna R. Witte
Kelvin Solco
Norwood Airport Commission (c/o Russ Maguire) ✓

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

In the Matter of:

Docket No.: 16-07-03

Boston Air Charter and
Norwood Airport Commission

Norwood, Massachusetts

**APPEAL OF THE NORWOOD AIRPORT COMMISSION
PURSUANT TO 14 C.F.R., § 16.33
AND
REQUEST FOR HEARING**

I. STATEMENT OF THE ISSUES

Whether the Acting Director of the Office of Airport Safety and Standards ("Acting Director") properly concluded that Norwood Airport Commission ("NAC") violated 49 U.S.C., § 47107 and related Grant Assurance 5 (*Preserving Rights and Powers*), 49 U.S.C., § 47107(a)(1) and related Grant Assurance 22 (*Economic Nondiscrimination*), and 49 U.S.C., § 40103(e) and related Grant Assurance 23 (*Exclusive Rights*), where Eastern Air Charter ("EAC") no longer serves as a tenant at Norwood Memorial Airport ("Airport"), and EAC's successor-in-interest, FlightLevel Norwood, LLC ("FLN"), authorized BAC to conduct certain self-fueling operations at the Airport.

Whether the Acting Director properly concluded that NAC violated Grant Assurance 5 and related 49 U.S.C., § 47107, where the Town of Norwood ("Town") initially acted pursuant to the direction of the Federal Aviation Administration ("FAA") when it acquired the 1100 Foot Strip and imposed certain restrictions upon its lessee, Boston Metropolitan Airport, Inc. ("BMA").

Whether the Acting Director properly concluded that NAC engaged in unreasonable and unjustly discriminatory conduct in violation of Grant Assurance 22 and related 49 U.S.C., § 40103(e), where it provided BAC a reasonable alternative for digging trench drains and installing electrical access and NAC exercised its discretion to discontinue lease negotiations with BAC based upon safety and public welfare concerns.

Whether the Acting Director properly concluded that NAC granted an exclusive right to EAC to operate a fueling facility at the Airport and violated 49 U.S.C., § 40103(e) and related Grant Assurance 23 (*Exclusive Rights*), in the absence of any express or implicit intent to confer an exclusive right to EAC and where NAC made

several efforts to assist BAC in establishing a presence and undertaking fueling operations at the Airport.

II. STATEMENT OF THE CASE

On April 5, 2006, BAC requested that NAC immediately grant to BAC the right to install and operate, on reasonable terms, a proposed fueling facility located in Area DC-3 of the Airport. [FAA Exhibit 1, Item 3, exhibit B]. This proposed fueling facility required BAC to install an electrical conduit upon an approximately ten (10) feet portion of the so-called "1100 Foot Strip," which at the time was subleased by EAC. [FAA Exhibit 1, Item 3, exhibit B]. Relying upon state law concepts of leasehold rights, Massachusetts General Laws Chapter 90, and Grant Assurances 22 and 23, BAC demanded that NAC immediately grant BAC the right to install and operate, on reasonable terms, the proposed fueling facility and all necessary utilities. [FAA Exhibit 1, Item 3, exhibit B]. BAC's April 5, 2006 request was sent to Donna Witte, Airports Program Specialist for the FAA New England Region Office. [FAA Exhibit 1, Item 3, exhibit B]. NAC responded to and refuted BAC's contentions, given that NAC declined to choose sides in a tenant dispute involving rights of access, NAC engaged in good faith negotiations with BAC but BAC remained a tenant at will, and NAC did not discriminate against BAC or grant exclusive rights to EAC [FAA Exhibit 1, Item 7, exhibit A].

On February 28, 2007, LaVerne F. Reid ("Ms. Reid"), Airports Division Manager for the FAA New England Region Office rejected BAC's contention that NAC violated Assurance No. 23, "Exclusive Rights," and instead made a preliminary determination that no further FAA action was warranted. [FAA Exhibit 1, Item 3, exhibit A]. Significantly, Ms. Reid observed "that the Town of Norwood intended to allow BAC to install and operate a fuel farm at Norwood Memorial Airport, if BAC could negotiate with EAC to run electrical service across EAC's leasehold." [FAA Exhibit 1, Item 3, exhibit A]. However, Ms. Reid concluded that "[t]he Town's ability to force EAC to permit the electrical line is outside FAA's prevue [sic]." [FAA Exhibit 1, Item 3, exhibit A] (emphasis added).

In response to Ms. Reid's preliminary determination, BAC filed a Complaint Under Part 16 on or about April 2, 2007, which was docketed on April 10, 2007, and opposed by NAC. [FAA Exhibit 1, Items 3, 7]. In his April 11, 2008 Determination, the Acting Director made the following findings and conclusions: (1) the Town violated Grant Assurance 5 and (FAAP) 9-19-019-0803, Special Condition 17, by leasing the 1100 Foot Strip to Boston Metropolitan Airport, Inc. ("BMA"); (2) the Town violated 49 U.S.C., § 47107(a)(1) and related Grant Assurance 22 by depriving BAC of reasonable use and access to the Airport on reasonable terms for carrying out a commercial aeronautical activity, thereby resulting in an unreasonable denial of access and unjust economic discrimination; and (3) the Town violated 49 U.S.C., § 40103(e) and related Grant Assurance 23 by granting an exclusive right to EAC to operate a fueling facility on the Airport in light of the leases with EAC and BMA, empowering EAC to control the sole source of power to the Airport ramps to maintain a fueling facility, and by depriving BAC of access to install its own fueling facility.

Consequently, the Acting Director ordered the Town to submit a corrective action plan to the FAA within thirty (30) days of April 11, 2008. This corrective action plan must: "(1) provide[] access for BAC to conduct self-fueling operations consistent with state and local regulations; (2) end[] the practice of awarding long-term leases of the federally-funded ramps that had the effect of granting one party control over the majority of the ramps on the Airport; (3) put[] in place a short-term ramp leasing permit policy for the Airport to assert more control of the federally-funded ramps; and (4) regain the Airport's rights and powers to access the '1100 Foot Strip' to provide power to the Airport ramps for Airport tenants." [Letter from Kelvin Solco, Acting Director, Office of Airport Safety and Standards, to Attorneys Matthew Watsky and Michael C. Lehane, Apr. 11, 2008].

On April 23, 2008, the Acting Director issued an Errata to his April 11, 2008 Determination, which provides that, absent an extension by the FAA for good cause, the Town's failure to timely submit a corrective plan will result in a suspension of its grant applications for AIP discretionary grants under 49 U.S.C., § 47115 and general aviation airport grants under 49 U.S.C., § 47114(d). In light of this Errata, the commencement of NAC's thirty (30) day deadline to appeal the Acting Director's Determination or submit a corrective plan was extended from April 12, 2008 to April 24, 2008. Pursuant 14 C.F.R., §§ 16.17(b)-(c) and 16.33(b), the Town's deadline to appeal the Acting Director's Determination or submit a corrective plan expires on May 27, 2008. Accordingly, this Appeal has been timely filed by NAC. Under separate cover, NAC previously filed its corrective action plan with the FAA.

III. STATEMENT OF THE FACTS

The gravamen of the present matter concerns BAC's attempt to install and operate a fuel storage facility to be located in Area DC-3, which it has leased from NAC as a tenant at will since 2003. [FAA Exhibit 1, Item 3, exhibit C.1.; FAA Exhibit 1, Item 11, exhibit (3.)]. In furtherance of the fuel storage facility it proposed in March 2004, BAC required access to an electric utility power source, which was a transformer located in the so-called 1100 Foot Strip. [FAA Exhibit 1, Item 11, exhibits (4.)-(6.)]. In particular, BAC sought to encroach upon an approximately ten (10) foot portion of the 1100 Foot Strip by installing an underground conduit. [FAA Exhibit 1, Item 11, exhibits (4.)-(6.)].

Prior to 1967, BMA owned the 1100 Foot Strip. [FAA Exhibit 1, Item 7, exhibit E]. In Special Condition No. 17 to a Grant Agreement between the Town and the FAA relating to the development of the Airport under FAAF Project Number 9-19-019-C803 ("Special Condition No. 17"), the FAA directed the Town to acquire the 1100 Foot Strip from BMA. [FAA Exhibit 1, Item 10; FAA Exhibit 1, Item 7, exhibit E]. At the time, however, the Town lacked sufficient funds to comply with Special Condition No. 17 by acquiring the 1100 Foot Strip for fair monetary value. [FAA Exhibit 1, Item 7, exhibit E].

Consequently, the only way that the Town was able to acquire the 1100 Foot Strip was through a sale and leaseback arrangement executed between the Town and BMA in December 1967 ("1967 Lease"). [FAA Exhibit 1, Item 7, exhibit E]. Specifically, BMA transferred its title to the Town in exchange for a lease back of the 1100 Foot Strip for a period of time sufficient to enable its fair market value to be realized. [FAA Exhibit 1, Item 7, exhibit E]. The 1967 Lease had an initial twenty (20) year term, subject to three (3) consecutive renewals for separate twenty (20) years periods. [FAA Exhibit 1, Item 7, exhibit E]. Under the 1967 Lease, BMA requires written approval from NAC before any of the following occur: it subleases the 1100 Foot Strip or any portions thereof; it assigns the 1967 Lease; or there are any improvements or any buildings or structures are constructed on the 1100 Foot Strip. [FAA Exhibit 1, Item 7, exhibit E].

The 1967 Lease omits any specific grant of a right to grant utility easements. [FAA Exhibit 1, Item 7, exhibit E]. For a period of time prior to January 9, 2008, EAC subleased the 1100 Foot Strip from BMA. EAC, however, declined to provide BAC or the Town with access to the 1100 Foot Strip for the installation of the underground conduit.

BAC applied for and obtained several permits required for the construction of its proposed fuel storage facility. [FAA Exhibit 1, Item 11, exhibits (9.), (11.), (18.), (119.), (120.), (123.)]. On May 5, 2004, the Norwood Board of Selectmen tentatively issued a Volatile Inflammable Fluids ("VIF") permit to BAC for the storage of flammables, pending approval by the Massachusetts State Fire Marshall. [FAA Exhibit 1, Item 11, exhibit (119.)]

During 2004, BAC applied for and received approval from the Town to self-fuel its aircraft using a 5,100 gallon Jet A fuel track. [FAA Exhibit 1, Item 11, exhibits (6.), (120.)]. However, this temporary self-fueling permit required BAC to adhere to local, state and federal rules and regulations concerning the transportation of aviation fuel. [FAA Exhibit 1, Item 11, exhibit (120.)].

In October 2005, NAC staff discovered drip pans filled with aviation fuel underneath the BAC fuel track and residual fuel stains on the pavement from BAC's parked Citation Jet. [FAA Exhibit 1, Item 11, exhibit (122.)]. At its November 1, 2005 meeting, NAC terminated BAC's temporary self-fueling permit upon thirty (30) days notice, effective immediately. [FAA Exhibit 1, Item 11, exhibit (36.)]. Subsequently, the Town issued two (2) violation notices to BAC because it continued to fuel its aircraft, notwithstanding state fire prevention regulations and the terms of its VIF license. [FAA Exhibit 1, Item 11, exhibits (43.), (52.)].

On January 11, 2006, the Norwood Board of Selectmen furnished BAC a ninety (90) day extension to obtain the necessary permits for installing a fuel facility or else its VIF license would be revoked. [FAA Exhibit 1, Item 11, exhibit (50.)]. However, EAC declined to provide access to BAC for the installation of an underground conduit for the proposed fuel storage facility. [FAA Exhibit 1, Item 11, exhibits (51.), (65.)].

As of February 21, 2006, the Norwood Board of Selectmen also required BAC to provide authorization that the storage of each inflammable fluid was authorized under the terms of its lease because it was a non-owner applicant. [FAA Exhibit 1, Item 11, exhibit (62.)]. On February 23, 2006, NAC declined to approve BAC's lease agreement for Area DC-3 because the VIF license would expire in less than ninety (90) days and an unresolved issue pertaining to the encroachment of the 1100 Foot Strip by the proposed underground conduit. [FAA Exhibit 1, Item 11, exhibit (63.)]. NAC advised BAC to provide the legal right and ability to provide electrical power to the proposed fuel storage facility without encroaching upon the 1100 Foot Strip. [FAA Exhibit 1, Item 11, exhibit (63.)].

At no time has BAC provided a reasonable, viable alternative to the proposed electrical conduit encroaching upon the 1100 Foot Strip. For example, NAC provided BAC with the opportunity to install electrical service and trench drains during a federally funded project for the reconstruction of a runway and rehabilitation of two (2) public aircraft parking aprons EAC leased. [FAA Exhibit 1, Item 7, exhibits B, H]. BAC, however, did not accept this offer. [FAA Exhibit 1, Item 7, exhibits B, H]. More importantly, BAC stated its intent to voluntarily withdraw its request for a VIF license on May 9, 2006 and the Norwood Board of Selectmen voted to revoke this license without prejudice. [FAA Exhibit 1, Item 7, exhibit D.8].

Although BAC discontinued its fueling operations, on August 4, 2006 it notified the Town of its intention to recommence self-fueling operations on or about September 1, 2006. (FAA Exhibit 1, Item 11, exhibit (96.)). The Norwood Fire Department responded that such proposed operations could not proceed without a VIF license or permit. [FAA Exhibit 1, Item 7, exhibit G].

On April 10, 2007, NAC voted to discontinue all discussions and negotiations with BAC concerning its proposed fuel farm. [FAA Exhibit 1, Item 7, exhibit L]. In particular, NAC considered and relied upon BAC's conduct over the prior eighteen (18) months in which BAC failed to promote its intent to fully comply with the Rules and Regulations of the Norwood Memorial Airport ("Airport Regulations"). [FAA Exhibit 1, Item 7, exhibit L]. For example, NAC cited BAC's repeated attempts to pursue unauthorized mobile fueling operations at the Airport. [FAA Exhibit 1, Item 7, exhibit L]. In addition, BAC's stated intent to defy the Airport Regulations occurred subsequent to a cease and desist order issued by the Norwood Fire Department on January 4, 2006 and its misrepresentation of the position of Norwood Fire Chief Mike Howard at a January 10, 2006 NAC public meeting. [FAA Exhibit 1, Item 7, exhibit L].

Several developments occurring subsequent to the parties' respective filings in the present matter are contrary to and undermine the Acting Director's findings. In that regard, EAC no longer maintains a presence at Norwood Memorial Airport, as a lessee, sublessee or otherwise. Therefore, BAC's arguments and the Acting Director's findings concerning BAC's inability to conduct fueling operations are moot.

On January 9, 2008, EAC Partners I LLP assigned and transferred to FLN one hundred (100%) percent of its beneficial interest in EAC Realty Trust. (Exs. A, B.) Included within this assignment was EAC's sublease for the 1100 Foot Strip. (Exs. A, B.) Accordingly, FLN currently sublessees the 1100 Foot Strip. (Exs. A, B.)

Unlike EAC, FLN has demonstrated its willingness to allow BAC to conduct fueling operations at Norwood Memorial Airport. During NAC's February 13, 2008 meeting, FLN introduced and embraced the concept of turning over its self-fueling capability to BAC. (Ex. B.) NAC was receptive to FLN's proposal to allow BAC to use its fuel farm. (Id.)

Consequently, on or about February 15, 2008, FLN and BAC executed a Self-Fueler Operations Agreement under which FLN agreed to allow BAC use of its Jet-A self-fueler located on FLN's fuel farm at Norwood Memorial Airport to fuel BAC aircraft. (Ex. C.) Pursuant to this Self-Fueler Operations Agreement, BAC is authorized to use FLN's fuel farm when FLN personnel are not on the premises, consisting of the hours between 9:30 p.m. and 5:30 a.m. (Ex. D.) During its March 12, 2008 meeting, NAC unanimously approved this self-fueling arrangement between FLN and BAC. (Id.)

IV. ARGUMENT

A. Standard of Review

"Upon appeal of a Director's Determination, pursuant to 14 CFR § 16.33, the FAA Associate Administrator for Airports must determine whether the findings of fact made by the Director are supported by a preponderance of reliable, probative, and substantial evidence, and whether each conclusion of law is made in accordance with applicable law, precedent, and public policy." [United States Constr. Corp. v. City of Pompano Beach, FAA Docket No. 16-00-14 (July 10, 2002)]. In his April 11, 2008 Determination, the Acting Director made substantial errors in reviewing the evidence, and he misapplied and misconstrued applicable law and FAA precedent. Therefore, NAC respectfully requests that the Associate Administrator reverse the Acting Director's April 11, 2008 Determination, as amended by the April 23, 2008 Errata.

B. The status of FLN as a successor-in-interest to EAC and its agreement to provide BAC with certain access to its fuel farm renders the Acting Director's Determination moot.

In considering an administrative appeal, new evidence may be submitted if it was not previously available and it could not have been previously discovered or proffered by the parties. [Roadhouse Aviations, LLC v. Tulsa, FAA Docket No. 16-05-08 (June 26, 2007)]. Here, NAC seeks to supplement the Administrative Record in part by including documentary evidence relating to FLN and the agreement it approved between FLN and BAC for access to BAC's fuel farm. These supplemental documents appear as Exhibits A through E of this Appeal.

The additional documentary evidence pertaining to FLN was not in existence at the time of the parties' respective pleadings and written submissions in the present matter. Nor were the matters relating to FLN even contemplated during the pendency of the present matter. As a practical matter, FLN was organized under the laws of Delaware on October 11, 2007 and it was registered in Massachusetts as a foreign entity on January 9, 2008, well after the parties' respective pleadings and submissions. (Ex. E.) By comparison, BAC filed its Complaint in April 2007 and NAC's Answer and Motion to Dismiss were filed in May 2007. [FAA Exhibit 1, Items 1, 3, 9].

FLN acquired the beneficial interest in EAC Realty Trust on or about January 9, 2008. (Exs. A, B.) FLN's agreement to furnish BAC with access to its fuel farm was executed during February 2008 and approved by NAC at its March 2008 public meeting. (Ex. B-D.) Therefore, the Associate Administrator should consider this new documentary evidence relating to FLN and allow the Administrative Record to be supplemented accordingly.

In his April 11, 2008 Determination, the Acting Director focused extensively upon EAC's role in opposing the installation of an underground conduit in the 1100 Foot Strip it subleased from BAC. [Determination at 6-7, 23-25, 28-29; FAA Exhibit 1, Item 11, exhibit (65.)]. The Acting Director also relied upon EAC's opposition to the introduction of competition at the Airport and BAC's fuel proposal, along with EAC's concerns of preserving its financial investment. [Determination at 23-25, 28-29; FAA Exhibit 1, Item 11, exhibits (1.), (2.), (5.), (6.), (7.), (16.), (18.), (51.) and (55.)]. The Acting Director questioned whether EAC would have provided approval to BAC to access the transformer on the 1100 Foot Strip if it installed underground conduits. [Determination at 26]. In light of EAC's position, the Acting Director concluded that the Town altered its position concerning BAC when EAC expressed its refusal to allow access to the 1100 Foot Strip without its prior permission. [Determination at 25].

EAC's involvement underpins the Acting Director's determination that the Town violated Grant Assurance 5 and 49 U.S.C., § 47107, Grant Assurance 22 and 49 U.S.C., § 40103(e), and Grant Assurance 23. Of particular concern is that the Acting Director's analysis and resulting conclusions are displaced and undermined by the introduction of FLN as a successor-in-interest at the Airport. Unlike its predecessor, EAC, FLN has demonstrated a willingness to allow BAC to engage in certain fueling operations at the Airport. Reflective of this willingness, FLN entered into the Self-Fueler Operations Agreement with BAC. The Self-Fueler Operations Agreement affords BAC with access to FLN's fuel farm between the hours of 9:30 p.m. and 5:30 a.m. NAC affirmatively and unanimously approved the Self-Fueler Operations Agreement at its March 12, 2008 meeting.

With respect to Grant Assurance 5 and 49 U.S.C., § 47107, the Acting Director determined that "the Town's right to grant BAC access for the purpose of receiving electric service to the DC-3 Ramp was effectively blocked by the Town's 1967 Lease agreement with BMA." [Determination at 22-23]. However, the Town's right to grant such access was not blocked through the 1967 Lease, but rather through EAC's specific

construction of its rights under its sublease, which in turn derived from the 1967 Lease. [FAA Exhibit 1, Item 7, exhibit E]. Because EAC no longer subleases the 1100 Foot Strip from BMA, such a conclusion is moot.

In its findings under Grant Assurance 22 and 49 U.S.C., § 40103(e), the Acting Director determined that the Town was obligated to provide an alternative location or an alternative source of power for BAC's proposed fuel facility. [Determination at 28]. In addition, the Acting Director determined that it was "unreasonable for the Town to enable an airport tenant to override its ability to respond to new business opportunities and comply with its Federal obligations." [Determination at 28]. Unlike EAC, there is no indication that FLN has overridden NAC's ability to respond to new business opportunities or to comply with its Federal obligations. To the contrary, NAC approved such a new business opportunity through its approval of the Self-Fueler Operations Agreement between FLN and BAC.

The Self-Fueler Operations Agreement also constitutes the very type of alternative contemplated by Grant Assurance 22. Prior to the Self-Fueler Operations Agreement, and absent the requisite permits and licenses, BAC was effectively precluded from furnishing any fueling services. However, the Self-Fueler Operations Agreement enables BAC to provide such fueling services at the Airport. "The fact that [BAC] does not enjoy the ability to offer every variety of aeronautical service upon terms it deems sufficiently advantageous or at the location of its choice does not constitute the granting of an exclusive right to its FBO competitor." [Wilson v. MSCAA, FAA Docket No. 16-99-10]. For that same reason, a determination of unjust discrimination or unreasonable denial of access under these circumstances is also unwarranted. [Monaco Coach Corp. v. Eugene Airport, FAA Docket No. 16-03-17 (Mar. 4, 2005)].

Finally, the Acting Director determined that the Town granted an exclusive right to EAC to operate a fueling facility on the Airport, in violation of Grant Assurance 23 and 49 U.S.C., § 40103(e). The Acting Director properly recognized that the existence of a single fixed base operator operating a fueling facility does not constitute a per se violation of the exclusive rights prohibition. [Determination at 28]. Nevertheless, the Acting Director concluded that an exclusive right was granted to EAC in light of EAC's opposition and active program of preventing BAC from constructing an aircraft fueling facility on the Airport, in conjunction with the then-existing lease and sublease arrangements for the Airport. [Determination at 28-29]. Any such purported exclusive right at the Airport no longer exists because EAC is not a lessee or sublessee. It is unreasonable to conclude that FLN has an exclusive right for operating a fueling facility at the Airport, especially because EAC's opposition and efforts to stymie BAC's proposed fueling facility cannot be attributed to FLN. Indeed, the very concept of exclusive rights is contrary to the Self-Fueler Operations Agreement, under which BAC may provide fuel services between 9:30 p.m. and 5:30 a.m.

Accordingly, the Acting Director's Determination must be reversed for the mere reason that EAC is no longer a lessee or sublessee at the Airport. In light of such substantial changed circumstances, the Acting Director's conclusions that the Town

violated Grant Assurance 5 and 49 U.S.C., § 47107, Grant Assurance 22 and 49 U.S.C., § 40103(e), and Grant Assurance 23 are moot.

C. The Town complied with Grant Assurance #5 because the 1967 Lease was executed pursuant to the express requirements of Special Condition 17 and restricts the rights conferred upon BMA.

The Acting Director determined that the Town violated Grant Assurance 5 by “surrendering significant rights and powers to BMA in the lease of the ‘1100 Foot Strip’” and that the 1967 Lease “effectively violates (FAAP) 9-19-019-0803, Special Condition 17 that required the Town to gain control of all Airport property.” [Determination at 24]. Conspicuously absent from the arguments raised by the parties before the Acting Director, however, was the fact that BAC failed to explicitly contend that the Town violated Grant Assurance 5. Nor did Ms. Reid consider Grant Assurance 5 in her February 28, 2007 preliminary determination. That the Acting Director determined that the Town failed to comply with Grant Assurance 5 exceeds the scope of the present proceeding.

Grant Assurance 5.a provides in part that a sponsor:

Will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary

By comparison, Special Condition 17 required the Town to “acquire the following property interests: Parcel 2 as shown on Exhibit A—Fee simple title, free and clear of all liens and encumbrances determined objectionable by the FAA” Parcel 2 is the 1100 Foot Strip.

Consistent with Special Condition 17, the Town acquired both the 1100 Foot Strip and Parcel 4, which represents an aviation easement, from BMA. [FAA Exhibit 1, Item 7, exhibit E; Determination at 22]. However, the Town could not purchase the 1100 Foot Strip at “fair value.” [FAA Exhibit 1, Item 7, exhibit E]. Therefore, the only manner in which the Town could acquire the 1100 Foot Strip, and therefore comply with Special Condition 17, was through a sale and leaseback arrangement with BMA.

Nevertheless, the Acting Director was correct in concluding that, upon acquisition of the title to the 1100 Foot Strip (and Parcel 4, an aviation easement), the Town “became the property owner and had all rights associated with the property with the exception of the reversionary interest.” [Determination at 21]. Indeed, the Town did so acquire the 1100 Foot Strip and Parcel 4 from BMA in December 1967. Moreover, the Acting Director correctly determined that, upon acquiring the 1100 Foot Strip, the Town had the right to lease that property. [Determination at 21]. Accordingly, the 1967 Lease reflects an exercise of the Town’s right to lease the 1100 Foot Strip to BMA.

While the Acting Director determined that the FAA did not require the Town to enter into a leaseback arrangement, the Town similarly was not explicitly prohibited from such an arrangement by either Special Condition 17 or Grant Assurance 5. Rather, Special Condition 17 simply required the Town to acquire the 1100 Foot Strip. Notably, the December 13, 1967 deed from BMA to the Town did not include any explicit liens or encumbrances, and instead simply included a reversionary interest by BMA in the event that the Airport was no longer used as an airport. (Ex. F.)

In addition, the Acting Director determined that the terms of the 1967 Lease “deprive it of its rights and powers to direct and control a significant portion of the aeronautical infrastructure on the Airport and to comply with the FAA grant assurances.” [Determination at 23]. In that regard, the Acting Director regarded BMA’s interest in the 1100 Foot Strip as a “superior property interest . . . that restricts the Town’s ability to preserve its rights and powers to operate the Airport in compliance with its Federal obligations.” [Determination at 23]. Such summary conclusions, however, clearly overlook explicit provisions within the 1967 Lease that restrict the nature and scope of the leasehold interest the Town conveyed to BMA.

Significantly, the 1967 Lease requires “[t]he subleases of said parcel or portions thereof shall be reviewed prior to their execution by the Massachusetts Aeronautics Commission and the Federal Aviation Administration, or the successor agencies, and approved, in writing, by the Norwood Airport Commission.” [FAA Exhibit 1, Item 7, exhibit E]. Therefore, any subleases involving the 1100 Foot Strip were conditioned upon not only the involvement of NAC, but also the FAA and the Massachusetts Aeronautics Commissions. Contrary to the Acting Director’s finding, the 1967 Lease requires NAC’s written consent to an assignment of the 1967 Lease. [Determination at 23; FAA Exhibit 1, Item 7, exhibit E]. Further, the 1967 Lease requires that NAC approve in writing any improvements or the construction of any buildings or structures on the 1100 Foot Strip. [FAA Exhibit 1, Item 7, exhibit E]. Certainly, such restrictions operated to vastly limit the scope of BMA’s leasehold interest under the 1967 Lease and cannot be regarded as a surrender of significant rights and powers to BMA. Moreover, these restrictions effect a preservation of the Town’s rights and powers to direct and control the 1100 Foot Strip.

The Acting Director confuses BMA with EAC. Yet, the underlying dispute at the center of the present matter is EAC’s direct opposition to the installation of an underground conduit in a portion of the 1100 Foot Strip. Acting at its own volition because of perceived competitive concerns, EAC, not BMA, objected to BAC’s proposed fuel storage facility. At the time that the 1967 Lease was executed, EAC was not even a sublessee of the 1100 Foot Strip and the same leasehold rights that the Acting Director criticizes in his Determination were directly conveyed to BMA.

Moreover, the Acting Director’s statement that “BMA, the Town’s lessee, indicated that it would join with EAC in seeking to bar BAC from installing underground conduit for electrical service through ‘1100 Foot Strip’ leasehold” is not supported by FAA Exhibit 1, Item 3, exhibit C, exhibit 1. [Determination at 6]. Rather, the foregoing

exhibit only indicates EAC's unwillingness to provide access for the installation of an underground conduit in the 1100 Foot Strip and makes no reference to BMA. Nevertheless, a March 6, 2006 letter from BMA to NAC stated that BMA would "grant a right-of-way for access to the electrical transformer on the portion of the 1100' strip subleased to Eastern Air Center providing you obtain a right-of-way from them as well." (Ex. G.) Thus, BMA never denied access to the 1100 Foot Strip, but rather indicated that NAC would require approval from EAC. Unfortunately, the 1967 Lease is silent on providing a utility easement or right of access to the Town for the 1100 Foot Strip.

The Acting Director overlooked the nature of the present action as a dispute between a former sublessee (EAC) and a lessee (BAC), which share the common nexus of the Town's status as a sublessor and lessor, respectively. Yet, the FAA is reluctant to involve itself with disputes between airport sponsors and airport tenants. [Platinum Aviation v. Bloomington-Normal Airport Auth., FAA Docket No. 16-06-09 (Nov. 28, 2007)]. In that regard, the FAA does not resolve such disputes through the Part 16 complaint process and it does not enforce clauses if it is not a party to a contract. [Platinum Aviation v. Bloomington-Normal Airport Auth., FAA Docket No. 16-06-09 (Nov. 28, 2007)]. Notwithstanding such FAA precedent and policy, the Acting Director unreasonably suggests that NAC should choose sides in a sublessee-lessee (i.e. tenant) dispute by "regaining its rights and powers including extinguishing rights of other parties that prevent the sponsor from complying with its Federal obligations." [Determination at 23]. As Ms. Reid determined, however, such a dispute is outside the FAA's purview. [FAA Exhibit 1, Item 3, exhibit A]. Additionally, EAC's assignment of its rights in the 1100 Foot Strip to FLN conflicts with the Acting Director's suggestion that the Town extinguish the rights of other parties.

The Acting Director's statement that "[t]he Record provides no evidence that the Town offered BAC an alternative course of action" is inconsistent with his Determination and FAA policy. [Determination at 23]. In actuality, and as acknowledged by the Acting Director, the Town provided BAC with an alternative by furnishing it the option of installing electrical service during the AIP-funded project. [FAA Exhibit 1, Item 7, exhibits B, H]. That BAC challenged the cost of this alternative is immaterial because "[t]he Grant Assurances do not identify or guarantee a specific method for fueling aircraft." [The Aviation Ctr., Inc. v. Ann Arbor, FAA Docket No. 16-05-01 (Dec. 16, 2005)]. "A sponsor is not obligated to provide a specific level of service or convenience, however reasonable it may be, when it provides an alternative, reasonable level of service or convenience." [Monaco Coach Corp. v. Eugene Airport, FAA Docket No. 16-03-17 (Mar. 4, 2005)]. Nor should BAC be rewarded for failing to attend project meetings and on-site meetings where it could have meaningfully participated in effecting an alternative, which the Acting Director overlooks.

The Town complied with FAA's direction in acquiring the 1100 Foot Strip. Notwithstanding the practical limitations upon the Town's ability to purchase the 1100 Foot Strip outright as of 1967, the 1967 Lease does restrict BMA's actions in certain respects.

D. NAC's actions were neither unreasonable nor unjustly discriminatory and instead NAC simply required BAC to adhere to the same rules and regulations as all other carriers and business at the Airport.

Grant Assurance 22.a. requires a sponsor to:

make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

The scope of Grant Assurance 22 is not unlimited, because a "sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport." [FAA Grant Assurance 22.h. (emphasis added)]. In addition, a "sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public." [FAA Grant Assurance 22.i. (emphasis added)]. "[A]n airport owner is under no obligation to permit aircraft owners to introduce on the airport practices which would be unsafe, unsightly, detrimental to the public welfare or which would affect the efficient use of airport facilities." [FAA Order 5190.6A, § 3-9.e.(3) (Oct. 2, 1989); Monaco Coach Corp. v. Eugene Airport, FAA Docket No. 16-03-17 (Mar. 4, 2005); Roadhouse Aviations, LLC v. Tulsa, FAA Docket No. 16-05-08 (June 26, 2007)].

As the Acting Director properly concluded, at all relevant times "the Town of Norwood intended to allow BAC to install and operate an aircraft fuel facility at" the Airport. [Determination at 24]. To that end, the Town "immediately leas[ed] the aircraft tie-downs on the DC-3 Ramp to BAC over EAC's objections, authoriz[ed] BAC to conduct temporary truck self-fueling operations, and enter[ed] into initial negotiations with BAC for construction of the aircraft fuel facility and a long-term lease of the DC-3 Ramp." [Determination at 24].

There is no support in the Administrative Record that "[t]he Town's position regarding BAC changed when EAC indicated that the Town and BAC did not have the right to access BMA/EAC leasehold without prior permission" [Determination at 25]. To the contrary, NAC exercised its discretion to preclude BAC from introducing practices at the Airport that are unsafe or detrimental to the public welfare. In that regard, BAC failed to comply with state licensing requirements for the use of fuel trucks at the Airport, declined to provide information requested by NAC, and was cited for lease violations on multiple occasions. Accordingly, NAC's response was not based upon EAC's opposition to the possibility of a second fixed-base operator, but rather BAC's prior conduct, the implications of its intended practices, and local and state law.

"The Grant Assurances do not identify or guarantee a specific method for fueling aircraft." [The Aviation Ctr., Inc. v. Ann Arbor, FAA Docket No. 16-05-01 (Dec. 16,

2005)]. The Acting Director overlooked the fact that BAC failed to reasonably consider and accept NAC's offer to dig trench drains and install electrical access during the apron construction project in 2005. BAC was informed of the repaving and invited to participate in the weekly job meetings at the site. [FAA Exhibit 1, Item 7, exhibits B, H]. As the job meeting notes indicated, BAC was contacted and invited to participate in the meetings, yet BAC's owner only attended a single meeting. [FAA Exhibit 1, Item 7, exhibits B, H] "A sponsor is not obligated to provide a specific level of service or convenience, however reasonable it may be, when it provides an alternative, reasonable level of service or convenience." [Monaco Coach Corp. v. Eugene Airport, FAA Docket No. 16-03-17 (Mar. 4, 2005)]. NAC's offer was reasonable and BAC must be held exclusively responsible for its failure to accept NAC's installation proposal. Moreover, NAC remains willing to allow BAC to dig the trench drains required by the Superseding Order of Conditions and install electrical access, provided that it restores the Airport parking apron to its current condition. [FAA Exhibit 1, Item 7].

"[T]he purpose of the grant assurances is . . . not to provide alternative or supplemental rights to those normally available to commercial tenants in disputes with their landlords, i.e., negotiation or commercial litigation under applicable state and local laws." Penobscot Air Servs., Ltd. v. FAA, 164 F.3d 713, 727 (1st Cir. 1999). The utility easement or right to access for the 1100 Foot Strip sought by BAC is thus outside the scope of the grant assurances because they constitute alternative or supplement rights not normally available to a commercial tenant.

In addition, the Acting Director's findings fail to account for the requirements of local and state law and the bona fide basis for NAC's suspension of lease negotiations with BAC. Of particular significance is the fact that BAC voluntarily and unilaterally withdrew its request for a VIF license on May 9, 2006. [FAA Exhibit 1, Item 7, exhibit D.8]. NAC cannot allow BAC to thwart state regulations or evade requirements applying equally to other carriers and businesses at the Airport.

As to the status of the proposed lease between NAC and BAC, the present circumstances are similar to those in The Aviation Center, Inc. v. Ann Arbor. [The Aviation Ctr., Inc. v. Ann Arbor, FAA Docket No. 16-05-01 (Dec. 16, 2005)]. In The Aviation Center, the airport sponsor denied a complainant's request for a self-fueling facility because of its deficient progress in completing agreed upon improvements in accordance with its lease agreement. In addition, the airport sponsor relied upon possible contamination of the municipal water supply due to the complainant's conduct. In light of these concerns, the FAA determined that the airport sponsor's denial of the complainant's request for a self-fueling facility was not unreasonable.

Here, NAC acted upon safety and general welfare concerns when it terminated BAC's temporary self-fueling permit. Yet, BAC intended and continued to conduct self-fueling operations even after its temporary self-fueling permit was revoked. Similar concerns motivated NAC's suspension of lease negotiations with BAC because of BAC's failure to provide documentation regarding its assertion that it was not required to install trench drains; and that it had obtained all required permits. BAC was also

witnessed by Airport officials using its self-fueling permit to fuel aircraft not owned or operated by BAC, in violation of its permit. These actions were captured on security footage and archived by Airport officials.

Accordingly, the Acting Director erroneously concluded that NAC effectively placed BAC in an unworkable situation by concurrently depriving it of a lease and required permits. The Town's conduct was reasonable and nondiscriminatory because it merely expected BAC to comply with all local and state requirements and attempted to accommodate BAC during its apron reconstruction project.

E. The Town's conduct is consistent with 49 U.S.C., § 40103(e) and related Grant Assurance 23 because it did not explicitly or implicitly grant an exclusive right to EAC to operate a fueling facility.

Although the granting of an "exclusive right" violates Section 308(a) of the Federal Aviation Act of 1958 and Order 5190.6A, no exclusive right has been explicitly/implicitly bestowed upon EAC. [FAA Order 5190.6A, c. 3 (Oct. 2, 1989)].

As construed by FAA Order 5190-5:

An exclusive right is defined as a power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right. An exclusive right can be conferred either by express agreement, by the imposition of unreasonable standards or requirements, or by any other means. Such a right conferred on one or more parties, but excluding others from enjoying or exercising a similar right or rights, would be an exclusive right.

[Jetaway Aviation, LLC v. Bd. of County Comm'rs, Montrose County, Colo., FAA Docket No. 16-06-01 (Nov. 6, 2006) (quoting FAA Order 5190-5 (June 10, 2002))]

"The presence on an airport of only one enterprise engaged in any aeronautical activity will not be considered a violation of this policy [against exclusive rights] if there is no understanding, commitment, express agreement, or apparent intent to exclude other reasonably qualified enterprises." [FAA Order 5190.6A, § 3-9.a. (Oct. 2, 1989) (emphasis added)]. "[T]he providing of services at an airport by a single fixed-based operator shall not be construed as an exclusive right if it would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and if allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport . . ." [FAA Order 5190.6A, § 3-9.a. (Oct. 2, 1989)]. "So long as the opportunity to engage in an aeronautical activity is available to those who meet reasonable and relevant standards, the fact that only one enterprise takes advantage of the opportunity does not constitute a grant of an exclusive right." [Pompano Beach v. FAA, 774 F.2d 1529, 1542 (11th Cir. 1985) (quoting FAA Advisory Circular No. 150/5190-2A at 4-5 (Apr. 4, 1972))]

**U. S DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION**

In the Matter of:

Docket No. 06-07-03

Boston Air Charter and
Norwood Airport Commission

Norwood Massachusetts

**BOSTON AIR CHARTER'S REPLY TO NORWOOD AIRPORT
COMMISSION'S APPEAL PURSUANT TO 14 C.F.R. PART 16.33**

1. Introduction:

In the Director's Decision issued April 11, 2008, the FAA made comprehensive findings of fact and rulings, with the conclusion that the Norwood Airport Commission was in violation of Grant Assurances 5, 22 and 23 as a result of its actions relating to the operation of Norwood Airport, and specifically in regard to NAC's having blocked Boston Air Charter's ("BAC") request to install and operate its own self fueling facility. In its appeal, the NAC has sought to reargue and put a new spin on old facts, and sought to introduce new facts in an inaccurate and misleading manner. BAC will not readdress all the issues below, but focus and address specific issues. BAC is in agreement with the facts as found by the FAA. To the extent that BAC does not once again correct or respond to specific assertions by the NAC that are in conflict with the facts as found in the Director's Decision, the BAC wishes to express its agreement with the FAA's findings.

2. BAC's Reply to NAC's Statement of Facts:

As noted above, BAC will not reply to all factual assertions made by NAC in its Appeal. To the extent that BAC does not respond, it stands by its position in its prior filings and the findings in the Directors Determination.

A. Reply to NAC's Statement of Facts, Appeal p. 5

The NAC asserts that BAC did not provide a viable alternative means to "encroaching" to the 1100 foot strip. BAC is not in control of the Airport – NAC is. It is NAC's obligation and burden to provide alternatives, if such alternatives are necessary.

The NAC asserts that BAC did not avail itself of the opportunity to install conduits during a federally funded project that reconstructed the ramp. BAC addressed this extensively in its appeal, and the FAA properly found the facts. The NAC made it clear at the time that the repaving was being undertaken that BAC could choose to wait

until the NAC's contractor was done, and then hire BAC's contractor to install conduits later. Thereafter, the Town Engineer, who is now a member of the NAC, barred BAC from opening the new pavement to install the conduits, even at BAC's sole expense. Further, this is really a "red herring," as installation of the conduits does not solve the basic problem – the electric service can not be provided without crossing over about 10 feet of the 1100 foot strip. The EAC asserted that it could bar both the NAC and BAC from entering that area to install the conduits and make the electric connection. Even if BAC had paid the NAC's contractors who were working on the federally funded project to install conduits under the ramp, the NAC did not then and has never allowed actual connection of the electric service across the short section of the 1100 foot strip to the transformer.

The NAC asserts that the BAC withdrew its application that was pending to the Norwood Board of Selectmen for a Volatile and Inflammable Fluids permit. As the NAC well knows, the Selectmen had informed the BAC that they would issue the permit only if the BAC had a lease for its premises. The BAC had long sought that lease, which was denied it by the NAC. The NAC refused to grant the lease to BAC unless BAC had demonstrated it had the rights to provide electric service by obtaining permission from EAC to cross its leasehold. Since BAC had no ability to obtain such rights from EAC, and knew that NAC would not grant it a lease, BAC withdrew its VIF permit application rather than have the Selectmen forced to deny it due to NAC's intransigence.

The NAC asserts, in a remarkable and specious argument presented as a statement of fact, that NAC's vote to discontinue all discussions with BAC was justified because of BAC "failure to promote its intent to fully comply with the NAC's Rules and Regulations, and for stating its intent to re-commence self-fueling operations," which NAC characterizes as "repeated attempts to pursue unauthorized mobile fueling." In fact, BAC only conducted mobile self fueling while explicitly permitted to do so by the NAC and the local Fire Department; and though sending a letter indicating its intent to recommence, which BAC reasonably believed that it was entitled to do, BAC complied with a later directive from the Fire Department and did not proceed with further mobile fueling. NAC apparently seeks to penalize BAC for advocating its wishes, and then complying with the orders of local officials, despite disagreeing with those orders.

B. Further Reply to NAC's Statement of Facts, Bottom of p. 5 to p 6.

In a new argument first presented in NAC's "Corrective Action Plan" ("CAP") and now again in the statement of facts section of the Appeal, NAC asserts that Easter Air Center ("EAC") has left the airport, assigning its rights to Flight Level Norwood (FLN"), and that this changes matters in several respects. In short, it does not.

The NAC asserts that with EAC "no longer maintains a presence" at the airport, and that thus the Acting Director's findings concerning BAC's inability to conduct fueling operations are moot. This is clearly an argument, not a fact, and disregards the fact that the NAC still has not provided BAC with permission, a lease or electric power to run BAC's fueling facility. BAC has no knowledge of whether NAC has asked FLN for

permission, or asserted NAC's rights to install improvements such as electric lines within the 1100 foot strip, but on information and belief it has not asserted such rights.

NAC asserts that FLN has, unlike its predecessor EAC, demonstrated its willingness to allow BAC to conduct fueling operations at Norwood Airport, and the NAC even suggests that FLN "embraced the concept" of turning over its self fueling capability to BAC. (NAC referenced its Ex B, Minutes of the February 13, 2008 NAC meeting). Nothing could be further from the truth. All that FLN expressed an interest in doing at the February 13 meeting, as evident in NAC's Ex. B, was that FLN "would like to give one of their [BAC] personnel access to the [FLN] self fueler through the late night for Boston Med Flights that require quick response." As expressed by Mr. Bishop on behalf of BAC, FLN has a commercial fueling operation at Norwood Airport. Exhibit A. BAC has merely entered into a temporary agreement with Flight Level that provides BAC with the permission to fuel BAC's planes using Flight Level's commercial fuel pump equipment and fuel supply. BAC is not self fueling with its own equipment and is not supplying itself with purchases of its own fuel at wholesale. But for NAC having denied BAC the rights needed to install and operate BAC's own self fueling facility, BAC would not have been forced to use FLN for this service. NAC's actions have channeled BAC's fuel business to FLN's commercial fueling operation.

The "Self Fueler Operations Agreement" between FLN and BAC merely allows a BAC employee to use the equipment that FLN calls its "Jet -A Self Fueler" after regular business hours, when BAC's Med Flights might need to re-fuel on an emergency basis. Ex A. (see also NAC's Appeal Ex D. 4 "This will take place when Flight Level personnel are not on the premises - after 9:30 at night and before 5:30 am. It is essentially for the med flights.")

3. BAC's Reply to NAC's Arguments:

The NAC argues, in its Appeal, Section IV(B), that the change from EAC to Flight Level Norwood ("FLN") is substantive. It is not. The obligation to comply with the FAA Grant assurances is the NAC's, not EAC's or FLN's. NAC has done nothing to facilitate providing BAC with its right to self fuel, as that term is defined by the FAA, and has done nothing to regain control of the airport ramps and the 1100 foot strip. The change to FLN has made no difference, NAC still will contend that it lacks the authority to install electric power across any portion of the 1100 foot strip, and BAC still can not install or operate its own self fueling facility.

NAC contests the Director's Determination that the Town's right to grant BAC's access was effectively blocked "by the Town's 1967 lease agreement with BMA." (Appeal p7.) NAC remarkably argues that the terms of the 1967 Lease did not block the Town from granting BAC access, but instead it was EAC's assertion of its rights as a subtenant that blocked the Town. The NAC is trying to draw a distinction that has no difference. If the NAC really believed that it had retained the necessary degree of control over the leased premises to comply with the Grant Assurances, it would have responded firmly to EAC's assertion and proceeded to grant BAC access. Instead, the NAC

deferred to EAC's assertion that as the tenant it had the right to bar the NAC or BAC as the tenant from any access for any purpose into the 1100 foot strip. The transfer of tenancy from EAC to FLN has had no effect on NAC's interpretation of its rights under the lease – the NAC still asserts no control and asserts that it has no rights to enter to make improvements to benefit the airport as a whole or to improve conditions and facilities for other tenants.

FLN's agreement to allow BAC to use FLN's commercial self fueler in emergency conditions does nothing for the NAC in the way of compliance with Grant Assurance #22.

Next, NAC argues that while perhaps the Director was correct in finding that the NAC had violated Grant Assurance #23, barring grants of exclusive rights, that such exclusivity has been nullified by the transfer of all of EAC's rights to FLN and FLN's agreement to allow BAC to use the FLN self fueler for emergencies. Again – nothing has changed. FLN is now the sole, exclusive commercial fueling operation at Norwood Airport, and BAC has been forced by the NAC's policies to "channel" its fueling business to FLN. FLN owns the fueling operation, buys the fuel at its wholesale cost, and will sell it to BAC at a marked up retail cost. In point of fact, however, BAC has never had the occasion to use the FLN facility with BAC's employees, as no emergency has occurred that required after hours fueling since the execution of the agreement. (Ex. A.)

Next the NAC argues that it has complied with Grant Assurance #5 not to take any action that would deprive it of all the rights that it needs to comply with the grant assurances. In this lengthy section of its appeal, the NAC's position can be summed up simply as follows: it received FAA approval to enter into the 1967 leases, has always had the right to review and approve any tenant's installation of any structure, but the lease has always been silent on whether NAC has ever had the right to enter into leased premises to install its own improvements. NAC points to BMA's assent, contingent on NAC's assent, as proof that the 1967 lease did not divest the NAC of its authority. In this, the NAC completely misses the point – it should not have to seek the permission of BMA, or EAC, or EAC's successor, when the NAC has an obligation to make improvements and to access and control the federally funded ramps. The fact that NAC has interpreted the lease contracts to give the tenants such rights to control NAC's decisions regarding improvements and operation of the airport is the problem, and that has not been cured. NAC must reassert its rights, and now obtain either a court order, the tenant's express acquiescence, or secure its rights in another manner, perhaps via eminent domain proceedings.

In its discussion of its violations of Grant Assurance #5, NAC points to BAC's alleged refusal to pay for the installation of conduits during the AIP funded repaving project. As noted *supra*, BAC was assured that it could install the conduits at a later date and was ready willing and able to do so; but that would not have solved the problem – NAC has never provided BAC the right to access the 1100 foot strip to install the electric conduits and service necessary to connect to the electric power. Even if BAC had paid to

install the conduits as suggested in NACs' appeal, there still would not have been electric power to the BAC fueling facility, because EAC had purported to bar the NAC and BAC from entering to install the electric power across the 10 foot wide section of the 1100 foot strip. The NAC argument about BAC's alleged failure to pay to install the conduits is merely a "red herring." The NAC has allowed its tenants BMA, EAC and EAC's successor FLN, to assert rights to absolute control over the airport, barring NAC or NAC's other tenants such as BAC from access to make basic improvements. NAC had an opportunity to take a hard line when EAC first sought to control the airport by purporting to assert its rights as a tenant and objecting to the installation of BAC's fueling facility. It was clear then that EAC was seeking to protect its monopoly on fuel sales at Norwood Airport. NAC could then have asserted that where the lease was silent regarding NAC's rights to enter, given that the lease was executed for the purpose of compliance with the FAA requirements, that by implication the NAC must have retained what ever rights it needed to comply with the Grant Assurances. By failing to assert such rights timely and forcefully in the face of EAC's aggressive, anticompetitive position, the NAC violated its basic obligations. It ceded control over the airport to EAC.

In Section D of NAC's Appeal, the NAC now argues that the real reason for it refusing to facilitate BAC's installation of its fueling facility was not the refusal of EAC to provide access across the leased premises, but BAC's alleged unsafe practices. The argument is obviously pretextual – the record is replete with NAC's arguments that it would have permitted BAC to have the access, but could not because BAC had failed to negotiate terms with EAC, and NAC would not intervene in a dispute between two tenants. BAC has safely operated its business at Norwood Airport for years, and had safely and capably operated the fuel truck during the time that it was allowed to do so. NAC's assertion that "BAC failed to comply with state licensing requirements for the use of fuel trucks" is an outrageous misrepresentation. BAC had temporary approval from the selectmen to operate the fuel truck and ultimately the fixed fueling facility, contingent on receipt of a written long term lease from the NAC. The NAC refused to give BAC a lease, allegedly because BAC lacked the access to have electric power to run the equipment, while NAC sought to place the burden on BAC to obtain the electric access NAC itself had the sole power and legal obligation to provide. NAC, by failing to assert control over the airport and refusing to give BAC the access for electric power, made it impossible for BAC to comply and secure all licenses needed. Ultimately, BAC withdrew its application to the Selectmen, removed its fueling truck as directed by the Fire Department and ended its temporary self fueling, and sought review by the FAA of the NAC's decision that made further local efforts by BAC futile.

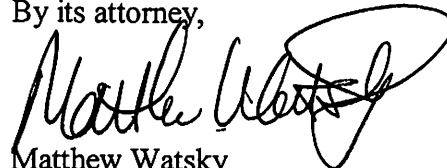
Finally, in Section E of its Appeal, the NAC argues that it has not granted an exclusive right to EAC, and now EAC's predecessor FLN to provide commercial fueling and self fueling at Norwood Airport. NAC cites, however, a case decision that is exactly contrary to its position. "So long as the opportunity to engage in an aeronautical activity is available to those who meet reasonable and relevant standards, the fact that only one enterprise takes advantage of the opportunity does not constitute a grant of an exclusive right." NAC Appeal, p. 14, Quoting Pompano Beach v. FAA, 774 F. 2d. 1529, 1542 (11th Cir 1985). BAC is ready willing and able to "take advantage " of an opportunity to

provide itself with self fueling, and if desired by the NAC, it would provide commercial fueling as well. It already owns and has in storage the fueling storage and dispensing equipment, and the state wetland permits necessary to install and operate the equipment. All it needs is the NAC to provide a lease and access to install electric power and data cables, and BAC will re-apply for and obtain the other necessary permits and approvals, such as the VIF license from the Selectmen. The NAC notes that it partially terminated EAC's lease to provide BAC with the DC-3 Ramp – but fails to explain, if it could so simply terminate that part of EAC's lease, why it could not act to re-assert control to enable either NAC or BAC to install the electric and data cables necessary to operate the BAC fueling facility. NAC's choice not to act to control the airport to provide BAC with the access needed to self fuel, is strong and convincing circumstantial evidence that NAC intended to allow and encourage EAC to retain an exclusive right to sell fuel at Norwood Airport. Fuel sales became EAC's primary source of revenue, Ex 1., and upon EAC's objection to BAC's proposal to self fuel, NAC acted to guarantee BAC could not compete against EAC's monopoly. With FLN standing in EAC's shoues, nothing has changed.

4. Conclusion:

BAC respectfully requests the Associate Administrator uphold the April 11, 2008 Director's Determination in every respect, and conclude that NAC has failed to present an adequate proposed CAP to solve the many violations.

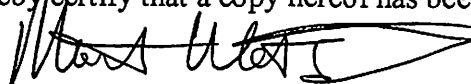
Respectfully submitted,
Boston Air Charter, Inc.
By its attorney,



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Certificate of Service

I, Matthew Watsky, hereby certify that a copy hereof has been served by first class mail, postage pre-paid, to



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Norwood Airport Commission
Norwood Memorial Airport
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**U. S DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION**

In the Matter of:

Docket No. 06-07-03

Boston Air Charter and
Norwood Airport Commission

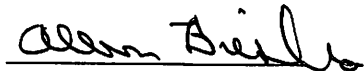
Norwood Massachusetts

**AFFIDAVIT OF AL BISHOP IN SUPPORT OF BOSTON AIR CHARTER'S
REPLY TO NORWOOD AIRPORT COMMISSION'S APPEAL PURSUANT TO
14 C.F.R. PART 16.33**

1. I, Al Bishop, am the President and primary operator of the Boston Air Charter, Inc., which flies out of Norwood Airport, Norwood Massachusetts.
2. I have worked at Norwood Airport for 35 years, and have been personally involved in and am personally familiar with all the facts relevant to the BAC's efforts to obtain approvals to install a fueling facility for its own aircraft.
3. As a practical matter, the NAC's refusal to allow BAC to install and operate its own fueling facility has conservatively cost BAC \$1,300,000 in excess fuel costs, making this the single highest extra cost factor BAC faces to operate its business and continue to provide aeronautical services.
4. EAC sold its business to Flight Level-Norwood ("FLN"). BAC has entered into an agreement with FLN to provide BAC the right to use BAC's employees to fuel BAC's aircraft using FLN's fueling equipment, which FLN calls its "Self Fueler," when FLN's employees are not present after FLN's usual business hours, after 9:30 at night and before 5:30 am.
5. FLN operates its Self Fueler as a commercial fueling facility, as the sole entity selling fuel to aircraft operators at Norwood Airport.
6. FLN has expressed no interest in assigning to BAC its fueling business or operation. BAC's only rights with regard to FLN's fueling equipment are to dispense the fuel and pay FLN for the fuel at FLN's rates.

7. The change from EAC to FLN as the primary tenant at Norwood Airport has not made a substantive change at the airport. FLN has offered nothing, and the NAC has done nothing further to facilitate providing BAC with its right to self fuel, as that term is defined by the FAA, and has done nothing to regain control of the airport ramps and the 1100 foot strip.
8. If BAC were operating its own Self Fueling facility, its fuel costs would be substantially lower, being able to purchase fuel at a lower wholesale rate than FLN, and not having to pay any retail mark up or fee other than the usual federal and state taxes, and a local flowage fee that BAC would expect to pay to the NAC.

Signed under the penalties of perjury, this 12th day of June, 2008,



Al Bishop, President
Boston Air Charter

MURPHY, HESSE, TOOMEY & LEHANE, LLP
Attorneys At Law

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Please Respond to Quincy

July 7, 2008

Kelvin Solco, Acting Director
Office of Airport Safety and Standards
Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, D.C. 20591

Re: Docket No. 16-07-03
In the Matter of Boston Air Charter and Norwood Airport Commission

Dear Mr. Solco:

Please accept this correspondence as the Norwood Airport Commission's ("NAC") reply to the Complainant, Boston Air Charter's ("BAC"), response to its corrective action plan ("Plan") in the above-referenced matter.

As an initial matter, NAC objects to BAC's continuing effort to misconstrue the underlying factual context of the above-referenced matter. To that end, BAC erroneously attributes Eastern Air Charter's ("EAC") conduct to NAC and its use of the terms "restrictions" and "intransigence" is grossly inaccurate and misleading. EAC, rather than NAC, objected to the encroachment of the so-called 1100 Foot Strip by BAC.¹ NAC has not declined to provide BAC with the access to install or provide electric power or to operate its own self-fueling facility. To the extent that NAC declined permission to EAC, it properly acted in accordance with safety,

¹Significantly, EAC is no longer a tenant at the Norwood Memorial Airport ("Airport"). Subsequent to the parties' pleadings in the above-referenced matter, EAC executed an assignment in favor of FlightLevel Norwood, LLC ("FLN"). Consequently, FLN is EAC's successor-in-interest at the Airport.

MURPHY, HESSE, TOOMEY & LEHANE, LLP
Attorneys At Law

Kelvin Solco, Acting Director
Office of Airport Safety and Standards
Federal Aviation Administration
July 7, 2008
Page 2

environmental and general welfare concerns. [FAA Grant Assurance 22.h.; FAA Order 5190.6A, § 3-9.e.(3) (Oct. 2, 1989); Monaco Coach Corp. v. Eugene Airport, FAA Docket No. 16-03-17 (Mar. 4, 2005); Roadhouse Aviations, LLC v. Tulsa, FAA Docket No. 16-05-08 (June 26, 2007).] Further, BAC omits a significant fact relative to its operation of MediVac flights: BAC has operated such a revenue-producing business at the Airport without its own fuel farm since 2003, well before the Self-Fueler Operations Agreement.

More importantly, BAC's response attempts to impose unnecessary and unreasonable conditions upon NAC that exceed the requirements of the Order. In addition, BAC's response conflicts with well-established Federal Aviation Administration ("FAA") policy. The Order did not specify the exact manner for compliance with each of its four (4) components, thereby affording considerable discretion to NAC. Accordingly, the Plan conforms to each of the four (4) components of the Order.

The first component of the Order required NAC to "provide[] access for BAC to conduct self-fueling operations consistent with state and local regulations." (Emphasis added). Due to changed circumstances, specifically the status of FLN as the successor-in-interest to EAC and the Self-Fueler Operations Agreement, NAC reiterates that BAC already has access to conduct certain fueling operations at the Airport. Notwithstanding the availability of such fueling operations, and to complement its compliance with the first component of the Order, NAC expressed its willingness in the Plan to investigate the feasibility of an alternative to the BAC ramp through the Airport's centerfield windsock, east of the Gate 3/Taxiway B intersection. This investigation includes consideration of how power will be conveyed to the BAC ramp, and BAC's corresponding criticism is unjustified and premature. However, unlike the encroachment of the 1100 Foot Strip proposed by BAC, this centerfield windsock alternative would not trigger an issue with any current leasehold.

The Order did not require NAC to restrict its consideration of this proposal to any single design, and certainly not the design advocated by BAC. Indeed, "[t]he Grant Assurances do not identify or guarantee a specific method for fueling aircraft." [Aviation Ctr., Inc. v. Ann Arbor, FAA Docket No. 16-05-01 (Dec. 16, 2005)]. Moreover, "[a] sponsor is not obligated to provide a specific level of service or convenience, however reasonable it may be, when it provides an alternative, reasonable level of service or convenience." [Monaco Coach Corp. v. Eugene Airport, FAA Docket No. 16-03-17 (Mar. 4, 2005)]. Therefore, BAC's challenge to the centerfield windsock alternative should be rejected by the FAA as unduly restrictive.

MURPHY, HESSE, TOOMEY & LEHANE, LLP
Attorneys At Law

Kelvin Solco, Acting Director
Office of Airport Safety and Standards
Federal Aviation Administration
July 7, 2008
Page 3

The second component of the Order requires NAC to “end[] the practice of awarding long-term leases of the federally-funded ramps that had the effect of granting one party control over the majority of the ramps on the Airport.” By using the verb “ends,” the second component of the Order constitutes a prospective, rather than retroactive, requirement. Indeed, many of the existing long-term leases were executed during prior administrations of the NAC and NAC’s recently formalized short-term leasing policy will specifically apply to the expiration of these leaseholds on a prospective basis.

Contrary to BAC’s assertion, the second component of the Order does not require NAC to recapture all of the federally-funded ramps and instead requires a purported historical long-term leasing practice to cease. The November 2007 lease negotiations with EAC reflect an actual change in this historical leasing practice. Moreover, NAC voted to formalize the cessation of this historical leasing practice at its May 14, 2008 public meeting. Therefore, the current status of leaseholds at the Airport is immaterial for compliance with the second component of the Order. In any event, BAC conveniently overlooks the fact that NAC previously discontinued lease negotiations with BAC based upon safety and public welfare concerns.

The third component of the Order requires NAC to implement a short-term ramp leasing permit policy for the Airport. Accordingly, NAC voted to formalize into future practice a shorter term leasing policy that will seek to prevent the granting of one party control over the majority of the airport ramps, with an exception for fuel farms. NAC’s short-term leasing policy is consistent with the FAA’s recognition of the distinction between short- and long-term leases. [See Aviation Ctr., Inc. v. Ann Arbor, FAA Docket No. 16-05-01 (Dec. 16, 2005) (“There are significant differences between a twenty-year long-term lease and a five-year short-term lease that have a bearing on financing and access to capital for equipment and facilities.”)]. Yet, BAC overlooks the fuel farm exception to NAC’s short-term leasing policy for fuel farms and instead proceeds to unjustifiably criticize the Plan. BAC’s arguments are inconsistent because BAC simultaneously opposes long-term leases to competitors and advocates for any such leases that benefit BAC.

Finally, the fourth component of the Order requires NAC to state how it will “regain the Airport’s rights and powers to access the ‘1100 Foot Strip’ to provide power to the Airport ramps for Airport tenants.” However, the Order is silent on the specific mechanism through which NAC should accomplish such rights and powers to the 1100 Foot Strip. Stated otherwise, the

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Attorneys At Law

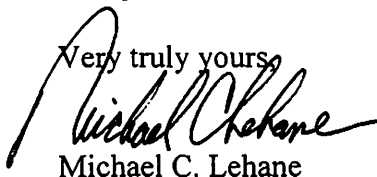
Kelvin Solco, Acting Director
Office of Airport Safety and Standards
Federal Aviation Administration
July 7, 2008
Page 4

Order did not require NAC to exclusively pursue eminent domain and instead ostensibly contemplates negotiations and/or litigation as reasonable alternatives.

The exercise of eminent domain authority requires a town meeting vote, which is anything but a certainty considering the substantial fiscal considerations involved. See M.G.L. c. 40, § 14; M.G.L. c. 44, § 53; M.G.L. c. 90, § 51G. BAC simply overstates and misconstrues the eminent domain process under Massachusetts law. Additionally, BAC's characterization of the alleged compensation stemming from a taking as "minimal" is unsupported and unjustified. Rather, eminent domain has the potential of exposing NAC and/or the Town of Norwood to substantial liability from any persons seeking damages. See M.G.L. c. 79, §§ 14, 16. Contrary to BAC's assertion, eminent domain is a time-consuming process, rather than an immediate solution. Therefore, as a practical matter, eminent domain is the least feasible possibility for compliance with the fourth component of the Order.

Accordingly, NAC reasserts that its Plan conforms to each of the four (4) components of the Order and the FAA should reject BAC's response.

Thank you for your attention to this correspondence.

Very truly yours,

Michael C. Lehane

cc: Matthew Watsky, Esquire
Norwood Airport Commission (c/o Russ Maguire)

78
79

**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC**

**Boston Air Charter,
Complainant / Appellee**

v.

**Norwood Airport Commission
Norwood, Massachusetts,**

Docket No. 16-07-03

Respondent / Appellant

FINAL DECISION AND ORDER

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) Associate Administrator for Airports on appeal filed by Norwood Airport Commission (Appellant or the Town) from the Director's Determination of April 11, 2008, issued by the Acting Director of FAA Office of Airport Safety and Standards¹, pursuant to the *FAA Rules of Practice for Federally Assisted Airport Enforcement Proceedings* found in Title 14 Code of Federal Regulations (CFR) Part 16 (Rules of Practice).

Appellant argues on appeal to the Associate Administrator for Airports that the Director committed errors in conducting the investigation, interpreting the evidence, and applying law and policy, causing the FAA to find Norwood Airport Commission in violation of grant assurance 5, *Preserving Rights and Powers*; grant assurance 22, *Economic Nondiscrimination*; and grant assurance 23, *Exclusive Rights*, erroneously.

Appellant questions whether the Director properly concluded:

- (a) The Town violated grant assurance 5, *Preserving Rights and Powers*, by surrendering significant rights and powers when it entered into a

At the time the Director's Determination was issued in this matter, the FAA Office of Airport Safety and Standards was in the process of selecting a new Director. As such, the Acting Director signed the determination. For purposes of this document, "Director" and "Acting Director" refer to the same authority.

leaseback agreement with Boston Metropolitan Airport, Inc. (BMA) for the "1100 Foot Strip."

- (b) The Town violated grant assurance 22, *Economic Nondiscrimination*, by denying Boston Air Charter access to conduct a commercial aeronautical activity and by restricting its ability to self-fuel.
- (c) The Town violated grant assurance 23, *Exclusive Rights*, by entering into lease agreements that gave control of the only power source to one tenant.

Appellant submits new evidence with the appeal that was not previously available during the initial pleadings. [See FAA Exhibit 1, Item 18, pages 6-7.]

In addition, Appellant requests the Associate Administrator conduct a hearing on this appeal. [FAA Exhibit 1, Item 18, page 16.]

The Associate Administrator affirms the Director's Determination. The appeal does not contain persuasive arguments sufficient to reverse any portion of the Director's Determination. The Appellant is not entitled to a hearing.

II. SUMMARY OF THE DIRECTOR'S DETERMINATION

In its Complaint, Boston Air Charter (Complainant) alleged the Town of Norwood (Town) violated federal law and policy when the Town failed to provide the Complainant access to install electric service underground conduits to support an aviation fuel facility. The underground conduit had to go through the leasehold of the existing fixed-base operator² and competitor, Eastern Air Center, who opposed the Complainant's request to provide aircraft fueling services. The Complainant contended the Town of Norwood engaged in discriminatory practices and granted a constructive exclusive right to Eastern Air Center by failing to force Eastern Air Center to allow access through its leasehold for the underground conduit. Furthermore, Complainant also argued that failure to grant a right of access to install electric service underground conduits effectively prohibited it from performing self-service fueling.

The Town argued that it could not be expected to take sides in a private dispute between two tenants over rights of access, despite the Town's desire to encourage competition. The Town of Norwood said it did not have an exclusive agreement with Eastern Air Center to offer fixed-base operator services, but it could not force Eastern Air Center to provide access for utilities through its leasehold to further the Complainant's interest in establishing its own fuel service facility. Furthermore, since the Complainant did not have a lease at the time the Complaint was filed, the Town argued the issue was moot.

² A fixed-base operator (FBO) is a commercial entity providing aeronautical services such as fueling, maintenance, storage, ground and flight instruction, etc., to the public. [See FAA Order 5190.6A, *Airport Compliance Requirements*, October 2, 1989, Appendix 5.]

The Town contended it was under no obligation to enter into a lease with the Complainant.

Under the particular circumstances existing at the Airport and the evidence of record, as discussed in the Director's Determination, the FAA concluded:

- The Town violated grant assurance 5, *Preserving Rights and Powers*, when it signed a lease agreement with Boston Metropolitan Airport, Inc., a tenant, depriving the Town of certain rights and powers necessary to comply with its federal obligations under the FAA grant assurances.
- The Town violated 49 United States Code (U.S.C.) § 47107(a)(1), and related grant assurance 22, *Economic Nondiscrimination*, by denying the Complainant reasonable use and access to the Airport on reasonable terms for the purpose of conducting a commercial aeronautical activity; the Town's actions in this regard constituted an unreasonable denial of access and unjust economic discrimination.
- The Town violated 49 U.S.C. § 40103(e), and the related grant assurance 23, *Exclusive Rights*, by constructively granting an exclusive right to Eastern Air Center to operate a fueling facility on the Airport by entering into leases with Eastern Air Center and Boston Metropolitan Airport, Inc., enabling Eastern Air Center to control the only source of power to the Airport ramps to operate a fueling facility. By denying Complainant access to power to install a fueling facility, the Town effectively granted Eastern Air Center the exclusive right to operate a fueling facility on the Airport.

III. THE AIRPORT

Norwood Memorial Airport (Airport) is a general aviation airport. The Town of Norwood is the Airport owner and sponsor responsible for complying with all FAA grant assurances. The Town has delegated daily operation of the Airport to the Norwood Airport Commission.

The planning and development of the Airport has been financed, in part, with funds provided by the FAA under the Airport Improvement Program (AIP), authorized by the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. § 47101, *et seq.*

As of June 5, 2008, the Airport had 240-based aircraft and 99,800 annual operations.³ Since 1982, the Airport sponsor has received 27 grants totaling \$11,577,569 in federal

³ FAA Exhibit 1, Item 1, provides (a) a copy of the July 5, 2007 FAA Form 5010 for the Airport, which was referenced in the Director's Determination, and (b) the June 5, 2008 FAA Form 5010, which is referenced in this Final Decision and Order.

financial assistance for airfield improvements. The Airport received \$844,715 in grant funds for apron rehabilitation in fiscal year (FY) 2006.⁴

IV. BACKGROUND

In March 2004, Boston Air Charter (BAC), a Part 135 operator serving Norwood Municipal Airport, proposed to construct a commercial aircraft fueling facility on the Airport's 19,072 square foot DC-3 Ramp. Boston Air Charter planned to fuel its own Part 135 charter operation aircraft. Eventually, it also wanted to become a fixed-base operator offering aircraft fueling service to the public. The record indicates the Town offered only the DC-3 Ramp to Boston Air Charter for this fueling operation.

Boston Air Charter's aircraft fueling facility was expected to consist of two above-ground aviation fuel storage tanks with a capacity of 12,000 gallons each and a spill containment system. The fueling facility would require electric service; the DC-3 Ramp does not have access to an electric utility power source. The available power source is a transformer located on the Gate 3 taxilane side of a building in the leasehold known as the "1100 Foot Strip."⁵ An underground conduit between the "1100 Foot Strip" and the DC-3 Ramp would have to be installed to provide electrical service for Boston Air Charter's proposed fueling facility. The underground conduit would run from the DC-3 Ramp across the backside of the West Apron Ramp adjacent to and into the Gate 3 taxilane and penetrate the "1100 Foot Strip" leasehold by ten feet to connect to the transformer. *[See map on pages 11 and 12 of this document.]*

The record shows competitor Eastern Air Center holds the sublease on the "1100 Foot Strip." The Town controls the West Apron Ramp. Boston Air Charter is a month-to-month tenant at will on the DC-3 Ramp. *[See Table 1: Norwood Airport Lease Plan on page 5 of this document.]*

The Town owns the "1100 Foot Strip" and has leased it to Boston Metropolitan Airport, Inc. (BMA) for a term of up to 80 years. Boston Metropolitan Airport, Inc., in turn, subleased the "1100 Foot Strip" to Eastern Air Center, the Airport's only fixed-base operator. Eastern Air Center controls most of the ramp space on Norwood Memorial Airport under long-term leases. Eastern Air Center is also an opponent of Boston Air Charter's plan to self-fuel. Eastern Air Center believes it would be detrimental to Eastern Air Center's business if Boston Air Charter is able to self-fuel and if Boston Air Charter might eventually operate a fueling service to the public.

⁴ FAA Exhibit 1, Item 2, provides the Airport Sponsor's AIP grant history listing the federal airport improvement assistance provided by the FAA to the Airport sponsor from 1982 to the date of this decision.

⁵ The building is depicted as a bright orange strip in the "1100 Foot Strip" leasehold on the *Compiled Lease Area Plan* dated December 17, 2007, on page 11 of this document. *[See Exhibit 1, Item 12.]*

Table 1: NORWOOD AIRPORT LEASE PLAN⁶

<u>LOT</u>	<u>LESSEE</u>	<u>LEASE EXTENSION PERIOD</u>	<u>DIMENSIONS</u>
ABC	EASTERN AIR CENTER	1 NOVEMBER 2004 to 31 OCTOBER 2009	85,860 SQFT
WXY	EASTERN AIR CENTER	16 NOVEMBER 1988 to 30 NOVEMBER 2008 1 DECEMBER 2008 to 30 NOVEMBER 2028	111,292 SQFT
LOT 6	EASTERN AIR CENTER	1 JANUARY 2001 to 31 DECEMBER 2020 30 SEPTEMBER 2006 to 31 OCTOBER 2026	210,180 SQFT
LOT 7	EASTERN AIR CENTER	1 JANUARY 2001 to 31 DECEMBER 2020 30 SEPTEMBER 2006 to 31 OCTOBER 2026	135,360 SQFT
WEST APRON	TOWN CONTROLLED	N/A	95,381 SQFT
DC-3 RAMP	BOSTON AIR CHARTER (Tenant at will)	N/A	19,072 SQFT
THE 1100 FOOT STRIP	BOSTON METROPOLITAN AIRPORT, INC (EASTERN AIR CENTER, sublessee)	1967 to 2047	330,000 sq ft

Eastern Air Center had leased the DC-3 Ramp until August 2003 when the Town reclaimed it over Eastern Air Center's objections. The Town then leased six tie-down positions to Boston Air Charter⁷ on a month-to-month basis. [FAA Exhibit 1, Item 11, exhibit 3.]

Summary of Boston Air Charter's Permit and Construction Sequence⁸

The Town and Boston Air Charter entered negotiations to lease the DC-3 Ramp and construct a fueling facility in 2004. By the close of 2004, Boston Air Charter had

⁶ AIP Project 3-25-0037-26-2005 authorized the expenditure of \$589,004 for the rehabilitation of airport aprons including two aprons (Lots 6 and 7) leased to Eastern Air Center. Over the past 20 years, the FAA has provided \$3,108,914 in federal financial assistance for rehabilitation and construction of all the aprons and ramps, excluding the "1100 Foot Strip."

⁷ Eastern Air Center asked the Town to convert its lease for the DC-3 Ramp to a long-term lease; the Town rejected this request and, instead, leased the DC-3 Ramp tie-downs to Boston Air Charter on a month-to-month basis. [FAA Exhibit 1, Item 11, exhibit 1.]

⁸ This is an approximation of the steps Boston Air Charter must pursue to begin operation. It does not include the time limit on some of the permits and approvals. Some permits are valid for one year, forcing Boston Air Charter to reapply or resubmit its application when the permits expire.

received approval or tentative approval for most of the permits required to construct the aircraft fuel facility.

- a. On May 5, 2004, the Town of Norwood Board of Selectman tentatively approved the Volatile Inflammable Fluids (VIF) License pending approved by the State Fire Marshal. This license was needed for the storage of flammables. [FAA Exhibit 1, Item 11, exhibit 119.]
- b. On May 5, 2004, Norwood Conservation Commission approved and issued its *Order of Conditions* required for the operation of the fuel facility. [FAA Exhibit 1, Item 11, exhibit 11.]
- c. On June 11, 2004, the State Fire Marshal approved the type of storage tanks and equipment Boston Air Charter proposed to use. [FAA Exhibit 1, Item 11, exhibit 9.]
- d. On June 15, 2004, Norwood Airport Commission issued a temporary 30-day fueling permit authorizing Boston Air Charter to self-fuel its aircraft. The permit is renewed monthly until December 2005. [FAA Exhibit 1, Item 11, exhibit 120.]
- e. On November 2, 2004, FAA issued Form 7460 aeronautical study for the proposed fuel facility. [FAA Exhibit 1, Item 11, exhibit 123.]
- f. On November 30, 2004, the Commonwealth of Massachusetts, State Department of Environmental Protection, issued its *Superseding Order of Conditions*. [FAA Exhibit 1, Item 11, exhibit 11.]
- g. On April 8, 2005, the Commonwealth of Massachusetts, Department of Environmental Protection, issued its decision on the *Appeal of Superseding Order of Conditions*. [FAA Exhibit 1, Item 11, exhibit 18.]
- h. During the summer of 2005, an apron rehabilitation project was begun with federal funding. Boston Air Charter elected not to participate financially in the project. At that time, Boston Air Charter could have paid to have the underground conduit and trench drains installed, but declined because the Town's quoted price was too high.⁹

⁹ The fueling facility requires electrical service and a spill containment system that includes concrete pads, trench drains, and catch basins to capture fuel spills. The work had to be coordinated with the federally funded apron construction project since both projects were being done on the same site. The Town's contractor working on the apron reconstruction project offered to construct the spill containment system for \$55,800. Another contractor selected by Boston Air Charter submitted a bid for \$29,185. Boston Air Charter concluded the Town contractor's price was too high. Boston Air Charter decided to wait until the apron reconstruction project was completed. However, once the apron project was completed, the Town engineer refused to allow Boston Air Charter's work to proceed because he didn't want the newly paved ramp surface to be cut. [See FAA Exhibit 1, Item 3, exhibit C.]

- i. During late 2005 and early 2006, Norwood Airport Commission reviewed construction plans for the fuel facility. There is no indication that the plans were approved.
- j. During late 2005, Boston Air Charter asked about the approval status of its pending lease agreement. [FAA Exhibit 1, Item 11, exhibit 39.]
- k. During February 2006, Norwood Fire Department advised that it needed an approved lease before it could issue a permit. (This step was not completed.) [FAA Exhibit 1, Item 11, exhibit 62.]

On January 11, 2006, The Town of Norwood, Board of Selectmen, gave Boston Air Charter a 90-day extension to complete the necessary permits to install the fuel facility or face revocation of the Town-issued Volatile Inflammable Fluids (VIF) license.¹⁰ [FAA Exhibit 1, Item 11, exhibit 50.]

Issue of Leasehold Encroachment

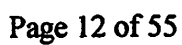
During a Norwood Airport Commission (NAC) meeting on Boston Air Charter's proposal, competitor Eastern Air Center objected to the construction of an aircraft fueling operation on the DC-3 Ramp. Eastern Air Center stated:

Neither [the Norwood Airport Commission] nor [Boston Air Charter] has the right to dig, construct, or otherwise utilize the so-called Gate 3 access to the Airport, which is situated on land we control, in any manner other than to allow a vehicle, aircraft, and/or a pedestrian to pass through for the lawful purpose of gaining access to the Airport.

[FAA Exhibit 1, Item 11, exhibit 51.]

In a January 30, 2006, letter to the Town, Eastern Air Center stated it would not grant permission for anyone to dig, install, or construct utility lines through the "1100 Foot Strip" without Eastern Air Center's prior written consent. [FAA Exhibit 1, Item 3, exhibit C, exhibit 1.] Eastern Air Center subleased the "1100 Foot Strip" from Boston Metropolitan Airport, Inc. [See FAA Exhibit 1, Item 7, exhibit C; and Item 7, page 1.] Eastern Air Center indicated that it informed Boston Air Charter and its counsel as early as 2004 that Boston Air Charter did not have the authority to install conduit on land controlled by Eastern Air Center. [FAA Exhibit 1, Item 11, exhibit 65.]

¹⁰ The Town of Norwood had issued Boston Air Charter a Volatile Inflammable Fluids (VIF) license to operate an above-ground fuel facility pending approval of the State Fire Marshal. The State Fire Marshal approved plans for the aircraft fuel facility on June 11, 2004. [FAA Exhibit 1, Item 11, exhibit 9.]



Temporary Self-fueling Permit

On April 13, 2004, Boston Air Charter requested the Town's approval to self-fuel its aircraft using a 5,100 gallon Jet A fuel truck until completion of its proposed aircraft fuel storage facility. On June 15, 2004, the Town gave Boston Air Charter permission to self-fuel for a 30-day period so long as they complied with local, state, and federal rules and regulations regarding the transportation of aviation fuel. The administrative record shows Boston Air Charter conducted aircraft fueling operations with the Town's consent and knowledge. The Town extended the permit on a monthly basis until October 5, 2005, when it threatened to terminate the permit due to Boston Air Charter's "housekeeping" practices.¹² After Boston Air Charter took action to correct the deficiencies, the permit was extended until the November 1, 2005, airport commission meeting. [See FAA Exhibit 1, Item 11.]

The Town originally consented to the temporary fueling arrangement because the Town believed construction and operation of the fuel facility was imminent. Eighteen months later, under concerns about the Town's liability, Boston Air Charter's temporary fueling operations were terminated. At the November 1, 2005, airport commission meeting, the Town terminated Boston Air Charter's temporary self-fueling operation upon 30-days notice, effective immediately. [See FAA Exhibit 1, Item 11.]

Even though its fueling rights had been termination, Boston Air Charter continued to fuel its aircraft. The Town issued a violation notice ordering Boston Air Charter to terminate its temporary fueling operation. The Town found the operation to be a violation of state fire prevention regulations and inconsistent with Boston Air Charter's Volatile Inflammable Fluids (VIF) license, which permitted the operation of an above-ground aircraft fuel storage facility. Boston Air Charter stopped fueling operations after the Town issued a second order with a threat of legal action. [See FAA Exhibit 1, Item 11.]

On August 4, 2006, Boston Air Charter informed the Town of its intention to start self-fueling again on or about September 1, 2006. The Town advised Boston Air Charter that it could not conduct self-fueling operations without a Volatile Inflammable Fluids (VIF) license and permit issued by the Town. [See FAA Exhibit 1, Item 11.]

Boston Air Charter contended that the Town – by denying it the right to self-fuel its aircraft and denying it the right to install underground conduit to gain electrical power from the "1100 Foot Strip" to its proposed aircraft fuel storage facility – had granted Eastern Air Center an effective exclusive right to operate a fueling facility and a monopoly on fuel sales at Norwood Municipal Airport. Furthermore, Boston Air Charter argued that Eastern Air Center refused permission to install underground conduit for electric service through its leasehold specifically to prevent Boston Air Charter from

¹² Airport staff found drip pans full of aviation fuel underneath the Boston Air Charter fuel truck; the contents of the pans should have been disposed of properly. Staff also found residual fuel stains on the pavement from Boston Air Charter's parked Citation Jet. [FAA Exhibit 1, Item 11, exhibit 122.]

servicing its own aircraft and from offering fueling services to the public in competition with Eastern Air Center. [See FAA Exhibit 1, Item 11.]

The Town contends Boston Air Charter (1) failed to comply with state licensing requirements regarding the use of fuel trucks at the Airport, (2) repeatedly refused to provide information requested by the Town, and (3) was cited for fueling violations.¹³ The Town contends it is under no obligation to enter into a lease with Boston Air Charter. [See FAA Exhibit 1, Item 18.]

The "1100 Foot Strip"

Eastern Air Center subleases an area called the "1100 Foot Strip" from Boston Metropolitan Airport, Inc. (BMA) who once owned the land and is now a lessee of the Town of Norwood. The "1100 Foot Strip" consists of 330,000 square feet. [See FAA Exhibit 1, Items 7 and 17.]

In 1967, the FAA directed the Town of Norwood to acquire this "1100 Foot Strip" as part of a grant agreement under the Federal Aid to Airports Program (FAAP). The requirement stated:

It is understood and agreed that the sponsor will acquire the following property interests: Parcel 2 as shown on Exhibit A – Fee simple title, free and clear of all liens and encumbrances determined objectionable by the FAA...

[FAA Exhibit 1, Item 10.]

The Town of Norwood acquired Parcel 2 ("1100 Foot Strip") and Parcel 4 (avigation easement) from Boston Metropolitan Airport, Inc. (BMA).¹⁴ On December 28, 1967, the Town counsel signed a certificate affirming that the Town of Norwood holds interest in parcels 2 ("1100 Foot Strip") and 4 (avigation easement). The certificate indicated that

¹³ Fueling violations are for drip pans and fuel stains on the pavement.

¹⁴ Title 49 U.S.C. Section 47106(b)(1) states that no project grant application for airport development may be approved by the Secretary until the Secretary is satisfied that the sponsor, a public agency, or the United States Government holds good title to the areas of the airport used or intended to be used for the landing, taking off, or surface maneuvering of aircraft, or gives assurance to the Secretary that good title will be acquired.

The *Airport Improvement Program (AIP) Handbook*, FAA Order 5100.38C, further clarifies title for landing and building areas: "Title with respect to lands to be used for landing area or building area purposes can be either fee simple title (free and clear of any and all encumbrances), or title with certain rights excepted or reserved. Any encumbered title must not deprive the sponsor of possession or control necessary to carry out all obligations under the grant. A deed containing a reversionary clause, for "so long as the property is being used for airport purposes," does not negate good title provided the other conditions are satisfied. Where rights excepted or reserved would prevent the sponsor from carrying out its obligations under the grant, such rights must be extinguished or subordinated prior to approval of the project."

the Town holds fee simple title, free and clear of all liens, encumbrances and adverse interests, subject to a reversionary interest held by Boston Metropolitan Airport, Inc. that would revert the property to Boston Metropolitan Airport, Inc. if the property is no longer needed for airport purposes. [FAA Exhibit 1, Item 10.]

Boston Metropolitan Airport, Inc. transferred title to the "1100 Foot Strip" to the Town of Norwood in return for a leaseback arrangement that gave Boston Metropolitan Airport, Inc. an executed lease with a 20-year term and three 20-year options to renew and a reversionary interest in the property should the Airport cease to exist.¹⁵ Boston Metropolitan Airport, Inc. has exercised the first renewal option. [FAA Exhibit 1, Item 7.]

According to the Town, this leaseback arrangement allowed the Town of Norwood to acquire the "1100 Foot Strip" without actually purchasing the land.¹⁶ The 1967 lease does not contain any provisions for utility easements and is silent on the Town's right of entry to maintain or install utilities. [FAA Exhibit 1, Item 7.]

FAA Investigation

On July 14, 2006, Boston Air Charter filed an informal complaint with the FAA New England Regional Headquarters. The result of FAA's investigation determined that the Town had not violated its federal obligations. According to the Regional Headquarters:

The review indicates that the Town of Norwood intended to allow [Boston Air Charter] to install and operate a fuel farm at Norwood Memorial Airport if [Boston Air Charter] could negotiate with [Eastern Air Center] to run electrical service across [Eastern Air Center's] leasehold. The Town's ability to force [Eastern Air Center] to permit the electrical line is outside FAA's purview.

[FAA Exhibit 1, Item 3, exhibit A.]

The FAA did direct the Town to ensure that any future Airport leases must provide the right to install utility lines across leased premises.

On April 2, 2007, Boston Air Charter filed a formal complaint under Title 14 Part 16 with the Federal Aviation Administration.

Boston Air Charter asked the FAA to direct the Town and Eastern Air Center to provide access to install electric utilities for Boston Air Charter's fueling operation and to grant a long-term lease on fair terms to operate its fueling facility. Boston Air Charter asked the FAA to issue a finding that the Town is obligated to:

¹⁵ The renewal options are at the sole discretion of Boston Metropolitan Airport, Inc.

¹⁶ FAA did not approve the lease back arrangement. FAA accepted the Town counsel's representation that the Town had acquired good title to the property.

- Enter into a lease on reasonable terms, as agreed;
- Either grant Boston Air Charter the right to install the necessary electrical conduits or for the Town to install those conduits itself; and
- To take any other action necessary to enable Boston Air Charter to exercise its rights under the grant assurances to fuel its aircraft, either from its own truck on a temporary basis, or through installation of the fueling facility, immediately.

On April 11, 2008, the FAA found the Town in violation of grant assurance 5, *Preserving Rights and Powers*; grant assurance 22, *Economic Nondiscrimination*; and grant assurance 23, *Exclusive Rights*. The Director's Determination ordered the Town to submit a corrective action plan within 30 days that explains how the Airport will (1) provide access for Boston Air Charter to conduct self-fueling operations consistent with state and local regulations; (2) end the practice of awarding long-term leases of federally funded ramps that have the effect of granting one party control over the majority of the ramps on the Airport; (3) put in place a short-term ramp leasing permit policy for the Airport to assert more control of the federally funded ramps, and (4) regain the Airport's rights and powers to access the "1100 Foot Strip" to provide power to the Airport ramps for Airport tenants.

On April 23, 2008, the FAA issued an Errata to the April 11, 2008, Director's Determination identifying the sections under the United States Code under which future grants may be withheld and extending the deadline for filing a corrective action plan or appeal of the Director's Determination. [See FAA Exhibit 1, Item 17A; and Item 18, page 3.]

On May 23, 2008, the Town submitted an appeal of the Director's Determination and a request for a hearing. The Town also submitted a corrective action plan, which is not part of this appeal record. The corrective action plan was held in abeyance pending the outcome of this appeal. [FAA Exhibit 1, Item 18, page 3.]

On June 12, 2008, Boston Air Charter submitted a reply to the Town's appeal of the Director's Determination.

On July 7, 2008, Norwood Airport Commission entered a Motion to Strike Boston Air Charter's reply, received July 15, 2008.

APPLICABLE FEDERAL LAW AND FAA POLICY

The following is a discussion pertaining to the (a) FAA's enforcement responsibilities; (b) the FAA compliance program; (c) statutes, sponsor assurances, and relevant policies; and (d) the complaint and appeal process.

A. FAA Enforcement Responsibilities

The Federal Aviation Act of 1958, as amended, 49 U.S.C. § 40101, et seq., assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety, security, and development of civil aeronautics. The federal role in encouraging and developing civil aviation has been augmented by various legislative actions, which authorize programs for providing funds and other assistance to local communities for the development of airport facilities. In each such program, the airport sponsor assumes certain obligations, either by contract or by restrictive covenants in property deeds and conveyance instruments, to maintain and operate its airport facilities safely, efficiently, and in accordance with specified conditions. Commitments assumed by airport sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation, and maintenance, as well as ensuring the public reasonable access to the airport. Pursuant to 49 U.S.C. § 47122, the FAA has a statutory mandate to ensure that airport owners comply with their federal grant assurances.

B. FAA Airport Compliance Program

The FAA discharges its responsibility for ensuring that airport sponsors comply with their federal obligations through its Airport Compliance Program. Sponsor obligations are the basis for the FAA's airport compliance effort. The airport owner accepts these obligations when receiving federal grant funds or when accepting the transfer of federal property for airport purposes. The FAA incorporates these obligations in grant agreements and instruments of conveyance to protect the public's interest in civil aviation and to ensure compliance with federal laws.

The FAA designed the Airport Compliance Program to ensure the availability of a national system of safe and properly maintained public-use airports which airport sponsors operate in a manner consistent with their federal obligations and the public's interest in civil aviation. The Airport Compliance Program does not control or direct the operation of airports. Rather, it monitors the administration of valuable rights, which airport sponsors pledge to the people of the United States in exchange for monetary grants and donations of federal property, to ensure that airport sponsors serve the public interest.

FAA Order 5190.6A, *Airport Compliance Requirements*, October 2, 1989, (hereinafter Order) sets forth policies and procedures for the FAA Airport Compliance Program. The

Order is not regulatory and is not controlling with regard to airport sponsor conduct; rather, it establishes the policies and procedures for FAA personnel to follow in carrying out the FAA's responsibilities for ensuring airport compliance. It provides basic guidance for FAA personnel in interpreting and administering the various continuing commitments airport owners make to the United States as a condition for the grant of federal funds or the conveyance of federal property for airport purposes. The Order, *inter alia*, analyzes the various obligations set forth in the standard airport sponsor assurances, addresses the application of the assurances in the operation of public-use airports, and facilitates interpretation of the assurances by FAA personnel.

The FAA Compliance program is designed to achieve voluntary compliance with federal obligations accepted by owners and/or operators of public-use airports developed with FAA administered assistance. Therefore, in addressing allegations of noncompliance, the FAA will make a determination as to whether an airport sponsor is *currently* in compliance with the applicable federal obligations. Consequently, the FAA will consider the successful action by the airport to cure any alleged or potential past violation of applicable federal obligation to be grounds for dismissal of such allegations. [See e.g. Wilson Air Center v. Memphis and Shelby County Airport Authority, FAA Docket No. 16-99-10, (August 30, 2001) (Final Decision and Order).]

C. Statutes, Sponsor Assurances, and Relevant Policies

As a condition precedent to providing airport development assistance under the Airport and Airway Improvement Act of 1982 (AAIA), codified at Title 49 U.S.C. § 47101, et seq., the Secretary of Transportation receives certain assurances from the airport sponsor.

The AAIA, 49 U.S.C. § 47101, et seq., sets forth assurances to which an airport sponsor receiving federal financial assistance must agree as a condition precedent to receipt of such assistance. These sponsorship requirements are included in every airport improvement program (AIP) grant agreement. Upon acceptance of an AIP grant by an airport sponsor, the assurances become a binding obligation between the airport sponsor and the federal government.

Three federal grant assurances apply to the specific circumstances of this complaint: (1) assurance 5, *Preserving Rights and Powers*, (2) assurance 22, *Economic Nondiscrimination*, and (3) assurance 23, *Exclusive Rights*.

1. Assurance 5, Preserving Rights and Powers

Federal grant assurance 5, *Preserving Rights and Powers*, (Assurance 5) requires the airport owner or sponsor to retain all rights and powers necessary to ensure the continued operation of the airport consistent with its federal obligations. This assurance implements the provisions of the AAIA, 49 U.S.C. § 47107(a), et seq., and requires, in pertinent part, that the owner or sponsor of a federally obligated airport

“...will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor.”

Assurance 5 states:

- a. [The airport owner or sponsor] will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.**
- b. [The airport owner or sponsor] will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which federal funds have been expended, for the duration of the terms, conditions, and assurances in the grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of the grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.**
- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial noncompliance with the terms of the agreement.**
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial noncompliance with the terms of the agreement.**

- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
- f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to ensure that the airport will be operated and maintained in accordance with Title 49, United States Code, the regulations and the terms, conditions and assurances in the grant agreement and shall ensure that such arrangement also requires compliance therewith.

FAA Order 5190.6A, *Airport Compliance Requirements*, October 2, 1989, describes the responsibilities under Assurance 5 assumed by the owners or sponsors of public-use airports developed with federal assistance. Among these is the responsibility for enforcing adequate rules, regulations, or ordinances as are necessary to ensure the safe and efficient operation of the airport. [See Order, Secs. 4-7 and 4-8.]

2. Assurance 22, Economic Nondiscrimination

Federal grant assurance 22, *Economic Nondiscrimination*, (Assurance 22) implements the provisions of 49 U.S.C. § 47107(a)(1) through (6), and requires, in pertinent part, that the owner or sponsor of a federally-obligated airport:

...will make its airport available as an airport for public use on reasonable terms, and without unjust discrimination, to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport. [Assurance 22(a).]

...each air carrier using such airport shall have the right to service itself or to use any fixed-base operator that is authorized or permitted by the airport to serve any air carrier at such airport. [Assurance 22(d).]

...will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees (including, but not limited to maintenance, repair and fueling) that it may choose to perform. [Assurance 22(f).]

...may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport. [Assurance 22(h).]

...may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public." [Assurance 22(i).]

Subsection (h) qualifies subsection (a), and subsection (i) represents an exception to subsection (a) to permit the owner or sponsor to exercise control of the airport sufficient to preclude unsafe and inefficient conditions, which would be detrimental to the civil aviation needs of the public.

The FAA Order 5190.6A describes the responsibilities under Assurance 22 assumed by the owners or sponsor of public use airports developed with federal assistance. Among these is the obligation to treat in a uniform manner those users making the same or similar use of the airport and to make all airport facilities and services available on reasonable terms without unjust discrimination. [See Order, Secs. 4-14(a)(2) and 3-1.]

The owner or sponsor of any airport developed with federal grant assistance is required to operate the airport for the use and benefit of the public and to make it available to all types, kinds and classes of aeronautical activity on reasonable terms, and without unjust discrimination. [See Order, Sec. 4-13(a).]

The Order also provides "...an aircraft operator, otherwise entitled to use the landing area, may tie-down, adjust, repair, refuel, clean and otherwise services its own aircraft, provided it does so with its own employees in accordance with reasonable rules or standards of the sponsor relating to such work." [See Order, Sec 4-15(a).]

FAA policy regarding the airport owner or sponsor's responsibility for ensuring the availability of services on reasonable terms and without unjust discrimination provides that third-party leases contain language incorporating these principles. Assurance 22(b) states,

In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the owner or sponsor will insert and enforce provisions requiring the contractor to --

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

- (b) 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.

The FAA considers it inappropriate to provide federal assistance for improvements to airports where the benefits of such improvements will not be fully realized due to inherent restrictions of aeronautical activities. [See Order, Sec. 3-8(a).]

3. Assurance 23, Exclusive Rights

Federal grant assurance 23, *Exclusive Rights*, (Assurance 23) implements the provisions of 49 U.S.C. §§ 40103(e) and 47107(a)(4), and requires, in pertinent part, that the owner or sponsor of a federally obligated airport:

...will permit no exclusive right for the use of the airport by any persons providing, or intending to provide, aeronautical services to the public.

...will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities...

...will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49 United States Code.

In the Order, the FAA discusses its exclusive rights policy and broadly identifies aeronautical activities as subject to the statutory prohibition against exclusive rights. While public-use airports may impose qualifications and minimum standards upon those who engage in aeronautical activities, FAA has taken the position that the application of any unreasonable requirement or any standard that is applied in an unjustly discriminatory manner may constitute the constructive grant of an exclusive right. Courts have found the grant of an exclusive right where a significant burden has been placed on one competitor that is not placed on another. [See e.g. Pompano Beach v FAA, 774 F2d 1529 (11th Cir, 1985).] An owner or sponsor is under no obligation, however, to permit aircraft owners to introduce onto the airport equipment, personnel, or practices which would be unsafe, unsightly, detrimental to the public welfare, or which would affect the efficient use of airport facilities. [See Order, Sec.3-9 (e).] However, where no attempt has been made to perform such services for others, an aircraft owner should be permitted to fuel, wash, repair, paint and otherwise take care of their own aircraft. A restriction which has the effect of diverting such business [fueling, washing, repairing and taking care of one's own aircraft] to a commercial operator amounts to an exclusive monopoly of an aeronautical activity contrary to law. [See Order, Sec.3-9 (e) (1).]

Leasing all available airport land and improvements planned for aeronautical activities to one enterprise will be construed as evidence of intent to exclude others unless it can be demonstrated that the entire leased area is presently required and will be immediately used to conduct the activities contemplated by the lease. [See Order, Sec. 3-9(c).]

FAA Order 5190.6A provides additional guidance on the application of the statutory prohibition against exclusive rights and FAA policy regarding exclusive rights at public-use airports. [See Order, Ch. 3.]

D. The Complaint and Appeal Process

1. Right to File the Formal Complaint

Pursuant to 14 CFR, Part 16, § 16.23, a person directly and substantially affected by any alleged noncompliance may file a complaint with the FAA. The complainant shall provide a concise but complete statement of the facts relied upon to substantiate each allegation. The complaint shall also describe how the complainant was directly and substantially affected by the things done or omitted by the respondents. [14 CFR, Part 16, § 16.23(b)(3,4).]

If, based on the pleadings, there appears to be a reasonable basis for further investigation, the FAA will investigate the subject matter of the complaint. In rendering its initial determination, the FAA may rely entirely on the complaint and the responsive pleadings provided. Each party shall file documents that it considers sufficient to present all relevant facts and arguments necessary for the FAA to determine whether the sponsor is in compliance. [14 CFR, Part 16, § 16.29.]

The proponent of a motion, request, or order has the burden of proof. A party who has asserted an affirmative defense has the burden of proving the affirmative defense. This standard burden of proof is consistent with the Administrative Procedure Act (APA) and federal case law. The APA provision states, “[e]xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof.” 5 U.S.C. § 556(d). [See also, Director, Office of Worker’s Compensation Programs, Department of Labor v. Greenwich Collieries, 512 US 267, 272 (1994); Air Canada et al. v. Department of Transportation, 148 F3d 1142, 1155 (DC Cir, 1998).] Title 14 CFR § 16.229(b) is consistent with 14 CFR § 16.23, which requires the complainant to submit all documents then available to support his or her complaint. Similarly, 14 CFR § 16.29 states that “[e]ach party shall file documents that it considers sufficient to present all relevant facts and argument necessary for the FAA to determine whether the sponsor is in compliance.”

2. Right to Appeal the Director's Determination

A party to this decision adversely affected by the Director's Determination may file an appeal with the Associate Administrator within 30 days after the date of service of the initial determination. If no appeal is filed within the time period specified, the Director's Determination becomes the final decision and order of the FAA without further action. A Director's Determination that becomes final because there is no administrative appeal is not judicially reviewable. [14 CFR, Part 16, § 16.33.]

Part 16 requires all relevant facts to be presented in the complaint documents. [14 CFR, Part 16, § 16.23(b)(3).] New allegations or issues should not be presented on appeal. Review by the Associate Administrator is limited to an examination of the Director's Determination and the administrative record upon which such determination was based. Under Part 16, complainants are required to provide with the complaint and reply all supporting documentation upon which it relied to substantiate its claims. Failure to raise all issues and allegations in the original complaint documents may be cause for such issues and allegations to be deemed waived and not reviewable upon appeal. This is consistent with the Supreme Court's recognition that courts may require administrative issue exhaustion as a general rule because it is usually appropriate under an [administrative] agency's practice for contestants in an adversarial proceeding before it to develop fully all issues there. The Court concluded that where parties are expected to develop the issues in an adversarial administrative proceeding, the rationale for requiring issue exhaustion is at its greatest. [See Sims v. Apfel, 530 US 103, 108-110 (2000) citing Hormel v. Helvering, 312 US 552 (1941) and US v. LA Tucker Truck Lines, 344 US 33, (1952).]

3. FAA's Responsibility with Regard to an Appeal

Pursuant to 14 CFR, Part 16, § 16.33, the Associate Administrator will issue a final decision on appeal from the Director's Determination, without a hearing, where the complaint is dismissed after investigation.

In such cases, it is the Associate Administrator's responsibility to determine whether (a) the findings of fact made by the Director are supported by a preponderance of reliable, probative, and substantial evidence, and (b) each conclusion of law is made in accordance with applicable law, precedent, and public policy. [See e.g. Ricks v Millington Municipal Airport, FAA Docket No. 16-98-19, (December 30, 1999) (Final Decision and Order) page 21, and 14 CFR, Part 16, § 16.227.]

VI. ANALYSIS AND DISCUSSION

On appeal from a Director's Determination, the appellant must demonstrate that the Director erred by (1) making findings of fact that were not supported by a preponderance of reliable, probative, and substantial evidence, or (2) by making conclusions of law that were not in accordance with applicable law, precedent, and public policy.

Appellant states, “the Acting Director made substantial errors in reviewing the evidence, and ... misapplied and misconstrued applicable law and FAA precedent.” [FAA Exhibit 1, Item 18, page 6.] Appellant questions whether the Director properly concluded:

- (a) The Town violated grant assurance 5, *Preserving Rights and Powers*, by surrendering significant rights and powers when it entered into a leaseback agreement with Boston Metropolitan Airport, Inc. (BMA) for the “1100 Foot Strip.”
- (b) The Town violated grant assurance 22, *Economic Nondiscrimination*, by denying Boston Air Charter access to conduct a commercial aeronautical activity and by restricting its ability to self-fuel.
- (c) The Town violated grant assurance 23, *Exclusive Rights*, by entering into lease agreements that gave control of the only power source to one tenant.

Appellant also requested the Associate Administrator to conduct a hearing on the matter.

A. Issue 1: Grant Assurance 5, *Preserving Rights and Powers*, and the Leaseback Provision

Appellant questions whether the Director properly concluded the Town violated grant assurance 5, *Preserving Rights and Powers*, by surrendering significant rights and powers when it entered into a leaseback agreement with Boston Metropolitan Airport, Inc. (BMA) for the “1100 Foot Strip.” Appellant argues the Town is in compliance with grant assurance 5, *Preserving Rights and Powers*, because the 1967 lease with BMA was executed pursuant to the express requirements of the FAA. [FAA Exhibit 1, Item 18, page 9.] Appellant also argues this finding exceeded the Director’s scope since the Complainant did not allege a violation of grant assurance 5. [FAA Exhibit 1, Item 18, page 9.]

The FAA directed the Town to acquire fee simple ownership of the “1100 Foot Strip,” – which was previously owned jointly by the Airport and Boston Metropolitan Airport, Inc (BMA) – as a prerequisite for funding future airport improvement projects. On December 28, 1967, the Town counsel signed a certificate affirming that the Town of Norwood holds fee simple title, free and clear of all liens, encumbrances and adverse interests, subject to a reversionary interest held by BMA that would revert the property to BMA, if the property is no longer needed for airport purposes. [FAA Exhibit 1, Item 10.]

Fee simple ownership represents absolute ownership of real property. Upon acquiring the title to the property, the Town became the property owner and had all rights associated with the property with the exception of the reversionary interest. At that

point, the Town had the right to access the property, the right to lease the property, the right to develop the property, and the right to grant easements. The right of access and the right to grant utility easements and maintain and install utilities are essential rights integral to the operation and development of any public use airport. A sponsor must have control of its land in order to support development and growth of the airport.

The Town, however, relinquished some of those rights when it entered into a leaseback arrangement with Boston Metropolitan Airport, Inc. (BMA), and BMA entered into a sublease with Eastern Air Center. The leaseback agreement does not contain provisions for utility easements, and it is silent on the Airport's right of entry to the property or a right to maintain and install utilities on the property. [FAA Exhibit 1, Item 7.]

The Town argues it was within its rights to lease the property back to Boston Metropolitan Airport, Inc. [FAA Exhibit 1, Item 18, page 9.] The FAA does not dispute this. Leasing the property is not the issue nor is it the basis for the Director's finding under grant assurance 5, *Preserving Rights and Powers*. The issue under review, and the basis for the Director's finding, is the Town's failure to retain the absolute right of access and the right to grant utility easements and to maintain and install utilities. These are essential rights integral to the operation and development of any public use airport.

The Town acquired the "1100 Foot Strip" property at the FAA's direction. The Town's decision to enter into the leaseback agreement – and the terms of that agreement – were wholly the responsibility of the Town. The FAA was not a party to the leaseback agreement, nor did it require the Town to enter into such an agreement. [FAA Exhibit 1, Item 18, page 10.]

Assurance 5 states that the airport sponsor "will not take or permit any action that would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement...." For whatever reason, and by whatever form, the Town relinquished these rights as evidenced by the Town's inability to broker a utility easement necessary to enable Boston Air Charter to establish a fueling facility.¹⁷ The details of how that happened do not alter the fact that it did happen. The Associate Administrator affirms the Director's finding that the Town of Norwood is in violation of grant assurance 5, *Preserving Rights and Powers*, by giving up the rights and powers necessary to ensure access for a prospective aeronautical activity.

The Associate Administrator also wants to clarify for the Town that the FAA is responsible for enforcing the grant assurances. Any action that is contrary to the

¹⁷ The Town's right to grant Boston Air Charter access for the purpose of receiving electric service to the DC-3 Ramp was effectively blocked by the Town's 1967 lease agreement with Boston Metropolitan Airport, Inc. and their subsequent sublease with Eastern Air Center. The Town put Boston Air Charter on notice that it was unable to approve the long-term lease agreement for the DC-3 Ramp and that Boston Air Charter must find another way get electric service without encroaching on the Eastern Air Center leasehold. [See FAA Exhibit 1, Item 17, page 23.]

sponsor's grant assurances is within the scope of the FAA to review and address. When information contained in the administrative record to a Part 16 complaint leads the agency to review areas of noncompliance – whether or not they are alleged by the complainant – the agency will, nonetheless, make a finding on those areas. [See for example, M. Daniel Carey and Cliff Davenport v. Afton-Lincoln County Municipal Airport Joint Powers Board, FAA Docket No. 16-06-06, (January 19, 2007) (Director's Determination), Issue 7.] All potential grant assurance violations are within the scope of the FAA to review and address, whether alleged in a Part 16 complaint or identified through any other means.

The Director did not err in finding the Town in violation of grant assurance 5, *Preserving Rights and Powers*. The Town clearly did not have the legal control necessary to resolve an access issue protected under the grant assurances.

The Town seeks to supplement the record on appeal. In support of its request, the Town contends that the additional documentary evidence pertaining to FlightLevel Norwood (FLN) was not in existence at the time of the parties' respective pleadings and written submissions, nor were the matters relating to FLN even contemplated during the pendency of the present matter. [FAA Exhibit 1, Item 18, page 7.]

It is well established that in an agency's appeal process new evidence need not be admitted unless the new evidence was not available and could not have been discovered or presented at the prior proceeding. Charles H. Koch, Jr. *Administrative Law and Practice*, Vol. 1, § 6.76. (1997). The new evidence will not be considered if the party could reasonably have known of its availability. Koch, *supra*, § 6.76. A party may not correct a mistake in its original selection of evidence by then compelling the agency to consider it on appeal. Koch, *supra*, § 6.76.

Part 16 requires all relevant facts to be presented in the complaint documents. [See Sims v. Apfel, 530 U.S. 103, 108-110 (2000)] The FAA may, under 14 CFR § 16.29(b)(1), rely entirely on the complaint and responsive pleadings provided by the parties in reaching its initial determination. If the parties could supplement the Director's Determination after it is issued, the administrative process would be endless and contrary to the expedited procedures provided under Part 16. [See Preamble, Rules of Practice for Federally Assisted Airport Proceedings, Summary, 61 Fed. Reg. 53998 (Oct. 16, 1996)]

Pursuant to 14 CFR § 16.23, the parties are required to submit all of their pleadings and other documentation in support of their case so that in rendering the Director's Determination, the FAA would have the entire record before it. Review by the Associate Administrator is limited to an examination of the Director's Determination and the Record upon which such determination was based.

FLN's actions occurred during the time the matter was under consideration by the Director. While the Town could have submitted a motion seeking to supplement the

record during its pendency before the Director, the Associate Administrator has elected to consider the seven supplemental exhibits submitted on appeal by the Town.¹⁸

In reliance on its new exhibits, the Town argues on appeal that Eastern Air Center is no longer a lessee or sublessee at the Airport and its successor has not overridden the Airport's ability to respond to new business. [FAA Exhibit 1, Item 18, page 8.] Having considered the new exhibits, the Associate Administrator notes that Eastern Air Center is no longer a lessee or sublessee at the Airport. The record is not clear whether the Town had to approve the assignment from Eastern Air Center to FLN. If the Town did have to approve the assignment, this would have been an opportune time for the Town to negotiate its right of access and right to grant utility easements, including the right to maintain and install utilities.

Nonetheless, there is no indication in the Appellant's submissions that any easement right has been granted or recaptured to enable Boston Air Charter to obtain electrical service so it can establish a fueling facility on its own leasehold. If the Town has, indeed, taken appropriate action to regain its rights and powers to access the "1100 Foot Strip" to provide power to the Airport ramps and Airport tenants, the Town needs to address this in a corrective action plan as ordered in the Director's Determination. The FAA will then evaluate whether the Town's actions are sufficient to address the issues of noncompliance identified in the Director's Determination.

Without this fix, the substitution of FLN for Eastern Air Center does not cure the noncompliance or render the matter moot.

B. Issue 2: Grant Assurance 22, *Economic Nondiscrimination*, and Access for Aeronautical Activity and Self-fueling

Appellant questions on appeal whether the Director properly concluded the Town violated grant assurance 22, *Economic Nondiscrimination*, by denying Boston Air Charter access to conduct a commercial aeronautical activity and by restricting its ability to self-fuel. The Director found the Town failed to provide a means for Boston Air Charter to obtain the necessary electrical service to establish a fuel facility so it could self-fuel its own aircraft and so it could potentially provide fueling services to the public.

The Town argues that even though the Town was unable to assist Boston Air Charter with an easement through the "1100 Foot Strip" (over Eastern Air Center's objections) to install a conduit for electrical service, it did offer a reasonable alternative. In addition, the Town argues Boston Air Charter is currently able to self-fuel.

Electrical Service

The record shows the Town was willing to enter into a lease agreement with Boston Air Charter on the DC-3 Ramp and to allow Boston Air Charter to engage in fueling

¹⁸ Boston Air Charter did not formally object to the record being supplemented on Appeal.

services. [FAA Exhibit 1, Item 18, page 12.] The fueling activity required electrical service, which had to be run through the "1100 Foot Strip" leasehold of Eastern Air Center. The only transformer providing power to the airfield ramps is located on the "1100 Foot Strip." The transformer is owned by the Town of Norwood Municipal Light Department. Eastern Air Center declined to allow the necessary easement. As a result, Boston Air Charter was not able to obtain electrical service and was not able to establish fueling services on the DC-3 Ramp.

Appellant argues the Town provided a reasonable alternative to the easement through the Eastern Air Center leasehold when it offered to allow Boston Air Charter to dig trench drains and install electrical access during the apron reconstruction project in 2005. [FAA Exhibit 1, Item 18, page 13.] Boston Air Charter declined that offer because its costs would have been substantially higher with the Town's contractor over what Boston Air Charter would have to pay its own contractor.¹⁹ Boston Air Charter states it was advised it could "choose to wait until the [Town's] contractor was done, and then hire [its own] contractor to install conduits later." [FAA Exhibit 1, Item 19, pages 1-2.] After the apron reconstruction was completed, however, the Town would not permit the newly paved area to be cut in order to install the trench drains for three years following the repaving. [FAA Exhibit 1, Item 9, page 4.]

While the record evidence shows Boston Air Charter was given the opportunity to participate in the apron reconstruction, it does not show this activity would have assured Boston Air Charter electrical service. The Director noted that even if Boston Air Charter had installed underground conduits, it would still have needed approval from Eastern Air Center to access the "1100 Foot Strip." Since Eastern Air Center successfully opposed any such easement, the Director reasoned that participating – or failing to participate – in the apron reconstruction was not the means by which Boston Air Charter could have obtained reasonable access to engage in a commercial aeronautical activity.²⁰ [See FAA Exhibit 1, Item 17, page 26.]

As stated previously, there is no indication in the Appellant's submissions that any easement right has been granted or recaptured to enable Boston Air Charter to obtain electrical service so it can establish a fueling facility on its own leasehold.

Access to electrical service is a requirement of any commercial aeronautical tenant operating an aircraft fuel facility. The Director noted the Town is not required to provide electrical service to Boston Air Charter directly, but it does have an obligation to

¹⁹ The record shows Boston Air Charter's costs would have been 91% higher using the Town's contractor. The Town's contractor would have charged \$55,800. Another contractor submitted an offer of \$29,185. The difference of \$26,615 (\$55,800 minus \$29,185) divided by the \$29,185 quoted from its own contractor is 91.19%.

²⁰ In its reply to this appeal, Boston Air Charter confirms its own understanding that installing conduits under the ramp did not ensure actual connection of the electric service across the section of the "1100 Foot Strip" to the transformer. [FAA Exhibit 1, Item 19, page 2.]

provide suitable area and space on the Airport where Boston Air Charter (or another potential aeronautical service provider) can obtain access to utilities.

Self-Fueling

In 2004, Boston Air Charter received a temporary self-fueling permit to fuel its aircraft using a 5,100 gallon Jet A fuel truck while it completed the necessary steps to install a permanent fuel facility. The Town terminated Boston Air Charter's temporary self-fueling permit for cause when Boston Air Charter violated the Town's rules and regulations regarding fueling. [See FAA Exhibit 1, Item 18, page 4.]

In addressing the issue of self-fueling, the Director acknowledged the Town's safety and public welfare concerns and noted "the Town was within its rights to terminate the temporary fueling operations" given the circumstances and the Town's concern over liability issues. Nonetheless, the Director advised that the Town has an obligation to provide access for self-fueling subject to reasonable rules and standards. [FAA Exhibit 1, Item 17, page 27.]

At the time this appeal was filed, Appellant reports that Eastern Air Center is no longer operating on the Airport. Eastern Air Center assigned its interest to FlightLevel Norwood, LLC (NLF) on January 9, 2008. [FAA Exhibit 1, Item 18, attachment A.] Appellant argues that FlightLevel Norwood entered into an agreement with Boston Air Charter February 15, 2008, to permit Boston Air Charter to self-fuel its own aircraft from FlightLevel Norwood's location. [FAA Exhibit 1, Item 18, attachment C.]

Appellant argues the Director's "conclusions are displaced and undermined by the introduction of [FlightLevel Norwood] as successor-in-interest at the Airport." [FAA Exhibit 1, Item 18, page 7.] Appellant states, "[FlightLevel Norwood's] agreement to provide [Boston Air Charter] with certain access to its fuel farm renders the Acting Director's Determination moot." [FAA Exhibit 1, Item 18, page 6.]

Boston Air Charter disputes the Town's claim that it is now able to self-fuel. The record evidence confirms the Complainant's position that it is not permitted to self-fuel. Although the agreement with FlightLevel Norwood is called a "Self-Fueler Operations Agreement" [FAA Exhibit 1, Item 18, attachment C], it merely permits an employee from Boston Air Charter to pump fuel from FlightLevel Norwood's pumps during the hours of 9:30 p.m. and 5:30 a.m. when FlightLevel Norwood personnel are not on the premises. Essentially, this "self-fueling" option is provided only to allow quick response for late night medical flights. [See FAA Exhibit 1, Item 18, page 8; and Item 18, attachments B and D.] Boston Air Charter may dispense the fuel into its own aircraft during these hours, but it must pay FlightLevel Norwood's standard fuel rates just as if FlightLevel Norwood personnel were pumping the fuel. [FAA Exhibit 1, Item 19, attachment A.] This is not the definition of self-fueling.

Self-fueling or self-servicing means the fueling or servicing of an aircraft by the owner of the aircraft or the owner's employee using fuel obtained by the aircraft owner from the source of his/her preference. Self-service includes activities such as adjusting, repairing, cleaning, and otherwise providing service to an aircraft, provided the service is performed by the aircraft owner or his/her employees with resources supplied by the aircraft owner. Title 14 CFR Part 43 permits the holder of a pilot certificate to perform specific types of preventative maintenance on any aircraft owned or operated by the pilot. Aircraft owners have the right to self-service their own aircraft, including fueling. They have the right to furnish their own supplies, including fuel. [See FAA Order 5190.6A, *Airport Compliance Requirements*, October 2, 1989, section 3-9(e)(1) and (2).] The agreement with FlightLevel Norwood does not meet the definition of self-fueling for Boston Air Charter.

Associate Administrator's Review of Issue 2, Economic Nondiscrimination

On appeal, the Associate Administrator will consider whether (a) findings of fact were supported by a preponderance of reliable, probative, and substantial evidence; and (b) conclusions of law were in accordance with applicable law, precedent, and public policy.

While Appellant states in general, "...the Acting Director made substantial errors in reviewing the evidence and he misapplied and misconstrued applicable law and FAA precedent" [FAA Exhibit 1, Item 18, page 6], the appeal does not identify errors of fact or law pertaining to the lack of electrical service for Boston Air Charter or its inability to self-fuel. Rather, Appellant argues the Director's Determination is moot as a result of the new agreement with FlightLevel Norwood that permits Boston Air Charter to self-fuel. [FAA Exhibit 1, Item 18, pages 6-7.]

The record does not support Appellant's assertions that the Town provided Boston Air Charter a reasonable alternative for securing electrical service or that Boston Air Charter is currently self-fueling. Nor does the record support the Town's assertion that its actions "were neither unreasonable nor unjustly discriminatory" or that the Town was simply requiring "[Boston Air Charter] to adhere to the same rules and regulations as all other carriers and businesses at the Airport." [FAA Exhibit 1, Item 8, page 12.]

There is no indication in the Appellant's submissions that any easement right or viable alternative option has been granted to enable Boston Air Charter to obtain electrical service in order to establish a fueling facility on its own leasehold, which was at the heart of the initial Complaint. The substitution of FlightLevel Norwood for Eastern Air Center has not resulted in Boston Air Charter being permitted to access the electrical power source through the "1100 Foot Strip" now occupied by FlightLevel Norwood. Likewise, the fuel service agreement with FlightLevel Norwood, which allows Boston Air Charter to pump fuel into its own aircraft during the night-time hours when FlightLevel Norwood personnel are not on the premises, is not "self-fueling" as defined by the FAA. Boston Air Charter is still unable to install a fueling facility, is still unable

to self-fuel, and is still unable to establish itself as a fixed-base operator providing fuel service to the public.

The Director did not err in finding the Town in violation of grant assurance 22, *Economic Nondiscrimination*, by denying Boston Air Charter access to conduct a commercial aeronautical activity and by restricting its ability to self-fuel.

C. Issue 3: Grant Assurance 23, *Exclusive Rights*, and the Power Source

Appellant questions on appeal whether the Director properly concluded the Town violated grant assurance 23, *Exclusive Rights*, by entering into lease agreements that gave control of the only power source to one tenant, effectively restricting commercial fuel sales to that one enterprise.

The Town argues it demonstrated no intent, either express or implied, that Eastern Air Center had the exclusive right to provide fuel services at the Airport. The Town argues that having only one enterprise on the Airport offering fueling services is not a violation of the exclusive rights prohibition if there is no understanding or express agreement or intent to exclude other reasonably qualified enterprises. [FAA Exhibit 1, Item 18, page 14.]

The FAA recognizes the Town did not grant an explicit exclusive right to Eastern Air Center to conduct fueling operations. The Town attempted to assist Boston Air Charter in obtaining space to construct its own fuel facility. Unfortunately, Boston Air Charter was unable to gain access to the electrical power source through the "1100 Foot Strip" on Eastern Air Center's leasehold. [See Issue 1 above.] Access to electrical service is a requirement of any commercial aeronautical tenant operating an aircraft fuel facility. As the Director noted, the Town is not required to provide electrical service to Boston Air Charter directly, but it does have an obligation to provide suitable area and space on the Airport where Boston Air Charter (or another potential aeronautical service provider) can obtain access to utilities. [FAA Exhibit 1, Item 17, page 28.] The Town did not do this.

The Town fails to appreciate the constructive nature of the exclusive right conferred upon Eastern Air Center then – and upon FlightLevel Norwood now – when the Town failed to provide a viable means for competitor Boston Air Charter to obtain electrical service necessary to conduct fueling operations. Without electrical service, Boston Air Charter could not install its fuel facility. Without installing the fuel facility, Boston Air Charter could not compete with Eastern Air Center for fuel sales and could not conduct its own self-fueling. The result is that Eastern Air Center remained the only entity on the Airport with the ability to dispense fuel to the public. FlightLevel Norwood took over the lease from Eastern Air Center and is now the only entity on the Airport offering fuel sales to the public.

Appellant quotes the FAA stating, "[T]he providing of services at an airport by a single fixed-base operator shall not be construed as an exclusive right if it is would be unreasonably costly, burdensome, or impractical for more than one fixed-base operator to provide such services..." [FAA Exhibit 1, Item 18, page 14.] Yet the Town does not argue that is it unreasonably costly, burdensome, or impractical to accommodate Boston Air Charter. Appellant continues the quote, "...and if allowing more than one fixed-base operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-base operator and such airport...." The Town points out that it terminated its lease with Eastern Air Center for the DC-3 Ramp in order to lease it to Boston Air Charter; the Town does not, however, state that leased space was, in any way, an impediment to Boston Air Charter's desire to engage in fueling operations on the Airport.

Appellant again quotes the FAA stating, "So long as the opportunity to engage in an aeronautical activity is available to those who meet reasonable and relevant standards, the fact that only one enterprise takes advantage of the opportunity does not constitute a grant of an exclusive right." [FAA Exhibit 1, Item 18, page 14.] In this case, however, there is not just one enterprise that wants to take advantage of the opportunity to engage in an aeronautical activity. Eastern Air Center had (and now FlightLevel Norwood has) the only fuel service on the Airport. Boston Air Charter wants to engage is the same aeronautical activity.

The Appellant is correct in quoting the FAA that, "The exclusive rights prohibition does not guarantee an airport user the right to acquire a specific piece of private property, or access to a specific location on the airport." [FAA Exhibit 1, Item 18, page 16.] However, Boston Air Charter is not arguing that it should have a specific piece of property on the Airport; nor did the Director advise the Town that it had to provide a specific piece of property. The Director ordered the Town to "regain the Airport's rights and powers to access the '1100 Foot Strip' to provide power to the Airport ramps for Airport tenants." [FAA Exhibit 1, Item 17, page 30.] The Town may, in fact, offer an alternate location and/or an alternate power source option so long as it meets the requirements of making electrical power available to aeronautical tenants.

The grant of an exclusive right to conduct an aeronautical activity at an airport on which federal funds have been expended is considered a violation of Section 308(a) of the Federal Aviation Act (49 U.S.C. § 40103(e)), whether such exclusive right results from an express agreement, from the imposition of unreasonable standards or requirements, or by any other means. [FAA Order 5190.6A, *Airport Compliance Requirements*, October 2, 1989, section 3-8(b).] In this case, the Town effectively gave Eastern Air Center (and then FlightLevel Norwood) the exclusive right to operate a fueling facility when it enabled that enterprise to control the only electrical power source and failed to provide an alternate option for electrical service to competitors.

In addition, an airport proprietor has the responsibility to permit self-fueling under reasonable standards that enhance the safety and efficiency of an airport operation.

Aircraft owners have the right to self-service their own aircraft using their own personnel, including fueling, washing, repairing, painting, and otherwise taking care of their own aircraft. A restriction that has the effect of diverting such business to a commercial operator amounts to an exclusive monopoly of an aeronautical activity contrary to law. [See FAA Order 5190.6A, *Airport Compliance Requirements*, October 2, 1989, section 3-9(e)(1).] The Town touts the "Self-Fueler Operations Agreement" with FlightLevel Norwood as the solution to Boston Air Charter's desire to self-fuel its own aircraft. In fact, that agreement merely serves to divert Boston Air Charter's fuel needs to FlightLevel Norwood. It is a means of boosting FlightLevel Norwood's commercial fuel sales; it is not a self-fueling solution.

The Associate Administrator finds the Director did not err in finding the Town in violation of grant assurance 23, *Exclusive Rights*, by entering into lease agreements that gave control of the only power source to one tenant, effectively restricting commercial fuel sales to that one enterprise.

D. Request for Hearing

On Appeal, the Town requested the Associate Administrator to conduct a hearing in this matter. Pursuant to 14 CFR, Part 16, § 16.33, the Associate Administrator will issue a final decision on appeal from the Director's Determination, without a hearing, where a hearing is not required by statute and is not otherwise made available by the FAA.

In accordance with 14 CFR § 16.109, if the Director in his determination proposes to issue an order withholding approval of an application for a grant apportioned under 49 U.S.C. § 47114(c) and (e), or a cease and desist order, or any other compliance order issued by the Administrator to carry out the provisions of a statute listed in 14 CFR § 16.1, and required to be issued after notice and opportunity for a hearing, then a respondent will have the opportunity for a hearing. [See 49 U.S.C. § 47106(d).] The Courts of Appeals that have examined the issue have held that the Part 16 hearing rules are consistent with 49 USC § 46101(a). [See e.g., Penobscot Air Services LTD v FAA, 164 F 3d 713, 720 (1st Cir., 1999); Lange v FAA, 208 F3d, 389, 391 (2nd Cir., 2000; Wilson Air Center v FAA, 372 F3d 807 (6th Cir., 2004).]

This is not the case here. Norwood Memorial Airport is a non-primary general aviation airport covered under 49 U.S.C. § 47114(d) and thus is not entitled to a hearing. The Associate Administrator denies the request for a hearing.

VII. CONCLUSION

The FAA's role in this appeal is to determine only the narrow issue of whether the Director erred in findings of fact or conclusions of law in issuing the Director's Determination of April 11, 2008.

Upon an appeal of a Part 16 Director's Determination, the Associate Administrator must determine whether (a) findings of fact made by the Director are supported by a preponderance of reliable, probative, and substantial evidence, and (b) each conclusion of law is made in accordance with applicable law, precedent, and public policy. [See e.g. Ricks v Millington Municipal Airport, FAA Docket No. 16-98-19 (December 30, 1999) (Final Decision and Order), page 21, and 14 CFR § 16.227.]

In arriving at a final decision on this appeal, the FAA has reexamined the record, including the Director's Determination, the administrative record supporting the Director's Determination, and the appeal and reply submitted by the parties in light of applicable law and policy. Based on this reexamination, the Associate Administrator concludes that the Director's Determination is supported by a preponderance of reliable, probative, and substantial evidence, and is consistent with applicable law, precedent, and FAA policy. The appeal does not contain persuasive arguments sufficient to reverse any portion of the Director's Determination.

The Associate Administrator affirms the Director's Determination. The Appellant is not entitled to a hearing. This decision constitutes the final decision of the Associate Administrator for Airports pursuant to 14 CFR § 16.33(a).

ORDER

ACCORDINGLY, it is hereby ORDERED that (1) the Director's Determination is affirmed, and (2) the appeal is dismissed, pursuant to 14 CFR § 16.33.

Consistent with the Director's Determination, the Town is ordered to submit a corrective action plan to the Director, Office of Airport Compliance and Field Operations²¹ within 30 days that explains how the Airport (1) has provided or will provide access to aeronautical service providers, including Boston Air Charter, to establish a fuel facility and conduct self-fueling operations consistent with state and local regulations; (2) has ended or will end the practice of awarding long-term leases of federally funded ramps that have the effect of granting one party control over the majority of the ramps on the Airport; (3) put in place a short-term ramp leasing permit policy for the Airport to assert more control of the federally funded ramps, and (4) has regained or will regain the Airport's rights and powers to access the "1100 Foot Strip" to provide power to the Airport ramps for Airport tenants.

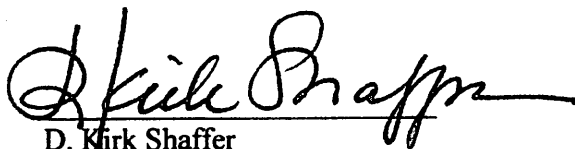
Failure to submit a corrective action plan acceptable to the FAA within the time provided, unless extended by the FAA for good cause, will lead to suspension of future grant applications for AIP discretionary grants under 49 U.S.C. § 47115 and general aviation airport grants under 49 U.S.C. § 47114(d).

²¹ This office was formerly part of the Office of Safety and Standards; the Office of Airport Compliance and Field Operations is now a separate directorate responsible for adjudicating Part 16 formal complaints, among other matters.

All motions not expressly granted in this Final Decision and Order are denied.

RIGHT OF APPEAL

A party to this decision disclosing a substantial interest in the final decision and order of the Federal Aviation Administration may file a petition for review pursuant to 49 U.S.C. § 46110, in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the Circuit in which the person resides or has its principal place of business. The petition must be filed not later than 60 days after a Final Decision and Order has been served on the party. [14 CFR, Part 16, § 16.247(a).]



D. Kirk Shaffer
Associate Administrator
for Airports

AUG 14 2008

Date



The TOWN OF NORWOOD

Commonwealth of Massachusetts

Norwood Memorial Airport

Russ Maguire, A.A.E., ACE, Airport Manager

OFFICE ADDRESS

125 Access Road
Norwood, MA 02062

MAILING ADDRESS

125 Access Road
Norwood, MA 02062

CERTIFIED MAIL

September 18, 2008

U.S. Department of Transportation
Federal Aviation Administration
Attn: Mr. D. Kirk Shaffer, Associate Administrator for Airports
800 Independence Ave., S.W.
Washington, D.C. 20591

**RE: Request for Extension: Boston Air Charter v. Norwood Airport Commission,
Norwood, Massachusetts – Docket No: 16-07-03**

Dear Mr. Shaffer:

On September 16th, in a telephone conversation with Kathryn Baxter, of FAA Headquarters in Washington, D.C., Ms. Baxter advised us that your office was seeking amendments to the four-part corrective action plan we initially submitted, as required by your office in an August 18, 2008 letter: *Final Decision and Order of the Federal Aviation Administration*. Although we have yet to receive said correspondence, we understand that a letter is in the process of being mailed to us.

From Ms. Baxter, we do know that specific elements of the plan, as submitted, were deemed unacceptable. In particular, Ms. Baxter cited shortcomings in our plan, as related to FAA Order #1 addressing our requirement to provide access to those aeronautical service providers that seek a fuel facility for self-fueling operations.

The Town of Norwood stands ready to fully comply with the FAA's final decision and order. However, because it appears that the Norwood Airport Commission must now investigate a more acceptable option(s), we respectfully request a 30-day extension, in order to amend our corrective action plan. We believe a 30-day extension will allow us adequate time to fully address those deficiencies cited in the letter we anticipate from your office.

In the past, we have worked closely with Ms. Donna Witte, FAA's compliance officer in the New England region. A 30-day extension will further allow the Norwood Airport Commission time to fully utilize Ms. Witte's expertise as we finalize an acceptable re-draft of our plan—prior to sending it forward to your office.


Please feel free to contact me directly if FAA requires any additional information relative to our case. My point-of-contact information is as follows:

Mailing Address: 125 Access Road
Norwood, MA 02062

E-Mail: rmaguire@norwoodma.gov
Work Phone: (781) 255-5616
Cell Phone: (781) 603-5373

Thank you.

Sincerely,


Russ Maguire, Airport Manager
Norwood Memorial Airport

CC: *Norwood Airport Commission, Norwood Town Counsel*



U.S. Department
of Transportation
Federal Aviation
Administration

Office of the Associate
Administrator for Airports

800 Independence Ave., SW.
Washington, DC 20591

ACO-1

OCT - 6 2008

Mr. Russ Maguire
Airport Manager
Norwood Memorial Airport
125 Access Road
Norwood, MA 02062

Dear Mr. Maguire:

Thank you for your letter of August 28 about the Town of Norwood's (Town) corrective action plan required by the Director's Determination in Federal Aviation Administration Docket Number 16-07-03, *Boston Air Charter v. Norwood Airport Commission*, and as affirmed in the FAA's Final Decision and Order. I am also in receipt of your September 18, 2008 letter and am pleased that the Town stands ready to comply with FAA's Final Decision and Order. The FAA did receive the Town's May 23, 2008 corrective action plan as noted in the Final Decision and Order of August 14, 2008. Unfortunately, it fails to comply with the Final Agency Decision.

Specifically, the Town must take the following corrective actions to comply with the Final Agency Decision:

- The Town has or will provide access to aeronautical service providers, including Boston Air Charter, to establish a fuel facility and conduct self-fueling operations consistent with State and local regulations.

Boston Air Charter is still unable to gain power to install its own fuel facility and self-fuel its aircraft. The "Self-Fueler Operation Agreement" between Flight Level Norwood, LCC, and Boston Air Charter essentially grants Boston Air Charter limited access to Flight Level's fueling facility. As stated in the Final Agency Decision, this is not self-fueling. This issue is addressed in detail on pages 30, 31, 32, 33, and 34 of the Final Agency Decision. Appropriate corrective action will occur when aeronautical service providers, including Boston Air Charter, gain access to power from either the public transformer on the "1100-foot strip" or another source on the airport. Expressing intent to provide access to power for Boston Air Charter in the future is not acceptable corrective action.

- The Town has ended or will end the practice of awarding long-term leases of federally funded ramps that have the effect of granting one party control over the majority of the ramps on the airport.
- The Town will put in place a short-term ramp leasing permit policy for the airport to assert more control of the federally funded ramps.

Appropriate corrective action will occur when the Town enacts a short-term leasing policy or short-term standard lease form or revocable permit for ramp parking. The lease or permit should include a subordination clause to the FAA grant assurances. The subordination clause should give the Town the ability to amend the lease or permit to comply with all existing and future FAA grant assurances. Such corrective action will demonstrate the Town's ability to gain control of the federally funded ramps.

- The Town has or will regain the airport's rights and powers to access the "1100-foot strip" to provide power to the airport ramps for airport tenants.

As addressed in the Director's Determination and Final Agency Decision (pages 14 and 15), the Town was obligated by a grant condition of a 1967 FAA grant to acquire title to the "1100-foot strip." On December 28, 1967, the Town counsel signed a certificate indicating the Town held fee simple title, free and clear of all liens, encumbrances and adverse interests. The Town then leased the property back to the owner under a 20-year lease with three 20-year renewal options for 80 years. The Town retained no rights under the lease to maintain or install utilities or provide access to public power on the "1100-foot strip." The terms of the lease essentially nullified the 1967 FAA grant condition.

It is the Town's obligation to gain and maintain access to utilities on the "1100-foot strip." It is not a funding obligation of FAA to correct the Town's mistake in entering into a lease that relinquished the Town's rights and powers. Corrective action will be achieved when the Town provides documentation to this office evidencing that it has gained unrestricted access to the public power source on the "1100-foot strip" to provide power to the airport ramps for airport tenants.

I also note that in your September 18 letter, you requested a 30-day extension of time to amend your corrective action plan. I grant your request for a 30-day extension of time to submit a corrective action plan that addresses the compliance issues in the Final Agency Decision and as further detailed here. The Town's corrective action plan is now due on October 24, 2008. Please be advised that when my office receives satisfactory evidence of compliance with each of the corrective actions, the Town will again be eligible for FAA discretionary grant funding.

For further information, please contact Charles C. Erhard, Manager of the Airport Compliance Division, at (202) 267-3187.

I trust this information is helpful.

Sincerely,

Original Signed By:
D. Kirk Shaffer

D. Kirk Shaffer
Associate Administrator
for Airports

cc: Matthew Watsky, Counsel for Complainant
Laverne Reid, New England Airports Division Manager



The TOWN OF NORWOOD
Commonwealth of Massachusetts

Norwood Memorial Airport
Russ Maguire, A.A.E., ACE, Airport Manager

OFFICE ADDRESS
125 Access Road
Norwood, MA 02062

MAILING ADDRESS
125 Access Road
Norwood, MA 02062

BY FAX

October 7, 2008

Federal Aviation Administration
Attn: Donna Witte, Realty Program Specialist/Compliance
12 New England Executive Park
Burlington, MA 01803-5299

RE: FAA Docket No: 16-07-03

Dear Donna:

At your earliest convenience, please see the attached letter—dated September 18, 2008—requesting from FAA Headquarters a 30-day extension to re-draft elements of our corrective action plan (CAP).

Within the past week, I again spoke with Kathryn Baxter at FAA Headquarters, at which time Ms. Baxter confirmed that the Norwood Airport Commission (NAC) did in fact receive a 30-day extension. However, as of this writing, we have not yet received correspondence to this effect. Furthermore, we never received a letter from FAA Headquarters noting the deficiencies in our CAP, as referenced in my September 18th request letter. Ms Baxter has assured me that both the granting of the 30-day extension request and the noted deficiencies in our CAP are being re-drafted into one letter.

My growing concerns are two-fold:

1. That while we have verbal confirmation of a 30-day extension, we do not know exactly when that extension begins and ends
2. That without the actual correspondence detailing those elements of our CAP that need to be re-addressed, it is difficult to do so—with any certainty that all of the issues posed by FAA will be fully covered

Any information you can provide regarding these anticipated articles of correspondence would be much appreciated.



The Town of Norwood

Commonwealth of Massachusetts

Norwood Memorial Airport

Russ Maguire, A.A.E., ACE, Airport Manager

OFFICE ADDRESS

125 Access Road
Norwood, MA 02062

MAILING ADDRESS

125 Access Road
Norwood, MA 02062

BY FAX

October 7, 2008

Federal Aviation Administration

Attn: Donna Witte, Realty Program Specialist/Compliance
12 New England Executive Park
Burlington, MA 01803-5299

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1. That while we have verbal confirmation of a 30-day extension, we do not know exactly when that extension begins and ends
2. That without the actual correspondence detailing those elements of our CAP that need to be re-addressed, it is difficult to do so—with any certainty that all of the issues posed by FAA will be fully covered

Any information you can provide regarding these anticipated articles of correspondence would be much appreciated.

As we await this correspondence, I've begun to work with my commission on other electrical service options for aeronautical service providers seeking self-fueling operations on the Norwood Airport. Specifically, I've met with both the Town Engineer, Mark Ryan (also, the NAC Vice Chair) as well as a senior manager in the *Norwood Light Department*, Kevin Shaughnessy (also, an NAC commissioner) to discuss alternative measures for bringing electrical service to the airport, while getting around the long-term leasehold to *BMA, Inc.*, which so greatly contributed to this Part 16 complaint.

Finally, you'll note in my September 18th letter that we'd like to work with you when fine-tuning the alternative measures we anticipate having to incorporate into our CAP re-draft. As we look to finalize these changes, would you be available to meet with Commissioners Ryan, Shaughnessy and myself, preferably here at the Norwood Airport, where we can actually look at the areas pertinent to corrective action?

Please advise at your convenience. I can be reached by cell phone at (781) 603-5373, or by e-mail at: rmaguire@norwoodma.gov

Thank you, Donna.

Sincerely,

A handwritten signature in cursive script that reads "Russ Maguire".

Russ Maguire, Airport Manager
Norwood Memorial Airport

Cc: *Norwood Airport Commission*



The TOWN OF NORWOOD

Commonwealth of Massachusetts

NORWOOD AIRPORT COMMISSION

BY FEDEX

October 23, 2008

U. S. Department of Transportation
Federal Aviation Administration
Attn: Mr. D. Kirk Shaffer, Associate Administrator for Airports
800 Independence Ave., S.W.
Washington, D.C. 20591

Bryan H. Corbett, *Chairman*
Mark P. Ryan, *Vice Chairman*
Leslie W. LeBlanc
Kevin J. Shaughnessy
Thomas J. Wynne

RE: FAA Docket No: 16-07-03, Boston Air Charter v. Norwood Airport Commission; Amended
Corrective Action Plan to meet the FAA Order

Dear Mr. Shaffer:

On behalf of the Norwood Airport Commission (NAC), please be advised that your letter, dated October 6, 2008, has been received. We understand that the Town's corrective action plan, filed with your office May 23, 2008, fails to fully comply with the final agency decision on the four parts of its Order. In response, we've taken actions that we believe more fully meet the obligations set forth.

Part 1 of the Order states:

"That the Town has or will provide access to aeronautical service providers, including *Boston Air Charter*, to establish a fuel facility and conduct self-fueling operations consistent with state and local regulations"

Specific to this part of the Order, in your October 6th letter, you stated: "Appropriate corrective action will occur when aeronautical service providers, including *Boston Air Charter*, gain access to power from either the public transformer on the '1,100-foot strip' or another source on the airport."

Corrective Action: At its October 21, 2008 public meeting, the NAC voted to approve funding the appraisal of a 20-foot wide, 300-foot long utilities easement, that will run from Access Road, east, through the 1,100-foot long-term leasehold of *BMA, Inc.* Once effected, this easement will allow aeronautical service providers: 1) to access to the public transformer on the 1,100-ft. strip; and/or 2) to access the Town's off-airport electrical service along Access Road, at the west boundary to the airport. Since the October 21st NAC vote, the Commission has moved forward with the appraisal process. From the Town Engineer's office, *Exhibit A* shows a schematic of the proposed utilities easement, bisecting the long-term leasehold on the airport's Gate 3.

The NAC does not have the appraisal cost, purchase price, or eminent domain damages for the proposed utilities easement in its current budget, which was adopted in March 2008 and made effective July 1, 2008. The current budget was prepared and approved prior to the issuance of the FAA's Final Decision and Order. Yet, Massachusetts law requires the NAC to have an appropriation prior to retaining an appraiser. See Mass. Gen. Laws ch. 44, §§ 31, 53. Appropriations are made by the legislative body,

which is the town meeting. The NAC intends to request an appropriation for an appraiser during the next town meeting, which is expected to take place later this fall. Nevertheless, in the interim, the NAC will attempt to negotiate an easement with *BMA* for the proposed utilities easement.

An appropriation by town meeting is also required for the acquisition of the proposed utilities easement via purchase or a taking by eminent domain. See Mass. Gen. Laws ch. 90, § 51G. Therefore, once the appraisal process is complete, the NAC will introduce an article at the Annual Town Meeting, which occurs during the spring, requesting an appropriation to cover the costs associated with the utilities easement, or, if necessary, to seek the taking of the proposed utilities easement by eminent domain. The foregoing strategy was approved by the NAC at its October 21, 2008 meeting.

In anticipation of an easement, Norwood Town Counsel has drafted a model *Deed of Easement (Exhibit B)* between *BMA* and the Norwood Airport Commission. The NAC voted to approve this model document at its October 21st meeting.

As a sidebar note: Prior to its decision to move forward with the valuation of *BMA*'s leasehold, specific to a utilities easement on Gate 3, the NAC approached *BMA*, requesting that *BMA* grant the Town an easement. However, *BMA* would only agree to an easement if the company were to receive compensation from the Town equal to a flowage fee already being received from its leasehold sub-tenant, *Flight Level*, formerly *Eastern Air Center*. (See *Exhibit C*.) The NAC did not consider this an acceptable arrangement, since the Town would have been required to pay a flowage fee to *BMA* for an indefinite period of time, based on the assumption that any decrease in *BMA*'s fuel flowage from *Flight Level* would be made up by the NAC. Though this was studied as a possible means to access the long-term leasehold quickly, the NAC concluded that, long-term, this would not constitute prudent action. Moreover, the NAC believed that the FAA would not consider supporting, as an acceptable practice, such an arrangement. Indeed, the possibility of reverter contemplated by *BMA*'s proposal conflicts with the type of long-term commitment disavowed by the FAA as inconsistent with the grant assurances and the responsibility of the NAC to retain control over Norwood Memorial Airport.

Parts 2 and 3 of the Order state:

"That the Town has ended or will end the practice of awarding long-term leases of federally funded ramps that have the effect of granting one party control over the majority of the ramps on the airport"

"That the Town will put in place a short-term ramp leasing policy for the airport to assert more control of the federally funded ramps"

Specific to these parts of the Order, in your October 6th letter, you stated: "Appropriate corrective action will occur when the Town enacts a short-term leasing policy or short-term standard lease form or revocable permit for ramp parking. The lease or permit should include a subordination clause to the FAA grant assurances. The subordination clause should give the Town the ability to amend the lease or permit to comply with all existing and future FAA grant assurances. Such corrective action will demonstrate the Town's ability to gain control of the federally funded ramps.

Corrective Action: At its October 21, 2008 public meeting, the NAC voted to approve the enclosed short-term lease form, and all conditions set forth therein, as shown in *Exhibit D, Norwood Memorial Airport, Standard Ground Lease Form, Short-Term*.

Specifically, I direct your attention to the following sections of the *Norwood Memorial Airport, Standard Ground Lease Form, Short-Term*:

IX. RULES AND REGULATIONS: Lessee agrees to observe and obey the Norwood Memorial Airport General Regulations, and any standards, regulations, plans and programs incorporated therein (collectively referred to as the General Regulations), adopted by the Norwood Airport Commission, as the same may be amended from time to time, and to conform to such rules and regulations applicable to the operation of aircraft also issued by the Norwood Airport Commission on an airport. Additionally, to comply with the directives of the Federal Aviation Administration (FAA) and the Massachusetts Aeronautics Commission (MAC) with respect to operation of aircraft on an airport. Lessee to acknowledge receipt of a copy of the General Regulations referred to herein and relating to conduct of person and business at the airport. The provisions of the General Regulations, as amended from time to time, are incorporated herein. To the extent the General Regulations are inconsistent with this lease, the the General Regulations shall control.

...

XXX. FEDERAL AND STATE REQUIREMENTS: It is mutually understood and agreed that in exercising the rights and privileges herein granted for furnishing aeronautical services to the public, the Lessee will: a.) Furnish said services on a fair, equal and not unjustly discriminatory basis to users thereof, and b.) Charge fair, reasonable and not unjustly discriminatory prices for each unit of service; provided, however, that Lessee may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

It is understood and agreed that: a.) no right or privilege has been granted which would serve to prevent any person, firm, or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own regular employees (including, but not limited to, maintenance and repair) that it may choose to perform; b.) nothing herein contained shall be construed as granting or authorizing the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958; and c.) no lessee will be given more favorable terms for providing the same public service than any other lessee.

The Lessee for self, personal representatives, assigns and successors in interest, further agrees as a covenant running with the land: a.) No person on the grounds of race, color, or national origin shall be excluded from participation in, denied benefits of, or otherwise subjected to discrimination in the use of its facilities. b.) In the construction of any improvements on, or under such land and the furnishing of services thereon, no person, on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination. c.) Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulation may be amended, that in the event of a breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate the lease, and to

re-enter and repossess said land, order the removal of Lessee's goods and to hold said land as if this lease had never been made or issued.

This lease shall be subordinate to the provisions of any existing or future agreement entered into between the Lessor and the United States of America for the purpose of obtaining federal aid for the improvement and/or development of the airport; that nothing in the lease shall be construed to grant or authorize the granting of an exclusive right; that the facilities of Norwood Memorial Airport have been financed in large part by grants from the Federal Aviation Administration (FAA) and/or Massachusetts Aeronautics Commission (MAC), meaning that receipt of these grants is conditional upon compliance by the NAC with certain assurances, and therefore, any term or condition of this lease which is found to be in conflict or inconsistent with any such federal and/or state grant assurance shall be subordinated to such federal and/or state grant assurance; and that the NAC, in compliance with FAA and/or MAC grant assurances, may not and does not give any lessee assurances of exclusive access or monopolistic rights on or to Norwood Memorial Airport, and thus, any commercial activity authorized on the premises of this lease may be subject to competition from others, on or off the airport. The Lessor has the right to amend this lease to comply with all existing and future FAA and/or MAC grant assurances.

Lessor reserves the right to cancel this lease in the event of a national emergency or declaration of war by the United States of America, and Lessor is notified of the exercise of the federal government's right to recapture and control the airport.

To the extent any of the foregoing sections required by Federal or Massachusetts law are inconsistent with other, non-statutory sections in this lease, any statutorily-mandated provisions contained herein shall control.

XXXI. RESERVED RIGHTS. In addition to any rights reserved by the Lessor hereunder, the Lessor reserves the right: a.) to further develop or improve the airside and landside areas of the airport as it sees fit, and without interference or hindrance; b.) to maintain and keep in good repair the landing areas of the airport and all publicly owned facilities of the airport, together with the right to direct and control all activities of lessees in this regard; c.) to take any action it considers necessary to protect the aerial approaches to the airport against obstruction, together with the right to prevent lessees from erecting, or permitting to be erected, any building or other structure on or adjacent to the airport which would limit the usefulness of the airport or constitute a hazard to aircraft; and d.) to take any action it considers necessary to comply with any grant assurances, obligations, or responsibilities imposed upon the Town of Norwood or the Lessor by the FAA and/or the MAC, including but not limited to entering the Airport's leased premises for any reason and/or amending or terminating any lease agreement.

In addition, I direct your attention to the proposed *Norwood Memorial Airport General Regulations*, which is attached as *Exhibit E*. Specifically, Section VI., *Lease/Sub-Lease Requirements*, is consistent with your October 6, 2008 letter and mirrors the above-quoted provisions of the *Norwood Memorial Airport, Standard Ground Lease Form, Short-Term*. On October 21, 2008, the NAC voted to approve the Norwood Memorial Airport General Regulations, pending approval by the MAC, which remains ongoing.

Part 4 of the Order states:

"That the Town has, or will, regain the airport's rights and powers to access the '1,100-foot strip' to provide power to the airport's ramps for airport tenants."

Specific to this part of the Order, in your October 6th letter, you stated: "Appropriate corrective action will occur when the Town provides documentation to this office evidencing that it has gained unrestricted access to the public power source on the "1,100-foot strip" to provide power to the airport ramps for airport tenants."

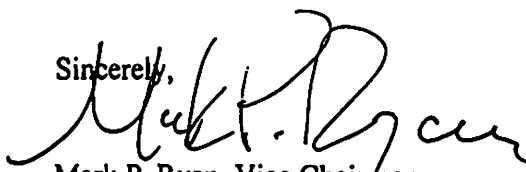
Corrective Action: As noted in the Town's corrective action for Part 1 of the Order, at its October 21, 2008 public meeting, the NAC voted to approve the appraisal of a 20-foot wide, 300-foot long utilities easement, that will run from Access Road, east, through the 1,100-foot leasehold of *BMA, Inc.* Such an easement will enable the Town to regain the airport's rights and powers to access the "1,100-ft. strip" to provide power to the airport's ramps for airport tenants.

To determine the value of the easement, the Town must first complete the appraisal process now underway. *BMA* and the Town must then agree to the appraised value of the utilities easement. Alternatively, the NAC may acquire the proposed utilities easement via a taking by eminent domain. Regardless of the specific manner of acquisition, an appraisal is appropriate and necessary. Realistically, we anticipate this process to take 6-8 months to complete, after which we expect to: (1) request an appropriation at the Annual Town Meeting; and (2)(a) either execute a Deed of Easement with *BMA* (*Exhibit B*), or (b) execute an order of taking by eminent domain.

In closing, Mr. Shaffer, the NAC believes it has fully met Parts 2 and 3 of the FAA Order, and is moving earnestly toward full compliance relative to Parts 1 and 4. These parts to the Order require that we pursue a utilities easement. We've determined this action to be the only viable and practical option for bringing power to tenants not currently able to gain access to power, and who desire electrical service in that quadrant of the airport. However, the NAC is subject to the requirements of the Massachusetts General Laws. We ask for the FAA's patience as we forge ahead in a direction we believe will render a satisfactory conclusion to these parts of the Order. We will certainly continue to keep Donna Witte, of FAA's New England Region, briefed on our progress.

Thank you.

Sincerely,



Mark P. Ryan, Vice Chairman
Norwood Airport Commission

Attachments:

- Exhibit A: Proposed Utilities Easement*
- Exhibit B: Deed of Easement*
- Exhibit C: October 17, 2008 Letter from BMA to the Norwood Airport Commission*
- Exhibit D: Norwood Memorial Airport, Standard Ground Lease Form, Short-Term*
- Exhibit E: Norwood Memorial Airport General Regulations*

DEED OF EASEMENT

THIS DEED OF EASEMENT is made this ____ day of _____, 2008 by BOSTON METROPOLITAN AIRPORT, INC. ("Grantor"), a Massachusetts corporation whose principal office is at 29C Longview Road, North Falmouth, Massachusetts 02556, in favor of the TOWN OF NORWOOD, a Massachusetts municipal corporation acting by and through the NORWOOD AIRPORT COMMISSION, whose mailing address is 125 Access Road, Norwood, Massachusetts 02062 ("Grantee").

RECITALS

WHEREAS, Grantee is the holder of a leasehold estate involving the parcel of land described in Document No. 288220 on Certificate of Title No. 83911, filed with the Norfolk County Registry District of the Land Court on December 28, 1967 ("Subject Premises");

WHEREAS, Grantee leased the Subject Premises to Boston Metropolitan Airport, Inc. ("BMA"), filed with the Norfolk County Registry District of the Land Court on December 28, 1967 as Document No. 288221 on Certificate of Title No. 83911;

WHEREAS, Grantee desires to obtain an all-purpose utility easement across, over, along, upon, under and through the Subject Premises ("Easement"); and

WHEREAS, Grantor is willing to grant such an Easement and subject to the terms set forth below.

NOW, THEREFORE, for consideration of \$_____, Grantor hereby grants and conveys to Grantee, its successors and assigns, an Easement across, over, along, upon, under and through the Subject Premises, as shown _____, and annexed hereto as Exhibit A and made a part hereof.

The Easement rights within the easement area ("Easement Area") granted by this Deed of Easement are more specifically described as follows:

1. Grantee shall have the right to construct, install, replace, maintain, repair, improve and operate underground utility lines and appurtenant facilities and equipment. Grantor and its successors-in-interest shall not erect, install, place or maintain any building, improvement, equipment or fixture in or on the Easement Area that would interfere with the exercise of the easement rights granted herein.
2. Grantor hereby authorizes and empowers Grantee, its agents, servants, workers, successors and assigns to enter in and upon the Subject Premises with tools, materials and equipment for the purposes expressed in Paragraph 1. above. Grantor hereby authorizes Grantee, its successors and

EXHIBIT B

assigns, to enter in and upon the Easement Area with persons and machinery, vehicles and material, at any and all times for the purposes expressed in Paragraph 1. above, and for doing anything necessary, useful or convenient for the enjoyment of the easement herein granted.

3. Grantee shall have the right of access over the Easement Area to exercise the easement rights granted herein.
4. Grantee shall be authorized to clear debris from the said Easement Area and to do all work which is consistent with the foregoing purposes.
5. The parties agree that if there is a conflict between the terms of this Deed of Easement and the Federal Aviation Administration ("FAA") Grant Assurances, said Grant Assurances shall take precedence and govern. Further, the terms of this Deed of Easement shall be subordinated to said FAA Grant Assurances and any surplus property obligations of Grantee to the FAA. The parties agree to amend this Deed of Easement and to execute any additional legal documents in the furtherance of Grantee's compliance with said FAA Grant Assurances and surplus property obligations of Grantee.
6. The easement rights granted herein shall extend to and be binding on the heirs, successors and assigns of the parties hereto and shall run with the land.
7. It is in the intent of the parties that this Easement be freely transferable by Grantee to one or more transferees. Furthermore, Grantee shall have the right to transfer its rights under this Easement separately from any lands owned by Grantee and benefited by this Easement.
8. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.
9. Grantor has full legal capacity, power and authority to grant the easement created hereby.

For Grantor's title see

Certificate No. _____

IN WITNESS WHEREOF, Grantor has caused this Deed of Easement to be executed and delivered as of the date first set forth above.

WITNESS:

GRANTOR:
BOSTON METROPOLITAN AIRPORT, INC.

THE COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

, 2008

On this ____ day of _____, 2008, before me the undersigned
notary public, personally appeared _____ proved to me through
satisfactory evidence of identification, which was _____,
to be the person whose name is signed on the preceding or attached document, and
acknowledged to me that he signed it voluntarily for its stated purpose.

NOTARY PUBLIC
My Commission Expires: _____

We, the undersigned members of the AIRPORT COMMISSION of the TOWN
OF NORWOOD, hereby certify that we approve the receipt and acceptance of the
foregoing Deed of Easement under Massachusetts General Laws, Chapter 90, Section
51G as it has been and may be amended.

EXECUTED AND SEALED THIS _____ DAY OF _____, 2008.

October 17, 2008

Norwood Airport Commission
125 Access Road
Norwood, MA. 02062

Dear Mr. Chairman,

This letter is sent to you by request of members of the Norwood Airport Commission (NAC) to state my position of granting the NAC a permanent utility easement for construction, maintenance and improvements on the Gate 3 taxiway.

According to the Airport Manager and two of NAC's members, this easement is sought by the NAC as a result of actions by a tenant at the Norwood Memorial Airport. This tenant wishes to gain access to power so that he can operate a fuel farm for self-fueling and presumably sale of fuel to others on at the airport.

I am not opposed to granting this easement as long as it does not result in a loss of revenue for Boston Metropolitan Airport (BMA). Currently BMA receives a flowage fee of \$0.04 per gallon delivered by our tenant Flightlevel Norwood LLC. We plan to increase this amount in January 2009 to \$0.06 per gallon delivered. We believe that another fuel farm on the Airport will significantly reduce our fuel revenue. In order for BMA to agree to an easement for the new fuel farm we would require compensation equal to the flowage fee paid by Flightlevel or future BMA tenants for gallons of fuel delivered at this new fuel farm. Payment would be made quarterly with manifests to verify quantities.

As long as this provision is met, I will grant The NAC a utility easement down the Gate 3 Taxiway for the extent of the lease of area known as the 1100 foot strip.

Sincerely,

Michael Pendergast, President
Boston Metropolitan Airport, Inc.

EXHIBIT C

Norwood Memorial Airport Standard Ground Lease Form, Short-Term

This Lease agreement is made the first day of _____ (Month, year) by and between the Norwood Airport Commission (NAC) (Lessor) and _____ (Lessee). Lessor: Norwood Airport Commission, acting pursuant to its statutory powers as set forth under Massachusetts State Laws, Chapter 90, Sections 51D through 51N, as the same may be amended, by and on behalf of the Town of Norwood, and having its usual place of business at the Norwood Memorial Airport, 125 Access Road, Norwood, MA 02062. Lessee: _____ (Business name) having its usual place of business at the Norwood Memorial Airport, _____ (Street address), Norwood, MA 02062.

I. **GROUND SPACE:** In consideration of the rent and covenants herein reserved and contained on the part of the Lessee to be paid, performed and observed, the Lessor hereby leases unto the Lessee a parcel of land containing approximately _____ square feet of land (commonly referred to as "_____ Ramp") and shown on an Exhibit A plan attached hereto, situated on the Norwood Memorial Airport in Norwood, Massachusetts. The leased premises are marked "_____ Ramp" on said plan.

II. **TERM:** Subject to earlier termination as hereunder provided, this lease is for one term of five (5) years, commencing on the first day of _____ (Month, year) and ending on the last day of _____ (Month, year).

III. **RENT:** It is the intent of both the Lessor and the Lessee that the Lease shall be a net Lease, with the Lessor to receive all rental payments herein, without offset or deduction of any kind. Lessee shall pay the sum of \$ _____ annually, payable in quarterly installments of \$ _____ in advance. The basis for this land rental fee is per square foot per year. The first payment shall be made upon the execution and delivery of this Agreement to the Lessor, and subsequent payments shall be made on the first day of each month thereafter, in advance, during the Term hereof, as same may be extended, as Lessee or anyone claiming under Lessee shall occupy said premises or any part thereof. The Lessee further agrees to pay the Lessor finance charges of 1 ½% per month (18% annual percentage rate) on all rents and payments due under this lease for each month or fraction of a month that the rents or payments remain unpaid beyond thirty (30) days after the date on which they are due, or as specified above.

IV. **USE OF THE PREMISES:** Lessee shall have the right to use the premises for the following purposes and activities, and those purposes directly needed to accomplish such uses and none other. The leased premises shall be used for: _____. Further the Lessee agrees to adhere to all environmental

EXHIBIT D

requirements regarding _____. As an accessory due to limited parking, Lessee may also park automobiles on the leased premises for personnel and customers. It is agreed that the Lessor makes no representation or guarantees that the leased area is fit for the uses to which they are placed by the Lessee, but rather, that Lessee has made its own independent judgment that the leased premises are suitable to Lessee's needs.

V. **INSURANCE:** The Lessee agrees that it will secure and pay for general liability insurance with respect to the leased area, insuring the Lessee and the Lessor against all claims for injuries to a person or property sustained by anyone while on the premises leased to the Lessee. Insurance will include product and service provided by the Lessee. Lessee will maintain property and public liability insurance with limits not less than one million dollars (\$1,000,000) per incident for bodily injury or death, and property damage with aggregate limits not less than ten million dollars (\$10,000,000). Insurance will be in responsible companies authorized to do business in Massachusetts. Lessee shall provide Lessor with duplicate original of policies providing such insurance and shall provide reasonable evidence by providing an annual updated policy to the Lessor. Insurance amounts shall at all times conform to the rules and regulations issued by the Massachusetts Aeronautics Commission (MAC) and the Norwood Airport Commission's rules and regulations for operating the airport. Copies of all insurances and binders will be filed in the offices of the Norwood Airport Commission.

VI. **ASSIGNMENTS, MORTGAGES, OR SUBLEASES:** Neither Lessee, nor its successor, heirs or assigns, shall assign, mortgage, pledge, or encumber this lease. Leased area may not be sub-let for any purpose. Lease shall not be assigned or transferred by operation of law, without the prior consent in writing of the Lessor in each instance. If lease is assigned or transferred, or any part of the leased area is used by other than the Lessee, Lessor may, after default by Lessee, collect rent from assignee, transferee, or occupant and apply amount collected to the rent reserved herein, but no such assignment, occupancy, or collection shall be deemed a waiver of any agreement or condition hereof, or acceptance of the assignee, transferee, or occupant as Lessee. Lessee shall continue to be liable hereunder in accordance with the terms and conditions of this lease and shall not be released from the performance of the terms and conditions hereof. The consent of the Lessor to an assignment, mortgage, pledge, or transfer shall not be construed to relieve Lessee from obtaining the express written consent to any future transfer of interest.

VII. **SPECIAL CONDITIONS:**

All activities shall be in accordance with the Norwood Airport Security Plan, including restrictive access control to and from the leased area. The NAC reserves the right to alter its security plan as needed to reflect the national security requirements in the future. The NAC further reserves the right to alter access to the site for safety and security reasons.

— STANDARD PROVISIONS —

VIII. **ACCESS AND EGRESS:** Lessee shall at all times have the full and free right of access and egress to the leased property referred to herein, subject, however, to safety and security requirements. This applies additionally, for employees, customers, passengers, guests and invitees of the Lessee. Such rights shall extend to persons or organizations supplying materials or furnishing services to the Lessee, including the use of vehicles, machinery and equipment reasonably required by such person or organization, provided, however, that such use shall conform to rules and regulations, plus security guidelines of the Norwood Airport Commission regulating such activity.

IX. **RULES AND REGULATIONS:** Lessee agrees to observe and obey the Norwood Memorial Airport General Regulations, and any standards, regulations, plans and programs incorporated therein (collectively referred to as the General Regulations), adopted by the Norwood Airport Commission, as the same may be amended from time to time, and to conform to such rules and regulations applicable to the operation of aircraft also issued by the Norwood Airport Commission on an airport. Additionally, to comply with the directives of the Federal Aviation Administration (FAA) and the Massachusetts Aeronautics Commission (MAC) with respect to operation of aircraft on an airport. Lessee to acknowledge receipt of a copy of the General Regulations referred to herein and relating to conduct of person and business at the airport. The provisions of the General Regulations, as amended from time to time, are incorporated herein. To the extent the General Regulations are inconsistent with this lease, the General Regulations shall control.

X. **GOOD AND SUFFICIENT REPAIR:** It is agreed the Lessor shall be under no obligation to maintain or repair leased area, but that Lessee shall keep leased area in good and sufficient repair and to quit and deliver up premises upon termination of the lease in the same condition they are now in. Ordinary wear and tear and damage resulting from the elements, or circumstances over which Lessee had no control are excepted. The Lessee shall be responsible for snow removal within the leased area. It is further agreed that pavement maintenance and crack seal repair be performed annually, or more frequently, if needed.

XI. **RIGHT TO MAKE IMPROVEMENTS, ALTERATIONS, OR REPAIR:** Lessor reserves the right from time to time to make improvements, alterations, renovations, changes and repairs in and about the leased premises. Other than those herein before provided for the Lessee to do, as to the Lessor shall be deemed desirable. Lessee shall make no claim against the Lessor for interference with leasehold interest or for loss or damage to its business during such improvements, alterations, renovations, change and repair. The Lessee shall not hinder or interfere with the Lessor. Lessor shall have the right at all times to erect a building or structure on adjoining or neighboring

premises as it deems fit or proper, without any liability to Lessee therefore in any event or any cause. The Lessor, as the authorized representative of the airport, is solely in charge of determining the nature and scope for improvements to the airport. Through the Airport Layout Plan (ALP) and/or the Airport Master Plan, the Lessor shall determine as it seems fit and proper, without any liability to the Lessee, therefore in any event, or any cause. Lessee agrees not to make or suffer to make any alteration therein without the approval of Lessor in advance of any work.

XII. **LESSEE TO RESTORE PREMISES:** In the event the leased property is destroyed in whole or in part by fire or other casualty, or by the Lessee's want of care, Lessee shall on receipt of notice from Lessor promptly rebuild or restore premises to their previous condition, or alternately, may elect to demolish the remaining structure, restore the ground site to pre-lease condition, and terminate this agreement upon thirty day's (30) written notice to Lessor. The Lessee shall remain liable for any rent hereunder at all times, notwithstanding rebuilding, restoration or demolition, and the Lessor shall not be liable for any costs incurred by the Lessee attributable to any election of Lessee hereunder.

XIII. **LESSEE TO COMPLY WITH FIRE PREVENTION LAWS:** Lessee shall at all times comply with fire Code, rules and regulations of the Norwood Fire Department for the prevention of fires and the environmental safety of the Leased area. Lessee shall at their own expense comply with all orders relating thereto, provided, however that there shall be no obligation to make substantial changes or to install costly fire prevention systems. No hazardous use of the leased area is authorized.

XIV. **INDEMNIFICATION OF LESSOR:** Lessor shall not be liable for any loss, injury, death or damage to person or property, which may be suffered, sustained or incurred by Lessee, employees, visitors, users or occupants of leased area, whether such loss, injury, death or damage shall be caused by, or in any way result from, or arise out of any act, omission, or negligence of Lessee or any occupant, subtenant, visitor, or user of any portion of the leased area, or result from or be caused by any other matter or thing, whether of the same kind or of a different kind than the matter of things set forth, and Lessee shall indemnify the Lessor against all claims, liability, loss, injury, death or damage. Lessee hereby waives all claims against Lessor for damages to improvements that are now on or hereafter may be placed on the premises and to the property of the Lessee in or about the leased area, from any cause arising at any time during the term thereof. The two preceding sentences shall not apply to loss, injury, death or damage by reason of the sole negligence or misconduct of Lessor, its agents or employees.

It is understood that the Lessor shall not be liable in any way to the Lessee, its agents, representatives, or employees for any injury to persons or damage to property resulting from the sinking or settlement of the land or from any change in the physical condition of

the land or from any change in the physical condition of the land caused by the elements, erosion or deterioration.

XV. TAXES: Real estate taxes, if any, on leased land will be the obligation of the Lessee.

XVI. TERMINATION BY LESSOR: Lessee hereby covenants with Lessor, its successors and assigns, that it will pay hereof unto the Lessor the monthly rent upon the days appointed for payment, and also all taxes and assessments, including any penalties of whatever nature. If the Lessee fails to make payments due within thirty (30) days on the date on which payment is due, Lessor may, at its option, terminate this agreement and take possession of the leased premises. Lessor shall have the right to terminate this agreement in the event that the Lessee, its agents or employees cause the premises to strip, waste or commit any breach of the covenants of this lease, and the Lessee shall have the right to remove its building or property not held by the Lessor for security of payment.

XVII. LESSOR'S RIGHT OF ENTRY: Lessee shall permit Lessor, its agents, attorney, or employees to enter demised premises at all reasonable times for the purpose of inspecting the same, or for the purpose of posting notices of non-responsibility for alterations, or repairs, without any rebate of rent and without any liability to the Lessee for any loss of occupation or quiet enjoyment of the premises thereby occasioned.

XVIII. RE-ENTRY AND REPOSSESSION ON DEFAULT: Lessor may terminate this agreement pursuant to Article XV, or for non-payment of taxes, assessments, or other payments obligated hereunder, or if the leased premises are abandoned or vacated by the Lessee during the term thereof.

XIX. LESSEE'S RIGHT TO TERMINATE: In the event the airport or the leased premises shall for any reason become unsuitable by reason of any law or regulation now or hereafter enforced affecting the Lessee's business, the Lessee shall have the right to terminate and cancel this lease upon giving the Lessor thirty (30) days' notice in writing, provided, however, that the Lessor may within such time, remove such cause for cancellation by placing the premises in suitable and safe condition so as to comply with the law and regulation affecting the same.

XX. LESSOR'S RIGHT OF FIRST REFUSAL: It is understood and agreed that upon the termination, cancellation, or at the end of any term hereof, if the Lessee determines not to remove property or building, the Lessor shall have first refusal to purchase property and/or buildings located on the leased premises upon terms and conditions as then are agreed, based on the original installation cost. If Lessor shall fail to execute the agreement within forty-five (45) days, Lessee shall be free thereafter to sell to

a third party, making the offer on the same terms and conditions. If the property is not sold, then, the Lessee shall give the Lessor the same right to purchase on receiving any subsequent offer from any third party that is acceptable to Lessee.

XXI. CONFORMITY OF AGREEMENT: Lessor reserves the right to enter into other agreements which authorize the use of the airport facilities on terms similar to those extended to Lessee. However, Lessor agrees not to enter into any similar agreements with respect to the airport, which contain more favorable terms than the agreement with the Lessee, or to grant potential competitors of Lessee privileges not herein authorized unless the same are extended to the Lessee.

XXII. SURRENDER OF POSSESSION: On expiration or other termination of this agreement, the Lessee shall vacate the premises, fixtures, improvements, equipment and other property bought, installed, erected, or placed by Lessee in, or about the airport and leased premises, including, but not limited to, storage tanks, pipes, pumps, poles, machinery, and air conditioning equipment, shall be deemed and shall remain the property of the Lessee. Lessee shall have the right at any time during the term hereof and for an additional ten (10) days after the expiration or other termination of the agreement to remove any and all of such property from the airport, subject, however, to Lessee's obligation to repair all damage, if any, resulting from moving or removal. Any and all property not removed by Lessee prior to expiration of the ten-day period shall thereupon become part of the land on which it is located and title shall vest with the Lessor at the sole election of the Lessor.

XXIII. ABANDONMENT OF PREMISES: Lessee hereby agrees not to vacate or abandon the premises at any time during the term hereof. If Lessee shall abandon, vacate or surrender the demised premises, or be disposed by process of law, or otherwise, any personal property belonging to Lessee and left on the premises shall be deemed to be abandoned, and may either be retained by the Lessor as property of the Lessor or may be disposed of at a public or private sale as Lessor sees fit. Any property of the Lessee sold at public or private sale or retained by Lessor shall have all proceeds of any such sale, or the then current fair market value of such property as may be retained by the Lessor, shall be applied by Lessor against (1) the expenses of Lessor removal, storage, or sale of the other damages to which Lessor may be entitled hereunder. The balance of such amounts if any shall be given to Lessee. Lessor may, at its option, relet the premises as agent of the Lessee, however, Lessee shall remain liable for loss or damages resulting from the abandonment. Lessee hereby waives all rights of notice to quit or intention to re-enter the premises under the provisions of any statute of the Commonwealth of Massachusetts, or of this lease, in the event of abandonment of the premises.

XXIV. ARBITRATION: If any controversy between the Lessor and the Lessee shall arise as to the fair rental value of the premises, or, as to the value of any building constructed by the Lessee, or question of reasonableness of denial of consent to a proposed building, such controversy shall be submitted to three (3) disinterested persons, one of whom shall be selected by the Lessor, another by the Lessee, and the third by the two chosen; provided, that if either party shall neglect or refuse to choose an arbitrator for a space of fifteen (15) days after written notice from the other, the other shall choose two persons chosen in either of the manners aforesaid shall give notice to and hear the parties and decide the matter upon equitable principles. The written award signed by any two (2) shall be decisive of such controversy. Each party shall pay the fee of the person elected by it and both shall pay all other expenses equally.

XXV. SIGNS, AWNINGS, AND MARQUEES INSTALLED BY LESSEE: Lessee shall not construct or place signs, awnings, marquees, or other structures projecting from the exterior of the premises without written consent of Lessor. Lessee shall remove such signs, displays, advertisements, or decorations placed on the premises, which, in the sole opinion of Lessor, are offensive or otherwise objectionable. If Lessee shall fail to remove signs, displays, advertisements, or decorations within seven (7) days after receiving written notice from Lessor to remove, then, Lessor reserves the right to enter the premises and remove the objectionable item at the expense of the Lessee.

XXVI. AGENCY: Lessee shall not at any time during the period of this lease, or any extensions thereof, act as agent, servant, or employee of Lessor, and shall not be liable for failure to act.

XXVII. NOTICE: All notices to be given with respect to this lease shall be in writing. Each notice shall be sent by registered or certified mail, postage prepaid, and returned receipt requested, to the party to be notified at the address set forth herein or at such other address as either party may from time to time designate in writing. Every notice shall be deemed to have been given at the time it shall be deposited in the United States mails in the manner prescribed herein. Nothing contained herein shall be construed to preclude personal service of a summons or other legal process.

XXVIII. ATTORNEY'S FEES: If any action at law or in equity shall be brought to recover rent under this lease, or for, or on account of any breach hereof, or to enforce or to interpret any of the covenants, terms or conditions of this lease, or for the recovery of the demised premises, the prevailing party shall be entitled to recover from the other party as part of the prevailing party's costs, reasonable attorney's fee, the amount of which shall be fixed by the court, and shall be made part of any judgment or decree rendered.

XXIX. RIGHT TO CLOSE AIRPORT: Lessor reserves the right to develop, improve, construct, repair, reconstruct, or rehabilitate any or all of the airport facilities, including runways, taxiways, aprons, lighting systems, approach lighting installations, beacons, avionics equipment and any other facility which may at times be used to provide service to users of the airport, and in the event that such development, improvement, construction, repair, reconstruction or rehabilitation interrupts, inconveniences, interferes with or in any way adversely affects Lessee's use of the airport, or any of its facilities, the, Lessee does hereby waive any and all claim for damages arising out of such action in carrying out the aforementioned functions. Lessee hereby agrees that Lessor has not nor hereby represent, warrant or guarantee, either expressly or by implication, that the use of the airport will be available continuously or at all times, but that the airport or any of its facilities may be closed by Lessor in whole or in part for reasonable periods of time as a result of causes beyond the control of the Lessor, or for the execution of any or all of the functions set forth herein above.

XXX. FEDERAL AND STATE REQUIREMENTS: It is mutually understood and agreed that in exercising the rights and privileges herein granted for furnishing aeronautical services to the public, the Lessee will: a.) Furnish said services on a fair, equal and not unjustly discriminatory basis to users thereof, and b.) Charge fair, reasonable and not unjustly discriminatory prices for each unit of service; provided, however, that Lessee may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

It is understood and agreed that: a.) no right or privilege has been granted which would serve to prevent any person, firm, or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own regular employees (including, but not limited to, maintenance and repair) that it may choose to perform; b.) nothing herein contained shall be construed as granting or authorizing the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958; and c.) no lessee will be given more favorable terms for providing the same public service than any other lessee.

The Lessee for self, personal representatives, assigns and successors in interest, further agrees as a covenant running with the land: a.) No person on the grounds of race, color, or national origin shall be excluded from participation in, denied benefits of, or otherwise subjected to discrimination in the use of its facilities. b.) In the construction of any improvements on, or under such land and the furnishing of services thereon, no person, on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, c.) Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964, and as said

regulation may be amended, that in the event of a breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate the lease, and to re-enter and repossess said land, order the removal of Lessee's goods and to hold said land as if this lease had never been made or issued.

This lease shall be subordinate to the provisions of any existing or future agreement entered into between the Lessor and the United States of America for the purpose of obtaining federal aid for the improvement and/or development of the airport; that nothing in the lease shall be construed to grant or authorize the granting of an exclusive right; that the facilities of Norwood Memorial Airport have been financed in large part by grants from the Federal Aviation Administration (FAA) and/or Massachusetts Aeronautics Commission (MAC), meaning that receipt of these grants is conditional upon compliance by the NAC with certain assurances, and therefore, any term or condition of this lease which is found to be in conflict or inconsistent with any such federal and/or state grant assurance shall be subordinated to such federal and/or state grant assurance; and that the NAC, in compliance with FAA and/or MAC grant assurances, may not and does not give any lessee assurances of exclusive access or monopolistic rights on or to Norwood Memorial Airport, and thus, any commercial activity authorized on the premises of this lease may be subject to competition from others, on or off the airport. The Lessor has the right to amend this lease to comply with all existing and future FAA and/or MAC grant assurances.

Lessor reserves the right to cancel this lease in the event of a national emergency or declaration of war by the United States of America, and Lessor is notified of the exercise of the federal government's right to recapture and control the airport.

To the extent any of the foregoing sections required by Federal or Massachusetts law are inconsistent with other, non-statutory sections in this lease, any statutorily-mandated provisions contained herein shall control.

XXXI. **RESERVED RIGHTS.** In addition to any rights reserved by the Lessor hereunder, the Lessor reserves the right: a.) to further develop or improve the airside and landside areas of the airport as it sees fit, and without interference or hindrance; b.) to maintain and keep in good repair the landing areas of the airport and all publicly owned facilities of the airport, together with the right to direct and control all activities of lessees in this regard; c.) to take any action it considers necessary to protect the aerial approaches to the airport against obstruction, together with the right to prevent lessees from erecting, or permitting to be erected, any building or other structure on or adjacent to the airport which would limit the usefulness of the airport or constitute a hazard to aircraft; and d.) to take any action it considers necessary to comply with any grant assurances, obligations, or responsibilities imposed upon the Town of Norwood or the Lessor by the FAA and/or the MAC, including but not limited to entering the Airport's leased premises for any reason and/or amending or terminating any lease agreement.

XXXII. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of the heirs, assigns or successors in interest to the parties.

XXXIII. **SEVERABILITY.** If for any reason any provision of this lease is determined to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

XXXIV. **WAIVER.** The failure by the Lessor to enforce any provision of this lease will not constitute a waiver of future enforcement of that or any other provision.

XXXV. **JURISDICTION.** Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts of Massachusetts and the parties hereby consent to the personal jurisdiction and venue of such courts.

XXXVI. **ENTIRE AGREEMENT.** This lease represents the entire agreement between the parties hereto with respect to the matter covered herein. No other agreement, representations, warranties, proposals, oral or written, shall be deemed to bind the parties.

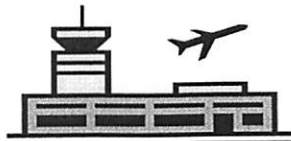
XXXVII. **CAPTIONS.** All captions in this lease are intended solely for the convenience of the parties and none shall be deemed to affect the meaning or construction of any provision of this lease.

IN WITNESS WHEREOF, the parties hereto have duly affixed their hand and seal as of
the day and year first above written.

LESSOR: NORWOOD AIRPORT COMMISSION, acting on behalf of the Town of Norwood

Approved by Counsel _____

LESSEE:



NORWOOD MEMORIAL AIRPORT

MEMO

TO: Norwood Board of Selectmen
FROM: Russ Maguire, Airport Manager
RE: Summary on FAA Determination and Order (FAA Docket #16-07-03)

TODAY' S DATE: October 31, 2008

Per your October 23, 2008 request (attached), I am forwarding a three-page summary of the Federal Aviation Administration's determination and order (FAA Docket #16-07-03). A similar summary, in question/answer format, was presented to the Town's Finance Committee on October 7th.

As requested, I will be available to speak to the Board of Selectmen at the November 4th meeting, beginning at 7:45 p.m.

1. Where are we with the FAA 'lawsuit'?

The Town of Norwood, as represented by the Norwood Airport Commission (NAC), is not currently in a lawsuit. The NAC has been given an order by FAA headquarters in Washington, D.C., pursuant to enforcement proceedings (under Part 16 of the federal aviation regulations, or FARs). This follows a complaint filed in April 2007 by one of the airport's business tenants, *Boston Air Charter*.

Summary of Issues and Findings (excerpted from the FAA Order)

The complainant (*Boston Air Charter*) alleged that the Town of Norwood violated federal law and policy when the Town failed to provide the complainant with access for the installation of electric service underground conduits to support its aviation fuel facility. However, this underground conduit would have encroached into the leasehold of *Eastern Air Center* (now *Flight Level*), the existing fixed base operator, which opposed the complainant providing aircraft fueling services.

The complainant (*Boston Air Charter*) contended that the Town of Norwood engaged in discriminatory practices and granted an exclusive right by not supporting the encroachment of *Eastern Air Center's* (*Flight Level*) leasehold, which would have given the complainant access for its underground electrical conduit. Furthermore, the complainant believed that it was prohibited from performing self-service fueling of its aircraft.

The Town argued that it could not be expected to take sides in a private dispute between two tenants over rights of access, despite the Town's desire to encourage competition. The Town's position was that it did not have the right to force *Eastern Air Center* (*Flight Level*) to provide to another business access for utilities through its leasehold. The Town also contended that it did not have an exclusive agreement with *Eastern Air Center* (*Flight Level*) to provide fixed-base operator services, including fueling. The Town further argued that the existence of one fixed base operator business (*Flight Level*) did not constitute an exclusive right. Finally, since the complainant (*Boston Air Charter*) did not/does not have a lease with the Town, the Town believed the issue was moot and the complaint should be dismissed.

In April 2006, the complaint was first filed by *Boston Air Charter* with the FAA New England Region. FAA Region determined that the Town of Norwood was not in violation of its grant assurances. However, in April 2007, the complainant filed a formal complaint with the FAA headquarters in Washington, D.C., citing federal grant assurance violations by the Town of Norwood under FAR Part 16. Subsequent to this filing, in April 2008, FAA headquarters overturned the FAA New England Region's decision, by determining that the Town of Norwood was in violation of the federal grant assurances.

Per the Part 16 process, the Town of Norwood was then allowed to appeal this decision, which Town Counsel filed in August of this year. But the Town's appeal did not overturn the decision by FAA headquarters.

Therefore, the FAA determination concluded that:

- The Town violated federal grant assurance #5, *Preserving Rights and Powers*, when the Town signed a 1967 lease agreement with *Boston Metropolitan Airport, Inc. (BMA)*, a tenant, depriving the Town of certain rights and powers necessary to comply with its federal obligation under the FAA grant assurances.
- The Town violated federal grant assurance #22, *Economic Nondiscrimination*, as it denied the complainant (*Boston Air Charter*) use and access to the airport on reasonable terms for the purpose of conducting a commercial aeronautical activity.
- The Town violated grant assurance #23 *Exclusive Rights*, as its granted an exclusive right to *Eastern Air Center (Flight Level)*, constructively or directly, to operate a fueling facility on the airport by entering into leases with *Eastern Air Center* and *BMA, Inc.*, thus enabling *Eastern Air Center (Flight Level)* control of the only source of power to the airport ramps, to operate a fueling facility.

1a. Have we filed a response?

To address these grant assurance violations, the Town of Norwood was required to file a corrective action plan. This has been filed with the FAA headquarters. Following an FAA review of this plan, a re-draft of some elements of this plan was re-submitted on October 23rd.

1b. Will the response have any financial impact on spending or reduce planned revenues?

When an FAR Part 16 complaint is filed, the sponsor airport (Norwood Memorial Airport) cannot receive federal grant monies until the issue is resolved by either a determination favoring the sponsor; or acceptance of the sponsor's corrective action plan. The Town of Norwood was therefore disallowed from receiving a federal grant this past summer, which was to address the partial re-construction of a runway. This grant would have paid 95% of the cost for the project, with the state paying 2.5% and the Town picking up the remaining 2.5%. The Town was also disallowed from receiving federal grant monies this past summer to purchase an additional piece of snow removal equipment. Again, the federal grant would have paid 95% of the cost for the equipment, with the state paying 2.5%.

Any spending impacts might include the airport's local share for these projects as programmed into the airport's FY 2009 budget. Sub-account #9024 *Airport Construction – Matching Grant* identifies \$51,750 in our revised airport budget. This is an aggregate

which includes local share monies for the aforementioned two federal projects anticipated this past summer. From this total, **\$24,750** was programmed for the runway reconstruction project; and **\$10,000** was programmed for the snow removal equipment project.

As for the airport's planned revenues, the FAA determination should not have an impact.

1c. What, if any, penalties, charges may come with a judgment?

When an FAR Part 16 complaint is filed, the sponsor airport (Norwood Memorial Airport) cannot receive federal grant monies until the issue is resolved by either a determination favoring the sponsor; or acceptance of the sponsor's corrective action plan.

2. Where are we with the FY 2009 airport budget activity?

See budget variance report

2a. Analysis of revenues and expenses to date?

See revenues/expenses sheet

2b. Any cost savings from rent elimination due to the new building?

The building is now nearing Phase 1 completion, which essentially will make it a cold storage facility for all of the airport's equipment. The building will require a financial commitment from the Massachusetts Aeronautics Commission and Town to address Phase II, which will include the second floor fit-out for office space. Therefore, the Airport Department must continue to lease out space for its operation, until Phase II is completed.

2c. Forecast through the end of FY09 – due to lawsuit corrective action?

Again, this is not a lawsuit, it is a complaint. However, addressing the FAA's violations will not allow the Town of Norwood to accept federal grant monies until our corrective action plan is approved by FAA. Direct and indirect revenues to the Town will not be affected.

JAN 15 2009

Mark P. Ryan, Vice Chairman
Norwood Airport Commission
Post Office Box 40
Norwood, MA 02062

**RE: Boston Air Charter v. Norwood Airport Commission,
FAA Docket 16-07-03
Amended Corrective Action Plan, October 23, 2008**

Dear Mr. Ryan

Thank you for your October 23, 2008 amended corrective action plan required by the Director's Determination in FAA Docket 16-07-03 and affirmed in the FAA's Final Decision and Order. We appreciate the Norwood Airport Commission's (NAC) efforts to address the issues raised in the FAA's Final Decision and Order. The NAC's intention to conduct an appraisal and acquire the easement combined with the development of a model easement indicates the Airport's recognition of the problem.

We concur with your decision not to accept Boston Metropolitan Airport's offer. Boston Metropolitan Airport's offer, granting a utility easement in return for fuel flowage fee receipts from all aeronautical service providers using the easement, may jeopardize the Town's rights and powers and the Airport's financial self-sustainability.

Unfortunately, the corrective action plan fails to address the following concerns:

- Part One: *"The Town has provided or will provide access to aeronautical service providers, including Boston Air Charter, to establish a fuel facility and conduct self-fueling operations consistent with state and local regulations."*
- Part Four: *"That the Town has, or will, regain the airport's rights and powers to access the "1,000-foot strip" to provide power to the airport's ramps for airport tenants."*

While the plan describes the process the NAC must employ to gain access to the property, it does not address how the Airport will provide access to aeronautical service providers. A key piece of an acceptable corrective plan will be the description of how the Airport will provide access to aeronautical service providers, including Boston Air Charter, to establish a fuel facility and conduct self-fueling operations consistent with state and local regulations.

Your letter indicated that the Commission does not have an appropriation in the current fiscal year Town budget for the appraisal and acquisition of this easement. FAA's Final Order and Decision is very clear, it requires the Town, the airport sponsor, to correct these deficiencies and bring the Airport in compliance with its grant assurances.

The FAA's Final Order and Decision also requires:

- Part Two: *"The Town has ended or will end the practice of awarding long-term leases of federally funded ramps that have the effect of granting one party control over the majority of the ramps on the Airport"*.
- Part Three: *The Town will put in place a short-term ramp leasing permit policy for the Airport to assert more control of the federally funded ramps"*.

We have no objection to the NAC using a five year term as the basis for its short-term standard ground lease. However, we do not see a provision in the lease that permits the Airport to recapture the common use ramps and redistribute the space in the event new fixed base operators establish businesses on the Airport. Based on provisions in the lease, a new operator would have to wait five years before ramp space could be made available. Adding a provision in the lease that permits the Airport to redistribute common use ramp space based on the needs of the Airport would be an appropriate means to address this issue. FBO operators would still have a preferential right to use ramp space immediately in front and adjacent to their FBO facilities.

Please submit the necessary changes to your lease form. In addition, please submit a revised corrective action plan to my office identifying a reasonable timetable to comply with the requirements of Part one and four and that also includes the date when funds will be made available for the necessary corrective action. Please direct all future correspondence to my attention

We look forward to reviewing your new submission.



Randall Fiertz
Director, of Airport Compliance
and Field Operations

Copies to:

Mr. Matthew Watsky, Esquire
Attorney at Law
East Brook Executive Park
30 Eastbrook Road, Suite 301
Dedham, MA 02026

Michael C. Lehane, Esquire
Murphy, Hesse, Toomey & Lehane, L.L.P.
300 Crown Colony Drive
Quincy, MA 02269



Commonwealth of Massachusetts

Norwood Memorial Airport

Russ Maguire, A.A.E., ACE, Airport Manager

OFFICE ADDRESS
125 Access Road
Norwood, MA 02062

MAILING ADDRESS
125 Access Road
Norwood, MA 02062

April 17, 2009

BMA, Inc.
Attn: Michael Pendergast, President
29 Longview Road
North Falmouth, MA 02556

RE: Gate 3 Utilities Easement, Norwood Memorial Airport

Dear Mike:

Thank you for your correspondence, dated March 30, 2009, regarding the revised financial terms your company is requesting to grant to the Town of Norwood a permanent utilities easement.

At its monthly meeting last week, the Norwood Airport Commission (NAC) did discuss these terms, most notably, your proposal that the NAC make a one-time payment to *BMA* totaling \$374,250. In calculating this amount, you've claimed that *BMA* should receive \$9,450—the appraised value of the permanent easement, based on the January 2009 *Sheehan* report—plus 50% of the anticipated loss in revenue *BMA* believes it will incur by granting this easement. In considering your proposal, the Commission again underscored that *BMA*'s calculation includes a cost variable based on perceived financial losses from a potential competing fueling operation. For this reason, the NAC voted to reject your proposal.

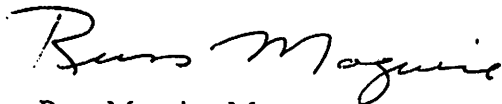
Massachusetts courts adhere to a well-established and longstanding rule that income derived from a business is not compensable when a real estate interest is acquired via eminent domain. Commonwealth v. Armory, 321 Mass. 240, 258 (1947) (citing several cases). As these courts have recognized, the market value of real estate cannot be determined based upon the income from a business operated on the premises because it involves a variety of factors unrelated to the land. Id. Accordingly, any perceived financial losses from a potential competing fueling operation are not compensable under Massachusetts law.

However, the Commission wishes to re-affirm its willingness to negotiate. In the interest of good will, and to forestall any further proceedings, the Commission will extend a final counteroffer beyond the appraised value cited in the *Sheehan* report. For a permanent utilities easement on Gate 3, the NAC offers to *BMA* a one-time total payment not to exceed \$15,000.

Because the Commission anticipates the placing of an article on the warrant for the May 11th special town meeting—to obtain the permanent utilities easement via purchase or eminent domain—we would ask that you respond to the NAC counteroffer no later than Friday, May 8th.

Please feel free to contact me directly at: rmaguire@norwoodma.gov. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Russ Maguire".

Russ Maguire, Manager
Norwood Memorial Airport

CC: *Norwood Airport Commission, Norwood Town Counsel*

SHEEHAN & COMPANY

Real Estate Appraisal and Consulting

April 8, 2009

Mr. Russ Maguire
Airport Manager
Norwood Memorial Airport
125 Access Road
Norwood, MA 02062
rmaguire@norwoodma.gov

Dear Mr. Maguire:

Pursuant to your letter dated March 31, 2009, I have read the correspondence from Mike Pendergast, President of BMA and reviewed my appraisal report of January 6, 2009. In the following paragraphs I have set forth my thoughts regarding the issues raised in these documents.

The appraisal report was commissioned as a result of a directive from the FAA. The directive categorically states that:

"The Town has or will provide access to aeronautical service providers, including Boston Air Charter, to establish a fuel facility and conduct self-fueling operations consistent with State and local regulations."

The intent of this directive was to end the practice of awarding long term leases of federally funded ramps granting one party control of the airport ramps.

The appraisal considered the value of the long-term lease to be the same as the fee ownership for valuation purposes. The loss in value due to the placement of the permanent easement and the rental value for the temporary construction easement was calculated to be \$9,450. This amount was considered to be Just Compensation due to BMA.


Boston Metropolitan Airport president Mike Pendergast contends that "if and when" a competing fuel farm is installed there will result additional damages. Undoubtedly, there will be a loss of revenue due to competition. This loss of revenue would be a result of changes in the Norwood/BMA contract. It would not be a direct result of an eminent domain easement taking.

Mr. Russ Maguire
Airport Manager
Norwood Memorial Airport
Page 2

The appraiser is not aware of the terms and conditions of the Norwood/BMA contract. If the long-term contract was made in consideration for a transfer of the land to the Town of Norwood, perhaps the terms of the contract would need to be renegotiated "if and when" the competing fuel farm is installed.

Should you have any questions regarding my appraisal or this letter, please call.

Very truly yours,



John F. Sheehan, A.S.A.
MA Certified General Appraiser No. 236



The town of Norwood

Commonwealth of Massachusetts

Norwood Memorial Airport

Russ Maguire, A.A.E., ACE, Airport Manager

OFFICE ADDRESS

125 Access Road
Norwood, MA 02062

MAILING ADDRESS

125 Access Road
Norwood, MA 02062

March 16, 2009

Mr. Michael Pendergast, President
BMA, Inc.
29 Longview Road
North Falmouth, MA 02556

RE: Gate 3 Utilities Easement, Norwood Memorial Airport

Dear Mike:

Thank you for your correspondence, dated March 4, 2009 regarding the financial terms your company is requiring in order to grant to the Town of Norwood a utilities easement on the Gate 3 taxi-lane.

At its monthly meeting March 11, the Norwood Airport Commission (NAC) did discuss these terms, most notably, your proposal that the NAC make an initial payment of \$9,450 as well as annual payments of at least \$9,500. As stated in your March 4th letter, these annual payments would be subject to adjustments based on fuel flowage fees charged by the NAC.

In considering your latest proposal, which incorporates a cost variable tied to the town's fuel flowage fees, the NAC returned to the January 15, 2009 letter from FAA Headquarters in Washington, D.C., which stated: "*Boston Metropolitan Airport's* offer, granting a utility easement in return for fuel flowage fees receipts from all aeronautical service providers using the easement may jeopardize the Town's rights and powers and the Airport's financial self-sustainability." With this as the basis for the NAC's position, the commission decided that your most recent proposal cannot be considered. The board did state its interest in a second appraisal authorized by *BMA*. But unless such a study is conducted, the NAC's offer remains unchanged.

Therefore, in the interest of acquiring this easement by agreement, so as to meet the FAA order and resolve the ongoing Federal Aviation Regulation Part 16 dispute, the NAC would again like to make an offer to *BMA*. The board proposes to acquire the 20-ft. wide, 300 ft. long utilities easement (both temporary and permanent) for the appraised value of \$9,450.

If this proposal meets your approval, a *Grant of Easement* will be drafted by the Norwood Town Counsel, subject to your review and approval. If, on the other hand, *BMA* intends to now obtain its own appraisal, please advise the board. Due to our current grant-ineligible status, as well as time constraints imposed by FAA, the board is interested in reaching agreement as soon as possible. The NAC is therefore requesting your response no later than Monday, April 6, 2009.

Please feel free to contact me directly at: rmaguire@norwoodma.gov

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Russ Maguire".

Russ Maguire, Manager
Norwood Memorial Airport

March 30, 2009

Russ Maguire, Manager
Norwood Memorial Airport
125 Access Rd
Norwood, MA, 02062

Dear Russ:

In response to your letter of March 16, 2009. I feel I must reiterate that the appraisal done by Sheehan and Company does not address the negative economic impact that granting this easement would cause BMA.

As I stated in my last letter. Al Bishop wants and intends to erect an additional fuel farm on the Airport and this easement is needed to upgrade the power to that part of the airport. When the new fuel farm is built it would most likely reduce BMA's income from fuel flowage by fifty percent. BMA insists on being compensated for this lost revenue before it can grant the permanent easement.

The NAC rejected our last proposal which linked payment to fuel flowage estimates on the airport.

Our revised proposal is as follows: In return for granting a permanent Gate 3 Utilities Easement BMA would receive a onetime payment of \$374,250.00. This amount is your proposed \$9,450.00 plus fifty percent of the anticipated loss in revenue which BMA will incur by granting this easement.

I look forward to hearing from you at your earliest convenience.

Sincerely,

Mike Pendergast, President
Boston Metropolitan Airport

October 17, 2008

Norwood Airport Commission
125 Access Road
Norwood, MA. 02062

Dear Mr. Chairman,

This letter is sent to you by request of members of the Norwood Airport Commission (NAC) to state my position of granting the NAC a permanent utility easement for construction, maintenance and improvements on the Gate 3 taxiway.

According to the Airport Manager and two of NAC's members, this easement is sought by the NAC as a result of actions by a tenant at the Norwood Memorial Airport. This tenant wishes to gain access to power so that he can operate a fuel farm for self-fueling and presumably sale of fuel to others on at the airport.

I am not opposed to granting this easement as long as it does not result in a loss of revenue for Boston Metropolitan Airport (BMA). Currently BMA receives a flowage fee of \$0.04 per gallon delivered by our tenant Flightlevel Norwood LLC. We plan to increase this amount in January 2009 to \$0.06 per gallon delivered. We believe that another fuel farm on the Airport will significantly reduce our fuel revenue. In order for BMA to agree to an easement for the new fuel farm we would require compensation equal to the flowage fee paid by Flightlevel or future BMA tenants for gallons of fuel delivered at this new fuel farm. Payment would be made quarterly with manifests to verify quantities.

As long as this provision is met, I will grant The NAC a utility easement down the Gate 3 Taxiway for the extent of the lease of area known as the 1100 foot strip.

Sincerely,

Michael Pendergast, President
Boston Metropolitan Airport, Inc.



The TOWN OF NORWOOD

Commonwealth of Massachusetts

Norwood Memorial Airport

Russ Maguire, A.A.E., ACE, Airport Manager

OFFICE ADDRESS

125 Access Road
Norwood, MA 02062

MAILING ADDRESS

125 Access Road
Norwood, MA 02062

February 13, 2009

Mr. Michael Pendergast, President
BMA, Inc.
29 Longview Road
North Falmouth, MA 02556

Dear Mike:

At its recent meeting February 11, the Norwood Airport Commission (NAC) directed me to contact you regarding the board's interest in acquiring a utilities easement on the airport's Gate 3 taxi-lane. For that reason, I'm enclosing an appraisal report of the easement valuation, prepared last month by *Sheehan & Co.*

The proposed permanent utilities easement would be 20 feet wide and 300 feet deep, or 6,000 square feet; and it would run east/west along the Gate 3 taxi-lane. In addition to the permanent easement, a temporary construction easement of the same dimensions as the permanent easement would be needed for a three-month period.

Based on the appraiser's findings, as of January 6, 2009, just compensation for the combined temporary/permanent easement totals \$9,450 (*Appraiser's Report, page 20*). In the interest of acquiring this easement by agreement, so as to meet the FAA order and resolve the ongoing Federal Aviation Regulation Part 16 dispute, the NAC would like to make an offer to *BMA*. The board proposes to acquire the 20-ft. wide, 300 ft. long utilities easement (both temporary and permanent) for the appraised value of \$9,450.

If this proposal meets your approval, a *Grant of Easement* will be drafted by Norwood Town Counsel, subject to your review and approval. If, on the other hand, *BMA* intends to obtain its own appraisal, please advise the board. Due to our current grant-ineligible status, as well as time constraints imposed by the FAA, the board is interested in reaching agreement as soon as possible. The NAC is therefore requesting your response no later than Monday, March 9. On a final note: The Commission is aware of your interest in negotiating by way of the electronic mail system. For that reason, please feel free to contact me at: rmaguire@norwoodma.gov.

Thank you.

Sincerely,

Russ Maguire, Manager
Norwood Memorial Airport



The TOWN OF NORWOOD

Commonwealth of Massachusetts

9878

Norwood Memorial Airport

Russ Maguire, A.A.E., ACE, Airport Manager

OFFICE ADDRESS

125 Access Road
Norwood, MA 02062

MAILING ADDRESS

125 Access Road
Norwood, MA 02062

BY FEDEX

December 9, 2009

COPY

U.S. Department of Transportation
Federal Aviation Administration
Attn: Randall Fiertz, Director, Airport Compliance and Field Operations
Office of the Associate Administrator for Airports
800 Independence Ave., S.W.
Washington, D.C. 20591

**RE: FAA Docket No.: 16-07-03, *Boston Air Charter v. Norwood Airport*
Commission; Revised Corrective Action Plan to Meet the FAA Order**

Dear Mr. Fiertz:

On behalf of the Norwood Airport Commission (NAC), please consider this letter—and its attachments—as the board's revised corrective action plan following your correspondence dated January 15, 2009 and July 31, 2009, and subsequent conversations and e-mails between our offices. Because the NAC's October 23, 2008 amended corrective action plan did not fully comply with the final agency decision on the four parts of its Order, the NAC has taken the following additional actions that we now believe fully meet the obligations set forth in the FAA Order.

Part 1 of the Order states:

"That the Town has or will provide access to aeronautical service providers, including Boston Air Charter, to establish a fuel facility and conduct self-fueling operations consistent with state and local regulations."

Part 4 of the Order states:

"That the Town has, or will, regain the airport's rights and powers to access the '1,100-foot strip' to provide power to the airport's ramps for airport tenants."

Corrective Actions: On October 14, 2009, following lengthy but productive negotiations with *Boston Metropolitan Airport (BMA), Inc.*, the town of Norwood agreed to appraise and then acquire (by Town Meeting vote and appropriation) a 20 ft. by 300 ft. utilities easement that now bisects the *BMA* long-term leasehold through the Norwood Airport gate

3 taxi-lane. A copy of the official document, now registered in Norfolk County Land Court, is included as *Attachment 1*. With this action, the town of Norwood has regained rights and powers to access the 1,100-ft. strip, that in turn provides access to power for airport tenants, including *Boston Air Charter* (BAC).

As requested by your office, on November 25, 2009 I sent a certified mailing to BAC, notifying the company that the town of Norwood had acquired the utilities easement from *BMA*; and extending a lease offer, subject to reasonable standards, for space on the DC-3 apron, so that BAC would then be able to construct and operate an aircraft self-fueling facility. (See *Attachments 2, 3 and 4*.)

Part 2 of the Order states:

"The Town has ended or will end the practice of awarding long-term leases of federally funded ramps that have the effect of granting one party control over the majority of the ramps on the Airport."

Part 3 of the Order states:

"The Town will put in place a short-term ramp leasing permit policy for the Airport to assert more control of the federally funded ramps."

Corrective Action: Specific to these parts of the Order, at its October 21, 2008 public meeting, the NAC voted to approve the standard short-term lease form noted in *Attachment 4*, and all conditions set forth therein. Specifically, I direct your attention to the following excerpted sections of the *Norwood Memorial Airport Standard Ground Lease Form, Short-Term*:

Section XXX. FEDERAL AND STATE REQUIREMENTS (paragraphs 4 and 6): "...This lease shall be subordinate to the provisions of any existing or future agreement entered into between the Lessor and the United States of America for the purpose of obtaining federal aid for the improvement and/or development of the airport; that nothing in the lease shall be construed to grant or authorize the granting of an exclusive right; that the facilities of Norwood Memorial Airport have been financed in large part by grants from the Federal Aviation Administration (FAA) and/or the Massachusetts Division of Aeronautics precursor entity, meaning that receipt of these grants is conditional upon compliance by the NAC with certain assurances, and therefore, any term or condition of this lease which is found to be in conflict or inconsistent with any such federal and/or state grant assurance shall be subordinated to such federal and/or state grant assurance; and that the NAC, in compliance with FAA and/or the Massachusetts Division of Aeronautics grant assurances, may not and does not give any lessee assurances of exclusive access or monopolistic rights on or to Norwood Memorial Airport, and thus, any commercial activity authorized on the premises of this lease may be subject to competition from others, on or off the airport. The Lessor has the right to amend this lease to comply with all existing and future FAA and/or Massachusetts Division of Aeronautics grant assurances...To the extent any of the sections

required by Federal or Massachusetts law are inconsistent with other, non-statutory sections in this lease, any statutorily-mandated provisions contained herein shall control."

Furthermore, as required by the Order, and as noted in *Section XXXI Reserved Rights*, paragraph 2 of the standard short-term lease form, a provision has been added to the document, permitting the airport to re-capture the common use ramps and re-distribute the space in the event that a new fixed-base operator(s) should establish business on the Norwood Airport.

In closing, Mr. Fiertz, acting through the NAC, the town of Norwood believes it has taken the necessary steps to meet all parts of the FAA Order. Throughout this process, we have worked very closely with Ms. Donna Witte, FAA's compliance officer in the New England region, as well as Mr. Kevin Willis from your office, to cure the issues relative to our case. We therefore respectfully request that your agency now consider this revised corrective action plan to meet the full measure of our compliance obligations, thus rendering Norwood Memorial Airport as federally grant-eligible.

Please feel free to contact my office directly should FAA require any additional information relative to our case. My point-of-contact information is as follows:

Mailing address:	125 Access Road Norwood, MA 02062
E-mail:	rmaguire@norwoodma.gov
Work phone:	(781) 255-5616
Cell phone:	(781) 603-5373

Thank you.

Sincerely,



Russ Maguire, Manager
Norwood Memorial Airport

Attachments:

- 1 — 10/14/2009 deed of easement between *BMA, Inc.* and the town of Norwood
- 2 — 11/25/2009 Norwood Airport Commission lease offer to *BAC*
- 3 — Mail receipt, Norwood Airport Commission lease offer to *BAC*
- 4 — Norwood Memorial Airport, standard ground lease, short-term; DC-3 apron

Copies to: *Federal Aviation Administration, (ANE) New England Region, Attn:
Donna Witte; Norwood Town Counsel; Norwood Airport Commission*



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City, State, ZIP+4 Norwood, MA 02062		
PS Form 3800, August 2006		
See Reverse for Instructions		

Norwood Memorial Airport Standard Ground Lease, Short-Term: DC-3 Ramp

This Lease agreement is made the ____ day of December 2009 by and between the Norwood Airport Commission (NAC) (*Lessor*) and Boston Air Charter (*Lessee*). Lessor: Norwood Airport Commission, acting pursuant to its statutory powers as set forth under Massachusetts State Laws, Chapter 90, Sections 51D through 51N, as the same may be amended, by and on behalf of the Town of Norwood, and having its usual place of business at the Norwood Memorial Airport, 125 Access Road, Norwood, MA 02062. Lessee: Boston Air Charter, having its usual place of business at the Norwood Memorial Airport, 209 Access Road, Norwood, MA 02062.

I. **GROUND SPACE:** In consideration of the rent and covenants herein reserved and contained on the part of the Lessee to be paid, performed and observed, the Lessor hereby leases unto the Lessee a parcel of impervious, asphalt-covered land containing 13,617 square feet of land (commonly referred to as the "DC-3 Ramp") and shown on an Exhibit A plan attached hereto, situated on the Norwood Memorial Airport in Norwood, Massachusetts. Contained outside and east of this parcel of land, west of the taxiway B centerline, is part of a taxiway object-free area (commonly referred to as a "TOFA") totaling 5,455 square feet, also shown on Exhibit A.

The leased premises are marked "DC-3 Ramp" on said plan.

II. **TERM:** Subject to earlier termination as hereunder provided, this lease is for one term of five (5) years, commencing on the ____ day of December 2009 and ending on the ____ day of November 2014.

III. **RENT:** It is the intent of both the Lessor and the Lessee that the Lease shall be a net Lease, with the Lessor to receive all rental payments herein, without offset or deduction of any kind. Prior to installation and approval by local and state officials of a fueling facility on the DC-3 Ramp, Lessee shall pay the sum of \$ 595.00 per month. Said rent shall be increased annually by two percent (2%) during the term of this lease.

Once the fueling facility is fully installed, inspected and approved for operation by local and state officials, the Lessee shall pay in year one \$20,000 (referred hereinafter as the "Base Annual Rent") regardless of any flowage fee as described below. For year one, the Base Annual Rent shall be paid in 12 equal monthly installments of \$1,666.67 due in advance of the first day of each month. For each successive year of this Lease, the Base Annual Rent will increase by 2% from the preceding year, and shall be paid in 12 equal monthly installments.

The Actual Annual Rent that the Lessee will pay to the Lessor shall be calculated on the basis of a flowage fee of twelve cents (\$.12) per gallon of Jet A fuel and/or ten cents (\$.10) per gallon of aviation gas (100 LL); calculated on the basis of all bills of lading for that month, which are submitted at the end of each month to the Lessor, for all Jet A and/or aviation gas deliveries to the Lessee's fueling facility. In the event the Actual

Annual Rent, calculated above using flowage fees, exceeds the Base Annual Rent, the Lessee shall make an additional payment at the end of each Lease year. Within sixty (60) days of the end of each Lease year, Lessee shall pay the Lessor such amount, if any, of the difference between the Actual Annual Rent and the Base Annual Rent. It is understood that the Actual Annual Rent calculated from the flowage fees may exceed the Base Annual Rent and that excess amount will be rent due under this lease agreement.

The first payment shall be made upon the execution and delivery of this Agreement to the Lessor, and subsequent payments shall be made on the first day of each month thereafter, in advance, during the Term hereof, as same may be extended, as Lessee or anyone claiming under Lessee shall occupy said premises or any part thereof. The Lessee further agrees to pay the Lessor finance charges of 1 ½% per month (18% annual percentage rate) on all rents and payments due under this lease for each month or fraction of a month that the rents or payments remain unpaid beyond thirty (30) days after the date on which they are due, or as specified above.

IV. USE OF THE PREMISES: Lessee shall have the right to use the premises for the following purposes and activities, and those purposes directly needed to accomplish such uses, and none other. The leased premises shall be used to accommodate the installation of an above ground, non-commercial self-fueling¹ storage facility, for the purpose of dispensing aviation fuel, together with the appropriate industry-standard pumping, filtering, security, fire suppression, electrical and containment equipment; plus aircraft parking apron.

The Lessee is restricted from selling or dispensing fuels to other airport users, including locally based and transient aircraft. Lessee's fuel dispensing activities shall consist of and be limited to self-fueling by the Lessee or the Lessee's employees, of aircraft owned by the Lessee; or, exclusively leased for two (2) years or more to the Lessee and under the complete operational control of the Lessee. Upon the request of airport management, the Lessee is required to provide evidence of aircraft ownership (and/or lease agreements) of any aircraft being fueled by the Lessee or the Lessee's employee. The Lessee may also be required to show proof that the person fueling the aircraft is an employee of the Lessee. Proof of employment may be a copy of the employee's W-2 statement.

All aircraft to be self-fueled by the Lessee must furthermore be carried on the Lessee's insurance certificate. It is the responsibility of the Lessee to ensure that airport management has an updated copy of the Lessee's insurance, with the required aircraft listed; and coverage limits.

¹ As defined in Federal Aviation Administration Advisory Circular AC 150/5190-7 *Minimum Standards*, Appendix 1. *Definitions*, (p.14) "Self-fueling means the fueling or servicing of an aircraft...by the owner of the aircraft with his or her own employees and using his or her own equipment. Self-fueling and other self-services cannot be contracted out to another party. Self-fueling implies using fuel obtained by the aircraft owner from the source of his/her preference. As one of many self-service activities that can be conducted by the aircraft owner or operator by his or her own employees using his or her own equipment, self-fueling differs from using a self-service fueling pump made available by the airport, an FBO, or an aeronautical service provider. The use of a self-service fueling pump is a commercial activity and is not considered self-fueling as defined herein."

The Lessee's fuel storage and dispensing activities shall consist of and be limited to self-fueling by the Lessee of aircraft which the Lessee owns or exclusively leases for its own use of two (2) years or more, with fueling equipment owned by the Lessee. Self-fueling co-ops are prohibited.

Lessee shall have the sole responsibility for maintaining fuel quality standards in all phases of fuel storage and dispensing.

Further the Lessee agrees to adhere to all environmental permitting and stewardship requirements regarding the installation and operation of a fuel storage and dispensing facility; and aircraft parking apron. As an accessory due to limited parking, Lessee may also park automobiles on the leased premises for personnel and customers. It is agreed that the Lessor makes no representation or guarantees that the leased area is fit for the uses to which they are placed by the Lessee, but rather, that Lessee has made its own independent judgment that the leased premises are suitable to Lessee's needs.

V. **INSURANCE:** The Lessee agrees that it will secure and pay for general liability insurance with respect to the leased area, insuring the Lessee and the Lessor against all claims for injuries to a person or property sustained by anyone while on the premises leased to the Lessee. Insurance will include product and service provided by the Lessee. Lessee will maintain property and public liability insurance with limits not less than five million dollars (\$5,000,000) per incident for bodily injury or death, and property damage with aggregate limits not less than ten million dollars (\$10,000,000). Insurance will be in responsible companies authorized to do business in Massachusetts. Lessee shall provide Lessor with duplicate originals of policies providing such insurance and shall provide reasonable evidence by providing an annual updated policy to the Lessor. Insurance amounts shall at all times conform to the rules and regulations issued by the Massachusetts Division of Aeronautics and the Norwood Airport Commission's rules and regulations for operating the airport. Copies of all insurances and binders will be filed in the offices of the Norwood Airport Commission.

VI. **ASSIGNMENTS, MORTGAGES, OR SUBLEASES:** Neither Lessee, nor its successor, heirs or assigns, shall assign, mortgage, pledge, or encumber this lease. Leased area may not be sub-let for any purpose. Lease shall not be assigned or transferred by operation of law, without the prior consent in writing of the Lessor in each instance. If lease is assigned or transferred, or any part of the leased area is used by other than the Lessee, Lessor may, after default by Lessee, collect rent from assignee, transferee, or occupant and apply amount collected to the rent reserved herein, but no such assignment, occupancy, or collection shall be deemed a waiver of any agreement or condition hereof, or acceptance of the assignee, transferee, or occupant as Lessee. Lessee shall continue to be liable hereunder in accordance with the terms and conditions of this lease and shall not be released from the performance of the terms and conditions hereof. The consent of the

Lessor to an assignment, mortgage, pledge, or transfer shall not be construed to relieve Lessee from obtaining the express written consent to any future transfer of interest.

VII. SPECIAL CONDITIONS:

All activities shall be in accordance with the Norwood Airport Storm Water Pollution Prevention Plan, Norwood Airport Spill Prevention, Control and Countermeasures Plan and Norwood Airport Security Plan, including restrictive access control to and from the leased area. The NAC reserves the right to alter these plans as needed to reflect the federal and/or state environmental and security requirements in the future. The NAC further reserves the right to alter access to the site for safety and security reasons.

The Lessee must cooperate with a number of local and state agencies, and officials, to effect the installation, inspection, approval, and operation of an aircraft fueling facility. Required critical path steps include, but may not be limited to the following:

- i) The Lessee must appear before the NAC with a proposal that defines the design, dimensions, equipment and space requirements for an aviation fueling facility.
- ii) The Lessee must provide to the NAC a complete set of detailed engineering drawings, signed off by a professional engineer, showing the fueling facility's design, dimensions, equipment and space requirements. These drawings will include an electrical plan and a conduit trench detail drawing, which depicts the pipe material to be installed. Both the electrical plan drawing and the conduit trench detail drawing must be signed off by the Town of Norwood. The fueling facility's design, dimensions, equipment and space requirements must be approved by the NAC; and any NAC-required design changes, modifications or deletions must be adhered to.
- iii) The Lessee's Superseding Order of Conditions from the Massachusetts Department of Environmental Protection must remain in good standing;
- iv) The Lessee must file a notice of intent with the Norwood Conservation Commission, and receive a subsequent order of conditions. A letter from the Norwood Conservation Commission, noting any requirements, or the absence thereof, must be copied to the NAC.
- v) The Lessee must receive: a) a written recommendation from the Norwood Fire Department to the Norwood Board of Selectmen, copied to the NAC, recommending that the Lessee be issued a VIF license to store flammables; and b) a subsequent VIF license issued by the Norwood Board of Selectmen for the storage of flammable liquids in a permanent fuel facility must be received by the lessee, copied to the NAC. This license constitutes an approval by the Town of Norwood, conditional to

the requirements then set forth by the office of the State Fire Marshal for the Commonwealth of Massachusetts.

- vi) The Lessee must file an *Application for Construction and Installation of Above Ground Tanks*, and all required documentation, specifications and plans, with the office of the State Fire Marshal in the Commonwealth of Massachusetts; and a permit must be approved by the State Fire Marshal. Unless otherwise noted on the permit from the State Fire Marshal's office, construction on the subject fuel tank(s) must begin within six (6) months of the date of the issued permit; and construction of the subject fuel tank(s) must be fully completed within one year of commencement.
- vii) No construction of the fueling facility will be granted until all local and state permits have been received by the Lessee. Construction will only begin with the issuance to the Lessee of a Notice to Proceed from the NAC.
- viii) The Lessee's fueling facility must pass inspection by both the Norwood Fire Department and the Massachusetts Division of Aeronautics. A copy of the inspection report(s) must be provided to the NAC.
- ix) Prohibited from the fueling facility locus, or use as an aircraft, ground vehicle or equipment parking or staging area, is the TOFA-designated area outside of the leased premises; the abutting aprons; and/or the public use Taxiway B.

Within three years from the date of execution of the lease, the Lessee's fueling facility must be fully constructed, inspected and approved for operation. The Lessee's inability to meet these requirements effectively breaches this lease.

— STANDARD PROVISIONS —

VIII. **ACCESS AND EGRESS:** Lessee shall at all times have the full and free right of access and egress to the leased property referred to herein, subject, however, to safety and security requirements. This applies additionally, for employees, customers, passengers, guests and invitees of the Lessee. Such rights shall extend to persons or organizations supplying materials or furnishing services to the Lessee, including the use of vehicles, machinery and equipment reasonably required by such person or organization, provided, however, that such use shall conform to rules and regulations, plus security guidelines of the Norwood Airport Commission regulating such activity.

IX. **RULES AND REGULATIONS:** Lessee agrees to observe and obey the Norwood Memorial Airport General Regulations, and any standards, regulations, plans and programs incorporated therein (collectively referred to as the General Regulations),

adopted by the Norwood Airport Commission, as the same may be amended from time to time, and to conform to such rules and regulations applicable to the operation of aircraft also issued by the Norwood Airport Commission on an airport. The Lessee must furthermore comply with the directives of the Federal Aviation Administration (FAA) and the Massachusetts Division of Aeronautics with respect to operation of aircraft on an airport. The provisions of the General Regulations, as amended from time to time, are incorporated herein. To the extent the General Regulations are inconsistent with this lease, the General Regulations shall control.

X. **GOOD AND SUFFICIENT REPAIR:** It is agreed the Lessor shall be under no obligation to maintain or repair leased area, but that the Lessee shall keep leased area in good and sufficient repair and to quit and deliver up premises upon termination of the lease in the same condition they are now in. Ordinary wear and tear and damage resulting from the elements, or circumstances over which Lessee had no control are excepted. The Lessee shall be responsible for snow removal within the leased area. It is further agreed that pavement maintenance and crack seal repair be performed annually, or more frequently, if needed.

XI. **RIGHT TO MAKE IMPROVEMENTS, ALTERATIONS, OR REPAIR:** Lessor reserves the right from time to time to make improvements, alterations, renovations, changes and repairs in and about the leased premises. Other than those herein before provided for the Lessee to do, as to the Lessor shall be deemed desirable. Lessee shall make no claim against the Lessor for interference with leasehold interest or for loss or damage to its business during such improvements, alterations, renovations, change and repair. The Lessee shall not hinder or interfere with the Lessor. Lessor shall have the right at all times to erect a building or structure on adjoining or neighboring premises as it deems fit or proper, without any liability to Lessee therefore in any event or any cause. The Lessor, as the authorized representative of the airport, is solely in charge of determining the nature and scope for improvements to the airport. Through the Airport Layout Plan (ALP) and/or the Airport Master Plan, the Lessor shall determine as it seems fit and proper, without any liability to the Lessee, therefore in any event, or any cause. Lessee agrees not to make or suffer to make any alteration therein without the approval of Lessor in advance of any work.

XII. **LESSEE TO RESTORE PREMISES:** In the event the leased property is destroyed in whole or in part by fire or other casualty, or by the Lessee's want of care, Lessee shall on receipt of notice from Lessor promptly rebuild or restore premises to their previous condition, or alternately, may elect to demolish the remaining structure, restore the ground site to pre-lease condition, and terminate this agreement upon thirty day's (30) written notice to Lessor. The Lessee shall remain liable for any rent hereunder at all times, notwithstanding rebuilding, restoration or demolition, and the Lessor shall not be liable for any costs incurred by the Lessee attributable to any election of Lessee hereunder.

XIII. **LESSEE TO COMPLY WITH FIRE PREVENTION LAWS:** Lessee shall at all times comply with fire Code, rules and regulations of the Norwood Fire Department for the prevention of fires and the environmental safety of the Leased area. Lessee shall furthermore comply with the National Fire Protection Association recommendations and standards, where applicable. Lessee shall at their own expense comply with all orders relating thereto

XIV. **INDEMNIFICATION OF LESSOR:** Lessor shall not be liable for any loss, injury, death or damage to person or property, which may be suffered, sustained or incurred by Lessee, employees, visitors, users or occupants of leased area, whether such loss, injury, death or damage shall be caused by, or in any way result from, or arise out of any act, omission, or negligence of Lessee or any occupant, subtenant, visitor, or user of any portion of the leased area, or result from or be caused by any other matter or thing, whether of the same kind or of a different kind than the matter of things set forth, and Lessee shall indemnify the Lessor against all claims, liability, loss, injury, death or damage. Lessee hereby waives all claims against Lessor for damages to improvements that are now on or hereafter may be placed on the premises and to the property of the Lessee in or about the leased area, from any cause arising at any time during the term thereof. The two preceding sentences shall not apply to loss, injury, death or damage by reason of the sole negligence or misconduct of Lessor, its agents or employees.

It is understood that the Lessor shall not be liable in any way to the Lessee, its agents, representatives, or employees for any injury to persons or damage to property resulting from the sinking or settlement of the land or from any change in the physical condition of the land or from any change in the physical condition of the land caused by the elements, erosion or deterioration.

XV. **TAXES:** Real estate taxes, if any, on leased land will be the obligation of the Lessee.

XVI. **TERMINATION BY LESSOR:** Lessee hereby covenants with Lessor, its successors and assigns, that it will pay hereof unto the Lessor the monthly rent upon the days appointed for payment, and also all taxes and assessments, including any penalties of whatever nature. If the Lessee fails to make payments due within thirty (30) days on the date on which payment is due, Lessor may, at its option, terminate this agreement and take possession of the leased premises. Lessor shall have the right to terminate this agreement in the event that the Lessee, its agents or employees cause the premises to strip, waste or commit any breach of the covenants of this lease, and the Lessee shall have the right to remove its building or property not held by the Lessor for security of payment.

XVII. **LESSOR'S RIGHT OF ENTRY:** Lessee shall permit Lessor, its agents, attorney, or employees to enter demised premises at all reasonable times for the purpose of inspecting the same, or for the purpose of posting notices of non-responsibility for

alterations, or repairs, without any rebate of rent and without any liability to the Lessee for any loss of occupation or quiet enjoyment of the premises thereby occasioned.

XVIII. **RE-ENTRY AND REPOSSESSION ON DEFAULT:** Lessor may terminate this agreement pursuant to Article XV, or for non-payment of taxes, assessments, or other payments obligated hereunder, or if the leased premises are abandoned or vacated by the Lessee during the term thereof.

XIX. **LESSEE'S RIGHT TO TERMINATE:** In the event the airport or the leased premises shall for any reason become unsuitable by reason of any law or regulation now or hereafter enforced affecting the Lessee's business, the Lessee shall have the right to terminate and cancel this lease upon giving the Lessor thirty (30) days' notice in writing, provided, however, that the Lessor may within such time, remove such cause for cancellation by placing the premises in suitable and safe condition so as to comply with the law and regulation affecting the same.

XX. **LESSOR'S RIGHT OF FIRST REFUSAL:** It is understood and agreed that upon the termination, cancellation, or at the end of any term hereof, if the Lessee determines not to remove property or building, the Lessor shall have first refusal to purchase property and/or buildings located on the leased premises upon terms and conditions as then are agreed, based on the original installation cost. If Lessor shall fail to execute the agreement within forty-five (45) days, Lessee shall be free thereafter to sell to a third party, making the offer on the same terms and conditions. If the property is not sold, then, the Lessee shall give the Lessor the same right to purchase on receiving any subsequent offer from any third party that is acceptable to Lessee.

XXI. **CONFORMITY OF AGREEMENT:** Lessor reserves the right to enter into other agreements which authorize the use of the airport facilities on terms similar to those extended to Lessee. However, Lessor agrees not to enter into any similar agreements with respect to the airport, which contain more favorable terms than the agreement with the Lessee, or to grant potential competitors of Lessee privileges not herein authorized unless the same are extended to the Lessee.

XXII. **SURRENDER OF POSSESSION:** On expiration or other termination of this agreement, the Lessee's right to use the premises, facilities and service set herein shall cease, and Lessee shall vacate the premises without unreasonable delay. Except as otherwise provided herein, all buildings, hangars, structures, fixtures, improvements, equipment and other property bought, installed, erected, or placed by Lessee in, or about the airport and leased premises, including, but not limited to, storage tanks, pipes, pumps, poles, machinery, and air conditioning equipment, shall be deemed and shall remain the property of the Lessee. Lessee shall have the right at any time during the term hereof and for an additional ten (10) days after the expiration or other termination of the agreement to remove any and all of such property from the airport, subject, however, to Lessee's obligation to repair all damage, if any, resulting from moving or removal. Any and all property not removed by Lessee prior to expiration of the ten-day period shall thereupon

became part of the land on which it is located and title shall vest with the Lessor at the sole election of the Lessor.

XXIII. ABANDONMENT OF PREMISES: Lessee hereby agrees not to vacate or abandon the premises at any time during the term hereof. If Lessee shall abandon, vacate or surrender the demised premises, or be dispossessed by process of law, or otherwise, any personal property belonging to Lessee and left on the premises shall be deemed to be abandoned, and may either be retained by the Lessor as property of the Lessor or may be disposed of at a public or private sale as Lessor sees fit. Any property of the Lessee sold at public or private sale or retained by Lessor shall have all proceeds of any such sale, or the then current fair market value of such property as may be retained by the Lessor, shall be applied by Lessor against (1) the expenses of Lessor removal, storage, or sale of the personality, (2) the arrears of rent or future rent payable under this lease, and (3) any other damages to which Lessor may be entitled hereunder. The balance of such amounts if any shall be given to Lessee. Lessor may, at its option, re-let the premises as agent of the Lessee, however, Lessee shall remain liable for loss or damages resulting from the abandonment. Lessee hereby waives all rights of notice to quit or intention to re-enter the premises under the provisions of any statute of the Commonwealth of Massachusetts, or of this lease, in the event of abandonment of the premises.

XXIV. ARBITRATION: If any controversy between the Lessor and the Lessee shall arise as to the fair rental value of the premises, or, as to the value of any building or structure constructed by the Lessee, or question of reasonableness of denial of consent to a proposed building or structure, such controversy shall be submitted to three (3) disinterested persons, one of whom shall be selected by the Lessor, another by the Lessee, and the third by the two chosen; provided, that if either party shall neglect or refuse to choose an arbitrator for a space of fifteen (15) days after written notice from the other, the other shall choose two (2) disinterested persons and the two (2) so chosen shall choose a third. The three (3) persons chosen in either of the manners aforesaid shall give notice to and hear the parties and decide the matter upon equitable principles. The written award signed by any two (2) shall be decisive of such controversy. Each party shall pay the fee of the person elected by it and both shall pay all other expenses equally.

XXV. SIGNS, AWNINGS, AND MARQUEES INSTALLED BY LESSEE: Lessee shall not construct or place signs, awnings, marquees, or other structures projecting from the exterior of the premises without written consent of Lessor. Lessee shall remove such signs, displays, advertisements, or decorations placed on the premises, which, in the sole opinion of Lessor, are offensive or otherwise objectionable. If Lessee shall fail to remove signs, displays, advertisements, or decorations within seven (7) days after receiving written notice from Lessor to remove, then, Lessor reserves the right to enter the premises and remove the objectionable item at the expense of the Lessee.

XXVI. AGENCY: Lessee shall not at any time during the period of this lease, or any extensions thereof, act as agent, servant, or employee of Lessor, and shall not be liable for failure to act.

XXVII. **NOTICE:** All notices to be given with respect to this lease shall be in writing. Each notice shall be sent by registered or certified mail, postage prepaid, and returned receipt requested, to the party to be notified at the address set forth herein or at such other address as either party may from time to time designate in writing. Every notice shall be deemed to have been given at the time it shall be deposited in the United States mails in the manner prescribed herein. Nothing contained herein shall be construed to preclude personal service of a summons or other legal process.

XXVIII. **ATTORNEY'S FEES:** If any action at law or in equity shall be brought to recover rent under this lease, or for, or on account of any breach hereof, or to enforce or to interpret any of the covenants, terms or conditions of this lease, or for the recovery of the demised premises, the prevailing party shall be entitled to recover from the other party as part of the prevailing party's costs, reasonable attorney's fee, the amount of which shall be fixed by the court, and shall be made part of any judgment or decree rendered.

XXIX. **RIGHT TO CLOSE AIRPORT:** Lessor reserves the right to develop, improve, construct, repair, reconstruct, or rehabilitate any or all of the airport facilities, including runways, taxiways, aprons, lighting systems, approach lighting installations, beacons, avionics equipment and any other facility which may at times be used to provide service to users of the airport, and in the event that such development, improvement, construction, repair, reconstruction or rehabilitation interrupts, inconveniences, interferes with or in any way adversely affects Lessee's use of the airport, or any of its facilities, the, Lessee does hereby waive any and all claim for damages arising out of such action in carrying out the aforementioned functions. Lessee hereby agrees that Lessor has not nor hereby represents, warrants or guarantees, either expressly or by implication, that the use of the airport will be available continuously or at all times, but that the airport or any of its facilities may be closed by Lessor in whole or in part for reasonable periods of time as a result of causes beyond the control of the Lessor, or for the execution of any or all of the functions set forth herein above.

XXX. **FEDERAL AND STATE REQUIREMENTS:** It is mutually understood and agreed that in exercising the rights and privileges herein granted for furnishing aeronautical services to the public, the Lessee will: a.) Furnish said services on a fair, equal and not unjustly discriminatory basis to users thereof, and b.) Charge fair, reasonable and not unjustly discriminatory prices for each unit of service; provided, however, that Lessee may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

It is understood and agreed that: a.) no right or privilege has been granted which would serve to prevent any person, firm, or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own regular employees (including, but not limited to, maintenance and repair) that it may choose to perform; b.) nothing herein contained shall be construed as granting or authorizing the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958;

and c.) no lessee will be given more favorable terms for providing the same public service than any other lessee.

The Lessee for self, personal representatives, assigns and successors in interest, further agrees as a covenant running with the land: a.) No person on the grounds of race, color, or national origin shall be excluded from participation in, denied benefits of, or otherwise subjected to discrimination in the use of its facilities. b.) In the construction of any improvements on, or under such land and the furnishing of services thereon, no person, on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, c.) Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulation may be amended, that in the event of a breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate the lease, and to re-enter and re-possess said land, order the removal of Lessee's goods and to hold said land as if this lease had never been made or issued.

This lease shall be subordinate to the provisions of any existing or future agreement entered into between the Lessor and the United States of America for the purpose of obtaining federal aid for the improvement and/or development of the airport; that nothing in the lease shall be construed to grant or authorize the granting of an exclusive right; that the facilities of Norwood Memorial Airport have been financed in large part by grants from the Federal Aviation Administration (FAA) and/or the Massachusetts Division of Aeronautics precursor entity, meaning that receipt of these grants is conditional upon compliance by the NAC with certain assurances, and therefore, any term or condition of this lease which is found to be in conflict or inconsistent with any such federal and/or state grant assurance shall be subordinated to such federal and/or state grant assurance; and that the NAC, in compliance with FAA and/or the Massachusetts Division of Aeronautics grant assurances, may not and does not give any lessee assurances of exclusive access or monopolistic rights on or to Norwood Memorial Airport, and thus, any commercial activity authorized on the premises of this lease may be subject to competition from others, on or off the airport. The Lessor has the right to amend this lease to comply with all existing and future FAA and/or Massachusetts Division of Aeronautics grant assurances.

Lessor reserves the right to cancel this lease in the event of a national emergency or declaration of war by the United States of America, and Lessor is notified of the exercise of the federal government's right to recapture and control the airport.

To the extent any of the sections required by Federal or Massachusetts law are inconsistent with other, non-statutory sections in this lease, any statutorily-mandated provisions contained herein shall control.

XXXI. **RESERVED RIGHTS.** In addition to any rights reserved by the Lessor hereunder, the Lessor reserves the right: a.) to further develop or improve the airside and landside areas of the airport as it sees fit, and without interference or hindrance; b.) to maintain and keep in good repair the landing areas of the airport and all publicly owned facilities of the airport, together with the right to direct and control all activities of lessees in this regard; c.) to take any action it considers necessary to protect the aerial approaches to the airport against obstruction, together with the right to prevent lessees from erecting, or permitting to be erected, any building or other structure on or adjacent to the airport which would limit the usefulness of the airport or constitute a hazard to aircraft; and d.) to take any action it considers necessary to comply with any grant assurances, obligations, or responsibilities imposed upon the Town of Norwood or the Lessor by the FAA and/or the Massachusetts Division of Aeronautics, or its precursor entity, including but not limited to entering the Airport's leased premises for any reason and/or amending or terminating any lease agreement.

Lessor also reserves the right to recapture the common use ramps of the airport, or any portion thereof, and to redistribute any portion of such ramps in the event a new fixed base operator ("FBO") establishes a business on the premises of the airport in the future, based upon the needs of the airport as determined from time to time by Lessor, exercising its discretion, and/or as necessary to comply with any federal or state grant assurances, statutes, regulations or other requirements. In the event that Lessor exercises its discretion under this paragraph, an FBO shall have a preferential right to use ramp space immediately in front and adjacent to said FBO's facilities, provided that nothing contained herein shall be construed as a guarantee of any right to use such ramp space.

XXXII. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of the heirs, assigns or successors in interest to the parties.

XXXIII. **SEVERABILITY.** If for any reason any provision of this lease is determined to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

XXXIV. **WAIVER.** The failure by the Lessor to enforce any provision of this lease will not constitute a waiver of future enforcement of that or any other provision.

XXXV. **JURISDICTION.** Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts of Massachusetts and the parties hereby consent to the personal jurisdiction and venue of such courts.

XXXVI. **ENTIRE AGREEMENT.** This lease represents the entire agreement between the parties hereto with respect to the matter covered herein. No other agreement, representations, warranties, proposals, oral or written, shall be deemed to bind the parties.

XXXVII. **CAPTIONS.** All captions in this lease are intended solely for the

convenience of the parties and none shall be deemed to affect the meaning or construction of any provision of this lease.

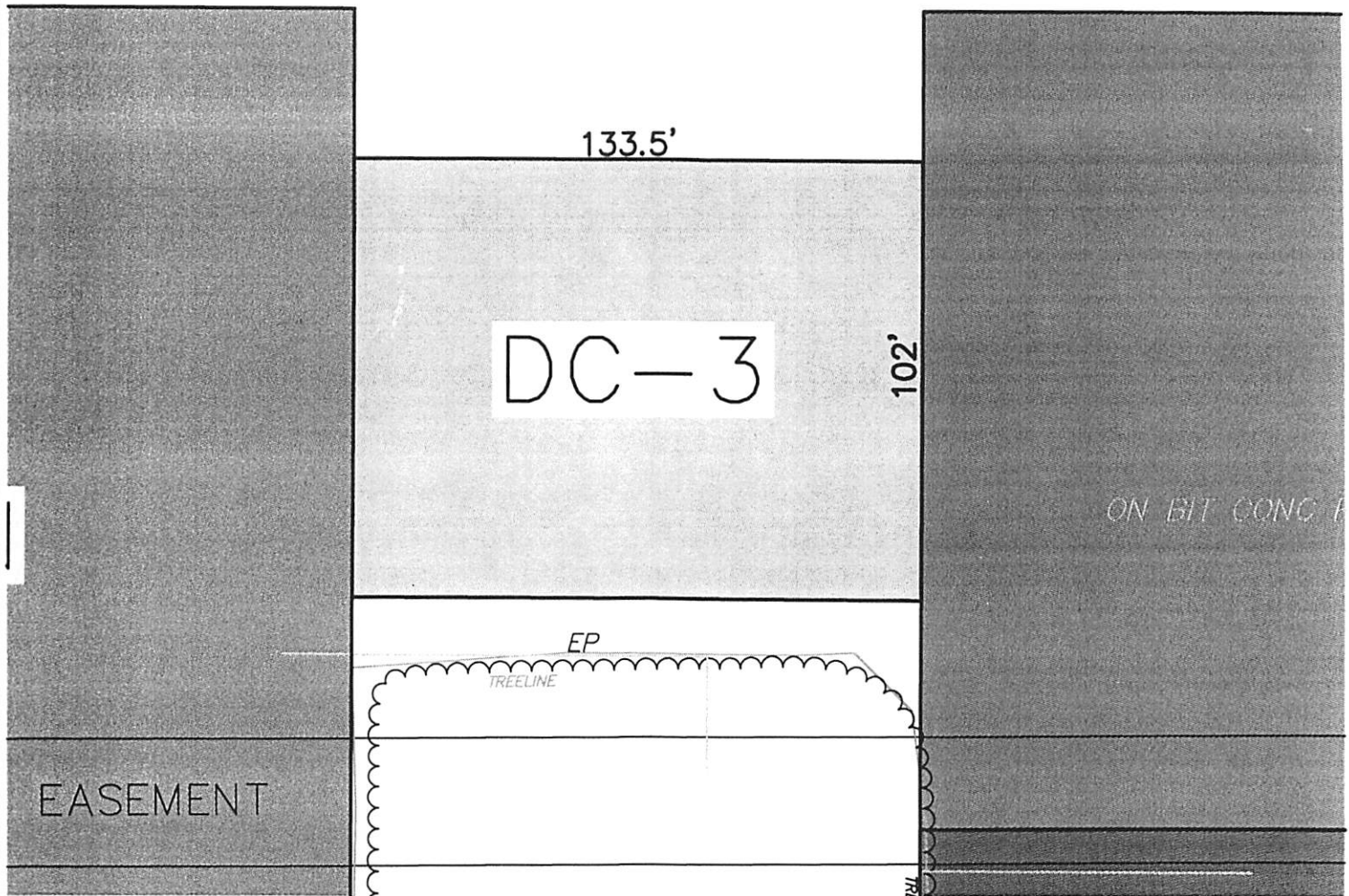
IN WITNESS WHEREOF, the parties hereto have duly affixed their hand and seal as of the day and year first above written.

LESSOR: NORWOOD AIRPORT COMMISSION, acting on behalf of the Town of Norwood

Approved by Counsel _____

LESSEE: BOSTON AIR CHARTER LLC

TOFA



LOT
DC-3

LESSEE
BOSTON AIR CHARTER

LEASE PERIOD
UNKNOWN

AREA
19,072 sq. ft. - (with TOFA : 13,617 sq. ft.)

NORWOOD MEMORIAL AIRPORT
LEASE PLAN

DC - 3
DECEMBER 1, 2009

SCALE: 1' = 40'



U.S. Department
of Transportation
Federal Aviation
Administration

Airport Compliance and Field Operations

800 Independence Ave., SW.
Washington, DC 20591

JAN 27 2010

Mr. Russ Maguire
Manager
Norwood Memorial Airport
125 Access Road
Norwood, MA 02062

Dear Mr. Maguire:

Thank you for your December 9, 2009 submission about the Town of Norwood's Corrective Action Plan (CAP) for FAA Docket Number 16-07-03, *Boston Air Charter v. Norwood Airport Commission*. The Federal Aviation Administration (FAA) finds that the CAP has resolved the issues identified in the Director's Determination (DD) dated April 11, 2008 and affirmed in the Final Agency Decision dated August 14, 2008.

Our review of the CAP indicates that the Town has taken the necessary and appropriate steps to comply with the FAA Order to:

- Provide access to aeronautical service providers, including Boston Air Charter, to establish a fuel facility and conduct self-fueling operations consistent with state and local regulations;
- Regain the Airport's rights and powers to access the "1,100 foot strip" to provide power to the Airport's ramps for the Airport's tenants;
- End the practice of awarding long-term leases of federally funded ramps that have the effect of granting one party control over the majority of the ramps on the Airport; and
- Establish a short-term ramp leasing permit policy for the Airport to assert more control of the federally funded ramps.

The Town has acquired a utilities easement from Boston Metropolitan Airport, Inc., to provide access to power for all interested tenants including Boston Air Charter. As required, the Town has extended a lease offer to Boston Air Charter, consistent with the state and local regulations, and advised BAC of the availability of this utility easement. The Town has also taken appropriate action to terminate the practice of long-term leasing of public ramps and institute a policy of short-term leasing of federally funded ramps on

the Airport. A review of the Town's proposed CAP and follow-up documentation demonstrates that the corrective actions are acceptable.

In conclusion, we find the Town's CAP acceptable, as submitted. The FAA finds the Town of Norwood in compliance with its Federal obligations.

Sincerely,



Randall S. Fiertz
Director of Airport Compliance
and Field Operations

cc: Donna Witte, Compliance and Real Estate Specialist
New England Region – Airports Division