

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. 1982CV01099

FLIGHTLEVEL NORWOOD, LLC, et al.,

Plaintiffs,

v.

TOWN OF NORWOOD, et al.,

Defendants.

BOSTON EXECUTIVE HELICOPTERS, LLC,

Plaintiff-in-Counterclaim,

v.

FLIGHTLEVEL NORWOOD, LLC, et al.,

Defendants-in-Counterclaim.

AFFIDAVIT OF ERIC H. LOEFFLER

I, Eric H. Loeffler, hereby depose and state the following:

1. I am counsel of record for the defendant, Boston Executive Helicopters, LLC (“BEH”), in the above captioned action. I make this affidavit upon my own personal knowledge.

2. Attached hereto as Exhibit 1 is a true and correct copy of FlightLevel’s Memorandum of Law in Support of Motion for Temporary Restraining Order and Injunctive Relief, filed in Civil Action No. 1582CV00213.

3. Attached hereto as Exhibit 2 is a true and correct copy of BEH's Opposition to FlightLevel's Motion for Temporary Restraining Order and Injunctive Relief, filed in Civil Action No. 1582CV00213.

4. Attached hereto as Exhibit 3 is a true and correct copy of the Affidavit of Christopher Donovan, dated February 26, 2021, filed in Civil Action No. 1582CV00213.

5. Attached hereto as Exhibit 4 is a true and correct copy of the BEH's Motion to Vacate Preliminary Injunction, filed in Civil Action No. 1582CV00213.

6. Attached hereto as Exhibit 5 is a true and correct copy of the Affidavit of Christopher Donovan, dated March 16, 2021, filed in Civil Action No. 1582CV00213.

7. Attached hereto as Exhibit 6 is a true and correct copy of FlightLevel's Opposition to BEH's Motion to Vacate Preliminary Injunction Order, filed in Civil Action No. 1582CV00213.

Signed under the pains and penalties of perjury on this 2nd day of August 2021.

/s/ Eric H. Loeffler
Eric H. Loeffler

CERTIFICATE OF SERVICE

I, Eric H. Loeffler, hereby certify that on this 2nd day of August 2021, I served a true and accurate copy of the foregoing document to counsel of record by email as follows:

Neil Hartzell, Esq.
Ben N. Dunlap, Esq.
Freeman, Mathis & Gary LLP
60 State Street, 6th Floor
Boston, MA 02109

David S. Mackey, Esq.
Jonathan T. Elder, Esq.
Anderson & Kreiger LLP
50 Milk Street, 21st Floor
Boston, MA 02109

Jason Pithie, Esq.
Pithie and Associates, Inc.
158 Pleasant Street
South Weymouth, MA 02190

/s/ Eric H. Loeffler

Eric H. Loeffler

EXHIBIT 1

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT

_____)	
BOSTON EXECUTIVE HELICOPTERS LLC,)	
ET AL.,)	
)	
Plaintiffs/Defendants-in-Counterclaim,)	
)	CIVIL ACTION NO. 1582CV00213
v.)	
)	
FLIGHTLEVEL NORWOOD, LLC, ET AL.,)	
)	
Defendants/Plaintiffs-in-Counterclaim.)	
_____)	
)	CONSOLIDATED WITH
)	
FLIGHTLEVEL NORWOOD, LLC, ET AL.,)	
)	
Plaintiffs,)	
)	
BOSTON EXECUTIVE HELICOPTERS LLC,)	CIVIL ACTION NO. 1582CV01637
ET AL.,)	
)	
Defendants.)	
_____)	

**FLIGHTLEVEL’S MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR TEMPORARY RESTRAINING ORDER AND INJUNCTIVE RELIEF**

FlightLevel Norwood, LLC is the Norwood Memorial Airport’s (the “Airport”) only provider of aviation fuel. Boston Executive Helicopters LLC (“BEH”) has now deliberately blocked FlightLevel’s access to its fuel farm and without immediate injunctive relief, FlightLevel will run out of jet fuel within 24-48 hours.

Pursuant to Mass. R. Civ. P. 65.3 and in conjunction with their Complaint for Contempt, Plaintiffs (collectively, “FlightLevel”) submit this Memorandum of Law in Support of their Motion for Injunctive Relief (“Motion”), against Defendant BEH, to enjoin BEH from

interfering with FlightLevel’s leasehold and access rights at the Airport, in violation of this Court’s Order dated October 22, 2019 (the “Order”).

I. BACKGROUND AND FACTS

This case concerns a dispute over property rights and business interests between sublessees at the Norwood Memorial Airport (“Airport”) located in Norwood, Massachusetts. The Norwood Airport Commission (“NAC”), an agency of the Town of the Norwood, is the operating authority of the Airport.

Defendant/Plaintiff-in-Counterclaim (in civil action number 1582CV00213) EAC Realty Trust, II (“EAC”) is the sublessee of land at the Airport known as Lot G and Lot H. At all relevant times, Defendant/Plaintiff-in-Counterclaim FlightLevel Norwood, LLC (“FlightLevel”) owned 100% of the beneficial interest in EAC, and Defendant/Plaintiff-in-Counterclaim Peter Eichley (“Eichley”) was the sole Trustee of EAC.

FlightLevel conducts business as a fixed base operator (“FBO”) at the Airport. As an FBO, FlightLevel leases land and improvements including aircraft hangars and parking aprons at the Airport and sells aircraft fuel to its customers. Affidavit of Peter Eichley (“Eichley Aff.”), ¶¶ 2, 3.

Plaintiff/Defendant-in-Counterclaim Boston Executive Helicopters LLC (“BEH”) also leases land at the Airport.¹ Eichley Aff., ¶¶ 5, 7, 17, 18.

As commercially permitted FBOs, both FlightLevel and BEH are authorized to conduct aircraft fueling at the Airport. FlightLevel has been selling fuel at the Airport since 2008. Although BEH’s fuel farm has been in place since 2014, it has yet to purchase, store, or offer

¹ Plaintiff/Defendant-in-Counterclaim MII Aviation Services LLC (“MII”) is the lessee of Unit 7 and Unit 8 of the T-hangar condominium on Lot G. At all relevant times, Plaintiff/Defendant-in-Counterclaim HB Holdings, Inc. (“HBH”) was the lessee of Office Space of the T-hangar condominium on Lot G.

fuel for sale to Airport users, leaving FlightLevel as the Airport's sole fuel provider. Eichleay Aff. ¶ 6 FlightLevel uses its Lot G and Lot H leaseholds and other portions of Lot H to operate its fuel farm on the Tank Farm Lease Lot on Lot H. BEH's fuel farm is located on Lot F. Eichleay Aff. ¶ 7.

By Order dated October 22, 2019 (the "Order") this Court ruled on the parties' cross-motions for summary judgment. The Court denied BEH's motion and allowed FlightLevel's motion in part, dismissing all of BEH's claims against FlightLevel, allowing all of FlightLevel's counterclaims that were the subject of the summary judgment motion, and awarding declaratory and injunctive relief to FlightLevel.

The October 22, 2019 Order enjoins BEH from interfering with FlightLevel's rightful use of Lot G and Lot H. Eichleay Aff. ¶ 8, Exhibit 2. As further described below, BEH on numerous occasions has used vehicles and other means to block FlightLevel's access to its fuel farm and obstruct deliveries of fuel necessary for FlightLevel's business operations and Airport users. Eichleay Aff. ¶¶ 21-32. Photographs attached as Exhibits 7 and 8 to the Eichleay Affidavit show BEH vehicles obstructing the transport route of trucks delivering fuel to FlightLevel's fuel farm. Eichleay Aff. ¶¶ 15-33.

A. FlightLevel's Rights to Access its Fuel Farm

Property rights of FlightLevel at the Airport include (1) FlightLevel's Lease Lot G and associated "25' Tank Farm Access Easement" (to the east) for access to FlightLevel's fuel farm on Lot H; (2) the "Lot B & H Licensed Area" on Lot B; (3) FlightLevel's Tank Farm Lease Lot, on Lot H; and (4) the area on Lot H (east of the Tank Farm Lease Lot and south of the "Lot B & H Licensed Area") where on February 15, 2017, FlightLevel was granted an access easement or

similar right of way to use in connection with its fuel farm by unanimous vote of the Norwood Airport Commission. Eichleay Aff., ¶ 4 and Exhibit 1.

Exhibit 1 to the Affidavit of Peter Eichleay shows the above referenced portions of the Airport. Eichleay Aff., ¶ 4. Exhibit 1 also shows Lot F at the Airport, which is leased to BEH. Eichleay Aff., ¶ 5. Exhibit 3 is a true and accurate copy of a plot plan identified as “Lot G Fueling Restriction Plan” (the “AutoTURN plan”). Eichleay Aff., ¶ 9. This AutoTURN plan shows the aforementioned property rights; the NFPA 407 Aircraft Fueling Standard setbacks (in red) where aircraft fueling is prohibited by Airport regulations, the “Gate 3 Taxiway” Object Free Area (or “OFA” in yellow) where it is prohibited to park or leave aircraft or vehicles, and a scaled AutoTURN example of a fuel transport delivering fuel to the Jet A loading pad on the south side of FlightLevel’s fuel farm. On February 15, 2017 the NAC approved the AutoTURN plan in connection with the extension of FlightLevel’s leases at the Airport. Eichleay Aff., ¶ 9.

B. FlightLevel’s Reliance on Access to Its Fuel Farm

FlightLevel’s business relies heavily on its purchase and sale of aviation fuel, which accounts for a substantial portion of its operating revenue. Eichleay Aff., ¶ 10. FlightLevel needs its commercial fueling operation to subsidize its other airport offerings, including its aircraft maintenance, avionics, and hangar and tie-down storage businesses. FlightLevel is also currently the sole provider of fuel to Airport users. Eichleay Aff., ¶ 11. If BEH is permitted to interfere with FlightLevel’s decades-old, and properly documented, recorded, and NAC approved fuel farm access rights, it will disrupt the supply of fuel to the Airport, destroy FlightLevel’s commercial fueling business, and terminate the revenue stream FlightLevel needs to cover its overhead, pay for the salaries and benefits of its employees, and pay rent to BMA and the Town of Norwood. Eichleay Aff., ¶ 35.

In order to operate its fueling business, FlightLevel and its third party delivery contractors need to be able to access the FlightLevel fuel farm on the Tank Farm Lease Lot on Lot H to offload bulk deliveries of jet fuel (“Jet-A”) and 100LL aviation gasoline (“Avgas”), and to pull Jet-A and Avgas from the farm for delivery in FlightLevel’s own fuel vehicles (“Refuelers”) to its customers aircraft at the Airport. Eichleay Aff., ¶ 12.

FlightLevel’s fuel farm includes four 12,000 gallon in-ground tanks, and a system of pumps and pipes for moving and filtering fuel. Deliveries arrive in 8,000 to 10,000 gallon loads, on transports (“Transports”) of up to 65 feet long.

Avgas is loaded into the FlightLevel fuel farm from a containment pad on the east side of the fuel farm. The Avgas containment pad is oriented along a north/south axis. Jet-A is loaded into the FlightLevel fuel farm from a containment pad on the south side of the fuel farm. The Jet-A containment pad is oriented along an east/west axis requiring Jet-A Transport drivers to execute a wide turn on Lot H in order to align their vehicles with the Jet-A containment pad prior to approaching the Tank Farm Lease Lot. Eichleay Aff., ¶ 14.

In order to reach and exit the fuel farm, Transports must use the Gate 3 Taxiway Object Free Area, the “25’ Tank Farm Access Easement” the “Lot B & H Licensed Area” on Lots B and H, the wide turn area on Lot H that was the subject of the February 15, 2017 vote of the NAC, and the area on Lot G west of the building on Lot G, as shown on the site plans at Exhibit 1 and Exhibit 3 to the Eichleay Affidavit. Eichleay Aff., ¶ 15.

Accordingly, the area on Lot H abutting the easterly boundary of the Tank Farm Lease Lot must be kept free of obstructions for vehicles to access the fuel farm, and the westerly portion of FlightLevel’s Lot G must be kept free of obstructions for vehicles to depart the fuel farm. If any of those areas are obstructed, FlightLevel’s delivery Transports, on-airport

Refuelers, third-party service and inspection vehicles, and Airport and Town fire safety equipment and vehicles cannot gain access to the FlightLevel fuel farm. Eichleay Aff., ¶ 16.

C. This Court's October 22, 2019 Order Prohibiting BEH from Interfering with FlightLevel's Rights

In this action, the Court issued an Order dated October 22, 2019 (the "Order") ruling on the parties' cross-motions for summary judgment. The Court denied BEH's motion and allowed FlightLevel's motion in part, awarding declaratory and injunctive relief to FlightLevel in connection with its rights at the Airport. In particular, the Court ordered, in pertinent part:

FlightLevel's motion for summary judgment (paper no. 64) is ALLOWED as to Counterclaim I insofar as it seeks an order restraining plaintiffs from interfering with Defendants' rightful use and quiet enjoyment of their leasehold at the Airport including Defendants' Lot G and Lot H leaseholds.

A true and accurate copy of the Order is attached to the Eichleay Affidavit as Exhibit 2.

The Order enjoins BEH from interfering with FlightLevel's rightful use of Lot G and Lot H. Lot H is where FlightLevel's fuel farm is located.

As described further below, BEH has acted in contempt of the Order by interfering with FlightLevel's rightful use of Lot G and Lot H.

D. BEH's Interference with FlightLevel's Leasehold and Access Rights

On December 21, 2020, BEH and the NAC entered into a non-exclusive lease for a 94,500 square foot portion of the Airport known as the West Apron (the "West Apron Lease"), which includes Lot A and portions of Lot B and Lot H. Eichleay Aff. ¶ 17, Exhibit 4. On December 21, 2020, BEH and the NAC entered into a non-exclusive lease for a 20,25 square foot portion of the Airport known as the DC-3 Apron (the "DC-3 Apron Lease"). Eichleay Aff., ¶ 18, Exhibit 5. In a separate federal action brought by BEH against the Town of Norwood and others, both BEH and the Town of Norwood represented that the West Apron Lease and the DC-3 Apron Lease are non-exclusive (the "Federal Action"). *See* Town Brief at 3 ("Norwood has: (a)

provided BEH with a proposed form of “non-exclusive lease” and proposed areas for this lease at the Norwood Memorial Airport (“Airport”); BEH Brief at 15 (“Principally, the NAC/Town have failed to provide a lease to BEH for the amount of space promised under the Settlement Agreement, free of encumbrances that will allow BEH to conduct FBO operations and build a hangar”). True and accurate copies of relevant pages of the briefs by the Town and BEH in the Federal Action are attached hereto as Exhibit A and Exhibit B. The Federal Court determined that the West Apron Lease and the DC-3 Apron Lease provide non-exclusive rights to BEH, consistent with the settlement agreement between BEH and the Town. See Order at 4-5:

“The Agreement entitles BEH only to “standard form, *non-exclusive* lease agreements ... for ... the West Apron ... and ... the DC-3 Ramp.” Agm’t § 3 (emphasis added). The term “non-exclusive” means “not limited to only one person or organization, or to one group of people or organizations. BEH received what was due under the Agreement.”

A true and accurate copy of the Court’s Order in the Federal Action is attached hereto as Exhibit C.

The West Apron Lease and the DC-3 Apron Lease each specifically state at Section IV that “Third party commercial activity customarily associated with FBO operations shall be authorized and permitted.” Eichley Aff., ¶ 19, Exhibits 4 and 5.

After entering into the West Apron Lease and the DC-3 Apron Lease with the NAC, BEH has wrongfully asserted that the leases provide BEH with an unencumbered leases of the West Apron and DC-3 Apron in order to be able to block FlightLevel’s fuel trucks from accessing FlightLevel’s fuel farm on the Tank Farm Lease Lot on Lot H. Eichley Aff., ¶ 19.

BEH on numerous occasions has used and continues to use vehicles and other means to block FlightLevel’s access to its fuel farm and obstruct deliveries of fuel necessary for FlightLevel’s business operations. Eichley Aff., ¶ 21. There is no valid reason for BEH to so

park its vehicles and aircraft. The only reason BEH is doing so is to attempt to obstruct FlightLevel's fuel deliveries.

Notwithstanding the available 94,500 square foot area of the West Apron Lease and the available 20,250 square foot area of the DC-3 Lease, and available area on BEH's Lot F leasehold, since January 3, 2021, BEH has positioned its fuel truck in the area on Lot H directly where inbound Jet-A delivery Transports must execute their wide turn to the east before turning 180 degrees west to line up with and position over the Jet-A containment pad on the south side of FlightLevel's fuel farm. Eichleay Aff., ¶ 22.

On Sunday, January 10, 2021, FlightLevel placed the Town, the NAC, the Airport Manager and BEH on notice that on Tuesday January 12, 2021, it would receive its first Jet-A delivery since the Town and BEH entered into the West Apron Lease and the DC-3 Apron Lease. Eichleay Aff., ¶ 23. FlightLevel's Notice Letter included a request that BEH's fuel truck be moved prior to the delivery. Eichleay Aff., ¶ 23. No attempt was made on the part of BEH to relocate its fuel truck, but FlightLevel's Jet-A Transport driver was able to maneuver around BEH's truck to complete the January 12, 2021 delivery. BEH President, Christopher Donovan was present during the delivery and later accused FlightLevel of reckless conduct for coming "within inches of hitting our fuel truck." Eichleay Aff., ¶ 24.

On January 13, 2021, BEH sued FlightLevel for trespass in a separate action pending in Norfolk Superior Court.² Eichleay Aff., ¶ 25. FlightLevel has moved to dismiss that action.

FlightLevel's second Jet-A delivery since the Town and BEH entered into the non-exclusive West Apron Lease and the DC-3 Lease occurred on January 28, 2021. On that

² In that action, BEH claims it has exclusive lease rights. However, these claims are contradicted by BEH's representations to the Court in the Federal Action, in which it argued the leases are not exclusive and by the Court's Order in that Action. *See* Exhibits A (p. 1 of the Town's filing in the Federal Court case), B (p. 15 from BEH's filings in that case), C (the Federal Court's order, p. 4).

occasion, BEH had positioned its fuel truck and two additional vehicles in the path of the delivery transport, blocking the approach that FlightLevel's fuel Transport driver had taken on January 12, 2021. However, FlightLevel's Transport driver was again able to maneuver around BEH's truck and other vehicles to complete the delivery. Eichleay Aff. ¶ 26.

BEH has continued to position its fuel truck on Lot H blocking the area needed to execute the wide turn onto the containment pad of FlightLevel's fuel farm. Eichleay Aff. ¶ 27.

Photographs showing BEH's fuel truck and other vehicles blocking the area on Lot H are attached to the Eichleay Affidavit as Exhibit 7 and Exhibit 8.

FlightLevel's third Jet-A delivery since the Town and BEH entered into the non-exclusive West Apron Lease and the DC-3 Lease occurred on February 22, 2021. By this date, BEH had repositioned the vehicles parked in the approach path to FlightLevel's Jet-A loading and containment pad such that both of the routing taken on January 12, 2021 and January 28, 2021 were now obstructed. Eichleay Aff. ¶ 28. Screenshots of video recorded on February 22, 2021 showing the location of BEH's vehicles blocking the approach path to FlightLevel's Jet-A loading and containment pad is attached to the Eichleay Affidavit as Exhibit 8.

At 8:05 am on the morning of February 22, 2021, FlightLevel personnel called Mr. Donovan to ask if he could move the vehicles on the West Apron, since a fuel delivery was arriving that morning. Mr. Donovan's response was "No." Shortly after speaking by phone, BEH added a fourth vehicle to the approach path of FlightLevel's Jet-A loading and containment pad. Eichleay Aff. ¶ 29.

Also at 8:05 am, FlightLevel's FBO Manager sent an email to Mr. Donovan, copied to Mr. Donovan's son and employee, to place BEH on written notice of the anticipated Jet-A Delivery and to request that that BEH move its vehicles, stating:

Good Morning Chris,
We are expecting a fuel delivery this morning. Is it possible for you to move the vehicles on the west apron so the truck can get into the fuel farm? Please contact me with any questions you might have.

A copy of FlightLevel's 8:05 am email is attached to the Eichleay Affidavit as Exhibit 9. As of this writing, no written response has been received. Eichleay Aff. ¶ 30.

At approximately 12:51 pm on February 22, 2021, FlightLevel's Jet-A Transport arrived at the Airport and an attempt was made by the Transport driver to access the Jet-A loading and containment pad. At approximately 1:08 pm, FlightLevel received a call from the dispatch office at Titan Aviation Fuels (FlightLevel's fuel supply contractor), informing that the Transport driver was unable to access FlightLevel's Tank Farm Lease Lot due to obstruction by BEH vehicles. Eichleay Aff. ¶ 31.

The Transport departed the Airport without having completed the delivery. Eichleay Aff. ¶ 32.

Depending on weather and Airport usage, FlightLevel and Norwood Memorial Airport will likely run out of Jet-A inventory by Thursday, February 25 or Friday, February 26, 2021. In the meantime, on information and belief, FlightLevel will be charged \$100.00/hour until the Transport can be off-loaded. Eichleay Aff. ¶ 34.

FlightLevel is entitled to an injunction to maintain its existing lease and access rights and to prevent BEH's interference with FlightLevel's rights.

II. ARGUMENT

The standards for the issuance of a preliminary injunction are well established,³ and FlightLevel satisfies each. This Court should issue the requested injunction because FlightLevel has a likelihood of success on the merits, will suffer irreparable harm if the requested injunction is not granted, and the equities favor granting the injunction.

A. FlightLevel Has a Very Strong Likelihood of Succeeding on the Merits of its Claims.

In the instant case, FlightLevel is entitled to an order to protect its ongoing valid lease and access rights. FlightLevel and its third-party contractors need to be able to access its fuel farm in order to have it provisioned by Transports of up to sixty-five (65) feet in length, and to have access to it for FlightLevel's Refuelers, which in turn fuel aircraft. *Eichleay Aff.*, ¶ 12.

This Court's October 22, 2019 Order expressly prohibits BEH from interfering with FlightLevel's access to Lots G and H. Again, Lot H is where FlightLevel's fuel farm is located.

There are four sources of FlightLevel's right to use certain portions of Lot B, Lot H and the DC-3 Apron to access its fuel farm: (1) the Lot G Sublease and its "25' Tank Farm Access Easement" rights; (2) the Tank Farm Sublease and its "25' Tank Farm Access Easement" rights - and its rights to Lot H and the DC-3 apron; (3) the License Agreement and its "Lot B&H Licensed Area" rights; and (4) the February 15, 2017 unanimous NAC vote and its access right over Lot H. . *Eichleay Aff.*, ¶ 4.

³ The standards for the issuance of a preliminary injunction are well established: (1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the moving party's likelihood of success on the merits, the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party in granting the injunction. *Boston Police Patrolmen's Ass'n, Inc. v. Police Dept. of Boston*, 446 Mass. 46, 49 (2006). Where the balance cuts in favor of the moving party, the Court should issue a preliminary injunction. *Commonwealth v. County of Suffolk*, 383 Mass. 286, 288 (1981) (citing *Packaging Industries Group, Inc. v. Cheney*, 380 Mass 609, 617) (if there is a substantial risk of irreparable harm to the moving party, it must be balanced against any similar risk to the other party in the light of the chance of each party to succeed on the merits).

1. The Lot G Sublease, Tank Farm Sublease, and License Agreement are Valid, Enforceable, and Pre-Date the General Release & Settlement Agreement

“Any recordable instrument purporting to affect an interest in real estate, title to which is held by a city, town, district or regional school district, executed in the name of a town . . . by any agent or committee authorized by particular vote of the city, town or district . . . shall be binding on the city, town, district or regional school district in favor of a purchaser or other person relying in good faith on such instrument notwithstanding inconsistent provisions of general or special law, the city or town charter, by-laws, resolutions or votes.” G.L. c. 40, § 3A.

The Town, acting through proper vote of its NAC, consented to the Lot G Sublease the Tank Farm Sublease, and executed the License Agreement to allow the sublessee to use the “25’ Tank Farm Access Easement” on Lot B, and the “Lot B&H Licensed Area” on Lot B and Lot H. These agreements are therefore binding on the Town and the NAC “notwithstanding inconsistent provisions of general or special law, the city or town charter, by-laws, resolutions or votes.” G.L. c. 40, § 3A.

Since entering into the West Apron Lease and the DC-3 Apron Lease, BEH has sought to block FlightLevel’s fuel trucks from accessing FlightLevel’s fuel farm on the Tank Farm Lease Lot on Lot H by parking vehicles in areas of the West Apron and DC-3 Apron that are subject to FlightLevel’s leasehold and access rights and are needed for FlightLevel’s fuel trucks to access FlightLevel’s fuel farm. *Eichleay Aff.*, ¶¶ 19-32.

2. This Court’s October 22, 2019 Order Expressly Prohibits BEH from Interfering with FlightLevel’s Access To Its Lot G and Lot H Leaseholds

The October 22, 2019 Order expressly prohibits BEH from, among other things, interfering with FlightLevel’s use and enjoyment of its Lots G and H leaseholds. *See Naddif v. St. Hilaire*, 5 LCR 86, 89 (Mass. Land Ct. 1997) (granting summary judgment and making final

determination on use of land, thereby dissolving preliminary injunction). BEH is therefore barred from contesting FlightLevel's access rights concerning Lots G and H. Therefore, FlightLevel's lease rights cannot be abrogated by BEH in this manner, and FlightLevel is entitled to an injunction to preserve its valid lease, license and access rights.

B. FlightLevel Will Suffer Irreparable Injury Unless the Court Restrains BEH from Interfering with and Violating FlightLevel's Lease and Access Rights.

A party experiences irreparable injury when there is no adequate remedy at final judgment. *GTE Prods. Corp. v. Stewart*, 414 Mass. 721, 724 (1993).⁴

Here, FlightLevel will suffer irreparable injury unless the Court restrains BEH from interfering with FlightLevel's access to its fuel farm. BEH has already established a practice of obstructed access to FlightLevel's fuel farm and other buildings on numerous occasions. Eichleay Aff., ¶¶ 19-32.

While FlightLevel's inability to obtain fuel deliveries and sell fuel to its aircraft customers is an economic loss, its inability to do so threatens the very existence of FlightLevel's business, and as the sole provider of aviation fuel at the Airport, leaves Airport users without access to fuel. Eichleay Aff., ¶¶ 1, 11. FlightLevel's business relies heavily on its purchase and sale of aviation fuel, which accounts for a substantial portion of its operating revenue. Eichleay Aff., ¶ 10. FlightLevel needs its commercial fueling operation to subsidize its other airport offerings, including its aircraft maintenance, avionics, hangar and tie-down storage businesses. Eichleay Aff., ¶ 11. If BEH is permitted to interfere with FlightLevel's decades-old, and properly documented, recorded, and NAC approved fuel farm access rights, it will disrupt the

⁴ See also *Baer v. Nat'l Bd. Of Med. Exam'rs*, 392 F. Supp. 2d 42, 49 (D. Mass. 2005) ("Irreparable injury in the preliminary injunction context means an injury that cannot adequately be compensated for either by a later-issued permanent injunction, after a full adjudication on the merits, or by a later-issued damages remedy") (internal quotations omitted).

supply of fuel to the Airport, destroy FlightLevel's commercial fueling business, and terminate the revenue stream FlightLevel needs to cover its overhead, pay for the salaries and benefits of its employees, and pay rent to BMA and the Town of Norwood. Eichleay Aff., ¶ 34. In such circumstances, courts have found "irreparable harm where the loss threatens the very existence of the movant's business." *Hull Municipal Lighting Plant v. Massachusetts Municipal Wholesale Electric Co.*, 399 Mass. 640, 643 (1987) (holding that if plaintiff were allowed to stop its payments, irreparable harm found where moving party relied solely on payments to meet its bond obligations).⁵

The exact amount of damages for BEH's interference with FlightLevel's lease and access rights between now and the time FlightLevel could obtain a final judgment would be difficult, if not impossible, to ascertain. Absent enforcement of FlightLevel's leases, license and access rights, BEH will directly interfere with FlightLevel's rights. Without the aid of this Court, FlightLevel has no adequate remedy at law. Consequently, an order is needed preventing BEH from interfering with FlightLevel's access rights under the Lot G Sublease, The Tank Farm Sublease, The License Agreement, and the NAC vote. Such an order would be efficient to the ends of justice.

Similarly, a money judgment standing alone would be incomplete to protect FlightLevel's rights and interests. *See Packaging Indus. Group, Inc. v. Cheney*, 380 Mass. 609, 621 (1980) (discussing defendant's inability to pay damages could support issuance of injunction). Without the injunctive relief requested in this Motion, FlightLevel will be unable to exercise its bargained-for rights under the existing leases and access agreements.

⁵ See also *Blackie's on the Rocks v. Town of Hull*, 97-1411-B, Mass. Super. LEXIS 726 at *1 (Feb. 12, 1998) (preliminary injunction granted to keep liquor license as without it, it was highly probable that the plaintiff restaurant would go out of business).

There is now documented evidence that BEH has been purposefully blocking FlightLevel's fuel Transports' access to the tank farm. Eichleay Aff., ¶¶ 19-33.

C. The Balance of Equities Favors FlightLevel.

Finally, the threatened harm to FlightLevel outweighs the harm the injunction will cause to BEH, particularly since BEH would be required to do nothing more than not interfere with and preserve FlightLevel's existing lease and license rights. *Lebel v. Backman*, 342 Mass. 759, 765 (1961) (upholding lease rights and finding lessors could be enjoined because there was evidence of a continuing intent to deprive the sublessee of the use of his leasehold); *see Rattigan v. Wile*, 445 Mass. 850, 864 (2006) (upholding "expansive" injunction issued by trial court because of "defendant's creativity in persisting with his campaign of nuisance," and permanently enjoining the defendant from unreasonably interfering with the use and enjoyment of the plaintiffs' property); *Joyal v. Marlborough*, 3 Mass. L. Rep. 379 (1995) (a municipality may be enjoined from making use of land owned or controlled by it in a way which is offensive to persons of ordinary sensibilities occupying neighboring property, or which unreasonably diminishes the value to property owned by others and allowing preliminary injunction enjoining municipal defendant). FlightLevel requests that BEH be enjoined from interfering with FlightLevel's existing lease and license rights.

Moreover, from a practical perspective, an order preserving FlightLevel's lease and license rights does not pose undue hardship on BEH. BEH would be required to do nothing more than not interfere with FlightLevel's existing rights. Any arguments by BEH that it needs to utilize or encroach on FlightLevel's existing lease and access rights are unavailing because to hold otherwise would deprive FlightLevel of the benefits of its bargain and render its contractual rights a nullity.

III. CONCLUSION

FlightLevel has satisfied the elements entitling it to the proposed temporary restraining order and injunctive relief. The proposed Order, attached as an exhibit to the Motion, should therefore be granted in its entirety and then entered as an injunction.

FLIGHTLEVEL NORWOOD, LLC,
EAC REALTY TRUST II,
EAC REALTY TRUST IV, and
PETER EICHLEAY, in his capacity as Trustee
of EAC Realty Trust II and EAC Realty Trust IV,
By their attorneys,

/s/ A. Neil Hartzell

A. Neil Hartzell, BBO # 544752
Ben N. Dunlap, BBO # 661648
Freeman Mathis & Gary, LLP
60 State Street, 6th Floor
Boston, MA 02109
Phone: 617.963.5975
nhartzell@fmglaw.com
bdunlap@fmglaw.com

Date:

2/29/21

CERTIFICATE OF SERVICE

I, A. Neil Hartzell, certify that on the 24th of February 2021, I served a copy of the foregoing by email and mail, first-class, postage pre-paid to counsel:

Eric Hans Loeffler, Esq.
Davids & Cohen, P.C.
40 Washington Street, Suite 20
Wellesley, MA 02481

/s/ A. Neil Hartzell

A. Neil Hartzell

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

)	
BOSTON EXECUTIVE HELICOPTERS,)	
LLC,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 15:CV-13647-RGS
)	
FRANCIS T. MAGUIRE, et al.,)	
)	
Defendants.)	
)	

NORWOOD’S OPPOSITION TO BEH’S MOTION TO ENFORCE SETTLEMENT AGREEMENT, IMPOSE SANCTIONS, AND AWARD ATTORNEYS’ FEES

FRANCIS T. MAGUIRE, et al.,

By their attorneys,

David S. Mackey (BBO #542277)
dmackey@andersonkreiger.com
Mina S. Makarios (BBO #675779)
mmakarios@andersonkreiger.com
Jonathan T. Elder (BBO #654411)
jelder@andersonkreiger.com
ANDERSON & KREIGER LLP
50 Milk Street, 21st Floor
Boston, MA 02109
(617) 621-6525

November 6, 2020

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INTRODUCTION

The defendants, the Town of Norwood (the “Town”), the Norwood Airport Commission (the “NAC”), and the individually named Town and NAC officials (collectively “Norwood”), oppose Boston Executive Helicopters, LLC’s (“BEH’s”) Motion to Enforce Settlement Agreement, Impose Sanctions, and Award Attorneys’ Fees (the “Motion to Enforce”).

As BEH acknowledges the Court must enforce the General Release & Settlement Agreement (“Agreement”) entered into between Norwood and BEH on July 30, 2019 according to its terms. Memorandum of Law in Support of Plaintiff’s Motion to Enforce Settlement Agreement, Impose Sanctions, and Award Attorneys’ Fees (“BEH Mem.”) at 15. Despite the volume of BEH’s submissions, and BEH’s desire to enmesh the Court in a convoluted tangle regarding what BEH did or did not believe it was agreeing to, the terms of the Agreement ultimately govern. And, when the Agreement is interpreted according to those terms, it is clear that Norwood has fully complied, and the Motion to Enforce should be denied. Norwood has: (a) provided BEH with a proposed form of “non-exclusive lease” and proposed areas for this lease at the Norwood Memorial Airport (“Airport”) that are the exact space identified in the Agreement; (b) written a letter in support of BEH’s request to the Federal Aviation Administration (“FAA”) for relief from portions of the FAA-required Taxi-Lane Object Free Areas (“TOFAs”) at the Airport; (c) properly provided BEH with copies of certain required correspondence involving its interests at the Airport; (d) given BEH multiple opportunities to help shape the submission of Norwood’s Corrective Action Plan to the FAA (which FAA has now approved); and (e) appointed a designated liaison to attend NAC meetings at which BEH matters are discussed.

BEH’s claims with respect to the Agreement’s provision that the parties execute a “non-exclusive lease,” fail for an additional reason. BEH seeks an order that Norwood is obliged to

provide a lease “free of encumbrances,” including “encumbrances” caused by another entity’s claimed rights of access over the “non-exclusive” leasehold. BEH Mem. at 1, 15, 16. Such an order would be directly at odds with the Agreement’s use of the term “non-exclusive.” But if the Court determines that the Agreement is ambiguous on this point, and that there was no meeting of the minds on the meaning of “non-exclusive,” then there was no agreement on a material term, and the Agreement’s provision requiring the parties to execute a lease is no more than an unenforceable agreement to agree at a future time.

Finally, as an alternative to summarily denying the Motion to Enforce, this Court may stay the matter pending resolution of related state court litigation involving all the relevant players to this dispute. BEH alleges that it was misled into signing the Agreement before it understood that FlightLevel Norwood, LLC (“FlightLevel”) claimed interests in the property at issue at the Airport. FlightLevel is not a party to this dispute, but if BEH is right that it is entitled to something other than the “non-exclusive lease” required by the Agreement, FlightLevel’s presence could be required to adjudicate the parties’ claims. The Norfolk County Superior Court is already addressing FlightLevel’s alleged property rights over the land at issue, and Norwood, BEH and FlightLevel are all parties to that case. Second Amended Verified Complaint, *FlightLevel Norwood LLC, et al. v. Town of Norwood, et al.*, Norfolk Superior Court C.A. No. 1982CV01099, Affidavit of Christopher R. Donovan, BEH President (“Donovan Aff.”) ¶ 8, Exhibit 3 (ECF #234-3). The Superior Court denied FlightLevel’s Motion for a Preliminary Injunction and took Norwood’s Motion to Dismiss under advisement in July. Memorandum and Order on Plaintiff’s Request for a Preliminary Injunction, Affidavit of Mina S. Makarious (“Makarious Aff.”) ¶ 3, Ex. A. If, as BEH argues, the provision that the parties execute a “non-exclusive lease” is inconsistent with FlightLevel’s claimed rights at the Airport, this Court

adequate vehicle for the complete and prompt resolution of the issues between the parties.”

Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1, 28 (1983), citing

Colorado River Water Conservation District v. United States, 424 U.S. 800 (1976). “Where the

issues pending in this Court are identical to those pending in state court, piecemeal litigation is

easily avoided by the District Court staying its hand.” *National Railroad Passenger Corp. v.*

Providence and Worcester Railroad Company, 798 F.2d 8, 11 (1st Cir. 1986) Accordingly,

before requiring joinder of FlightLevel as a required party, the Court should stay resolution of

the matter pending resolution of the FlightLevel matter in state court.⁴

CONCLUSION

For the foregoing reasons, this Court should deny the Motion to Enforce, or stay the matter pending resolution of the FlightLevel matter in state court.

FRANCIS T. MAGUIRE, et al.,
By their attorneys,

/s/ Mina S. Makarious

David S. Mackey (BBO #542277)

dmackey@andersonkreiger.com

Mina S. Makarious (BBO #675779)

mmakarious@andersonkreiger.com

Jonathan T. Elder (BBO #654411)

jelder@andersonkreiger.com

ANDERSON & KREIGER LLP

50 Milk Street, 21st Floor

Boston, MA 02109

(617) 621-6525

November 6, 2020

Certificate of Service

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants identified on the Notice of Electronic Filing.

/s/ Mina S. Makarious

⁴ Norwood has repeatedly offered to BEH that BEH, Norwood and Flight Level mediate the property issues at the Airport. BEH has consistently declined to mediate, asserting, among other things, that Norwood counsel is advocating mediation because it is colluding with FlightLevel and seeks to mediate to cover up its illegal actions.

EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BOSTON EXECUTIVE HELICOPTERS, LLC,

Plaintiff,

v.

FRANCIS T. MAGUIRE, ET AL.,

Defendants.

C.A. NO. 15:CV-13647-RGS

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION
TO ENFORCE SETTLEMENT AGREEMENT, IMPOSE SANCTIONS,
AND AWARD ATTORNEYS' FEES**

The plaintiff, Boston Executive Helicopters, LLC ("BEH") hereby requests that this Honorable Court order Defendants to perform obligations agreed to under a General Release & Settlement Agreement dated July 30, 2019 (the "Settlement Agreement"), and sanction the Defendants for fraud in the inducement, failure to act in accordance with the Settlement Agreement and for material omissions and misrepresentations made to BEH and the Court. The facts supporting this Motion are set forth in the accompanying Affidavit of Christopher R. Donovan ("Donovan Affidavit"), President of BEH. As grounds for this Motion, BEH states the following.

INTRODUCTION

This Motion is made necessary by the Defendants' multiple breaches of the Settlement Agreement, a copy of which is attached to the Donovan Affidavit as Exhibit 1. As discussed in greater detail below, the Defendants have breached the Settlement Agreement in the following manners:

- a. By failing to provide BEH a lease for the promised amount of ramp space, free of encumbrances which would prevent BEH from operating as an FBO;

- b. By purposefully and materially undermining BEH's petition to the FAA seeking approval for the removal of all TOFA/OFA markings on Taxiway 3;
- c. By failing to distribute copies of all email and correspondence contemporaneously by and between the Town/NAC, FlightLevel or BEH, including between their respective attorneys or representatives;
- d. By failing to provide copies of all correspondence and allow BEH to participate in any meetings with the FAA, allowing BEH a "seat at the Table" in a "Joint Corrective Plan" regarding the negotiations for the corrective action plan, from the Directors Determination for Case no. 16-15-05 wherein the Airport was found to have violated BEH's rights;
- e. By the Board of Selectmen abandoning its obligation and otherwise failing to provide oversight of the NAC regarding issues involving BEH;
- f. By failing to provide the appropriate turn around at the Gate #3 access area; and
- g. By continuing the retaliation toward BEH because BEH exercised its constitutional right of petition.

To date, BEH still does not have a lease for ramp space at the Airport which can be used for FBO operations as promised in the Settlement Agreement. As outlined in the Donovan Affidavit, the Defendants and their counsel intentionally concealed encumbrances on the West and DC-3 Ramps, which were only made known to BEH after the Settlement Agreement was executed. Thus, the existence of and failure of the Defendants to identify all encumbrances renders the ramps promised to BEH (West and DC-3 Ramps) in the settlement agreement useless for any FBO operations by BEH or construction of a hangar, which the Defendants knew prior to the Settlement Agreement.

The Defendants have further sought to actively undermine BEH's petition to the FAA for the removal of TOFA/OFA markings on Taxiway 3 and, in fact, have *proposed and affirmatively advocated* to the FAA that the markings be expanded into BEH's hangar/leasehold on Lot F. The

agreement either by ‘including a provision explicitly retaining [enforcement] jurisdiction . . .’”), quoting Lipman v. Dye, 294 F.3d 17, 20 (1st Cir. 2002).

II. THE DEFENDANTS ARE IN BREACH OF THE SETTLEMENT AGREEMENT.

The Defendants have failed to perform under the terms of the Settlement Agreement in several material respects, as fully set forth in the above statement of facts and the Donovan Affidavit. Principally, the NAC/Town have failed to provide a lease to BEH for the amount of space promised under the Settlement Agreement, free of encumbrances that will allow BEH to conduct FBO operations and build a hangar. The Defendants have intentionally and materially undermined BEH’s petition to the FAA requesting removal of TOFA/OFA marking outside of BEH’s hangar on Lot F, and plan to increase the TOFA/OFA area to the detriment of BEH and in violation of the Settlement Agreement.

The Defendants have also unquestionably failed to distribute copies of all email and correspondence by and between the Town/NAC, FlightLevel or BEH, including between their respective attorneys or representatives, and have not permitted BEH to participate in meetings with the FAA concerning the Corrective Action Plan, all in violation of the Settlement Agreement. The Board of Selectmen have also abandoned their oversight responsibilities under the Settlement Agreement by assigning that role to counsel, who represents both the NAC and the Town.

III. THE SETTLEMENT AGREEMENT SHOULD BE ENFORCED ACCORDING TO ITS TERMS.

Settlement agreements are commonly enforced by specific performance. See Correia v. Desimone, 34 Mass. App. Ct. 601 (1993) (affirming award of specific performance where party attempted to renege on settlement agreement reached the day before). Specific performance is typically an appropriate remedy when a party to a settlement agreement attempts to renege. Malave v. Carney Hospital, 170 F.3d 217 (1st Cir. 1999). Summary enforcement of an arm’s

attorney's fees associated with that litigation are recoverable from the defendant. Mut. Fire, Marine & Inland Ins. Co. v. Costa, 789 F.2d 83, 88 (1st Cir. 1986) (applying Massachusetts law) (citations omitted). The Town/NAC's conduct has caused BEH to be sued by FlightLevel, and BEH is entitled to recover those fees, as well as the fees incurred since the Settlement Agreement, against the Town/NAC.

Due to the Defendants' and their counsel's actions, BEH has been denied the resolution for which it bargained, and now finds itself again having to expend a significant amount of money litigating the enforceability of the settlement just to obtain that for which it originally bargained. The Defendants have continually and consistently acted in bad faith prior to settlement and certainly post settlement. They have offered no solution to the damage they have caused. This bad faith conduct has also embroiled BEH in litigation with FlightLevel, at great expense and time, with the resulting lost revenue.

The Defendants, with the ongoing assistance of counsel, at the time of this motion, have still, despite numerous demands, not complied with the aforementioned provisions of the Settlement Agreement, have not acted in good faith in delivering to BEH a lease for the amount of ramp space promised in the Settlement Agreement, and have caused BEH to continue to incur attorney fees in trying to motivate the Town/NAC to comply with the basic provisions of the Settlement Agreement.

CONCLUSION

Based upon the foregoing, Boston Executive Helicopters, LLC, having shown a clear breach of the Settlement Agreement and bad faith by the Defendants and their counsel, hereby respectfully requests that this Honorable Court issue an Order reopening the case, Order the Defendants and their counsel to comply with the Settlement Agreement terms, and issue an Order

sanctioning the Defendants and their counsel in an amount to compensate BEH for its attorneys' fees and lost revenue caused by the Defendants' failure to provide space for BEH to operate as an FBO at the Airport, and costs, including attorneys' fees, incurred in defense of the FlightLevel case, which are another direct result of the Defendants and their attorneys.

Respectfully submitted,

BOSTON EXECUTIVE HELICOPTERS, LLC,

By its attorneys,

/s/ Eric H. Loeffler

Eric H. Loeffler, BBO #641289
DAVIDS & COHEN, P.C.
40 Washington Street, Suite 20
Wellesley, MA 02481
781-416-5055
eloeffler@davids-cohen.com

Dated: October 9, 2020

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above documents, filed through the Electronic Case Filing System, was served upon the attorney of record for each party by email and by electronic means on October 9, 2020.

/s/ Eric H. Loeffler

Eric H. Loeffler

EXHIBIT C

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 15-13647-RGS

BOSTON EXECUTIVE HELICOPTERS, LLC

v.

FRANCIS T. MAGUIRE, et al.

MEMORANDUM AND ORDER ON PLAINTIFF'S MOTION TO ENFORCE
SETTLEMENT AGREEMENT, IMPOSE SANCTIONS,
AND AWARD ATTORNEYS' FEES

November 20, 2020

STEARNS, D.J.

After prolonged litigation, plaintiff Boston Executive Helicopters, LLC (BEH), and defendants Town of Norwood (Town), Norwood Airport Commission (NAC), and the individually named Town and NAC officials (collectively, Norwood) reached an agreement to settle their dispute on the eve of a December 10, 2018 trial. Months of contentious motion practice followed over what the parties had exactly agreed upon. After some prodding by the court, on July 30, 2019, the parties reported that they had achieved a "valid, enforceable settlement agreement (Agreement)." Dkt # 220. At the parties' request, the court agreed to retain jurisdiction to enforce the terms of the Agreement should it become necessary. *See* Dkt # 228. The parties

stipulated to a dismissal of the litigation with prejudice on September 12, 2019. *See* Dkt # 229.

BEH now alleges that defendants have breached six provisions of the Agreement, *see* Dkt # 234-1 (Agm't), and seeks specific performance and the imposition of sanctions. BEH asserts that defendants (1) failed to provide BEH an encumbrance-free lease for the promised amount of ramp space at Norwood Airport; (2) undermined BEH's petition to the FAA seeking approval for the removal of all taxi lane object free area (TOFA) markings on Taxiway 3;¹ (3) failed to contemporaneously distribute copies of all email and correspondence by, between, and among the Town, NAC, FlightLevel, and/or BEH; (4) refused to allow BEH to participate in meetings with the FAA or to have a "seat at the Table" in negotiating a Joint Corrective Action Plan (JCAP); (5) failed to provide proper oversight by the Board of Selectmen

¹ BEH also lists as a breach of the Agreement that Norwood failed to provide the "appropriate turn around" at the Taxiway 3 access area. Mot. at 1. It is unclear whether BEH's complaints about Taxiway 3's supposedly inadequate turn around and its attempt to remove the TOFA markings are related. In any event, the court recognizes that the Agreement requires NAC "to construct a pedestrian access gate at Taxiway 3 . . . within ninety (90) days of the execution of this agreement" that has "[a]ppropriate turnaround and lighting." Agm't § 4. However, neither party has addressed this purported violation of the Agreement with sufficient detail for the court to rule on the claim of a breach.

over dealings between NAC and BEH; and (6) retaliated against BEH in response to its demands. Mot. at 1-2.

DISCUSSION

“[A] suit to enforce a settlement is a contract dispute which requires a new jurisdictional basis to be heard in federal court.” *Quincy V, LLC v. Herman*, 652 F.3d 116, 121 (1st Cir. 2011). However, “[a]ncillary jurisdiction exists where the district court has ensured its continuing jurisdiction to enforce a settlement agreement . . . by ‘including a provision explicitly retaining [enforcement] jurisdiction.’” *Baella-Silva v. Hulsey*, 454 F.3d 5, 10 (1st Cir. 2006), quoting *Lipman v. Dye*, 294 F.3d 17, 20 (1st Cir. 2002).

The court agreed to “retain jurisdiction over th[is] case to resolve any disputes that may arise *from the implementation of the settlement agreement’s terms*.” Dkt # 228 (emphasis added). Any grievances that arise outside of the four corners of the Agreement, however, lie outside the ambit of the court’s jurisdiction. *Cf. Lipman*, 294 F.3d at 21.

Violations of the Agreement

A settlement agreement is interpreted in the same manner as any other contract. *See, e.g., Perry v. F.D.I.C.*, 2010 WL 5349883, at *6 (D. Mass. Dec. 21, 2010). Contract interpretation is generally a question of law for the court. *Teragram Corp. v. Marketwatch.com, Inc.*, 444 F.3d 1, 9 (1st

Cir. 2006). The court construes the Agreement as an integrated whole according to its plain meaning, *McAdams v. Mass. Mut. Life Ins. Co.*, 391 F.3d 287, 298-299 (1st Cir. 2004), and will enforce any unambiguous terms, *Schwanbeck v. Fed.-Mogul Corp.*, 412 Mass. 703, 706 (1992).

1) *Lease for West Apron and DC-3 Ramps*

BEH first argues that Norwood failed to provide it with a lease for the Agreement's promised amount of ramp space "free of encumbrances" because FlightLevel, another airport operator, has claimed preexisting access rights over the same ramp space. Mot. at 1, 15-16. Norwood responds that BEH received a proposed lease consistent with the terms of the Agreement.

Norwood has the better of the arguments. The Agreement entitles BEH only to "standard form, *non-exclusive* lease agreements . . . for . . . the West Apron . . . and . . . the DC-3 Ramp." Agm't § 3 (emphasis added). The term "non-exclusive" means "not limited to only one person or organization, or to one group of people or organizations."² This language does not support BEH's demand for a lease "free of encumbrances." BEH received what it was

² Cambridge Dictionary, <https://dictionary.cambridge.org/us/dictionary/english/non-exclusive> (last visited Nov. 19, 2020).

due under the Agreement, that is, a lease granting unrestricted access to the ramp space.

BEH makes no forceful argument to the contrary but contends that Norwood “concealed” FlightLevel’s access rights during the settlement discussions and now “attempt[s] to re-write history.” Mot. at 4-9; Reply at 7. The court will not consider this allegation for two reasons (putting aside the improbability that BEH would never have taken note of FlightLevel’s airport operations). First, courts do not consider extrinsic evidence when a contract’s language is unambiguous, as is the case here. *Sound Techs., Inc. v. Hoffman*, 50 Mass. App. Ct. 425, 429 (2000). Although BEH ostensibly “would never [have] accept[ed] a lease that had encumbrances,” Mot. at 9, BEH’s submissions concerning the parties’ negotiations and performance of the Agreement are an attempt to vary the plain meaning of terms under which it in fact accepted the lease. See Pls.’ Reply at 1-7. The Agreement’s integration clause, see Agm’t § 21, cements this conclusion. *Simon v. Simon*, 35 Mass. App. Ct. 705, 713 n.9 (1994) (a finding that an agreement is not integrated is a “predicate” to considering extrinsic evidence). Second, BEH’s theory sounds in fraud in the inducement, not enforcement of a contract, and

thus exceeds the court's ancillary jurisdiction over the enforcement of the Agreement.³

Because BEH does not contest that Norwood offered non-exclusive leases to the West and DC-3 ramps, the court finds that Norwood complied with its obligations as to this provision of the Agreement.

2) *Removal of TOFA Markings*

BEH next argues that Norwood undermined its petition to the FAA to remove TOFA markings on Taxiway 3 – and in fact submitted even more stringent TOFA measurements to the FAA in its 2020 Technical Master Plan Update (TMPU). But Norwood states that it met its full obligation under the Agreement when it submitted a letter in support of BEH's petition to the FAA.

The Agreement provides:

“BEH shall prepare a petition to the FAA, with appropriate plans or drawings, seeking approval for the removal of all TOFA . . . markings on Taxiway 3. The NAC shall submit a letter to the FAA in support of BEH's petition . . . within thirty (30) days after the receipt of BEH's submission to the FAA. *If approved by the FAA,*

³ While “a trial court may not summarily enforce a purported settlement agreement if there is a genuinely disputed question of material fact regarding the existence or terms of that agreement,” *Malave v. Carney Hosp.*, 170 F.3d 217, 220 (1st Cir. 1999), here the parties do not dispute the existence or wording of the Agreement. See Dkt # 220, Reply at 7. BEH cannot simultaneously allege fraud in the inducement to overcome the integration clause, see Reply at 7-8, while representing that the Agreement is valid.

the TOFA/OFA markings on Taxiway 3 shall be removed by the NAC within sixty (60) days.”

Agm’t § 9 (emphasis added).

The parties agree that NAC sent a letter supporting BEH’s petition to the FAA on November 20, 2019, but quibble over whether NAC acted within the 30-day window stipulated in the Agreement. *See* Mot. at 10; Opp’n at 11-12.⁴ Even if NAC bumped this deadline, it is not clear what relief the court could order. BEH seeks specific performance, yet NAC did send the supportive letter required by the Agreement over a year ago, and there is no argument that it was received too late by the FAA to be considered in its ruling on BEH’s petition. *See, e.g., Med. Prac. Mgmt., Inc. v. Bos. IVF, Inc.*, 67 Mass. App. Ct. 1102, 1102 n.3 (2006) (“[Plaintiff’s] claim for specific performance of an accounting is moot as the accounting had been completed.”). It is not alleged that the FAA granted BEH’s petition, which was a prerequisite to NAC’s removal of the TOFA markings, and the Agreement, of course, had no binding effect on the FAA’s decision making (nor could it have).⁵

⁴ Norwood maintains that BEH did not provide “appropriate plans or drawings” with its initial August 26, 2019 petition, and that Norwood did not receive notice of BEH’s October 16, 2019 correction until October 31, 2019. Opp’n at 11; Makarious Aff. ¶ 21; Dkt # 243-19.

⁵ BEH’s secondary argument that NAC’s implementation of stricter TOFA markings at BEH’s hangar in June of 2020 “violates the letter and

3) *Distributing Correspondence*

BEH next alleges that Norwood breached the Agreement by failing to circulate contemporaneously all correspondence between itself, NAC, FlightLevel, and/or BEH. Norwood counters that BEH does not identify any correspondence which has allegedly been withheld. Opp'n at 13.

According to a handwritten clause in the Agreement:

For a period of eighteen (18) months following execution of this Agreement . . . the Town and the NAC agree to copy, or distribute copies, to both BEH and FlightLevel . . . any and all email and correspondence, by and between the NAC and BEH or F[lightLevel], contemporaneously with any such communications.

Agm't at 6.

Norwood represents that it "has provided [to] BEH and FlightLevel a weekly package" of correspondence since entering into the Agreement

spirit of the . . . Agreement" also fails. Mot. at 11. The structure of § 9 limits Norwood's obligation to "support" the removal of TOFA markings only in its submission to the FAA. The court agrees with Norwood that "nothing in the Agreement guarantees BEH a lease area free of TOFAs" – especially since the Agreement provides for a *non-exclusive* lease – and the process for petitioning the FAA outlined in § 9 reflects that these markings are "not within Norwood's sole power to remove." Opp'n at 5.

Nor do the increased TOFA markings violate the terms of BEH's ramp leases. Reply at 5-7. The Agreement entitles BEH to approximately 72,000 sq. ft. at the West Apron and 15,295 sq. ft. at the DC-3 Ramp but is otherwise silent as to the nature of the leased space. See Agm't § 3. The court will not enjoin NAC from a "plan to increase the TOFA/OFA area to the detriment of BEH," Mot. at 16, because the Agreement makes no provision for granting this type of relief.

although acknowledges belatedly turning over a few hundred pages of correspondence in July of 2020. Opp'n at 12-13. To the extent that these communications form the basis of BEH's claim, *see, e.g.*, Donovan Aff. ¶ 129 (listing documents already produced as examples of Norwood's breach), it is unclear what relief BEH seeks, as this provision of the Agreement was eventually, if unevenly, performed. While BEH also claims that "other letters and communications have apparently not been provided to BEH despite many requests," Mot. at 13, it does not identify any documents specifically or generically that it has in mind. The court cannot order the production of documents that a party cannot identify or describe.

4) *Joint Corrective Action Plan*

BEH also challenges Norwood's alleged failure to allow BEH to participate in FAA meetings or to have a "seat at the Table" in negotiating a JCAP to remedy Norwood's alleged violations of FAA leasing requirements. BEH states that, other than attending two meetings in October of 2019, it has not attended any subsequent meetings regarding the JCAP – and further that the October meetings did not include the FAA.

The Agreement provides "that BEH shall be allowed to participate in any meetings . . . regarding the negotiation with the FAA regarding . . . the goal of crafting a '[JCAP].'" Agm't § 8. BEH's argument that this language

of the Agreement entitles it to a “seat at the Table” with the FAA and the right “to attend any FAA meetings regarding the [J]CAP” is something of a stretch. Donovan Aff. ¶¶ 140-141, 144. BEH attempts to equate meetings “regarding” the subject of FAA negotiations (which is what the Agreement stipulated) with meetings at which the FAA is in attendance.⁶ BEH’s involvement in the October 9 and 15, 2019 meetings, which are the only meetings regarding the JCAP that have taken place thus far, see Pls.’ Reply at 12, fully satisfies the terms of the Agreement.

5) *Board of Selectmen Oversight*

The next alleged violation of the Agreement concerns whether the Board of Selectmen provided proper oversight of dealings between NAC and BEH given that the Board’s liaison also “represents . . . NAC and the Town.” Mot. at 15; Donovan Aff. ¶¶ 137-139. More specifically, the designated liaison is a member of the law firm that represents the collective defendants in this litigation. As the designated liaison, he participated in the operational

⁶ At most, the Agreement requires the NAC to “allow BEH to explain to the FAA its view of the value of the so called Verizon land to the NAC, and offer suggestions as to why it should be recovered by the NAC for aeronautical use.” Agm’t § 8. This language, which is silent on how BEH was to go about providing this explanation, does not require a face-to-face meeting between BEH and the FAA.

meetings held between the Board, NAC, and BEH in August and September of 2020. Makarious Aff. ¶¶ 26.

Under the relevant terms of the Agreement, the Town’s “Board of Selectmen[] shall appoint a member of the Board . . . or a designated liaison to attend NAC meetings at which an item concerning or related to BEH . . . appears on the NAC agenda for eighteen (18) months.” Agm’t § 5. The Agreement also requires “the Airport Manager, a representative of the NAC, the Selectmen liaison . . . and a representative of BEH [to] meet monthly in a good faith effort to discuss operational issues and to resolve specific disagreements or disputes that may arise between them.” *Id.* § 6.

“[A] contract is to be construed to give reasonable effect to each of its provisions.” *McMahon v. Monarch Life Ins. Co.*, 345 Mass. 261, 264 (1962). While the language of § 5 requires the Board to “designate[] [a] liaison,” it does not specify that the chosen liaison be independent of any ties with Norwood or be a disinterested party. Nor does § 5 preclude the liaison from filling dual roles at required meetings. BEH does not maintain, nor would it have standing to assert, a conflict of interest between the Board and NAC, the parties represented by the Board’s chosen liaison. Contrary to BEH’s contention that this arrangement “effectively provid[es] no oversight whatsoever” because the Board’s liaison owes a duty of loyalty to NAC,

Donovan Aff. ¶ 139, BEH does not allege that the interests of Norwood's counsel are inconsistent with the liaison's responsibilities under the Agreement, such as "periodically report[ing] to the Board of Selectmen." Agm't § 5.

6) *Retaliation Against BEH*

Finally, BEH argues that Norwood has breached the Agreement by retaliating against BEH for exercising its constitutional right of petition. Although Norwood provides no response to this argument, the court will not consider the allegation. Retaliation is not a contractual breach, but rather an independent legal claim, which exceeds the court's ancillary jurisdiction to enforce the Agreement.

Sanctions and Attorneys' Fees

BEH seeks sanctions, namely attorneys' fees and other costs, for the alleged breaches of the Agreement. BEH proffers two theories to support the request for fees: bad faith and the third-party exception.

A court may award sanctions, including attorneys' fees, upon finding that a party has "acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Chambers v. Nesco, Inc.*, 501 U.S. 32, 45-46 (1991), quoting *Alyeska Pipeline Serv. Co. v. Wilderness Soc.*, 421 U.S. 240, 258-259 (1975); see also *Mullane v. Chambers*, 333 F.3d 332, 337-338 (1st Cir. 2003). But

“a court’s inherent power to shift attorneys’ fees ‘should be used sparingly and reserved for egregious circumstances.” *Whitney Bros. Co. v. Sprafkin*, 60 F.3d 8, 13 (1st Cir. 1995), quoting *Jones v. Winnepesaukee Realty*, 990 F.2d 1, 3 (1st Cir. 1993).

Underlying BEH’s theory of bad faith is the allegation that Norwood’s “bait and switch” tactics during settlement discussions concealed the encumbrances on BEH’s lease. But this argument fails for the same lack of jurisdiction that defeats many of BEH’s alleged violations of the Agreement. Even if the court had the authority to consider the settlement negotiations, “it is impossible for the court, given the vehemence of the accusations and counter-accusations, to sort out who bears responsibility for the[se] painful disputes.” *LD Assocs., Inc. v. Krant*, 2010 WL 4485900, at *1 (D. Mass. Nov. 9, 2010) (Ponsor, J.) (denying motions for sanctions because the parties failed to demonstrate bad faith). And the court cannot accept that BEH was forced “to expend a significant amount of money litigating the enforceability of the settlement just to obtain that for which it originally bargained,” Mot. at 19, given that the court has found no material breaches of the Agreement itself.

BEH’s argument for applying Massachusetts’s third-party attorney fee exception, pursuant to which “attorneys’ fees can be collected as part of

damages when ‘tortious conduct . . . requir[es] the victim of the tort to sue or defend against a third party in order to protect his rights,’” *RFF Family P’ship, LP v. Ross*, 814 F.3d 520, 535 (1st Cir. 2016), quoting *M.F. Roach Co. v. Town of Provincetown*, 355 Mass. 731, 732 (1969), is also unavailing. BEH alleges that Norwood’s nondisclosure of encumbrances on the leased ramps caused BEH to be sued by FlightLevel over the disposition of this third party’s property rights. As explained above, the court lacks jurisdiction to pass on the settlement negotiations; it follows that it cannot award sanctions for a dispute that it cannot evaluate.

Because the court does not find that BEH was “denied the resolution for which it bargained,” Mot. at 19, there is no proper basis for an imposition of sanctions.

ORDER

For the foregoing reasons, BEH’s motion to enforce the settlement agreement, impose sanctions, and award attorneys’ fees is DENIED.

SO ORDERED.

/s/ Richard G. Stearns
UNITED STATES DISTRICT JUDGE

EXHIBIT 2

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. 1582CV00213

BOSTON EXECUTIVE HELICOPTERS, LLC,
et al.,

Plaintiffs,

v.

FLIGHTLEVEL NORWOOD, LLC, et al.,

Defendants.

Consolidated with
CIVIL ACTION NO. 1582CV01637

FLIGHTLEVEL NORWOOD, LL, et al.,

Plaintiffs,

v.

BOSTON EXECUTIVE HELICOPTERS, LLC,
et al.,

Defendants.

**OPPOSITION OF BOSTON EXECUTIVE HELICOPTERS, LLC
TO FLIGHTLEVEL'S EMERGENCY MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

The defendant, Boston Executive Helicopters, LLC ("BEH") hereby submit this opposition to FlightLevel Norwood, LLC's Emergency Motion for Temporary Restraining Order and Preliminary Injunction.¹ FlightLevel's motion and request for extraordinary relief is based entirely

¹BEH also relies upon and incorporates herein by reference the Affidavit of Christopher Donovan, submitted herewith.

upon claimed property rights that simply do not exist. Moreover, FlightLevel cannot show that it has suffered any harm as a result of conduct by BEH. FlightLevel has made no attempt to make the required showing that it cannot under any circumstances provision its fuel system without making a wide turn onto BEH's leasehold. As discussed below, FlightLevel can access the fuel farm for deliveries from the east and from the west, and can do so without traversing BEH's property. Simply put, FlightLevel has no basis for seeking injunctive relief from this Court and its Motion for Injunction must be denied.

BACKGROUND

The Norwood Memorial Airport (the "Airport") is a public airport located in Norwood, Massachusetts, owned and operated by the Town of Norwood. The Norwood Airport Commission ("NAC") was established pursuant to G.L. c. 90, §§51E, and is charged with custody, care, and management of the Airport. Donovan Aff., ¶4.

Owners and operators of aircraft using airports such as the Airport typically utilize the services of a privately owned fixed based operator, or "FBO." Donovan Aff., ¶5. Under the NAC's Regulations and Minimum Standards, an FBO is defined as an airport-based organization which provides aircraft fueling services while engaging in a minimum of one of the primary service areas that include: (1) location-based services (line services/ground handling; crew and passenger services; facilities (aircraft tie-downs, hangars, offices); (2) technical services (aircraft maintenance and parts; paint and interiors); (3) flight services (charter and aircraft management); or (4) aircraft sales. Donovan Aff., ¶6.

Until recently, the Airport was served by only a single fuel provider/FBO, FlightLevel. Donovan Aff., ¶7. FlightLevel leases approximately 85% of the ramp space at the Airport. Until recently, the only public ramps remaining within NAC's control were the West Apron and the

DC-3 Ramps. FlightLevel has sought to obtain all available ramp space for the operation of its FBO to the exclusion of all other prospective competing FBOs, including BEH. Donovan Aff., ¶8.

Since 2010, BEH has held an existing Part 135 commercial permit to operate at the Airport. Since October 2010, BEH has requested ramp space and rights to operate a second FBO at the Airport, in order to provide aeronautical services to the Airport's users, such as aviation fueling services. BEH has submitted numerous requests, both verbally and in written form, seeking a permit and reasonable ramp space at the Airport in order to allow BEH to operate an FBO, sell fuel, and use the costly investments it has already made at the Airport. Donovan Aff., ¶9.

Since that time, FlightLevel has done everything it can to prevent BEH from becoming an FBO at the Airport, including repeatedly making false claims of obstruction and interference by BEH. FlightLevel also worked in concert with the NAC, including under a joint defense agreement, to prevent BEH from providing fuel competition on the Airport. Donovan Aff., ¶10.

Lot F and BEH's Fueling System

Pursuant to an Assignment, Assumption and Amendment of Lease dated October 19, 2012 (the "Assignment"), by and among BEH, Swift Aviation, and Boston Metropolitan Airport, Inc ("BMA") BEH acquired the sublease rights to Lot F. Donovan Aff., ¶11.

On December 5, 2012 BEH received approval from the Norwood Conversation Commission for the construction of the Fuel Farm and a hanger on Lot F. At the December 12, 2012 NAC meeting, the NAC approved the design of a fuel storage and dispensing system to be built on Lot F. On January 22, 2012, the Board of Selectmen for the Town of Norwood (the

“Board”), after a public hearing, approved BEH’s fuel farm for use, and stated that there were no restrictions on the fuel permit. Donovan Aff., ¶12.

On June 20, 2013, FlightLevel sent a detailed letter to the NAC and the Airport Manager suggesting for the first time that BEH had no right to use any of their leaseholds under any circumstances. This letter outlined the concern FlightLevel had with the NAC allowing competition at the Airport for fueling. Donovan Aff., ¶13. On July 17, 2013, the Airport Commission again approved the construction of Fuel Farm on Lot F. The FAA also approved the fuel farm and all TOFA/OFA compliance in July 2013. Donovan Aff., ¶14.

BEH Lawsuit Against The Town/NAC

In October of 2015, BEH filed a lawsuit against the Town and others, which was removed to federal court, captioned Boston Executive Helicopters LLC v. Francis T. Maguire, et al., United States District Court, District of Massachusetts, Civil Action No. 1:15-cv-13647-RGS (“the Federal Case”). Donovan Aff., ¶15.

On November 2, 2018, the FAA issued a decision on BEH’s separate Part 16 Complaint finding the Town of Norwood to be in violation of Federal law and its Federal grant obligations, and recognized conclusively that FlightLevel was the beneficiary of impermissibly granted exclusive rights (i.e., a monopoly) at the Airport. The FAA found that the Town “imposed unreasonable restrictions on BEH . . . which, when combined with the leasing practice with FlightLevel, have the overall effect of solidifying FlightLevel’s position at the Airport to the detriment not just for BEH, but any other entity which would be seeking an opportunity to provide FBO services.” Donovan Aff., ¶16.

On July 30, 2019, BEH and the Town/NAC entered into a General Release & Settlement Agreement (the “Settlement Agreement”). Donovan Aff., ¶17. In addition to other issues, the

Town agreed to work “cooperatively to ensure that BEH is promptly approved and permitted as a full Service Fixed Base Operator (‘FBO’) at Norwood Memorial Airport within thirty (30) days of the execution of this Agreement.” Donovan Aff., ¶18.

The Town further agreed in the Settlement Agreement that the NAC would enter into lease agreements with BEH for AIP Ramp #3-25-0037-27 (2006), consisting of approximately 72,000 s.f. (the ‘West Apron’), and AIP Ramp #3-25-0037-26\2005), consisting of approximately 15,295 s.f. (the ‘DC-3 Ramp’) (the ‘Leases’).” Donovan Aff., ¶19.

On August 26, 2019, the NAC granted BEH a permit to operate as an FBO. Donovan Aff., ¶20.

In keeping with its efforts to prevent competition, shortly after the Settlement Agreement was signed, on August 26, 2019, FlightLevel commenced a new lawsuit in the Norfolk Superior Court against BEH, the Town, the NAC, and others, captioned FlightLevel v. Town of Norwood et al., Civil Action No. 1982-01099, for injunctive relief to protect alleged access rights over portions of the West and DC-3 Ramps, including among other claimed rights, breach of an easement voted on by the NAC on February 15, 2017, and breach of a January 24, 1996 License Agreement (“the Lot B&H License”). Donovan Aff., ¶21.

On or about May 20, 2020, in Civil Action No. 1982-01099, FlightLevel filed a Motion for Injunctive relief against BEH (and the Town/NAC) seeking to enjoin BEH “from interfering with FlightLevel’s leasehold and access rights.” In that Motion, FlightLevel, just as it does here, claimed that BEH was blocking “access to and egress from its fuel farm.” Donovan Aff., ¶22.

On or about July 1, 2020, the Court denied FlightLevel’s Motion for Injunctive Relief. Donovan Aff., ¶23.

On or about December 21, 2020, the NAC and BEH entered into a Standard Form Ground Lease for a portion of the Airport known as the West Apron. Donovan Aff., ¶24, Exhibit A. On or about December 21, 2020, the NAC and BEH entered into a Standard Form Ground Lease for a portion of the Airport known as the DC-3 Apron. Donovan Aff., ¶25, Exhibit B.

Pursuant to the terms of the West Apron and DC-3 leases, BEH has the right to use the leased ramp space for its own FBO operations including, aircraft handling, fueling of aircraft, aircraft tie-downs, and including but not limited to operations customarily associated with an FBO. Donovan Aff., ¶26.

The leases executed between the Town and BEH contain no language or any indication that they are non-exclusive, or grant FlightLevel access rights. The phrase “non-exclusive” does not appear in the leases. Moreover, the issue before Judge Stearns concerned enforcement of the settlement agreement, not an interpretation of property rights granted or not granted under the yet to be signed leases. Donovan Aff., ¶27.

Additionally, the NAC, through counsel, has taken the position that FlightLevel does not have rights to these areas as it pertains to fueling operations. Donovan Aff., ¶28.

An airport ramp is a dangerous and high risk environment with substantial assets in terms of aircraft in close proximity with each other. Donovan Aff., ¶29. Christopher Donovan of BEH has personally observed fuel vehicles and large tanker trucks directed and controlled by FlightLevel dangerously close to aircraft, equipment, and operators in the past. Donovan Aff., ¶30.

Notwithstanding BEH’s possessory interests, FlightLevel continues to maintain that they have “pre-existing leasehold and access rights” to the West Apron and DC-3 Apron. FlightLevel has wrongly claimed that it has unfettered access rights over the West and DC-3 Aprons,

including pursuant to an alleged vote by the NAC to create a non-exclusive easement over Lot H (on the West Apron), a license agreement concerning the area known as the “Lot B&H Licensed Area” on the West Apron, an alleged right to install a fuel delivery system from Lot H (portions of the West Apron) to the DC-3 Apron, and alleged rights to install, maintain, a fuel terminal and dispensing system on the DC-3 Apron. Donovan Aff., ¶32.

Over BEH’s objection, and notwithstanding the BEH’s leases, FlightLevel has stated that they fully intend to “utilize such portions of the West Apron and/or DC-3 Apron as shall be necessary to provision its fuel farm and exercise its access rights.” Donovan Aff., ¶33.

On January 11, 2021, FlightLevel was put on written notice that if they enter upon or traverse BEH’s leaseholds that it would be deemed a trespass. Donovan Aff., ¶34. On January 12, 2021, FlightLevel caused and/or directed an 18 wheel semi-truck gasoline tanker under their direction and control to trespass on and across BEH’s leasehold on the West Apron, almost striking one of BEH’s fuel vehicles. Donovan Aff., ¶35.

Since the execution of the West Apron and DC-3 Leases, FlightLevel employees have continued to frequently drive vehicles and otherwise trespass onto BEH’s leaseholds. Donovan Aff., ¶36.

FlightLevel does not have rights to access any of BEH’s leaseholds for fueling or any other purpose without BEH’s consent and, in no event, does FlightLevel have the right to demand that BEH move aircraft or vehicles parked on and within BEH’s leaseholds. Donovan Aff., ¶38. FlightLevel has not provided any lease agreement or other evidence that it has any rights to the West Apron, or the DC-3 apron, leased to BEH. Donovan Aff., ¶39.

FlightLevel similarly does not have an easement as suggested to access the fuel farm over BEH’s leased portion of Lot H. FlightLevel continues to baselessly maintain that a February

2017 vote of the NAC to have the NAC's counsel work with FlightLevel to create such an easement over the West Apron portion of Lot H granted it rights. But that easement was never completed and since that time the NAC has leased that area to BEH. Donovan Aff., ¶40.

The plans attached to the West and DC-3 Leases (see Exhibits A and B) contain no easement or other access rights in favor of FlightLevel. Prior to the execution of the leases, on April 29, 2020, Town Counsel sent a title exam to BEH regarding the West and DC-3 Aprons. No easement or other access rights in favor of FlightLevel as suggested here were noted. Donovan Aff., ¶41.

In a recent attempt to thwart BEH's business and any competition, at a February 10, 2021 meeting of the NAC, FlightLevel presented a plan to install a fuel dispensing facility on the DC-3 Ramp, currently leased to BEH. The NAC denied this request, affirming that FlightLevel has no rights on the BEH's leaseholds. Donovan Aff., ¶42.

Given FlightLevel's failure to respect BEH's property rights, on or about January 13, 2021, BEH filed an amended answer and counterclaim against FlightLevel in Civil Action No. 1982-01099 seeking among other things a declaration that the Defendants-in-Counterclaim have no right to use BEH's leaseholds in connection with, without limitation, the provisioning of FlightLevel's fueling system, the lightering of fuel to and from said fueling system, the operation of fuel transport vehicles or other vehicles, and the fueling of aircraft of any kind. Donovan Aff., ¶43.

FlightLevel Can Access Its Fuel Farm

FlightLevel is able to access their fuel farm, including receiving deliveries of "Jet A" and Avgas fuel from transports, without accessing or traversing BEH's leaseholds, and without impeding or interfering with BEH's rights under its leases. Donovan Aff., ¶44. BEH has never

obstructed or blocked FlightLevel. FlightLevel has not received a fuel delivery because of BEH. On Monday, February 22, 2021, FlightLevel chose to make a stand in an attempt to claim rights to BEH's leased space, rather than unload its fuel. There was nothing preventing FlightLevel from unloading in the exact same area as the Avgas is unloaded. Donovan Aff., ¶45.

In his affidavit, Peter Eichleay fails to mention that "Lot H" is over 100,000 square feet in size. A portion of Lot H is inside the FlightLevel fuel farm, a portion of Lot H is also inside the West Apron, leased to BEH. BEH has not placed any vehicles outside of our West Apron leased area. The vehicles Eichleay claims were placed on "Lot H" were in fact on the West Apron, leased to BEH. The vehicles in no way blocked or prohibited FlightLevel from entering its fuel farm, from the East, South or West. Eichleay falsely claims delivery vehicles must "position" over the "Containment Pad." FlightLevel can load and unload bulk and service vehicles, from multiple locations throughout its fuel farm on lot H. The containment pad on the East side of the fuel farm can accommodate both "Jet A" and Avgas deliveries. Donovan Aff., ¶47.

FlightLevel has previously loaded and unloaded fuel delivery vehicles on both the West, East, and South sides of the Fuel farm. Donovan Aff., ¶48, Exhibit E. FlightLevel has also repeatedly loaded and unloaded fuel from outside the fenced area of the fuel farm, on dirt, through the fence – and not on the so-called "Containment Pad." Donovan Aff., ¶49, Exhibit E.

The "AutoTurn Plan" attached to the Affidavit of Peter Eichleay as Exhibit 3 is not based on any known or written standards or regulations. FlightLevel incorrectly asserts that certain areas at the Airport prohibit fueling due to NFPA 407. There are no NFPA setbacks at the Airport, as the Airport regulations do not contain any reference to NFPA 407. This was confirmed by the Norwood Fire Department, and through the deposition testimony of the Airport

Manager in the Federal Case. Moreover, FlightLevel itself regularly fuels in areas that it claims are subject to non-existent NFPA setbacks. Donovan Aff., ¶50.

Moreover, the “AutoTurn Plan” shows only FlightLevel’s preferred way to enter the fuel farm (from the East). In fact, FlightLevel can enter the fuel farm from the East, West, or South directions. Donovan Aff., ¶51, Exhibit E. As such, FlightLevel can enter and exit the fuel farm without driving over the West Apron leased to BEH.

FlightLevel’s rights on Lot G to access its fuel farm are limited to the tank farm access easement, which is on both the East and West of the fuel farm. Donovan Aff., ¶52.

BEH has observed on many occasions FlightLevel or its transports entering the fuel farm from the East and West, and also backing in from the East and West, loading and unloading from the East, South, and West. Donovan Aff., ¶53, Exhibit E.

There is no need or regulatory requirement for FlightLevel’s transports of Avgas or “Jet A” to refuel FlightLevel’s tanks from the so-called “containment pad.” FlightLevel often loads and unloads fuel from vehicles not situated on the “containment pad.” Donovan Aff., ¶54, Exhibit E.

There is no need for FlightLevel to enter or exit from the East side of the fuel farm, and a wide turn in that area is not required. BEH has observed for many years FlightLevel unloading bulk fuel deliveries from the East and South side of the fuel farm – without any turn on to the West apron (now leased by BEH). Donovan Aff., ¶55, Exhibit E.

To the extent FlightLevel claims any difficulty maneuvering on its property, that is an issue of its own making. FlightLevel has installed gates and a fence around its fuel farm. There is no need or legal requirement for the gates and/or a fence. BEH’s own underground fuel storage facility has no fence or gate surrounding the area. Donovan Aff., ¶56.

FlightLevel’s claim that the area of Lot H (now leased by BEH), which is shown on the “AutoTurn Plan,” must be free of obstructions and vehicles is a falsehood. As shown on the photos attached as Exhibit E, that precise area on the West Apron has aircraft tie downs located in the same area complained of by FlightLevel. Donovan Aff., ¶57.

FlightLevel has been utilizing the fuel farm, without any problems or complaint, with aircraft permanently tied down/parked, in that exact same location. Donovan Aff., ¶58, Exhibit E.

Peter Eichleay claims, incorrectly, that the areas surrounding the FlightLevel fuel farm, South, East, West, must be free at all times , for FlightLevel fuel delivery trucks, inspection vehicles and Town Fire Safety. This is another falsehood. FlightLevel delivery trucks park at various locations inside and outside the fuel farm fence, as depicted in the pictures attached. See Exhibit E. Fuel delivery trucks enter and exit the area using the Tank Farm Access Easement, without any problem, as they have done for years. Donovan Aff., ¶59.

STANDARD FOR INJUNCTIVE RELIEF

An injunction is an extraordinary remedy. See, e.g., Gut v. MacDonough, No. 07- 1083-C, 2007 WL 2410131, at *16 (Mass. Super. Ct. Aug. 14,2007); Mass. Corr. Officers Federated Union v. County of Bristol, 64 Mass. App. Ct. 461, 468 (2005); Silverman v. Liberty Mutual Ins. Co., No. 01-2767-F, 2001 WL 810157, at *17 (Mass. Super. Ct. July 11,2001) (Gants, J.). The purpose of an injunction is merely to maintain the status quo while litigation is pending. See, e.g., Thayer Co. v. Binnall, 326 Mass. 467, 479 (1950). To obtain preliminary injunctive relief the moving party must show that: (1) they have a reasonable likelihood of success on the merits; (2) if the preliminary injunction is not granted they will suffer irreparable harm – losses that cannot

be repaired or adequately compensated upon final judgment; and (3) the harm the moving party will suffer if the injunction is denied outweighs the harm and injury the non-moving party will suffer if the injunction is granted. Boston Police Patrolmen’s Ass’n, Inc. v. Police Dept. of Boston, 446 Mass. 46, 49 (2006). It is entirely inappropriate to order a preliminary injunction on a record of sharply disputed facts. Mass. Fed’n of Nursing Homes, Inc. v. Commonwealth, 772 F. Supp. 31, 37 (D. Mass. 1991) (A court should not grant an injunction when there is a close factual dispute that could go either way at trial”).

ARGUMENT

A. FlightLevel Has Failed To Demonstrate A Likelihood Of Success On The Merits.

FlightLevel has failed to demonstrate a likelihood of success on the merits warranting the requested relief. FlightLevel has no cognizable property rights to access BEH’s leaseholds on the Airport, or to demand that BEH move aircraft or vehicles parked on and within BEH’s leaseholds. Further, the Court’s October 22, 2019 Order in no way requires that BEH grant FlightLevel “access” to its leaseholds. FlightLevel is able to access its fuel farm, including receiving deliveries of fuel from transports, without accessing or traversing BEH’s leaseholds, and without impeding or interfering with BEH’s rights under its leases.

Moreover, BEH has already filed a counterclaim against FlightLevel in Civil Action No. 1982-01099 seeking among other things a declaration that FlightLevel has no right to use BEH’s leaseholds in connection with, without limitation, the provisioning of FlightLevel’s fueling system, the lightening of fuel to and from said fueling system, the operation of fuel transport vehicles or other vehicles, and the fueling of aircraft of any kind.

1. **FlightLevel Has No Property Rights To Access BEH's Leasehold, Or Demand That BEH Move Aircraft Or Vehicles.**

On or about December 21, 2020, BEH and the NAC entered into Standard Form Ground Leases for ramp space at the Airport known as the West Apron and the DC-3 Apron. Pursuant to the terms of the West Apron and DC-3 leases, BEH has a possessory interest and the exclusive right to use the leased ramp space for its own FBO operations including, aircraft handling, fueling of aircraft, aircraft tie-downs, and including but not limited to operations customarily associated with an FBO.

Notwithstanding BEH's possessory interests, FlightLevel continues to maintain that they have "pre-existing leasehold and access rights" to the West Apron and DC-3 Apron. Over BEH's objection, the Plaintiffs have stated that they fully intend to "utilize such portions of the West Apron and/or DC-3 Apron as shall be necessary to provision its fuel farm and exercise its access rights."

There is no existing instrument, whether recorded or not, that gives FlightLevel access rights over BEH's leaseholds on the West and DC-3 Aprons in the area complained of by FlightLevel. The portion of Lot H (which is on BEH's leasehold) that FlightLevel claims BEH parked vehicles preventing a fuel delivery is not covered by the Tank Farm Sublease, the Tank Farm Access Easement, or the "Lot B&H Licensed Area." FlightLevel can point to no document or right that grants it access rights to this particular area of the West Apron, because there are none. On this basis alone, the Court must deny FlightLevel's motion.

2. **The Court's October 22, 2019 Order Does Not Require BEH To Grant FlightLevel "Access" To FlightLevel's Lot G and Lot H Leaseholds**

In its Memorandum, FlightLevel completely mischaracterizes the Court's October 22, 2019 Order as "expressly prohibit[ing] BEH from interfering with FlightLevel's *access* to Lots G and H." FlightLevel's Memo, p. 11 (emphasis added). Nowhere in the October 22, 2019 Order

does the Court prohibit BEH from utilizing its own leasehold on the West Apron (which obviously did not exist at the time the Court issued the decision) or require BEH to grant FlightLevel “access” to its fuel farm. Rather, Judge Connors allowed FlightLevel’s motion “as it seeks an order restraining plaintiffs from interfering with Defendants’ rightful use and quiet enjoyment of their leasehold at the Airport including Defendants’ Lot G and H leaseholds.” Decision, p. 25.

Moreover, FlightLevel’s “rights” to Lot H are hardly mentioned in the decision itself. This makes sense, as the dispute between BEH and FlightLevel (and the subject of the summary judgment motion) concerned the parties’ respective property rights in the taxiway area between BEH’s Lot F and Lot G, not the area of which FlightLevel presently complains. In other words, the present issue was never before Judge Connors. As noted above, at the time of the decision, BEH did not have its current lease to the West Apron, so the parties’ respective property rights could not have been considered or decided by Judge Connors.

The simple fact is that there is nothing in the October 22, 2019 Order which requires BEH to grant FlightLevel “access” over BEH’s now existing leaseholds on the West or DC-3 Ramps, or would preclude BEH from utilizing the area complained of by FlightLevel in the manner that it sees fit.

Moreover, BEH vehemently disputes any characterization of the Federal court decision that the leases somehow grant FlightLevel unfettered access to BEH’s leaseholds. The leases recently executed between the Town and BEH contain no language or any indication that they are non-exclusive, or grant property rights to any third party, including the Plaintiffs. The phrase “non-exclusive” does not even appear in the leases. Moreover, the issue before Judge Stearns concerned enforcement of the settlement agreement to which the Plaintiffs were not parties or

beneficiaries, and not an interpretation of property rights granted or not granted under the yet-to-be executed leases. As such, FlightLevel's motion must be denied.

3. FlightLevel Is Perfectly Able to Access And Provision Its Fuel Farm Without Trespassing On BEH's Leaseholds And Will Suffer No Harm By The Denial Of Its Motion.

FlightLevel is able to access its fuel farm, including receiving deliveries of fuel from transports, without accessing or traversing BEH's leaseholds, and without impeding or interfering with BEH's rights under its leases. BEH has never obstructed or blocked FlightLevel. FlightLevel has not received a fuel delivery because of BEH. On Monday, February 22, 2021, FlightLevel chose to make a stand in an attempt to claim rights to BEH's leased space, rather than unload its fuel. There was nothing preventing FlightLevel from unloading in the exact same area as the Avgas is unloaded.

In his affidavit, Peter Eichleay fails to mention that "Lot H" is over 100,000 square feet in size. A portion of Lot H is inside the FlightLevel fuel farm, a portion of Lot H is also inside the West Apron, leased to BEH. BEH has not placed any vehicles outside of our West Apron leased area. The vehicles Eichleay claims were placed on "Lot H" were in fact on the West Apron, leased to BEH. The vehicles in no way blocked or prohibited FlightLevel from entering its fuel farm, from the East, South or West. Eichleay also wrongly claims delivery vehicles must "position" over the "Containment Pad." FlightLevel can load and unload bulk and service vehicles, from multiple locations throughout its fuel farm on lot H. The containment pad on the East side of the fuel farm can accommodate both "Jet A" and Avgas deliveries. FlightLevel has previously loaded and unloaded fuel delivery vehicles on both the West, East, and South sides of the Fuel farm.

The "AutoTurn Plan" attached to the Affidavit of Peter Eichleay as Exhibit 3 is not based on any known or written standards or regulations. Moreover, the "AutoTurn Plan" shows only FlightLevel's preferred way to enter the fuel farm (from the East). In fact, FlightLevel can enter

the fuel farm from the East or the West directions. As such, FlightLevel can enter and exit the fuel farm without driving over any portion of the West Apron leased to BEH.

There is no need for FlightLevel to enter or exit only from the East side of the fuel farm, and a wide turn (onto BEH's leasehold) in that area is not required. BEH has observed for many years FlightLevel unloading bulk fuel deliveries from the East side of the fuel farm – without any turn on to the West apron (now leased by BEH). On many occasions, FlightLevel or its transports have entered the fuel farm from the West, and have also backed into and out of the fueling area from the East and West.

To the extent FlightLevel claims any difficulty maneuvering on its property, that is an issue of its own making. FlightLevel has installed gates and a fence around its fuel farm; yet, there is no need or legal requirement for the gates and/or a fence. BEH's own underground fuel storage facility has no fence or gate surrounding the area.

Moreover, FlightLevel's claim that the area of Lot H (now leased by BEH), which is shown on the "AutoTurn Plan," must be free of obstructions and vehicles is a falsehood. That precise area on the West Apron has aircraft tie downs located in the same area now complained of by FlightLevel. FlightLevel has been utilizing the fuel farm, without any problems or complaint, with aircraft permanently tied down/parked, in that exact same location for years.

In any event, FlightLevel has not shown – which it must do – that it cannot provision the fueling system in another manner, or that it has property rights to support its request for relief. As such, FlightLevel's motion must be denied.

CONCLUSION

For the forgoing reasons, the Court should deny FlightLevel's Emergency Motion for Temporary Restraining Order and Preliminary Injunction.

Respectfully submitted,

BOSTON EXECUTIVE HELICOPTERS, LLC,

By its attorneys,

/s/ Eric H. Loeffler

Eric H. Loeffler, BBO #641289
DAVIDS & COHEN, P.C.
40 Washington Street, Suite 20
Wellesley, MA 02481
781-416-5055
eloeffler@davids-cohen.com

Dated: February 26, 2021

CERTIFICATE OF SERVICE

I, Eric H. Loeffler, hereby certify that on this 26th day of February 2021, I served a true and accurate copy of the foregoing document to counsel of record by email as follows:

Neil Hartzell, Esq.
Ben N. Dunlap, Esq.
Freeman, Mathis & Gary LLP
60 State Street, 6th Floor
Boston, MA 02109

/s/ Eric H. Loeffler

Eric H. Loeffler

EXHIBIT 3

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. 1582CV00213

BOSTON EXECUTIVE HELICOPTERS, LLC,
et al.,

Plaintiffs,

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Defendants.

Consolidated with
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et al.,

Defendants.

AFFIDAVIT OF CHRISTOPHER R. DONOVAN

I, Christopher R. Donovan, hereby depose and state the following based on my own personal knowledge.

1. I am the manager of Boston Executive Helicopters, LLC ("BEH"), a Delaware limited liability company with its principal place of business at 209 Access Road, Norwood, Massachusetts 02062.

2. I have approximately 10,000 flight hours, hold the following FAA certifications and ratings: Airline Transport Pilot (ATP) Airplane Single and Multi-Engine Land, Rotorcraft Helicopter, Certified Flight Instructor (CFI) Airplane Single and Multi-Engine, Rotorcraft Helicopter, Instrument Airplane and Helicopter (CFII), Ground Instructor (GI) Advanced Instrument. I have over 34 years of flying throughout the USA, Europe, and the Middle East, including 12 years of Military Pilot in Command, with combat deployment to the Middle East.

3. I am certified by the Massachusetts Department of Environmental Protection, Class A/B operator in Underground Storage Tank (UST) systems, which the DEP defines as “In depth knowledge and understanding of the UST System(s), how to operate and maintain UST systems, as well as Federal and State regulatory requirements that apply to that system (UST).”

4. The Norwood Memorial Airport (the “Airport”) is a public airport located in Norwood, Massachusetts, owned and operated by the Town of Norwood. The Norwood Airport Commission (“NAC”) was established pursuant to G.L. c. 90, §§51E, and is charged with custody, care, and management of the Airport.

5. Owners and operators of aircraft using airports such as the Airport typically utilize the services of a privately owned fixed based operator, or “FBO.”

6. Under the NAC’s Regulations and Minimum Standards, an FBO is defined as an airport-based organization which provides aircraft fueling services while engaging in a minimum of one of the primary service areas that include: (1) location-based services (line services/ground handling; crew and passenger services; facilities (aircraft tie-downs, hangars, offices); (2) technical services (aircraft maintenance and parts; paint and interiors); (3) flight services (charter and aircraft management); or (4) aircraft sales.

7. Until recently, the Airport was served by only a single fuel provider/FBO, FlightLevel.

8. FlightLevel leases approximately 85% of the ramp space at the Airport. Until recently, the only public ramps remaining within NAC's control were the West Apron and the DC-3 Ramps. FlightLevel has sought to obtain all available ramp space for the operation of its FBO to the exclusion of all other prospective competing FBOs, including BEH.

9. Since 2010, BEH has held an existing Part 135 commercial permit to operate at the Airport. Since October 2010, BEH has requested ramp space and rights to operate a second FBO at the Airport, in order to provide aeronautical services to the Airport's users, such as aviation fueling services. BEH has submitted numerous requests, both verbally and in written form, seeking a permit and reasonable ramp space at the Airport in order to allow BEH to operate an FBO, sell fuel, and use the costly investments it has already made at the Airport.

10. Since that time, FlightLevel has done everything it can to prevent BEH from becoming an FBO at the Airport, including repeatedly making false claims of obstruction and interference by BEH. FlightLevel also worked in concert with the NAC, including under a joint defense agreement, to prevent BEH from providing fuel competition on the Airport.

Lot F and BEH's Fueling System

11. Pursuant to an Assignment, Assumption and Amendment of Lease dated October 19, 2012 (the "Assignment"), by and among BEH, Swift Aviation, and Boston Metropolitan Airport, Inc ("BMA") BEH acquired the sublease rights to Lot F.

12. On December 5, 2012 BEH received approval from the Norwood Conversation Commission for the construction of the Fuel Farm and a hanger on Lot F. At the December 12, 2012 NAC meeting, the NAC approved the design of a fuel storage and dispensing system to be

built on Lot F. On January 22, 2012, the Board of Selectmen for the Town of Norwood (the “Board”), after a public hearing, approved BEH’s fuel farm for use, and stated that there were no restrictions on the fuel permit.

13. On June 20, 2013, FlightLevel sent a detailed letter to the NAC and the Airport Manager suggesting for the first time that BEH had no right to use any of their leaseholds under any circumstances. This letter outlined the concern FlightLevel had with the NAC allowing competition at the Airport for fueling.

14. On July 17, 2013, the Airport Commission again approved the construction of Fuel Farm on Lot F. The FAA also approved the fuel farm and all TOFA/OFA compliance in July 2013.

BEH Lawsuit Against The Town/NAC

15. In October of 2015, BEH filed a lawsuit against the Town and others, which was removed to federal court, captioned Boston Executive Helicopters LLC v. Francis T. Maguire, et al., United States District Court, District of Massachusetts, Civil Action No. 1:15-cv-13647-RGS (“the Federal Case”).

16. On November 2, 2018, the FAA issued a decision on BEH’s separate Part 16 Complaint finding the Town of Norwood to be in violation of Federal law and its Federal grant obligations, and recognized conclusively that FlightLevel was the beneficiary of impermissibly granted exclusive rights (i.e., a monopoly) at the Airport. The FAA found that the Town “imposed unreasonable restrictions on BEH . . . which, when combined with the leasing practice with FlightLevel, have the overall effect of solidifying FlightLevel’s position at the Airport to the detriment not just for BEH, but any other entity which would be seeking an opportunity to provide FBO services.”

17. On July 30, 2019, BEH and the Town/NAC entered into a General Release & Settlement Agreement (the “Settlement Agreement”).

18. In addition to other issues, the Town agreed to work “cooperatively to ensure that BEH is promptly approved and permitted as a full Service Fixed Base Operator (‘FBO’) at Norwood Memorial Airport within thirty (30) days of the execution of this Agreement.”

19. The Town further agreed in the Settlement Agreement that the NAC would enter into lease agreements with BEH for AIP Ramp #3-25-0037-27 (2006), consisting of approximately 72,000 s.f. (the ‘West Apron’), and AIP Ramp #3-25-0037-26\2005), consisting of approximately 15,295 s.f. (the ‘DC-3 Ramp’) (the ‘Leases’).”

20. On August 26, 2019, the NAC granted BEH a permit to operate as an FBO.

21. In keeping with its efforts to prevent competition, shortly after the Settlement Agreement was signed, on August 26, 2019, FlightLevel commenced a new lawsuit in the Norfolk Superior Court against BEH, the Town, the NAC, and others, captioned FlightLevel v. Town of Norwood et al., Civil Action No. 1982-01099, for injunctive relief to protect alleged access rights over portions of the West and DC-3 Ramps, including among other claimed rights, breach of an easement voted on by the NAC on February 15, 2017, and breach of a January 24, 1996 License Agreement (“the Lot B&H License”).

22. On or about May 20, 2020, in Civil Action No. 1982-01099, FlightLevel filed a Motion for Injunctive relief against BEH (and the Town/NAC) seeking to enjoin BEH “from interfering with FlightLevel’s leasehold and access rights.” In that Motion, FlightLevel, just as it does here, claimed that BEH was blocking “access to and egress from its fuel farm.”

23. On or about July 1, 2020, the Court denied FlightLevel’s Motion for Injunctive Relief.

24. On or about December 21, 2020, the NAC and BEH entered into a Standard Form Ground Lease for a portion of the Airport known as the West Apron. A true and correct copy of the West Apron Lease is attached hereto as Exhibit A.

25. On or about December 21, 2020, the NAC and BEH entered into a Standard Form Ground Lease for a portion of the Airport known as the DC-3 Apron. A true and correct copy of the DC-3 Lease is attached hereto as Exhibit B.

26. Pursuant to the terms of the West Apron and DC-3 leases, BEH has the right to use the leased ramp space for its own FBO operations including, aircraft handling, fueling of aircraft, aircraft tie-downs, and including but not limited to operations customarily associated with an FBO.

27. The leases executed between the Town and BEH contain no language or any indication that they are non-exclusive, or grant FlightLevel access rights. The phrase “non-exclusive” does not appear in the leases. Moreover, the issue before Judge Stearns concerned enforcement of the settlement agreement, not an interpretation of property rights granted or not granted under the yet to be signed leases.

28. Additionally, the NAC, through counsel, has taken the position that FlightLevel does not have rights to these areas as it pertains to fueling operations. See Exhibit C, attached hereto.

29. An airport ramp is a dangerous and high risk environment with substantial assets in terms of aircraft in close proximity with each other.

30. I have personally observed fuel vehicles and large tanker trucks directed and controlled by FlightLevel dangerously close to aircraft, equipment, and operators in the past.

31. Notwithstanding BEH’s possessory interests, FlightLevel continues to maintain that they have “pre-existing leasehold and access rights” to the West Apron and DC-3 Apron.

32. FlightLevel has wrongly claimed that it has unfettered access rights over the West and DC-3 Aprons, including pursuant to an alleged vote by the NAC to create a non-exclusive easement over Lot H (on the West Apron), a license agreement concerning the area known as the “Lot B&H Licensed Area” on the West Apron, an alleged right to install a fuel delivery system from Lot H (portions of the West Apron) to the DC-3 Apron, and alleged rights to install, maintain, a fuel terminal and dispensing system on the DC-3 Apron.

33. Over BEH’s objection, and notwithstanding the BEH’s leases, FlightLevel has stated that they fully intend to “utilize such portions of the West Apron and/or DC-3 Apron as shall be necessary to provision its fuel farm and exercise its access rights.”

34. On January 11, 2021, FlightLevel was put on written notice that if they enter upon or traverse BEH’s leaseholds that it would be deemed a trespass.

35. On January 12, 2021, FlightLevel caused and/or directed an 18 wheel semi-truck gasoline tanker under their direction and control to trespass on and across BEH’s leasehold on the West Apron, almost striking one of BEH’s fuel vehicles.

36. Since the execution of the West Apron and DC-3 Leases, FlightLevel employees have continued to frequently drive vehicles and otherwise trespass onto BEH’s leaseholds.

37. BEH has lease rights on the following parcels at the Airport:

- a. Portions of Lot A, B and H, via the West Apron Lease with the Town of Norwood. This includes lease rights on the “West Apron”, which include portions of Lot A, Lot H and Lot B, and Gate Lane 3, which includes the entire length.
- b. Lot F and Lot G, via the assignment of the Lot F sub lease, which includes the Gate Lane 3, entire length.

c. Portions of Lots F, G, B, A, and H, via the condo hangar sub leases for units 7 and 8 BEH's operations on the Condo Hangar sub leases, on Lot G, which includes portions of Lot G, Lot B, Lot A, Lot H and gate lane 3, the entire length.¹

38. FlightLevel does not have rights to access any of BEH's leaseholds for fueling or any other purpose without BEH's consent and, in no event, does FlightLevel have the right to demand that BEH move aircraft or vehicles parked on and within BEH's leaseholds.

39. FlightLevel has not provided any lease agreement or other evidence that it has any rights to the West Apron, or the DC-3 apron, leased to BEH.

40. FlightLevel similarly does not have an easement as suggested to access the fuel farm over BEH's leased portion of Lot H. FlightLevel continues to baselessly maintain that a February 2017 vote of the NAC to have the NAC's counsel work with FlightLevel to create such an easement over the West Apron portion of Lot H granted it rights. But that easement was never completed and since that time the NAC has leased that area to BEH.

41. The plans attached to the West and DC-3 Leases (see Exhibits A and B) contain no easement or other access rights in favor of FlightLevel. Prior to the execution of the leases, on April 29, 2020, Town Counsel sent a title exam to BEH regarding the West and DC-3 Aprons. No easement or other access rights in favor of FlightLevel as suggested here were noted.

42. In a recent attempt to thwart BEH's business and any competition, at a February 10, 2021 meeting of the NAC, FlightLevel presented a plan to install a fuel dispensing facility on the DC-3 Ramp, currently leased to BEH. The NAC denied this request, affirming that FlightLevel has no rights on the BEH's leaseholds.

¹The Condo hangar sublease used by BEH was acknowledged and approved by Peter Eichleay, with notice, regarding BEH operations, beginning on March 23, 2010.

43. Given FlightLevel's failure to respect BEH's property rights, on or about January 13, 2021, BEH filed an amended answer and counterclaim against FlightLevel in Civil Action No. 1982-01099 seeking among other things a declaration that the Defendants-in-Counterclaim have no right to use BEH's leaseholds in connection with, without limitation, the provisioning of FlightLevel's fueling system, the lightering of fuel to and from said fueling system, the operation of fuel transport vehicles or other vehicles, and the fueling of aircraft of any kind.

FlightLevel Can Access Its Fuel Farm

44. FlightLevel is able to access their fuel farm, including receiving deliveries of "Jet A" and Avgas fuel from transports, without accessing or traversing BEH's leaseholds, and without impeding or interfering with BEH's rights under its leases.

45. BEH has never obstructed or blocked FlightLevel. FlightLevel has not received a fuel delivery because of BEH. On Monday, February 22, 2021, FlightLevel chose to make a stand in an attempt to claim rights to BEH's leased space, rather than unload its fuel. There was nothing preventing FlightLevel from unloading in the exact same area as the Avgas is unloaded.

46. Attached as Exhibit D is a photographic overview of the Lot F, Lot G, Lot H and Gate 3 area.

47. In his affidavit, Peter Eichleay fails to mention that "Lot H" is over 100,000 square feet in size. A portion of Lot H is inside the FlightLevel fuel farm, a portion of Lot H is also inside the West Apron, leased to BEH. BEH has not placed any vehicles outside of our West Apron leased area. The vehicles Eichleay claims were placed on "Lot H" were in fact on the West Apron, leased to BEH. The vehicles in no way blocked or prohibited FlightLevel from entering its fuel farm, from the East, South or West. Eichleay falsely claims delivery vehicles must "position" over the "Containment Pad." FlightLevel can load and unload bulk and service vehicles, from multiple

locations throughout its fuel farm on lot H. The containment pad on the East side of the fuel farm can accommodate both “Jet A” and Avgas deliveries.

48. As depicted on the attached photographs, FlightLevel has previously loaded and unloaded fuel delivery vehicles on both the West, South, and East sides of the Fuel farm. See Exhibit E.

49. FlightLevel has also repeatedly loaded and unloaded fuel from outside the fenced area of the fuel farm, on dirt, through the fence – and not on the so-called “Containment Pad.” See Exhibit E.

50. The “AutoTurn Plan” attached to the Affidavit of Peter Eichleay as Exhibit 3 is not based on any known or written standards or regulations. FlightLevel incorrectly asserts that certain areas at the Airport prohibit fueling due to NFPA 407. There are no NFPA setbacks at the Airport, as the Airport regulations do not contain any reference to NFPA 407. This was confirmed by the Norwood Fire Department, and through the deposition testimony of the Airport Manager in the Federal Case. Moreover, FlightLevel itself regularly fuels in areas that it claims are subject to non-existent NFPA setbacks.

51. Moreover, the “AutoTurn Plan” shows only FlightLevel’s preferred way to enter the fuel farm (from the East). In fact, FlightLevel can enter the fuel farm from the East, West, or South directions. See Exhibit E. As such, FlightLevel can enter and exit the fuel farm without driving over the West Apron leased to BEH.

52. FlightLevel’s rights on Lot G to access its fuel farm are limited to the tank farm access easement, which is on both the East and West of the fuel farm.

53. I have observed on many occasions FlightLevel or its transports entering the fuel farm from the East and West, and also backing in from the East and West, loading and unloading from the East, South, and West. See Exhibit E.

54. Moreover, there is no need or regulatory requirement for FlightLevel's transports of Avgas or "Jet A" to refuel FlightLevel's tanks from the so-called "containment pad."² FlightLevel often loads and unloads fuel from vehicles not situated on the "containment pad." See Exhibit E.

55. There is no need for FlightLevel to enter or exit from the East side of the fuel farm, and a wide turn in that area is not required. I have observed for many years FlightLevel unloading bulk fuel deliveries from the East, West and South side of the fuel farm – without any turn on to the West apron (now leased by BEH).

56. To the extent FlightLevel claims any difficulty maneuvering on its property, that is an issue of its own making. FlightLevel has installed gates and a fence around its fuel farm. There is no need or legal requirement for the gates and/or a fence. BEH's own underground fuel storage facility has no fence or gate surrounding the area.


57. FlightLevel's claim that the area of Lot H (now leased by BEH), which is shown on the "AutoTurn Plan," must be free of obstructions and vehicles is a falsehood. As shown on the attached photos, See Exhibit E. that precise area on the West Apron has aircraft tie downs located in the same area complained of by FlightLevel.

58. FlightLevel has been utilizing the fuel farm, without any problems or complaint, with aircraft permanently tied down/parked, in that exact same location. See Exhibit E. p. 6.

²The "Containment Pad" directs any FlightLevel fuel spills to "Outflow 2" which would discharge fuel spills directly into the Neponset River Watershed.

59. Peter Eichleay claims, incorrectly, that the areas surrounding the FlightLevel fuel farm, South, East, West, must be free at all times , for FlightLevel fuel delivery trucks, inspection vehicles and Town Fire Safety. This is another falsehood. FlightLevel delivery trucks park at various locations inside and outside the fuel farm fence, as depicted in the pictures attached. See Exhibit E. Fuel delivery trucks enter and exit the area using the Tank Farm Access Easement, without any problem, as they have done for years.

Signed under the pains and penalties of perjury on this 26th day of February 2021.



Christopher R. Donovan

EXHIBIT A

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Norwood Memorial Airport Standard Ground Lease Form, Short-Term

This Ground Lease Agreement (the "Lease" or "Agreement") is made this 16th day of December, 2020 by and between the Norwood Airport Commission (the "Lessor" or "NAC") 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, 111 Access Road, Norwood, MA 02062 and Boston Executive Helicopters, LLC, a Delaware Limited Liability Company with a principal place of business located at 209 Access Road, Norwood, MA 02062 (the "Lessee").

WITNESSETH

WHEREAS, the Lessor operates that certain airport known as the Norwood Memorial Airport and is located at 111 Access Road, Norwood MA 02062 (the "Airport"); and

WHEREAS, the Lessor desires to lease a portion of the Airport known as the West Apron (hereinafter defined) to Lessee and Lessee desires to lease from the Lessor the West Apron subject to the terms and conditions hereinafter set forth;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

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 situated on the Airport known as AIP Apron #3-25-0037-27 (2006) consisting of approximately seventy-three thousand two hundred and thirty eight (73,238) square feet and marked the "West Apron" on the Airport plan attached hereto as Exhibit A and incorporated herein by reference (the "Leased Premises" or "West Apron"). Contained outside and east of the Leased Premises and West Apron and west of the north-south taxi-lane centerline is part of a taxi-lane object-free area (commonly referred to as a "TOFA"). Contained outside and north of the Leased Premises and West Apron and south of the Gate 3 taxi-lane centerline, is part of a TOFA.

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, 2020 and ending on the last day of November, 2025. Provided Lessee is not in default hereunder, Lessee shall have the right exercisable by giving written notice thereof to Lessor not less than six (6) months prior to the expiration of the Term, to extend the Term for one (1) additional three (3) year period (the "Extended Term"). The terms and conditions of any Extended Term shall be as set forth herein. Notwithstanding the foregoing or any other provision of this Agreement to the contrary, Lessee shall have no right to elect to extend the term during any period in time in which the Lessee remains in default hereunder.



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III. **RENT:** The rent that the Lessee will pay to the Lessor during the Term shall be equal to \$0.50 per square foot and shall be paid in twelve (12) equal monthly installments of Three Thousand fifty-one and 58/100 Dollars (\$3,051.58). The first (1st) payment hereunder shall be made upon the execution and delivery of this Agreement to the Lessor, and subsequent payments shall be made no later than the first (1st) day of each month thereafter during the Term thereof. For each successive year of this Lease, from Year 2 through Year 5 (or from Year 2 through Year 8 in the case of an Extended Term), the rent will increase by two percent (2%) from the preceding year.

To the extent permitted by applicable law, Lessee further agrees that, in the event that any rent payment or other payment required to be paid by Lessee hereunder is not paid in full by the start of the tenth (10th) day of each month, Lessee shall pay to Lessor, in addition to such late rent payment or other payment due hereunder, an initial late fee, as additional rent, in the amount of Fifty and 00/100 Dollars (\$50.00). Further, a subsequent late fee of Twenty and 00/100 Dollars (\$20.00) per day will be incurred by Lessee for each day payment is delayed after the tenth (10th) day of the month in which such payment was originally due. All future payments by Lessee will be allocated first to any outstanding balances due other than rent. Any remaining monies paid by Lessee to Lessor will be allocated lastly to any rent balance.

IV. **USE OF THE PREMISES:** Lessee shall have the right to use the Leased Premises for the following aeronautical purposes and activities, and those purposes directly needed to accomplish such uses and none other. The Leased Premises shall be used for: Aircraft tie-down, aircraft handling, and fueling of aircraft, including but not limited to operations customarily associated with an FBO "Fixed Base Operator." As an accessory use to Lessee's right to use the Leased Premises, and due to limited parking elsewhere, Lessee may also park vehicles on the Leased Premises for personnel and customers so long as doing so does not interfere with Lessee's or any other Airport user's lawful activities at the Airport. It is agreed that the Lessor makes no representation or guarantees that the Leased Premises 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.

No unauthorized third party commercial activity shall be conducted in, from or around the Leased Premises. Third party commercial activity customarily associated with FBO operations shall be authorized and permitted. Lessee shall not use the Leased Premises in any manner that will constitute waste, and Lessee shall not cause or permit any unlawful conduct, annoyance or nuisance to exist or arise in the course of or as a result of its use of the Leased Premises, nor permit any activity or omission that constitutes or results in unlawful conduct, annoyance or nuisance, or permit any use that shall be liable to endanger, affect, or make voidable any insurance on the Leased Premises, or the building or any of its contents, or to increase the cost of any such insurance. Lessee shall conduct itself, and shall cause its officers, employees, representatives, servants, agents, invitees, guests, clients, contractors, licensees, suppliers and service providers to conduct

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themselves, in an orderly and proper manner so as not to disturb or interfere with the NAC's or others' use of the Airport.

The Lessor hereby requires that the Lessee comply with FAA Advisory Circular AC 150/5300-13A Airport Design and its successor, particularly sections 504, 505, and 506, which address the safe maneuvering of aircraft on a parking apron, mixing aircraft types and sizes, and the potential need to ground-handle jet aircraft to and from the parking apron, and to prevent jet blast, among other issues. Therefore, The Lessee will be required to make its own independent judgment to assure proper wingtip clearances, and the parties hereto agree that the Lessor shall not be liable or otherwise responsible relative to the layout and use of the Leased Premises, including, but not limited to, said internal taxi-lane.

V. **INSURANCE:** The Lessee agrees that it will secure and pay for commercial general liability insurance with respect to the Leased Premises, insuring the Lessee and the Lessor (including its past, present, and future officers, officials, employees, agents, servants, representatives, designees, volunteers, boards, committees, commissions, departments, and assigns) against all claims for injuries to a person or property sustained by anyone while on the Leased Premises or by through the actions of the Lessee, its officers, employees, representatives, servants, agents, invitees, guests, clients, contractors, licensees, suppliers and service providers, anywhere on the Airport. The Lessee agrees to name the Lessor as an additional insured. Insurance will also include coverage for any product and service provided by the Lessee. Lessee will maintain property and general liability insurance for personal injury including death with limits equal to the greater of the minimum insurance amounts required by the Norwood Airport Minimum Standards or such other amounts as the Lessor may reasonably require from time to time; and property damage insurance with limits equal to the greater of the minimum insurance amounts required by the Norwood Airport Minimum Standards, or such other amounts as the Lessor may reasonably require from time to time; and any other type of insurance as may be required by law or by the Lessor with limits in the amount(s) specified by law or by the Lessor. Higher insurance coverage limits may apply based on the Lessee's planned use of the Leased Premises with respect to the applicable insurance coverage limits reflected in the Norwood Airport Minimum Standards. Insurance will be provided by a responsible company(ies) authorized to do business in the Commonwealth of Massachusetts. The Lessee shall provide the Lessor with proof of insurance as evidenced by certificates of insurance which comply with the Norwood Airport Minimum Standards. The Lessee shall promptly provide the Lessor with such proof in the event of any material change in the coverage limits, type of insurance, or the insurer providing any such insurance. Insurance policies and coverage limits shall at all times conform to the applicable rules, regulations, standards, policies, directives, guidelines, and other requirements issued by the Federal Aviation Administration ("FAA"), Massachusetts Department of Transportation (Aeronautics Division) or its successor (collectively, the "Mass DOT"), and the NAC. Copies of all proof of insurance shall be filed with and maintained in the offices of the NAC.

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VI. ASSIGNMENTS, MORTGAGES, OR SUBLEASES: Neither Lessee, nor its successor, heirs or assigns, shall assign, mortgage, pledge, or encumber this Lease. Leased Premises may not be sub-let for any purpose other than aircraft tie down sub leases. This Lease shall not be assigned or transferred by operation of law, without the prior consent in writing of the Lessor in each instance. If this Lease is assigned or transferred, or any part of the Leased Premises is used by other than the Lessee, Lessor may, after notice of default to 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 General Regulations for the Norwood Memorial Airport, the Norwood Airport Minimum Standards, the Norwood Memorial Airport Storm Water Pollution Prevention Plan, the Norwood Memorial Airport Spill Prevention, Control and Countermeasure Plan, Norwood Airport Security Plan, including restrictive access control to and from the Leased Premises, and any other applicable rules, regulations, standards, policies, directives, guidelines and other requirements issued by a governmental authority including but not limited to the FAA, Mass DOT, and the NAC, as these may be amended from time to time. 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.

The following additional conditions are required by the Lessor of the Lessee:

1. The Lessee must provide a parking plan of the West Apron to Lessor, showing its intended use of transient (non-based) aircraft tie-down spaces, as well as based aircraft tie-down spaces.
2. With an FAA-approved paint, the Lessee must apply pavement markings of "Transient" on those aircraft tie-down spaces to be used exclusively for non-based aircraft. Spaces not marked "transient" may be used for based or non-based aircraft. In advance, a pavement markings plan must be submitted to, and approved by, Lessor.
3. Per the General Regulations for Norwood Memorial Airport, the pilot-in-command of any transient aircraft parked on the West Apron must sign in at the Lessee's operations desk. A standardized form will be provided by Lessor. This form will be turned in to Lessor at its request, but at least monthly.
4. The Lessee must perform crack-sealing on the West Apron in Years one (1) and five (5) of the Term using Mass DOT approved products and processes.

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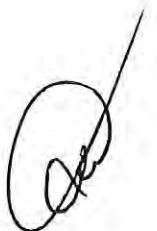
5. With an FAA-approved paint, the Lessee must re-mark the aircraft tie-down every even year during the Term beginning in Year 2 of this Lease.

VIII. **ACCESS AND EGRESS:** Lessee shall at all times have the full and free right of access and egress to the Leased Premises, 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, and 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, Lessee agrees to comply with the directives of the FAA and Mass DOT with respect to operation of aircraft on an airport. Lessee acknowledges 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 Premises, but that Lessee shall keep Leased Premises in good and sufficient repair and to quit and deliver up the Leased 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 Premises and shall deposit such snow and ice in those areas of the Airport designated by the Lessor from time to time. In the event of extreme weather events or extraordinarily high levels of snowfall, the parties agree to work cooperatively to identify other areas where such snow and ice may, if necessary, be deposited.

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. 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

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to consist of a large initial letter followed by a series of loops and a long tail extending upwards and to the right.

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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 Premises 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 the Leased 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 Lease 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 the Massachusetts General Laws Chapter 148, the Massachusetts Fire Code and Regulations, and the rules and regulations of the Norwood Fire Department for the prevention of fires and the environmental safety of the Leased Premises. Lessee shall at its 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 Premises is authorized.

XIV. **INDEMNIFICATION OF LESSOR:** Lessee, at its expense, shall release, defend, indemnify and hold harmless the Lessor, the Town of Norwood, and their respective members, directors, officers, agents and employees from and against all costs, claims, damages, losses, expenses, fees, proceedings, judgments, actions, demands, causes of action, and liabilities ("Claims") and expenses (including reasonable attorneys' fees and costs of investigation and litigation) based upon or arising out of Lessee's conduct of its business at the Airport or its use of the Leased Premises or any other Airport property, provided that Lessee shall not be liable for any Claim caused solely by the willful misconduct or gross negligence of the Lessor or the Town. The foregoing express obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the Lessor or the Town that would exist under any applicable law or under provisions of this Lease, and the extent of the obligation of indemnification shall not be limited by any provision of insurance undertaken in accordance with this Lease. This indemnification agreement shall survive the expiration or earlier termination of this Lease.

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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 the Leased Premises 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 Lease and take possession of the Leased Premises. Lessor shall have the right to terminate this Lease in the event that the Lessee, its agents or employees cause the Leased 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 the Leased 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 Leased Premises thereby occasioned.

XVIII. **RE-ENTRY AND REPOSSESSION ON DEFAULT:** Lessor may terminate this Lease 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 Leased Premises in suitable and safe condition so as to comply with the law and regulation affecting the same.

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XX. **LESSOR'S RIGHT AT END OF TERM:** It is understood and agreed that upon the termination, cancellation, or at the end of any Term hereof, the buildings and improvements on the Leased Premises shall revert to Lessor. Lessee may remove fixtures at its own expense, without damage to the underlying real property, building, or improvements.

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 this Lease 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:** The Lessee shall at the expiration or earlier termination of this Lease remove all Lessee's goods and effects from the Leased Premises, (including, without hereby limiting the generality of the foregoing, all signs and lettering affixed or painted by the Lessee, either inside or outside the Leased Premises). Lessee shall deliver to the NAC the Leased Premises and all keys, locks thereto, and other fixtures connected therewith and all alterations and additions made to or upon the Leased Premises, in good condition, damage by fire or other casualty only excepted. In the event of the Lessee's failure to remove any of Lessee's property from the Leased Premises, the NAC is hereby authorized, without liability to Lessee for loss or damage thereto, and at the sole risk of Lessee, to remove and store any of the property at Lessee's expense, or to retain same. In the event of an Event of Default, the NAC shall have the right to sell such property provided that it shall give Lessee not less than thirty (30) days' advance written notice that it intends to conduct such a sale. The proceeds of such sale shall be applied, first, to the cost of the sale, second, to the payment of charges of storage and removal, third to the payment of rentals or any other obligation which may then be due from Lessee to the NAC, and the balance, if any, shall be paid to Lessee.

XXIII. **ABANDONMENT OF PREMISES:** Lessee hereby agrees not to vacate or abandon the Leased Premises at any time during the term hereof. If Lessee shall abandon, vacate or surrender the Leased Premises, or be dispossessed by process of law, or otherwise, any personal property belonging to Lessee and left on the Leased 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, relet the Leased Premises as agent of the Lessee, however, Lessee shall remain liable for

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loss or damages resulting from the abandonment. Lessee hereby waives all rights of notice to quit or intention to re-enter the Leased Premises under the provisions of any statute of the Commonwealth of Massachusetts, or of this Lease, in the event of abandonment of the Leased Premises.

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 Leased Premises without written consent of Lessor which shall not be unreasonably withheld. Lessee shall remove such signs, displays, advertisements, or decorations placed on the Leased 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 Leased 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 Leased 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,

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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. Lessor will notify the Lessee upon closing the airport and when re-opening the airport.

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 Leased 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

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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 part by grants from the FAA and Mass DOT, 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 Mass DOT grant assurances, may not and does not give any lessee assurances of exclusive access or monopolistic rights on or to the Airport, and thus, any commercial activity authorized on the Leased 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 Mass DOT 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 Mass Dot, 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.

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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.

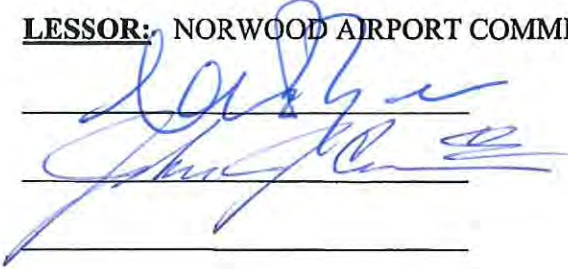
[SIGNATURES APPEAR ON THE FOLLOWING PAGE]



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

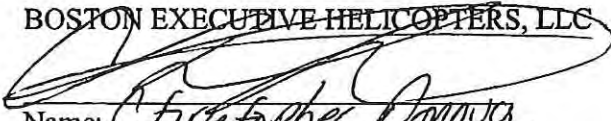
LESSOR: NORWOOD AIRPORT COMMISSION, acting on behalf of the Town of Norwood



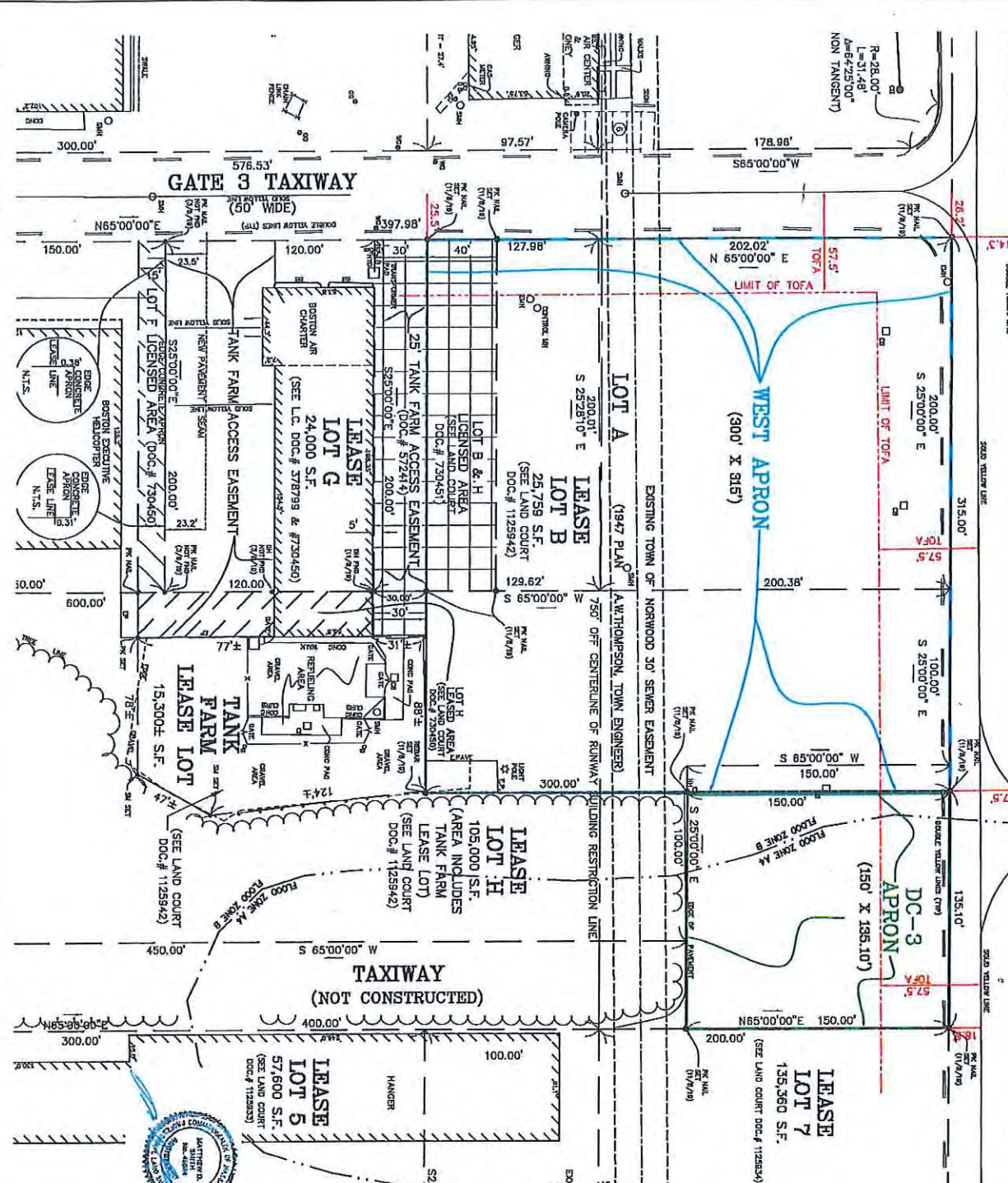
Approved by Counsel as to form only, not substance

LESSEE:

BOSTON EXECUTIVE HELICOPTERS, LLC


Name: Christopher Donova
Title: President





LAND COURT PLAN 15289-12

SEWER EASEMENT	AREA WITHIN WEST APRON	AREA OUTSIDE OF TOFA IN WEST APRON
9,450 S.F.	73,238 S.F.	8,487 S.F.

WEST APRON	DC-3 APRON	BOTH LICENSED AREA	TOTAL AREA	AREA OUTSIDE OF TOFA
94,500 S.F.	20,285 S.F.	8,000 S.F.	122,785 S.F.	14,930 S.F.

STAKEOUT SKETCH PLAN
 OF
"WEST APRON" AND "DC-3"
 AT
NORWOOD MEMORIAL AIRPORT
 125 ACCESS ROAD
 NORWOOD, MASSACHUSETTS

SCALE: 1" = 40'
 NOVEMBER 9, 2019

Norwood Engineering

Norwood Engineering Company, Inc.
 Consulting Engineers, Land Surveyors
 1410 ROUTE ONE, NORWOOD, MA 02062
 TEL (781)762-0145 FAX (781)762-8595

METERS: 0 10 20 30 40
 FEET: 0 20 40 60 80 100 120

DATE	REVISIONS
11/15/19	SHADE WEST APRON & DC-3 AREA
03/11/20	AREA CALCULATIONS

EXHIBIT B

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Norwood Memorial Airport Standard Ground Lease Form, Short-Term

This Ground Lease Agreement (the "Lease" or "Agreement") is made this 16th day of December, 2020 by and between the Norwood Airport Commission (the "Lessor" or "NAC") 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, 111 Access Road, Norwood, MA 02062 and Boston Executive Helicopters, LLC, a Delaware Limited Liability Company with a principal place of business located at 209 Access Road, Norwood, MA 02062 (the "Lessee").

WITNESSETH

WHEREAS, the Lessor operates that certain airport known as the Norwood Memorial Airport and is located at 111 Access Road, Norwood MA 02062 (the "Airport"); and

WHEREAS, the Lessor desires to lease a portion of the Airport known as the DC-3 Apron (hereinafter defined) to Lessee and Lessee desires to lease from the Lessor the DC-3 Apron subject to the terms and conditions hereinafter set forth;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

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 situated on the Airport known as AIP Apron #3-25-0037-26 (2005) consisting of approximately fourteen thousand nine hundred thirty (14,930) square feet and shown on an Exhibit A plan attached hereto, situated on the Norwood Memorial Airport in Norwood, Massachusetts. The Leased Premises are marked "DC-3 Apron" on said plan (the "Leased Premises" or "DC-3 Apron"). Contained outside and east of the Leased Premises and DC-3 Apron and west of the north-south taxi-lane center line is part of a taxi-lane object-free area (commonly referred to as a "TOFA").

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, 2020 and ending on the last day of November, 2025. Provided Lessee is not in default hereunder, Lessee shall have the right exercisable by giving written notice thereof to Lessor not less than six (6) months prior to the expiration of the Term, to extend the Term for one (1) additional three (3) year period (the "Extended Term"). The terms and conditions of any Extended Term shall be as set forth herein. Notwithstanding the foregoing or any other provision of this Agreement to the contrary, Lessee shall have no right to elect to extend the term during any period in time in which the Lessee remains in default hereunder.



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III. **RENT:** The rent that the Lessee will pay to the Lessor during the Term shall be equal to \$0.50 per square foot and shall be paid in twelve (12) equal monthly installments of Six Hundred Twenty-two and 08/100 Dollars (\$622.08). The first (1st) payment hereunder shall be made upon the execution and delivery of this Agreement to the Lessor, and subsequent payments shall be made no later than the first (1st) day of each month thereafter during the Term thereof. For each successive year of this Lease, from Year 2 through Year 5 (or from Year 2 through Year 8 in the case of an Extended Term), the rent will increase by two percent (2%) from the preceding year.

To the extent permitted by applicable law, Lessee further agrees that, in the event that any rent payment or other payment required to be paid by Lessee hereunder is not paid in full by the start of the tenth (10th) day of each month, Lessee shall pay to Lessor, in addition to such late rent payment or other payment due hereunder, an initial late fee, as additional rent, in the amount of Fifty and 00/100 Dollars (\$50.00). Further, a subsequent late fee of Twenty and 00/100 Dollars (\$20.00) per day will be incurred by Lessee for each day payment is delayed after the tenth (10th) day of the month in which such payment was originally due. All future payments by Lessee will be allocated first to any outstanding balances due other than rent. Any remaining monies paid by Lessee to Lessor will be allocated lastly to any rent balance.

IV. **USE OF THE PREMISES:** Lessee shall have the right to use the Leased Premises for the following aeronautical purposes and activities, and those purposes directly needed to accomplish such uses and none other. The Leased Premises shall be used for: Aircraft tie-down, aircraft handling, and fueling of aircraft, including but not limited to operations customarily associated with an FBO "Fixed Base Operator." As an accessory use to Lessee's right to use the Leased Premises, and due to limited parking elsewhere, Lessee may also park vehicles on the Leased Premises for personnel and customers so long as doing so does not interfere with Lessee's or any other Airport user's lawful activities at the Airport. It is agreed that the Lessor makes no representation or guarantees that the Leased Premises 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.

No unauthorized third party commercial activity shall be conducted in, from or around the Leased Premises. Third party commercial activity customarily associated with FBO operations shall be authorized and permitted. Lessee shall not use the Leased Premises in any manner that will constitute waste, and Lessee shall not cause or permit any unlawful conduct, annoyance or nuisance to exist or arise in the course of or as a result of its use of the Leased Premises, nor permit any activity or omission that constitutes or results in unlawful conduct, annoyance or nuisance, or permit any use that shall be liable to endanger, affect, or make voidable any insurance on the Leased Premises, or the building or any of its contents, or to increase the cost of any such insurance. Lessee shall conduct itself, and shall cause its officers, employees, representatives, servants, agents, invitees, guests, clients, contractors, licensees, suppliers and service providers to conduct

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themselves, in an orderly and proper manner so as not to disturb or interfere with the NAC's or others' use of the Airport.

The Lessor hereby requires that the Lessee comply with FAA Advisory Circular AC 150/5300-13A Airport Design and its successor, particularly sections 504, 505, and 506, which address the safe maneuvering of aircraft on a parking apron, mixing aircraft types and sizes, and the potential need to ground-handle jet aircraft to and from the parking apron, and to prevent jet blast, among other issues. Therefore, The Lessee will be required to make its own independent judgment to assure proper wingtip clearances, and the parties hereto agree that the Lessor shall not be liable or otherwise responsible relative to the layout and use of the Leased Premises, including, but not limited to, said internal taxi-lane.

V. **INSURANCE:** The Lessee agrees that it will secure and pay for commercial general liability insurance with respect to the Leased Premises, insuring the Lessee and the Lessor (including its past, present, and future officers, officials, employees, agents, servants, representatives, designees, volunteers, boards, committees, commissions, departments, and assigns) against all claims for injuries to a person or property sustained by anyone while on the Leased Premises or by through the actions of the Lessee, its officers, employees, representatives, servants, agents, invitees, guests, clients, contractors, licensees, suppliers and service providers, anywhere on the Airport. The Lessee agrees to name the Lessor as an additional insured. Insurance will also include coverage for any product and service provided by the Lessee. Lessee will maintain property and general liability insurance for personal injury including death with limits equal to the greater of the minimum insurance amounts required by the Norwood Airport Minimum Standards or such other amounts as the Lessor may reasonably require from time to time; and property damage insurance with limits equal to the greater of the minimum insurance amounts required by the Norwood Airport Minimum Standards, or such other amounts as the Lessor may reasonably require from time to time; and any other type of insurance as may be required by law or by the Lessor with limits in the amount(s) specified by law or by the Lessor. Higher insurance coverage limits may apply based on the Lessee's planned use of the Leased Premises with respect to the applicable insurance coverage limits reflected in the Norwood Airport Minimum Standards. Insurance will be provided by a responsible company(ies) authorized to do business in the Commonwealth of Massachusetts. The Lessee shall provide the Lessor with proof of insurance as evidenced by certificates of insurance which comply with the Norwood Airport Minimum Standards. The Lessee shall promptly provide the Lessor with such proof in the event of any material change in the coverage limits, type of insurance, or the insurer providing any such insurance. Insurance policies and coverage limits shall at all times conform to the applicable rules, regulations, standards, policies, directives, guidelines, and other requirements issued by the Federal Aviation Administration ("FAA"), Massachusetts Department of Transportation (Aeronautics Division) or its successor (collectively, the "Mass DOT"), and the NAC. Copies of all proof of insurance shall be filed with and maintained in the offices of the NAC.

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VI. ASSIGNMENTS, MORTGAGES, OR SUBLEASES: Neither Lessee, nor its successor, heirs or assigns, shall assign, mortgage, pledge, or encumber this Lease. Leased Premises may not be sub-let for any purpose other than aircraft tie down sub leases. This Lease shall not be assigned or transferred by operation of law, without the prior consent in writing of the Lessor in each instance. If this Lease is assigned or transferred, or any part of the Leased Premises is used by other than the Lessee, Lessor may, after notice of default to 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 General Regulations for the Norwood Memorial Airport, the Norwood Airport Minimum Standards, the Norwood Memorial Airport Storm Water Pollution Prevention Plan, the Norwood Memorial Airport Spill Prevention, Control and Countermeasure Plan, Norwood Airport Security Plan, including restrictive access control to and from the Leased Premises, and any other applicable rules, regulations, standards, policies, directives, guidelines and other requirements issued by a governmental authority including but not limited to the FAA, Mass DOT, and the NAC, as these may be amended from time to time. 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.

The following additional conditions are required by the Lessor of the Lessee:

1. The Lessee must provide a parking plan of the DC-3 Apron to Lessor, showing its intended use of transient (non-based) aircraft tie-down spaces, as well as based aircraft tie-down spaces.
2. With an FAA-approved paint, the Lessee must apply pavement markings of "Transient" on those aircraft tie-down spaces to be used exclusively for non-based aircraft. Spaces not marked "transient" may be used for based or non-based aircraft. In advance, a pavement markings plan must be submitted to, and approved by, Lessor.
3. Per the General Regulations for Norwood Memorial Airport, the pilot-in-command of any transient aircraft parked on the DC-3 Apron must sign in at the Lessee's operations desk. A standardized form will be provided by Lessor. This form will be turned in to Lessor at its request, but at least monthly.
4. The Lessee must perform crack-sealing on the DC-3 Apron in Years one (1) and five (5) of the Term using Mass DOT approved products and processes.

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5. With an FAA-approved paint, the Lessee must re-mark the aircraft tie-down every even year during the Term beginning in Year 2 of this Lease.

VIII. **ACCESS AND EGRESS:** Lessee shall at all times have the full and free right of access and egress to the Leased Premises, 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, and 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, Lessee agrees to comply with the directives of the FAA and Mass DOT with respect to operation of aircraft on an airport. Lessee acknowledges 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 Premises, but that Lessee shall keep Leased Premises in good and sufficient repair and to quit and deliver up the Leased 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 Premises and shall deposit such snow and ice in those areas of the Airport designated by the Lessor from time to time. In the event of extreme weather events or extraordinarily high levels of snowfall, the parties agree to work cooperatively to identify other areas where such snow and ice may, if necessary, be deposited.

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. 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

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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 Premises 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 the Leased 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 Lease 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 the Massachusetts General Laws Chapter 148, the Massachusetts Fire Code and Regulations, and the rules and regulations of the Norwood Fire Department for the prevention of fires and the environmental safety of the Leased Premises. Lessee shall at its 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 Premises is authorized.

XIV. **INDEMNIFICATION OF LESSOR:** Lessee, at its expense, shall release, defend, indemnify and hold harmless the Lessor, the Town of Norwood, and their respective members, directors, officers, agents and employees from and against all costs, claims, damages, losses, expenses, fees, proceedings, judgments, actions, demands, causes of action, and liabilities ("Claims") and expenses (including reasonable attorneys' fees and costs of investigation and litigation) based upon or arising out of Lessee's conduct of its business at the Airport or its use of the Leased Premises or any other Airport property, provided that Lessee shall not be liable for any Claim caused solely by the willful misconduct or gross negligence of the Lessor or the Town. The foregoing express obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the Lessor or the Town that would exist under any applicable law or under provisions of this Lease, and the extent of the obligation of indemnification shall not be limited by any provision of insurance undertaken in accordance with this Lease. This indemnification agreement shall survive the expiration or earlier termination of this Lease.



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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 the Leased Premises 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 Lease and take possession of the Leased Premises. Lessor shall have the right to terminate this Lease in the event that the Lessee, its agents or employees cause the Leased 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 the Leased 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 Leased Premises thereby occasioned.

XVIII. **RE-ENTRY AND REPOSSESSION ON DEFAULT:** Lessor may terminate this Lease 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 Leased Premises in suitable and safe condition so as to comply with the law and regulation affecting the same.

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XX. **LESSOR'S RIGHT AT END OF TERM:** It is understood and agreed that upon the termination, cancellation, or at the end of any Term hereof, the buildings and improvements on the Leased Premises shall revert to Lessor. Lessee may remove fixtures at its own expense, without damage to the underlying real property, building, or improvements.

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 this Lease 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:** The Lessee shall at the expiration or earlier termination of this Lease remove all Lessee's goods and effects from the Leased Premises, (including, without hereby limiting the generality of the foregoing, all signs and lettering affixed or painted by the Lessee, either inside or outside the Leased Premises). Lessee shall deliver to the NAC the Leased Premises and all keys, locks thereto, and other fixtures connected therewith and all alterations and additions made to or upon the Leased Premises, in good condition, damage by fire or other casualty only excepted. In the event of the Lessee's failure to remove any of Lessee's property from the Leased Premises, the NAC is hereby authorized, without liability to Lessee for loss or damage thereto, and at the sole risk of Lessee, to remove and store any of the property at Lessee's expense, or to retain same. In the event of an Event of Default, the NAC shall have the right to sell such property provided that it shall give Lessee not less than thirty (30) days' advance written notice that it intends to conduct such a sale. The proceeds of such sale shall be applied, first, to the cost of the sale, second, to the payment of charges of storage and removal, third to the payment of rentals or any other obligation which may then be due from Lessee to the NAC, and the balance, if any, shall be paid to Lessee.

XXIII. **ABANDONMENT OF PREMISES:** Lessee hereby agrees not to vacate or abandon the Leased Premises at any time during the term hereof. If Lessee shall abandon, vacate or surrender the Leased Premises, or be dispossessed by process of law, or otherwise, any personal property belonging to Lessee and left on the Leased 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 personalty, (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, relet the Leased Premises as agent of the Lessee, however, Lessee shall remain liable for

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loss or damages resulting from the abandonment. Lessee hereby waives all rights of notice to quit or intention to re-enter the Leased Premises under the provisions of any statute of the Commonwealth of Massachusetts, or of this Lease, in the event of abandonment of the Leased Premises.

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 Leased Premises without written consent of Lessor which shall not be unreasonably withheld. Lessee shall remove such signs, displays, advertisements, or decorations placed on the Leased 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 Leased 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 Leased 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,

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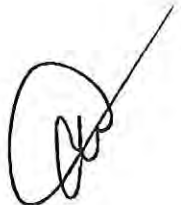
the Lessee does hereby waive any and all claim for damages arising out of such action in carrying out the aforementioned functions. Lessee hereby agrees that Lessor has not nor hereby represent, warrant or guarantee, either expressly or by implication, that the use of the Airport will be available continuously 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. Lessor will notify the Lessee upon closing the airport and when re-opening the airport.

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 Leased 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



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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 part by grants from the FAA and Mass DOT, 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 Mass DOT grant assurances, may not and does not give any lessee assurances of exclusive access or monopolistic rights on or to the Airport, and thus, any commercial activity authorized on the Leased 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 Mass DOT 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 Mass Dot, 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.

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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.

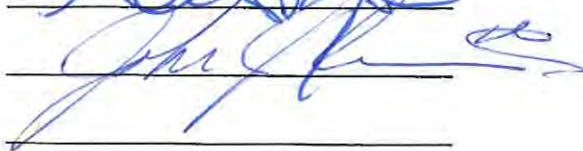
[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

A handwritten signature in black ink, consisting of a large, stylized initial 'A' followed by a vertical line and some smaller, less distinct characters.

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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



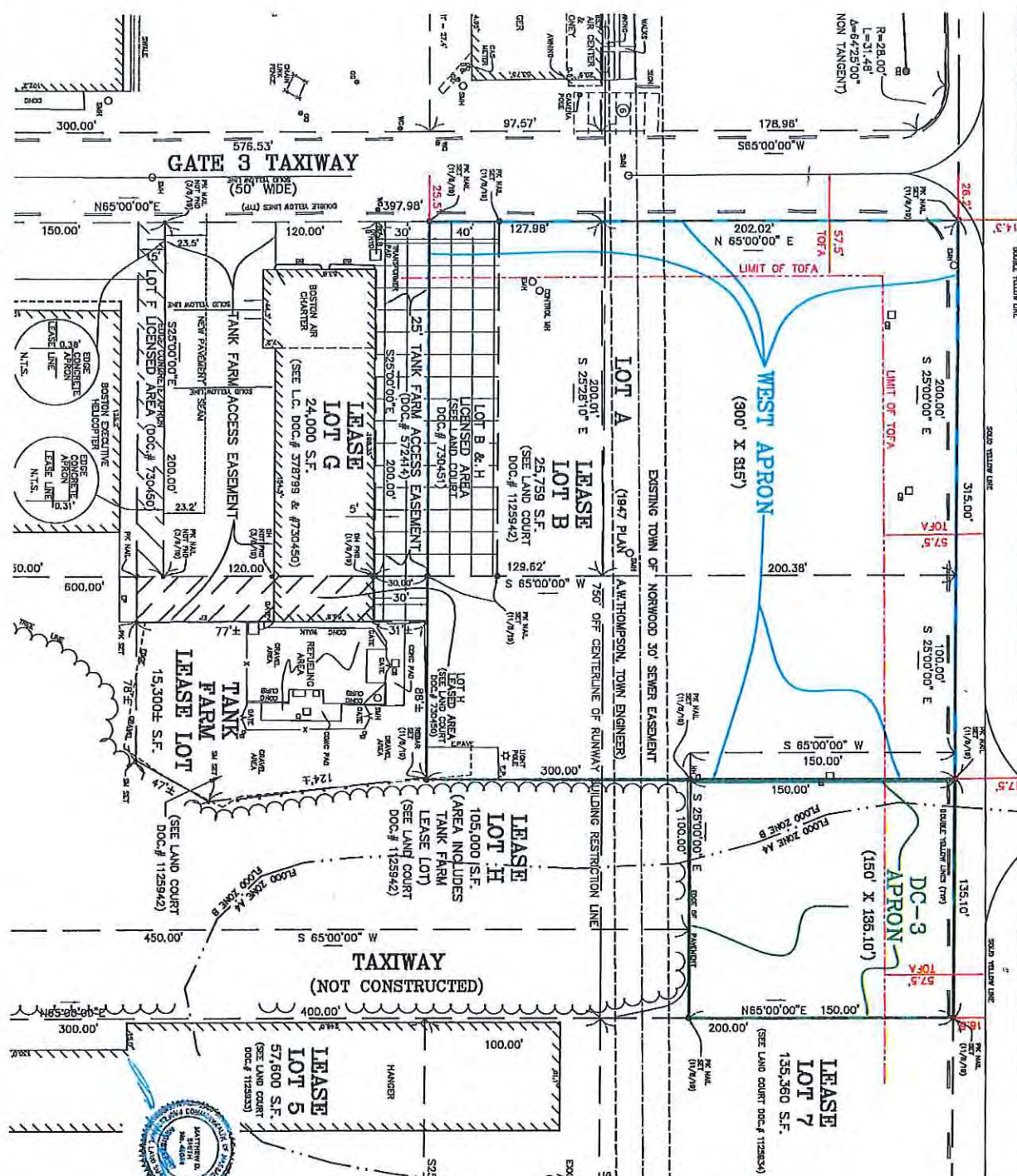
Approved by Counsel as to form only, not substance

LESSEE:

BOSTON EXECUTIVE HELICOPTERS, LLC


Name: *Christopher Conover*
Title: *President*





LAND COURT PLAN 15269-12

AREA	TOTAL AREA	AREA OUTSIDE OF TOFA
WEST APRON	94,200 S.F.	73,238 S.F.
DC-3 APRON	20,285 S.F.	14,930 S.F.
B&H LICENSED AREA	8,000 S.F.	6,717 S.F.

EASEMENT	AREA WITHIN WEST APRON	AREA OUTSIDE OF TOFA IN WEST APRON
SEWER EASEMENT	9,450 S.F.	8,487 S.F.

STAKEOUT SKETCH PLAN
 OF
"WEST APRON" AND "DC-3"
 AT
NORWOOD MEMORIAL AIRPORT
125 ACCESS ROAD
NORWOOD, MASSACHUSETTS
 SCALE: 1" = 40' NOVEMBER 9, 2019

Norwood Engineering
 Norwood Engineering Company, Inc.
 Consulting Engineers, Land Surveyors
 1410 ROUTE ONE, NORWOOD, MA 02062
 TEL: (781) 682-0143 FAX: (781) 682-8595

REVISIONS

DATE	REVISIONS
11/15/19	SHADE WEST APRON & DC-3 AREA
03/11/20	AREA CALCULATIONS

METERS: 0 10 20 40
 FEET: 0 20 40 80 120

EXHIBIT C

From: [Mina S. Makarious](#)
To: ["Christopher Donovan"](#)
Cc: [Eric Loeffler](#)
Subject: RE: Fueling operations
Date: Friday, February 19, 2021 7:56:07 PM
Attachments: [image001.png](#)

Chris and Eric,

Regarding Chris' questions below, BEH can set up fueling operations and infrastructure on the two leasehold parcels it now leases (DC-3 and West Apron). BEH can also fuel on common areas, such as the helicopter parking pads. FLN similarly can fuel on its leaseholds and common areas. As I told the Commission at its last meeting, it's my reading of the documents FLN has provided regarding the DC-3 apron that FLN does *not* have any previously approved right to fuel on the DC-3 apron, and cannot begin fueling there now without BEH's permission, if that would interfere with BEH's leasehold interest. The inverse would be true: BEH can't fuel on FLN leaseholds without FLN's permission.

In all cases, fueling would have to comply with all applicable laws and airport rules and not create safety or environmental risks for the airport and other lawful users of the airport.

Mina



Mina S. Makarious
T. 617.621.6525 | F. 617.621.6625
[Anderson & Kreiger LLP](#) | 50 Milk Street, 21st Floor, Boston, MA 02109

This electronic message contains information from the law firm of Anderson & Kreiger LLP which may be privileged. The information is for the use of the intended recipient only. If you are not the intended recipient, note that any disclosure, copying, distribution or other use of the contents of this message is prohibited.

From: Christopher Donovan <christopherdonovan1@gmail.com>
Sent: Thursday, February 18, 2021 11:25 AM
To: Mark Ryan <mryan@norwoodma.gov>
Cc: Russ Maguire, A.A.E. ,ACE <rmaguire@norwoodma.gov>; John Corcoran <jcorcoran@mbta.com>; jcorcoran <jcorcoran@norwoodma.gov>; selectmen <selectmen@norwoodma.gov>; Michael Sheehan <msheehan8@gmail.com>; msheehan <msheehan@norwoodma.gov>
Subject: Re: Fueling operations

Mark, John, Michael and Russ,

Could you please help and answer the questions I sent prior.

1. What specific areas of Norwood Airport can BEH fuel aircraft on?
2. What specific areas of Norwood Airport is BEH prohibited from fueling aircraft.
3. What specific areas of Norwood Airport can FLN fuel aircraft on?

Please advise.

Christopher Donovan

On Thu, Feb 11, 2021 at 4:31 PM Christopher Donovan <christopherdonovan1@gmail.com> wrote:

Mark, John, Michael and Russ,

What specific areas of Norwood Airport can BEH fuel aircraft on?

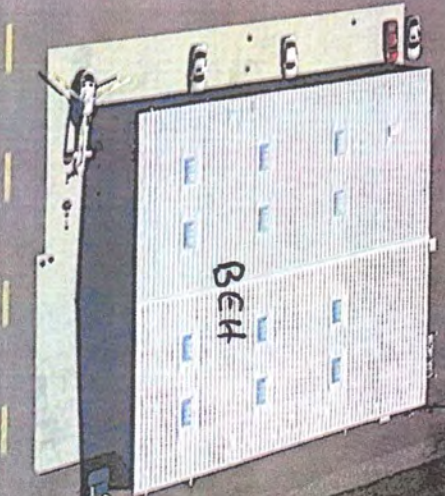
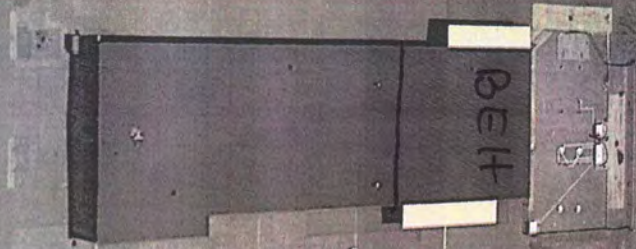
What specific areas of Norwood Airport is BEH prohibited from fueling aircraft.

EXHIBIT D

LOOKING NORTH.

Write a description for your map.





Gate 1

Airport

Gate lane 2

DC-3

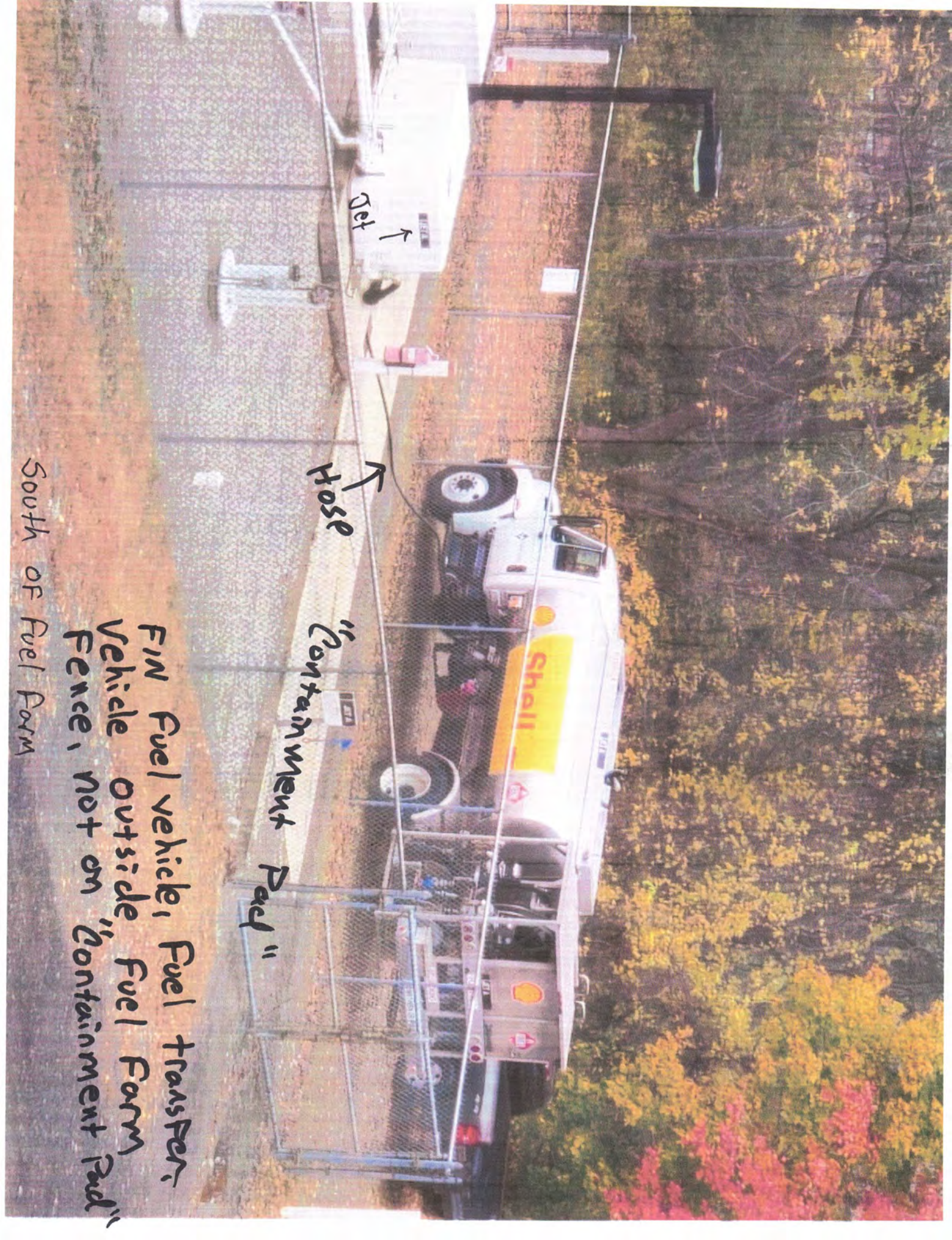
West Apron

Gate lane 3

BEH



EXHIBIT E



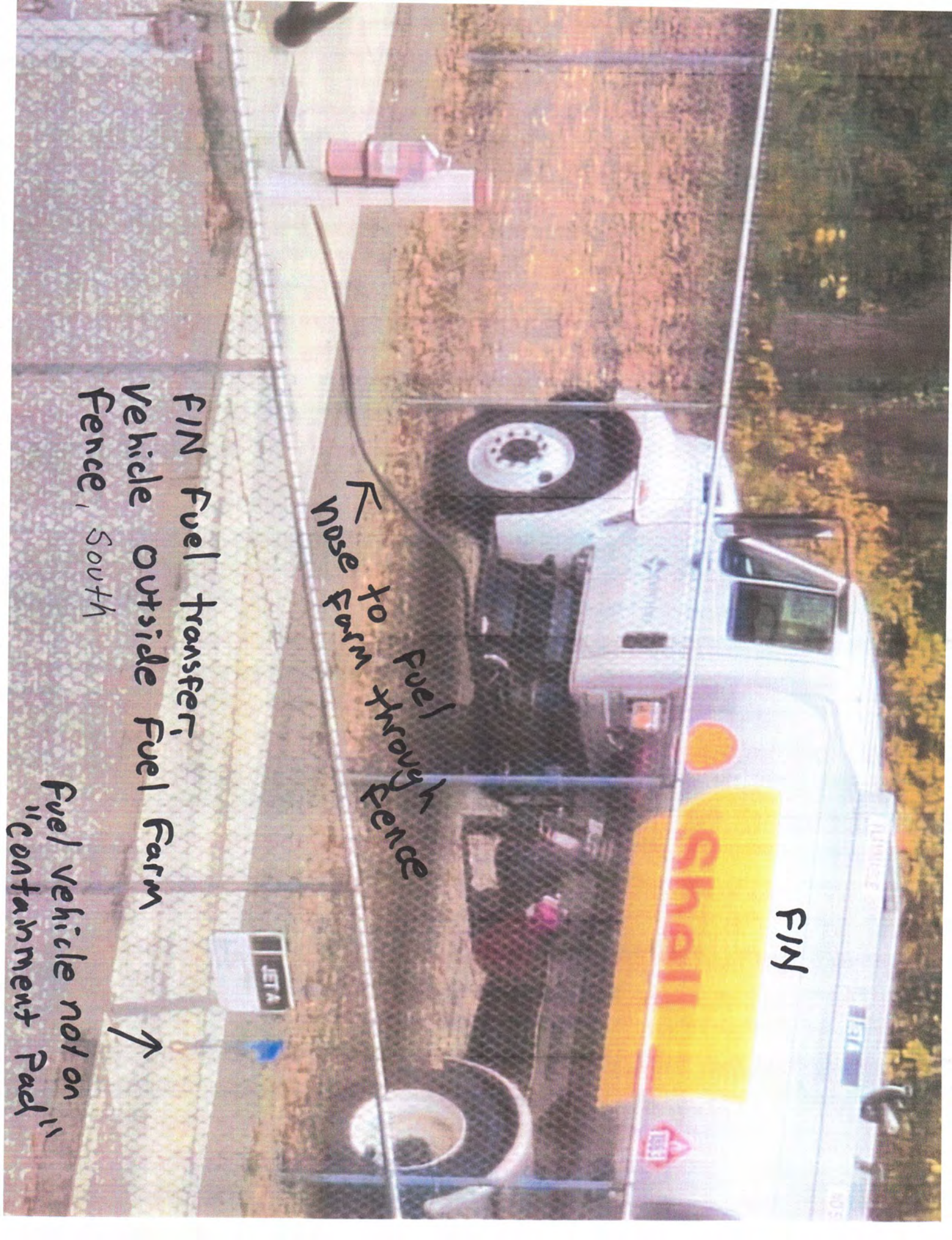
Jet
←

←
Hose

"Containment Pad"

FIN Fuel vehicle, Fuel transfer
Vehicle outside, Fuel Farm
Fence, not on "Containment Pad"

South of Fuel Farm



FIN

Shell

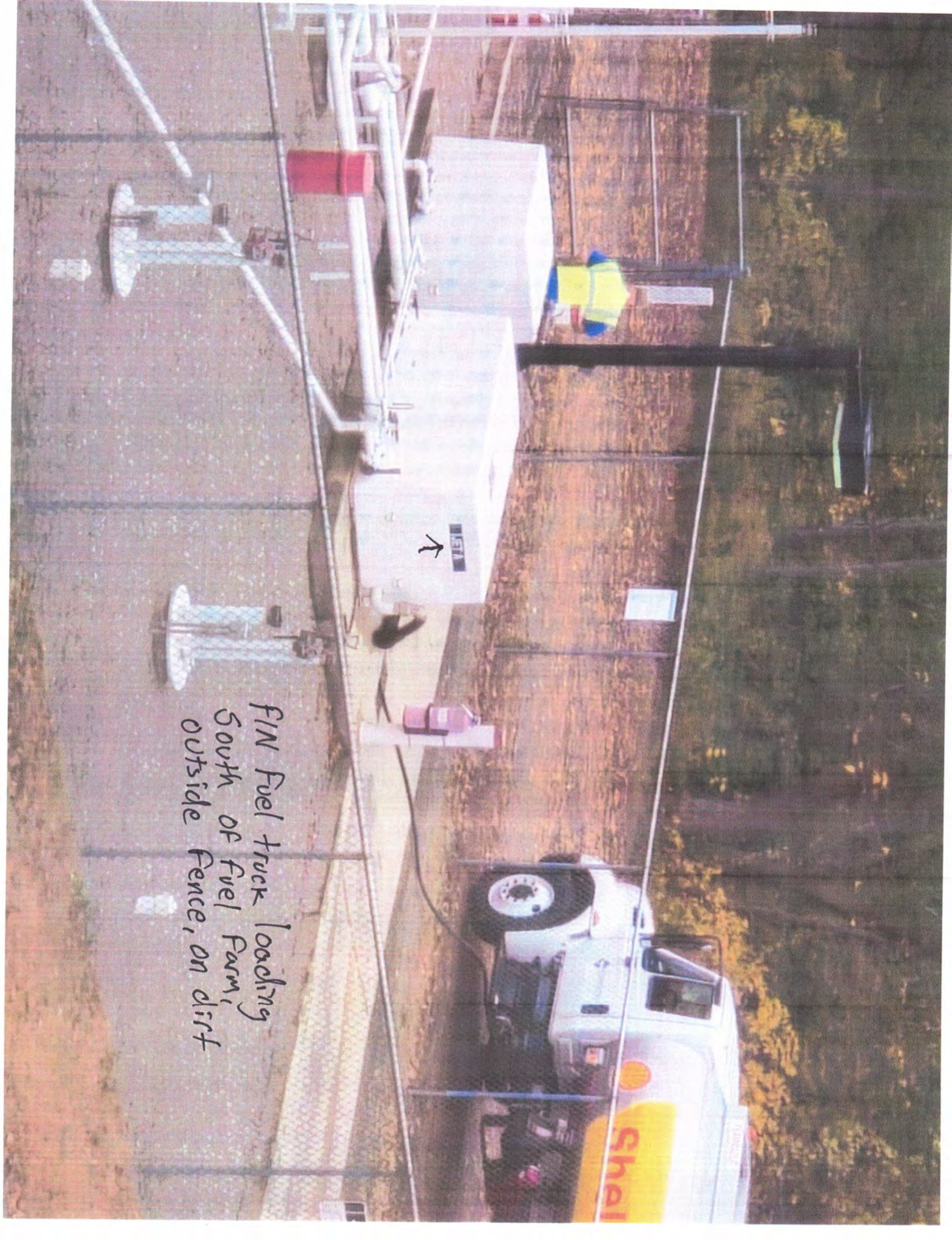
← Nose Form Fuel Through Fence

FIN Fuel transfer Vehicle Outside Fuel Farm Fence, South



Fuel vehicle not on "Containment Pad"

FIN Fuel truck loading
South of fuel farm,
outside fence, on dirt



FIN loading / unloading bulk fuel From Fuel Farm, lot H. Outside Fence area - Not on any "Containment" area or Pad.

↑ South

E

W

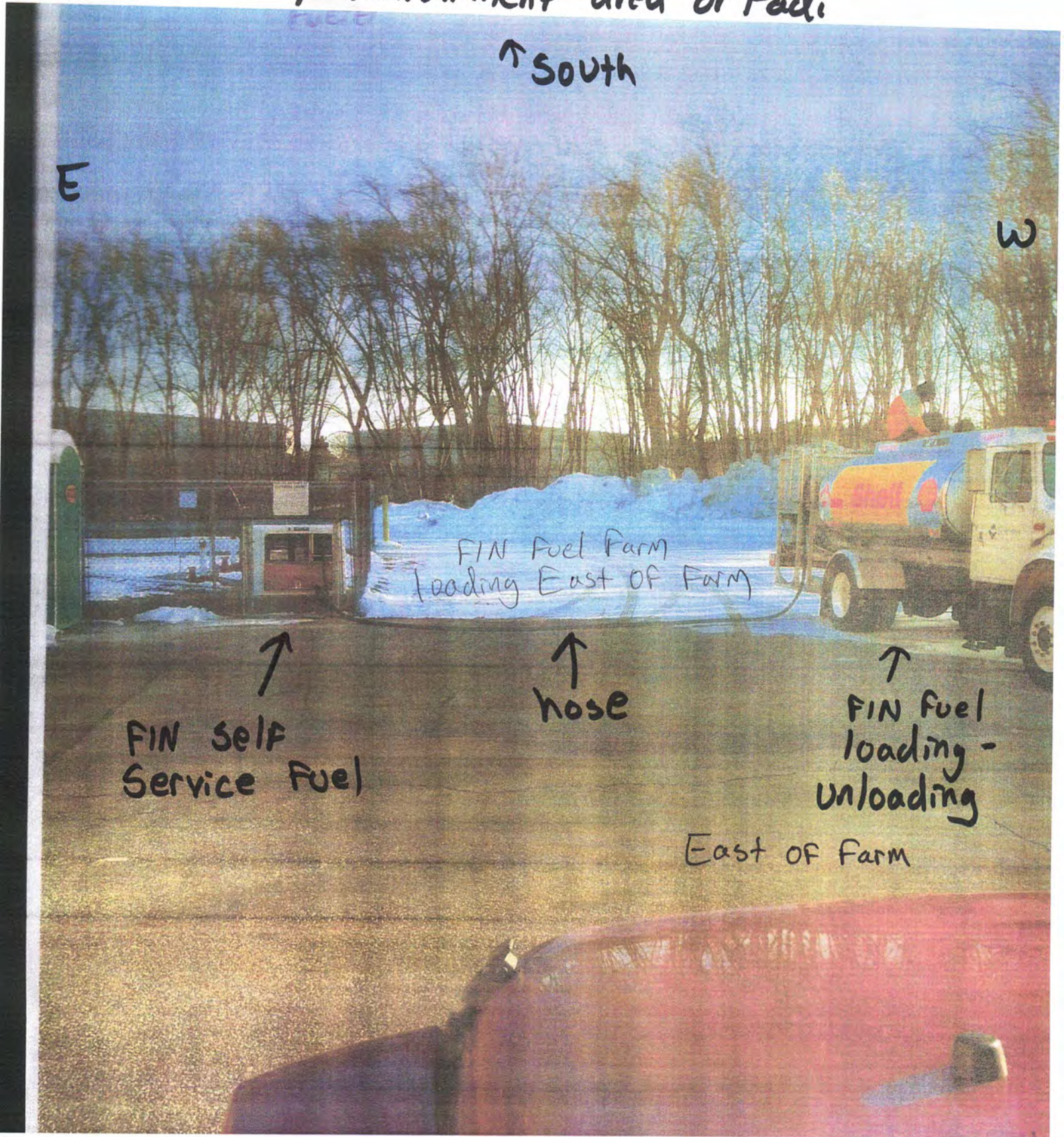
FIN Fuel Farm
loading East of Farm

↑
FIN Self
Service Fuel

↑
hose

↑
FIN fuel
loading -
unloading

East of Farm

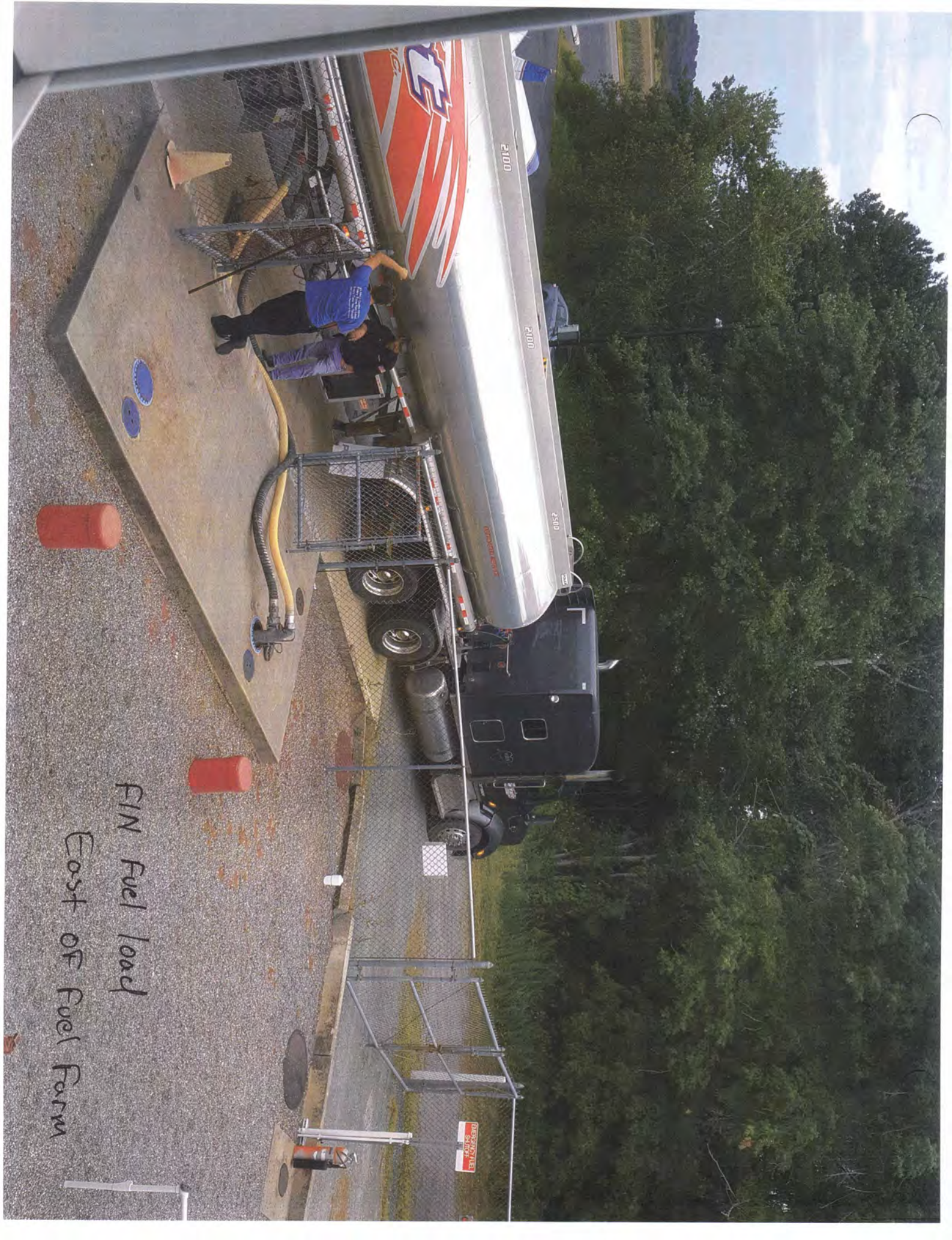




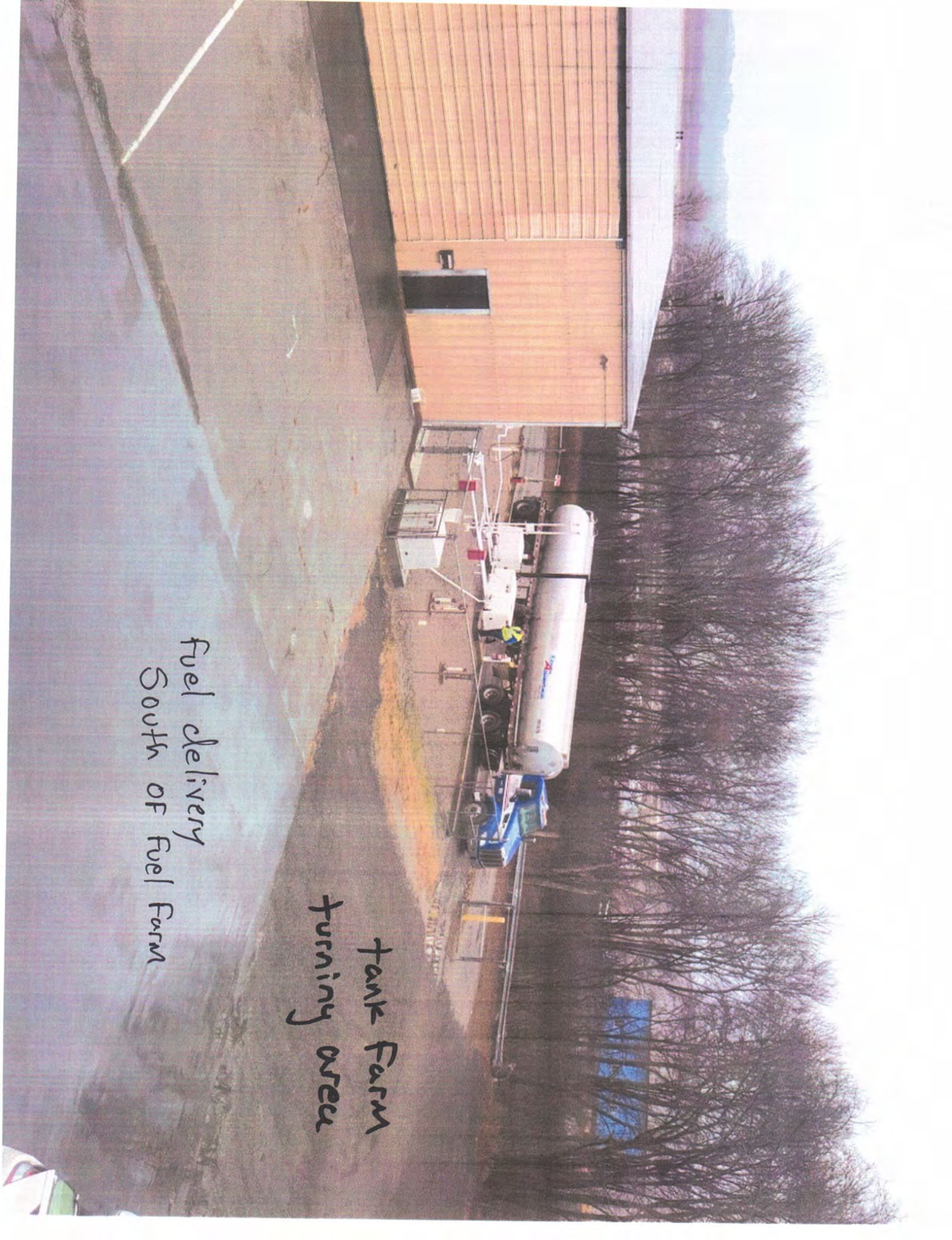
FIN Fuel transfer, not on Fuel Farm
Not on "Containment Pad"
No Fence.

Not on FIN Fuel Farm

Lot 5



FIN Fuel load
East of Fuel Farm



Fuel delivery
South of Fuel Farm

farm
turning area

East

FIN Fuel delivery

South

BEH
Condo
Hangar

delivery hoses

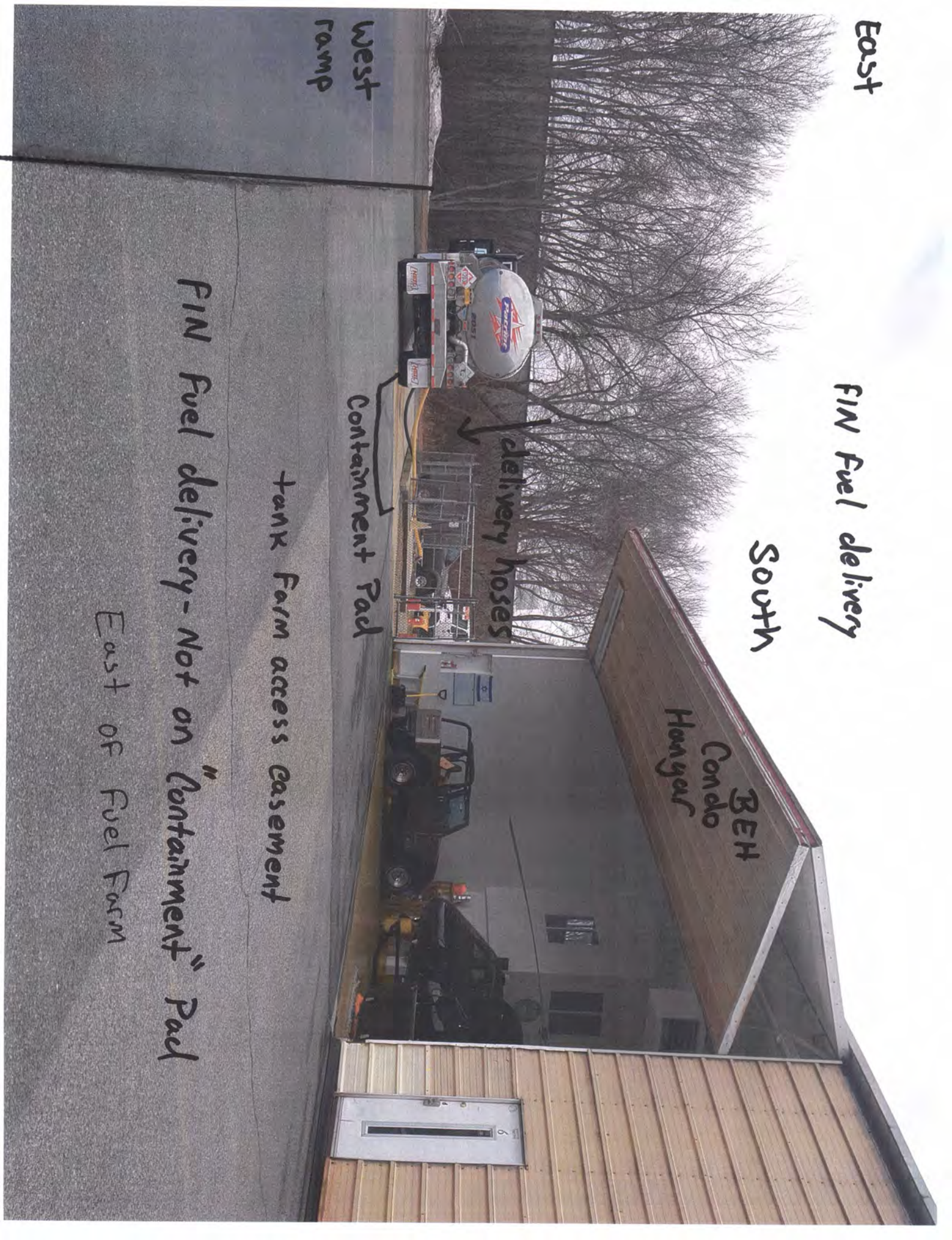
Containment Pad

tank farm access easement

FIN Fuel delivery - Not on "Containment" Pad

East of Fuel Farm

West
ramp





FIN Fuel transfer, not on Fuel Farm
Not on "Containment Pad"

lot 5

Not on FIN Fuel Farm



Hose

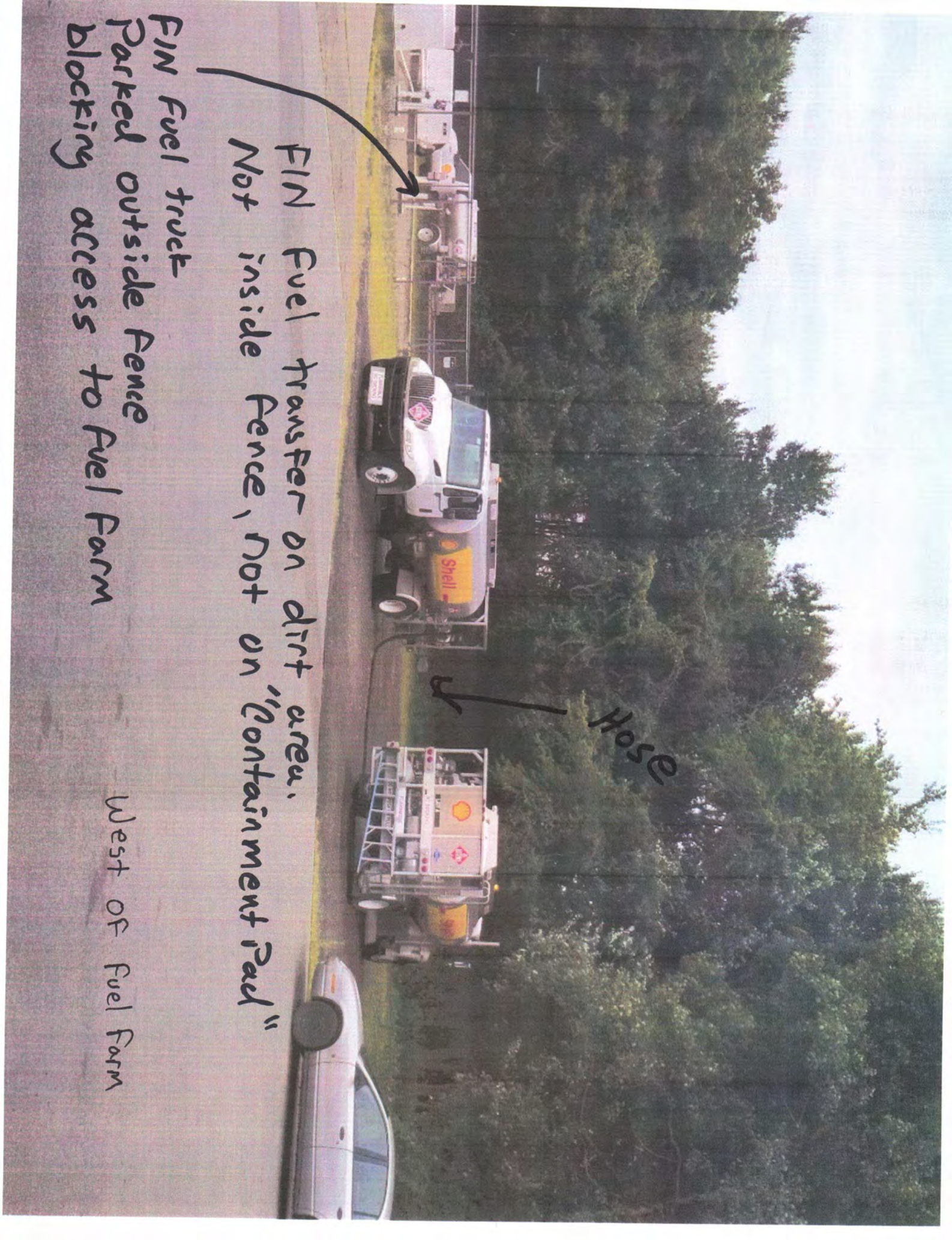
Dirt



FIN Fuel transfer,
Not on Fuel "Containment Pad"
Not inside Fence

West of Fuel Farm





FIN Fuel transfer on dirt area,
Not inside Fence, Not on "Containment Pad"

Hose

FIN Fuel truck
Parked outside Fence
blocking access to Fuel Farm

West of Fuel Farm



West Ramp

Executive

1203

1203

Hoses

through Fence

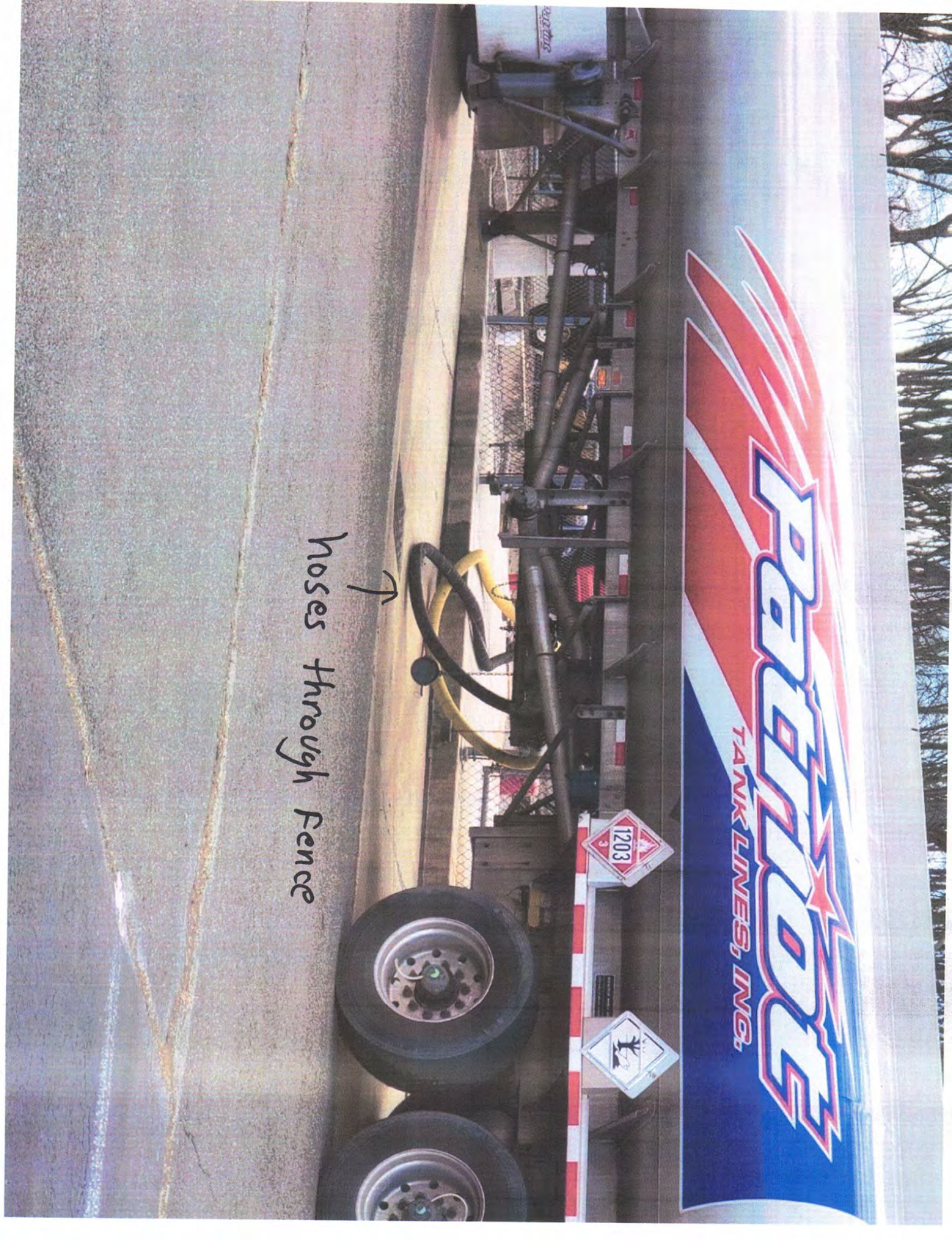
FIN Fuel delivery
East of Fuel Farm

Parsons
TANK LINES, INC.

1203



↑ hoses through fence





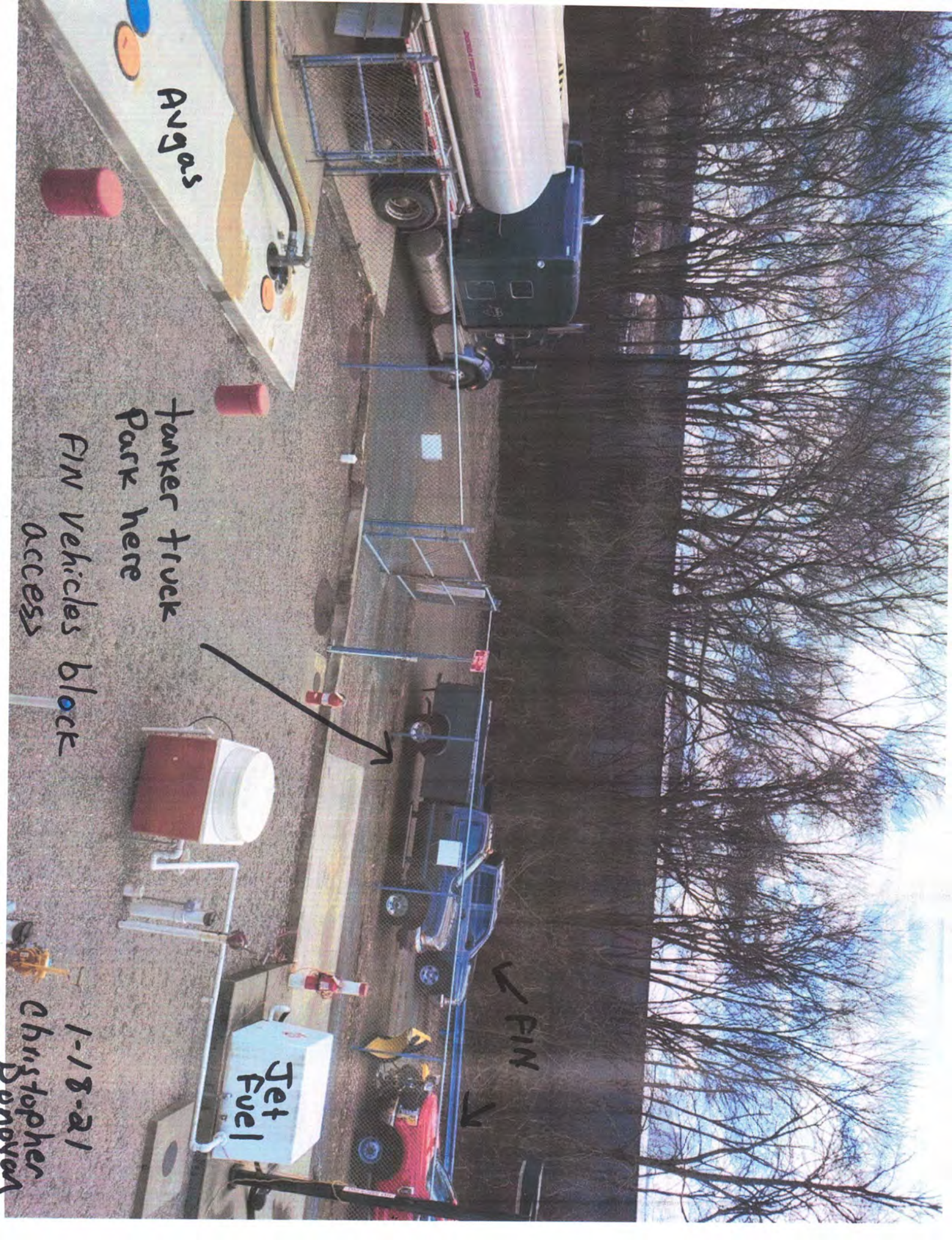


↑ Fuel hoses

East of Fuel Farm

1-18-21

Christopher Doreen



Angas

farker truck
Park here

FIN vehicles block
access

Jet Fuel

FIN

1-18-21

Christopher
Donover



Avgas

Jet fuel

FIN Vehicles
block access

East of Fuel Farm

Christopher

1-18-21

Donovan

FIN Fuel
Delivery

Argas

Run Jet
Fuel hose

FIN Argas delivery

FIN vehicles block
access

1-18-2021
By Christopher Donovan

Jet
Fuel



FIN
Fuel delivery

East of Fuel Farm

BEH Hanger



FIN
Fuel delivery



BEH
Hanger



EXHIBIT 4

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. 1582CV00213

BOSTON EXECUTIVE HELICOPTERS, LLC,
et al.,

Plaintiffs,

v.

FLIGHTLEVEL NORWOOD, LLC, et al.,

Defendants.

Consolidated with
CIVIL ACTION NO. 1582CV01637

FLIGHTLEVEL NORWOOD, LL, et al.,

Plaintiffs,

v.

BOSTON EXECUTIVE HELICOPTERS, LLC,
et al.,

Defendants.

EMERGENCY MOTION TO VACATE
PRELIMINARY INJUNCTION ORDER

Pursuant to Mass. R. Civ. P. Rule 65, the defendant, Boston Executive Helicopters, LLC (“BEH”), on an emergency basis, moves this Honorable Court to vacate the Preliminary Injunction Order, which the Court issued on February 26, 2021. As grounds for this Motion, BEH states that since BEH’s initial submission in opposing FlightLevel’s request for relief, which the Court did not have opportunity to review prior to allowing FlightLevel’s request on the record, BEH has

retained the services of a licensed professional engineer, Halim A. Choubah, P.E, to opine on FlightLevel's claim that fuel transports must be able to use the "the wide turn area on Lot H" located on BEH's leasehold in order to reach and exit FlightLevel's fuel farm located on a different portion of Lot H at the Norwood Memorial Airport ("the Airport"), and FlightLevel's claim that the portion of BEH's leasehold on Lot H abutting the easterly boundary of the Tank Farm Lease Lot must be kept free of obstructions for FlightLevel's vehicles to access the fuel farm.

The Affidavit of Mr. Choubah, with exhibits attached, is submitted herewith and incorporated herein by reference. BEH also submits the Affidavit of Christopher Donovan in support of this Emergency Motion. As set forth in more detail below, Mr. Choubah fully concurs with BEH's position that: (1) FlightLevel's inbound Jet-A delivery transports do not need to execute a wide turn over BEH's leasehold on Lot H to be able to off-load Jet-A fuel to FlightLevel's fuel farm; (2) FlightLevel can off-load inbound Jet-A fuel from its delivery transports from multiple locations without traversing over BEH's leasehold on Lot H; and (3) that BEH's leasehold on Lot H abutting the easterly boundary of the Tank Farm Lease Lot does not need to be kept free of obstructions for FlightLevel's vehicles to access the fuel farm for Jet-A or Avgas deliveries. Accordingly, FlightLevel cannot show that it has or will suffer any harm and the preliminary injunction should be vacated immediately. Further, the preliminary injunction should be vacated because Judge Connors' prior Order, upon which this Court based its decision granting the injunctive relief, does not and cannot extend to BEH's use of its own property at the Airport.

ARGUMENT

A. FlightLevel Has Not Demonstrated The Required Irreparable Harm To Justify The Injunctive Relief Against BEH.

To sustain the preliminary injunction, FlightLevel must demonstrate that “without the requested relief, it may suffer a loss of rights that cannot be vindicated should it prevail after a full hearing on the merits.” Packaging Indus. Group, Inc. v. Cheney, 380 Mass. 609, 616-17 (1980). In other words, “injunctive relief [is] granted only after irreparable harm is specifically shown.” *Id.* at 621 (emphasis added). “Where the moving party has failed to demonstrate that the denial of the injunction would create any substantial risk that it would suffer irreparable harm, the injunction must be denied, no matter how likely it may be that the moving party will prevail on the merits.” *Id.* (citing Sampson v. Murray, 415 U.S. 61, 88 (1974)).

Indeed, irreparable harm is a threshold factor that the moving party seeking the preliminary injunction must demonstrate, and its failure to do so is a complete bar to a preliminary injunction. See Packaging Industries Group, Inc. v. Cheney, 380 Mass. 609, 621 (1980) (“Where the moving party has failed to demonstrate . . . that it would suffer irreparable harm, the injunction must be denied, no matter how likely it may be that the moving party will prevail on the merits”); Matos v. Clinton Sch. Dist., 367 F.3d at 73 (“irreparable harm is a necessary threshold showing for awarding preliminary injunctive relief”); K-Mart Corp. v. Oriental Plaza, Inc., 875 F.2d 907, 914 (1st Cir. 1989) (“The irreparability of the injury is of paramount concern.”); Ross-Simons of Warwick, Inc. v. Baccarat, Inc., 217 F.3d 8, 13 (1st Cir. 2000) (“Irreparable harm is an essential prerequisite for a grant of injunctive relief.”).

Here, FlightLevel failed to demonstrate that it will suffer irreparable harm. FlightLevel has not proffered any competent evidence to support its position that it is unable to deliver Jet-A fuel without access to BEH’s leasehold; neither has FlightLevel proffered any competent evidence

that it has no other alternative for off-loading Jet-A fuel exists. FlightLevel's silence on this latter point is telling. As noted below, FlightLevel is able to access its fuel farm, including receiving deliveries of fuel from transports, without accessing or traversing BEH's leaseholds, and without impeding or interfering with BEH's rights under its leases.

Following the Court's Order of February 26, 2021, BEH retained Halim A. Choubah, P.E, of CEG to perform a review and evaluation of FlightLevel and its related entities' claims that fuel transports must be able to use the "the wide turn area on Lot H" located on BEH's leasehold in order to reach and exit FlightLevel's fuel farm located on a different portion of Lot H at the Airport. More specifically, Mr. Choubah was also asked to perform a review and evaluation of FlightLevel's claim that the portion of BEH's leasehold on Lot H abutting the easterly boundary of the Tank Farm Lease Lot must be kept free of obstructions for FlightLevel's vehicles to access the fuel farm.

Mr. Choubah, a licensed professional engineer and Principal of CEG, has thirty-five (35) years of experience in the civil engineering field with extensive experience in land development, planning zoning, permitting, and construction. Pertinent to the matters addressed herein, he has worked extensively in the design of gasoline filling stations, including site layout for optimal fuel delivery circulation and fueling operations, including evaluating ingress and egress, and the turning radius, of fuel trucks carrying up to 10,000 gallon loads. Mr. Choubah has been responsible for the design, permitting and construction supervision of over 100 filling stations in New England over the past fifteen (15) years.

In connection with his analysis, Mr. Choubah reviewed: FlightLevel's Memorandum of Law in Support of Its Motion for a Temporary Restraining Order and Preliminary Injunction, and related documents; Affidavit of Peter Eichleay (and exhibits) in support of FlightLevel's Motion

for a Temporary Restraining Order and Preliminary Injunction; BEH's Opposition FlightLevel's Motion Temporary Restraining Order and Preliminary Injunction; the Affidavit of Christopher Donovan (and exhibits) filed in support of its Opposition; BEH's lease for the West Apron; the stamped Stakeout Sketch Plan of "West Apron" and "DC-3" Area at Norwood Memorial Airport, prepared by Norwood Engineering Company, Inc. ("Norwood Engineering"), which is also attached as an exhibit to BEH's lease for the West Apron; the plot plan submitted by FlightLevel, which is attached to the Eichleay Affidavit as Exhibit 1; the February 14, 2017 plot plan identified as "Lot G Fueling Restriction Plan" (the "AutoTURN plan") submitted by FlightLevel, which is attached to the Eichleay Affidavit as Exhibit 2; and aerial photographs of the subject area. As stated in his affidavit, Mr. Choubah is also familiar with this area of the Airport and the requirements for fuel storage facilities on and off of airports. CEG also visited the site on March 9, 2021 and took field measurements of the subject area as part of Mr. Choubah's analysis and study of FlightLevel's claims.

As set forth in his affidavit, Mr. Choubah performed his review with the understanding that: (1) FlightLevel has claimed that BEH positioned its fuel truck or other vehicles in the area on Lot H on BEH's own leasehold; (2) FlightLevel claims that its inbound Jet-A delivery Transports must execute a wide turn (over BEH's leasehold) before turning 180 degrees west to line up with and position over the Jet-A containment pad on the south side of FlightLevel's fuel farm, as depicted on FlightLevel's AutoTURN plan; and (3) FlightLevel claims that its fuel deliveries arrive in 8,000 to 10,000 gallon loads, on transports of up to 65 feet long. As further detailed in his affidavit, Mr. Choubah also understands that FlightLevel further maintains that its inbound Jet-A delivery Transports must off-load the Jet-A fuel from the "Jet-A loading and

containment pad” located on FlightLevel’s fuel farm, and that without access to BEH’s leasehold on Lot H, FlightLevel cannot supply Jet-A fuel to its fuel farm.

As it pertains to FlightLevel’s claims, Mr. Choubah opines, to a reasonable degree of professional certainty, that FlightLevel is able to access its fuel farm, including receiving deliveries of “Jet A” and Avgas fuel from transports, without accessing or traversing BEH’s leaseholds, and without impeding or interfering with BEH’s rights under its leases. See Choubah Affidavit, ¶16. FlightLevel can load and unload bulk and service vehicles, from multiple locations throughout its fuel farm on its own property on Lot H, and from different directions, without accessing BEH’s leasehold. See Choubah Affidavit, ¶17. Attached as Exhibits B, C, and D to the Choubah Affidavit are stamped engineering drawings prepared by CEG showing how FlightLevel can accomplish this – again, without traversing onto BEH’s property – and as discussed in more detail below.

According to Mr. Choubah, the “AutoTURN Plan” relied upon by FlightLevel shows only FlightLevel’s preferred way to enter the fuel farm (from the East); however, this is not the only way FlightLevel can access and refuel its fuel farm for both Jet-A and Avgas deliveries. See Choubah Affidavit, ¶18. FlightLevel’s large tanker vehicles can enter the fuel farm from the East, West, or South directions. Id.

For example, as shown on the plan prepared by CEG, Exhibit B, FlightLevel can instruct its fuel delivery tankers to access the fuel farm for delivery by driving along the 25’ Tank Farm Access Easement located on the West side of the condo hangars and making a left turn onto the area to the South of the fuel farm. See Choubah Affidavit, ¶19. From that location, fuel tankers, including the large delivery transports carrying Jet-A fuel and Avgas, can easily unload fuel into FlightLevel’s storage tanks using hoses typically carried by fuel tankers. Id.

As stated by Mr. Choubah, large fuel trucks, such as the trucks delivering Jet-A fuel and Avgas to FlightLevel, typically carry hoses to off load fuel. Delivery tankers of the size relied upon by FlightLevel (i.e., transports of up to 65 feet long delivering 8,000 to 10,000 gallons) carry hose lengths of approximately 60 feet. Thus, fuel delivery vehicles such as the vehicles servicing FlightLevel's fuel farm can easily unload fuel up to a distance of at least 60 feet from the tank. Using those hoses, FlightLevel can provision its fuel farm from the South side of the fuel farm without traversing onto BEH's leaseholds. See Choubah Affidavit, ¶20.

As another example, and as shown on the plan prepared by CEG, Exhibit C, FlightLevel can also instruct its fuel delivery tankers to access the fuel farm for delivery by driving along the 25' Tank Farm Access Easement located on the East side of the condo hangars and parking along the East side of the fuel farm, in the same location that FlightLevel currently unloads Avgas fuel. From that location, fuel tankers, including the large delivery transports carrying Jet-A fuel and Avgas, can easily unload fuel into FlightLevel's storage tanks using hoses typically carried by fuel tankers. See Choubah Affidavit, ¶21.

As yet a further example, as shown on the plan prepared by CEG, Exhibit D, FlightLevel can also instruct its fuel delivery tankers to access the fuel farm for delivery by driving along the 25' Tank Farm Access Easement located on the West side of the condo hangars and parking along the West side of the fuel farm. From that location, fuel tankers, including the large delivery transports carrying Jet-A fuel and Avgas, can easily unload fuel into FlightLevel's storage tanks using hoses typically carried by fuel tankers. See Choubah Affidavit, ¶22.

Based upon the forgoing, Mr. Choubah has opined to a reasonable degree of professional certainty that FlightLevel's transport vehicles can easily off-load Jet-A fuel and Avgas from the

East, West, and South locations using hoses carried on the vehicles, and without accessing BEH's leasehold.

Further supporting the fact that this is an issue of FlightLevel's own making, Mr. Choubah's notes that FlightLevel has gates and fencing surrounding its fuel farm, yet there is no legal or regulatory provision requiring a fence around the fuel farm. See Choubah Affidavit, ¶24. BEH's own underground fuel storage tanks do not have fencing surrounding BEH's fuel farm on Lot F. Id. FlightLevel could easily remove the gates and fence and provide itself with more room to maneuver its vehicles without traversing onto BEH's leasehold. Id.

If FlightLevel wishes to maintain a fence around the fuel farm, which is not required, FlightLevel could easily relocate the gates and fence approximately 15 feet closer to the "Jet A" fill points and still provide itself with more room to maneuver its vehicles without traversing onto BEH's leasehold. Id. By way of illustration, removing or relocating the fence would easily allow FlightLevel's fuel delivery tankers to access the fuel farm for delivery by driving along the 25' Tank Farm Access Easement located on the East side of the condo hangars and making a wide turn (but without traversing BEH's leasehold) onto the South side of the fuel farm. Id. From that location, fuel tankers, including the large delivery transports carrying Jet-A fuel and Avgas, can easily unload fuel into FlightLevel's storage tanks. Id. Again, FlightLevel has proffered no evidence that it is unable to remove or relocate its fence to allow its trucks more room to maneuver on FlightLevel's own property.

Additionally, FlightLevel has suggested that its vehicles must be parked on the so-called "Jet-A containment pad" located on the south side of the fuel farm. Mr. Choubah notes that he is not aware of any professional standard, legal, or regulatory requirement for FlightLevel's transports of Avgas or "Jet A" to provision FlightLevel's fuel tanks from the so-called "Jet-A

containment pad” on the south side of FlightLevel’s fuel farm. See Choubah Affidavit, ¶25. In other words, FlightLevel’s fuel delivery vehicles do not need to be parked on or near the so-called containment pad to off-load fuel of any type. Id. Thus, as Mr. Choubah opines to a reasonable degree of professional certainty, FlightLevel is not required by any standard, law, or regulation to off-load Jet-A fuel from the “Jet-A loading and containment pad” located on FlightLevel’s fuel farm. Id.

If, however, FlightLevel wishes to load and unload fuel from the “Jet-A” containment pad on the South side of the fuel farm, and without making any changes to the existing fencing and gates, it can easily do so by entering the fuel farm by driving along the 25’ Tank Farm Access Easement located on the West side of the condo hangars as depicted in Exhibit B. Id.

FlightLevel could also relocate the existing fence currently located south of the “Jet A” fueling area approximately 15’ closer to the fill points (similar to the Avgas containment pad layout) and FlightLevel’s fuel delivery vehicles could then easily position themselves over the containment pad. Id. Or, as noted above, FlightLevel can use the “containment pad” on East side of the fuel farm where they currently load/unload Avgas. Id.

In summary, Mr. Choubah opines to a reasonable degree of professional certainty that FlightLevel’s inbound Jet-A delivery Transports do not need to execute a wide turn over BEH’s leasehold on Lot H to be able to off-load Jet-A fuel on FlightLevel’s fuel farm. See Choubah Affidavit, ¶26. He further opines that FlightLevel can off-load inbound Jet-A fuel from its delivery transports without traversing over BEH’s leasehold on Lot H. See Choubah Affidavit, ¶27. Finally, and based upon the foregoing, Mr. Choubah opines that BEH’s leasehold on Lot H abutting the easterly boundary of the Tank Farm Lease Lot does not need to be kept free of

obstructions for FlightLevel's vehicles to access the fuel farm for Jet-A or Avgas deliveries. See Choubah Affidavit, ¶28.

Moreover, the Court may recall at the February 26, 2021 hearing on FlightLevel's motion, counsel for FlightLevel did not dispute that FlightLevel's tankers could access the fuel farm using hoses from different locations, but suggested that this method would be inefficient; however, mere inconvenience or inefficiency is hardly enough to overcome the proposition that a property owner such as BEH is entitled to have its property free of interference and unlawful trespasses, and in no event should the extraordinary relief of a preliminary injunction – depriving BEH of the lawful use of its property – be grounded upon a parties' mere inconvenience.

And, as if that were not conclusive enough, BEH has captured video of FlightLevel's tankers accessing the fuel farm for a Jet-A delivery from the East (using FlightLevel's preferred method of entry) without trespassing onto BEH's property. The link noted below shows a video of one of FlightLevel's tankers maneuvering into the fuel farm without going over what is now BEH's property.¹

Based upon the forgoing, FlightLevel is perfectly capable of delivering fuel to its fuel farm – without the need to trespass onto BEH's property. FlightLevel has made no attempt to make the required showing that it cannot under any circumstances provision its fuel system without making a wide turn onto BEH's leasehold. Accordingly, FlightLevel cannot show that it has or will suffer any irreparable harm and the preliminary injunction – which is preventing BEH from using its property – should be vacated immediately.

¹https://drive.google.com/file/d/1tvIqhHsZzBe4OpRBIvZg-URMn_zQiNYt/view?ts=6050212c

B. FlightLevel Misrepresented Facts To The Court And, Therefore, The Preliminary Injunction Order Should Be Vacated.

“A court of equity does not lend its aid to parties who resort to unjust and unfair conduct.” Shikes v. Gabelnick, 273 Mass. 201, 207 (1930). Where there is fraud, deceit, failure to do equity or inequitable conduct on behalf of a plaintiff, established principles of equity require a refusal of an equitable remedy including a preliminary injunction. See New Boston Systems, Inc. v. Joffe, 1993 WL 818570, *3 (Mass. Super. Ct. 1993) (observing that “a preliminary injunction sounds in equity and it is a maxim of equity that ‘[H]e who seeks equity must do equity’”) (quoting Spadea v. Stewart, 350 Mass. 218, 222 (1966)).

In support of its Motion, FlightLevel repeatedly makes the claim that it must make “the wide turn area on Lot H,” onto BEH’s leasehold, in “order to reach and exit the fuel farm.” See Eichleay Affidavit, ¶15. FlightLevel similarly stated that “the area on Lot H abutting the easterly boundary of the Tank Farm Lease Lot,” i.e., BEH’s leasehold on Lot H, “must be kept free of obstructions for vehicles to access the fuel farm . . . [and] if any of those areas are obstructed, FlightLevel’s delivery Transports, on-airport Refuelers, third-party service and inspection vehicles, and Airport and Town fire safety equipment and vehicles cannot gain access to the FlightLevel fuel farm.” See Eichleay Affidavit, ¶16.

These claims are patently false, and are yet another example of FlightLevel making baseless claims of obstruction and interference by BEH in order to prevent competition at the Airport.² As set forth in the Choubah Affidavit, FlightLevel is perfectly capable of offloading fuel,

²FlightLevel’s opposition to having a competitor at the Airport is well documented. For example, on June 20, 2013, Peter Eichleay of FlightLevel wrote to the NAC to stating “BEH’s entry into the fuel business would severely undermine not only our own fuel business and planned capital improvement projects, but also our aircraft maintenance and real estate business as well.” See Donovan Aff., ¶5.

whether Avgas or Jet-A, from multiple locations on its own property without the need to pass over BEH's leasehold.

Moreover, Peter Eichleay claims in his affidavit that his "Exhibit 1 is a true and accurate copy of a plot plan depicting certain portions of the Airport. The plot plan shows property rights of FlightLevel at the Airport." This is untrue. The plan is not stamped by an engineer, and shows areas to which FlightLevel has no property rights; indeed, BEH has property rights to a majority of the areas depicted on "Exhibit 1." See Donovan Affidavit, Exhibit 1.

Peter Eichleay's claim that FlightLevel has property rights pursuant to "FlightLevel's Lease Lot G and associated '25' Tank Farm Access Easement' (to the east) for access to FlightLevel's fuel farm on Lot H" is also untrue. Eichleay is Trustee of EAC Realty Trust II and EAC Realty Trust IV. FlightLevel does not conduct any operations on Lot G, other than to access the fuel farm via the Tank Farm Access Easement. BEH, on the other hand, operates out of two condo hangars on Lot G, Units 7 and 8, with access rights to those areas. BEH also hangars two aircraft in those condo units on Lot G. This is well known to FlightLevel. In fact, on March 23, 2010, BEH notified FlightLevel's president, Peter Eichleay ("Eichleay"), that BEH would be operating out of Lot G from the condo hangars leased to MII Aviation ("MII"), an entity related to BEH. Further, on May 11, 2010, FlightLevel, through a series of emails, confirmed all billings for the condominium Units 7 and 8, would be billed to BEH moving forward.

Peter Eichleay also claims that it has property rights to Lot H (on BEH's leasehold) by stating that: "On February 15, 2017, FlightLevel was granted an access easement or similar right of way to use in connection with its fuel farm by unanimous vote of the Norwood Airport Commission." (emphasis added). This is not true. No easement for the benefit of FlightLevel was ever granted by the NAC. Were such an easement to exist, surely FlightLevel would have

produced a copy to the Court. Moreover, Eichleay has previously acknowledged under oath that the Town “cut off all communication with FlightLevel concerning access rights over Lot H” after the vote was taken. See Donovan Aff., ¶16.

The “AutoTurn Plan” attached to the Affidavit of Peter Eichleay as Exhibit 3 is not based on any known or written standards or regulations. FlightLevel incorrectly asserts that certain areas at the Airport prohibit fueling due to NFPA 407, and based its “plan” on the NFPA setbacks. There are, however, no NFPA setbacks at the Airport, as the Airport regulations do not contain any reference to NFPA 407. This was confirmed by Lt. Paul Butters from the Norwood Fire Department, acting as the fire prevention officer for the Town of Norwood and the NFD, during a deposition on June 20, 2018. See Donovan Aff., ¶16.

BEH has never obstructed or blocked FlightLevel’s access to the fuel farm. FlightLevel has not received a fuel delivery because of BEH. On Monday, February 22, 2021, FlightLevel chose to make a stand in a feigned attempt to claim rights to BEH’s leased space, rather than unload its fuel. There was nothing preventing FlightLevel from unloading its fuel as confirmed by Mr. Choubah above.

It is also highly disingenuous for FlightLevel to object to BEH’s protecting its own property rights. In a letter dated September 24, 2013, Peter Eichleay addressed the NAC about BEH’s intentions to become an FBO and Mr. Eichleay stated expressly that one business at the Airport should not be compelled to allow another business at the Airport to use its property: “Needless to say, our stance is a common sense one that holds true for all American enterprise according to common law: namely that no business would ever be compelled to allow its assets to be used to their own detriment let alone to enable a competitor without just compensation (e.g.

Ernie Boch wouldn't allow Herb Chambers to sell cars on his lots; Ford would never grant Honda access to its plants; etc.).” See Donovan, Aff., ¶6.

It should also be noted, as it pertains to the harm caused to BEH by the Order, that preventing BEH from utilizing its own leasehold on the West Apron, so that FlightLevel can make a wide turn onto BEH's leasehold, prevents BEH from using a substantial portion of its leased premises and from conducting its own FBO operations at the Airport and is causing harm to BEH. FlightLevel knows this all too well, and preventing BEH from competing is FlightLevel's real motivation behind the injunctive relief it seeks.

C. The Order Prevents BEH From Exercising Its Property Rights On Other Areas Of The Airport.

In its Order of February 26, 2021, the Court enjoined BEH from “interfering with access to FlightLevel Norwood, LLC (“FlightLevel”)’s fuel farm, including but not limited to the parking of vehicles or aircraft or the placement of obstructions in the Gate 3 Taxilane Object Free Area, on FlightLevel’s Lot G Sublease premises, on FlightLevel’s Tank Farm Lease Lot premises, on FlightLevel’s ‘25’ Tank Farm Access Easement’ area, on the ‘Lot B & H Licensed area,’ as depicted on Exhibit 1 attached hereto, and on the area on Lot H as shown on Exhibit 2 attached hereto, and are also enjoined from interfering with FlightLevel’s rights under its Tank farm Sublease.”

The Court’s Order prevents BEH from operating on its property on areas well outside of the area FlightLevel wrongly claims it needs to turn (on BEH’s property) to access the fuel farm. BEH has lease rights to portions of Lots F, G, B, and H, including the entire Gate Lane and claimed Object Free Area. This includes aircraft and vehicle parking rights. See Donovan Affidavit, Exhibit C.

Also, there are three (3) gates at the Norwood Airport, for use by all vehicles, including FlightLevel's bulk delivery vehicles. The gates are often out of service, including Gate 3, and the other gates are routinely used. FlightLevel can access the fuel farm from any one of the three gates, and Gate 3 is not the only access to the Airport. Norwood Fire Department uses all gates, large 18 wheel truck use all three gates, and FlightLevel is currently constructing a hangar and its large trucks use all three gates for entry/exit. Donovan Aff., ¶10.

As noted above, the Order prohibits BEH from "parking of vehicles or aircraft . . . on FlightLevel's Lot G Sublease premises." FlightLevel does not "own" Lot G. BEH, however, and as noted above, operates out of two condo hangars on Lot G, Units 7 and 8, with access rights, as depicted in the attached diagram. BEH also hangars two aircraft in those condo units on Lot G. As written, the Order deprives BEH the use of the use of its leased hangars and property, essentially putting BEH out of business. Donovan Aff., ¶11.

BEH also has access rights on the "Lot B & H License" area through its lease agreement for the West Apron, and also through the attached Lot B&H License Agreement itself, which provides that the license "shall be for the benefit of occupants . . . of the Hangar located on Lot G and a portion of Lot H" See Donovan Affidavit, Exhibit D. The Lot B & H License was not issued in connection with FlightLevel's fuel farm, or access thereto, and is entirely on the West Apron, leased to BEH. Again, it should be noted that "Lot H" contains over 100,000 square feet, and includes areas leased by BEH and FlightLevel, and also includes property owned and controlled by the Town. The AutoTURN plan submitted by FlightLevel includes areas of Lot H, now leased to BEH.

Additionally, the 25' Tank Farm Access Easement is by its terms "non-exclusive" and runs the East and West sides of the condo hangars on Lot G. BEH has lease rights to enter and exit the

Condo hangars its leases from EAC Realty Trust. The Court's Order, broadly prohibiting the parking of vehicles or aircraft, interferes with and deprives BEH of its property rights and use of this area. Donovan Aff., ¶14.

Similarly, the Order, prohibiting the parking of vehicles and aircraft in the Gate 3 Taxilane Object Free Area ("TOFA"), affects BEH's property rights outside of the area complained of by FlightLevel in order to allegedly access its fuel farm. As it stands, the Order prevents BEH access to the Gate Lane 3, including access to and from its Lot F, the condo hangars on Lot G, and BEH's leased space on the West and DC-3 Ramps. For example, BEH has rights to park in the parking spaces located on the North end of Lot G, which are located in the TOFA, but were grandfathered in according to the NAC. According to the Order, BEH is now prohibited from parking in these leased spaces. Donovan Aff., ¶15.

In sum, while BEH maintains that the Order should be vacated as noted herein, the Order does far more than allow FlightLevel to make a "wide turn" onto BEH's leasehold; the Order effectively prohibits BEH from operating on many other areas it leases at the Airport. For this reason, the Order should be vacated.

D. Judge Connors' Order Does Not Provide A Basis To Grant FlightLevel A Preliminary Injunction.

At the February 26, 2021 hearing on FlightLevel's Motion for a Preliminary Injunction, the Court was clear that it was basing its decision to grant FlightLevel's motion on Judge Connors' October 22, 2019 Order, and not on the alleged "property rights" by FlightLevel. FlightLevel, however, does not have a reasonable likelihood of succeeding on its claim that BEH violated the Order because there is nothing in Judge Connor's Order or decision which prohibits BEH from exercising its rights with respect to its own leaseholds at the Airport. Moreover, there is nothing

contained in Judge Connors' Order which grants FlightLevel "access" to BEH's property. Additionally, as noted above, BEH did not actually interfere with or block access to the fuel farm.

Again, in seeking this extraordinary relief, FlightLevel purposefully misrepresents Judge Connors' Order as "expressly prohibit[ing] BEH from interfering with FlightLevel's access to Lots G and H." FlightLevel's Memo, p. 11 (emphasis added). Nowhere in the October 22, 2019 Order does the Court prohibit BEH from utilizing its own leasehold on the West Apron or require BEH to grant FlightLevel "access" to its fuel farm over BEH's leaseholds.

Any dispute concerning the area now complained of could not have been addressed by Judge Connors as the subject leases to BEH were not in existence. At the time of his decision, BEH did not have its current lease to the West Apron, so the parties' respective property rights could not have been considered or decided by Judge Connors. The simple fact is that Judge Connors' order did nothing to prohibit BEH from exercising its rights with respect to its own leaseholds at the Airport.

Moreover, FlightLevel's "rights" to "Lot H" are hardly mentioned in the decision itself. The dispute between BEH and FlightLevel (and the subject of the summary judgment motion) concerned the parties' respective property rights in the taxiway area between BEH's Lot F and Lot G, not the area of which FlightLevel presently complains.

CONCLUSION

FlightLevel has failed to demonstrate the irreparable harm required to justify the extraordinary relief granted by the Court. FlightLevel is unquestionably able to access their fuel farm, including receiving deliveries of "Jet A" and Avgas fuel from transports, without accessing or traversing BEH's leaseholds, and without impeding or interfering with BEH's rights under its

leases. Accordingly, the Court should vacate the February 26, 2021 Order granting FlightLevel's Emergency Motion for Temporary Restraining Order and Preliminary Injunction.

Respectfully submitted,

BOSTON EXECUTIVE HELICOPTERS, LLC,

By its attorneys,



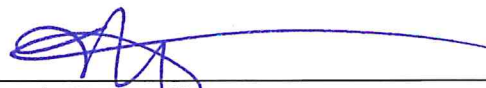
Eric H. Loeffler, BBO #641289
DAVIDS & COHEN, P.C.
40 Washington Street, Suite 20
Wellesley, MA 02481
781-416-5055
eloeffler@davids-cohen.com

Dated: March 16, 2021

CERTIFICATE OF SERVICE

I, Eric H. Loeffler, hereby certify that on this 16th day of March 2021, I served a true and accurate copy of the foregoing document to counsel of record by email as follows:

Neil Hartzell, Esq.
Ben N. Dunlap, Esq.
Freeman, Mathis & Gary LLP
60 State Street, 6th Floor
Boston, MA 02109



Eric H. Loeffler

EXHIBIT 5

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
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Defendants.

AFFIDAVIT OF CHRISTOPHER R. DONOVAN

I, Christopher R. Donovan, hereby depose and state the following based on my own personal knowledge.

1. I am the manager of Boston Executive Helicopters, LLC ("BEH"), a Delaware limited liability company with its principal place of business at 209 Access Road, Norwood,

Massachusetts 02062. I have over 35 years of aviation experience operating throughout the world.

2. I am certified by the Massachusetts Department of Environmental Protection, Class A/B operator in Underground Storage Tank (UST) systems, which the DEP defines as “In depth knowledge and understanding of the UST System(s), how to operate and maintain UST systems, as well as Federal and State regulatory requirements that apply to that system (UST).”

3. I am responsible for compliance with the Norwood Airport Spill Prevention Control and Countermeasures Plan and the Storm Water Pollution Prevention Plan.

4. Since 2010, BEH has requested and sought to obtain ramp space at the Airport to conduct FBO operations, including selling fuel. Since that time, FlightLevel has done everything it can to prevent BEH from becoming an FBO at the Airport, including repeatedly making false claims of obstruction and interference by BEH.

5. For example, on June 20, 2013, Peter Eichleay of FlightLevel wrote to the NAC to “voice some serious and legitimate concerns” about BEH’s then proposed fueling facility, including that “BEH’s entry into the fuel business would severely undermine not only our own fuel business and planned capital improvement projects, but also our aircraft maintenance and real estate business as well.” See Exhibit A, hereto.

6. Tellingly, in a letter dated September 24, 2013, Peter Eichleay again addressed the NAC and stated expressly that one business at the Airport should not be compelled to allow another business at the Airport to use its property: “Needless to say, our stance is a common sense one that holds true for all American enterprise according to common law: namely that no business would ever be compelled to allow its assets to be used to their own detriment let alone to enable a competitor without just compensation (e.g. Ernie Boch wouldn’t allow Herb

Chambers to sell cars on his lots; Ford would never grant Honda access to its plants; etc.).” See Exhibit B, hereto.

7. FlightLevel also worked in concert with the NAC, including under a joint defense agreement, to prevent BEH from providing fuel competition on the Airport. Through leases and sublease on the Airport, FlightLevel controls approximately 560,000 square feet or space, including ramps and hangars whereas, prior to executing the leases for the West and DC-3 Ramps, BEH only leased 30,000 square feet at the Airport despite prior requests for ramp space.

8. In its Order of February 26, 2021 (“the Order”), the Court enjoined BEH from “interfering with access to FlightLevel Norwood, LLC (“FlightLevel”)’s fuel farm, including but not limited to the parking of vehicles or aircraft or the placement of obstructions in the Gate 3 Taxilane Object Free Area, on FlightLevel’s Lot G Sublease premises, on FlightLevel’s Tank Farm Lease Lot premises, on FlightLevel’s ‘25’ Tank Farm Access Easement’ area, on the ‘Lot B & H Licensed area,’ as depicted on Exhibit 1 attached hereto, and on the area on Lot H as shown on Exhibit 2 attached hereto, and are also enjoined from interfering with FlightLevel’s rights under its Tank farm Sublease.”

9. As it pertains to FlightLevel’s request for preliminary injunctive relief, and the Court’s subsequent Order, I note that BEH has lease rights on Gate Lane 3, including the entire Gate Lane and claimed Object Free Area. This includes aircraft and vehicle parking rights. See my color depiction of FlightLevel’s Exhibit 1, attached hereto as Exhibit C. The Court’s Order prevents BEH from operating on its property on areas well outside of the area FlightLevel wrongly claims it need to turn (on BEH’s property) to access the fuel farm.

10. Also, there are three (3) gates at the Norwood Airport, for use by all vehicles, including FlightLevel’s bulk delivery vehicles. The gates are often out of service, including Gate

3, and the other gates are routinely used. FlightLevel can access the fuel farm from any one of the three gates, and Gate 3 is not the only access to the Airport. Norwood Fire Department uses all gates, large 18 wheel truck use all three gates, and FlightLevel is currently constructing a hangar and its large trucks use all three gates for entry/exit.

11. As noted above, the Order prohibits BEH from “parking of vehicles or aircraft . . . on FlightLevel’s Lot G Sublease premises.” FlightLevel does not “own” Lot G. BEH, on the other hand, operates out of two condo hangars on Lot G, Units 7 and 8, with access rights, as depicted in the attached diagram. BEH also hangars two aircraft in those condo units on Lot G. This is well known to FlightLevel. In fact, on March 23, 2010, BEH notified FlightLevel’s president, Peter Eichleay (“Eichleay”), also the trustee of “Lot G,” that BEH would be operating out of Lot G from the condo hangars leased to MII Aviation (“MII”), the entity that owns BEH. Further, on May 11, 2010, FlightLevel, through a series of emails, confirmed all billings for the condominium Units 7 and 8, would be billed to BEH moving forward. As written, the Order deprives BEH (and MII) the use of the use of its leased hangars and property, which includes portions of Lots F, G, B, and H, the entire Gate 3 Taxi Lane, essentially putting BEH out of business.

12. BEH has access rights on the “Lot B & H License” area through its lease agreement for the West Apron, and also through the attached Lot B&H License Agreement itself, which provides that the license “shall be for the benefit of occupants . . . of the Hangar located on Lot G and a portion of Lot H” See Exhibit D, attached hereto. The Lot B & H License was not issued in connection with FlightLevel’s fuel farm, or access thereto, and is entirely on the West Apron, leased to BEH.

13. Lot H contains over 100,000 square feet, and includes areas leased by BEH, FlightLevel and property owned by the Town. The AutoTURN plan submitted by FlightLevel includes areas of Lot H, now leased to BEH.

14. The 25' Tank Farm Access Easement, attached hereto as Exhibit E, is "non-exclusive" and runs the East and West sides of the condo hangars on Lot G. BEH has lease rights to enter and exit the Condo hangars its leases from EAC Realty Trust. The Court's Order, broadly prohibiting the parking of vehicles or aircraft, interferes with and deprives BEH of its property rights and use of this area.

15. The Order, prohibiting the parking of vehicles and aircraft in the Gate 3 Taxilane Object Free Area ("TOFA"), affects BEH's property rights outside of the area complained of by FlightLevel in order to allegedly access its fuel farm. As it stands, the Order prevents BEH access to the Gate Lane 3, including access to and from its Lot F, the condo hangars on Lot G, and BEH's leased space on the West and DC-3 Ramps. For example, BEH has rights to park in the parking spaces located on the North end of Lot G, which are located in the TOFA, but were grandfathered in according to the NAC. According to the Order, BEH is now prohibited from parking in these leased spaces, and deprives BEH of the use of its ramp space on Lot F, for aircraft and vehicles.

16. I have reviewed the Affidavit of Peter Eichleay dated February 23, 2021. This affidavit contains lies and deceit, with the intent of using this court to maintain FlightLevel's monopoly on fuel sales at the Norwood airport, and prevent BEH from operating.

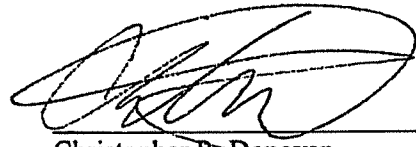
- a. For example, Eichleay claims that his "Exhibit 1 is a true and accurate copy of a plot plan depicting certain portions of the Airport. The plot plan shows property rights of FlightLevel at the Airport." This is not true. The plan is not stamped by

an engineer, and shows areas to which FlightLevel has no property rights; indeed, BEH has property rights to a majority of the areas depicted on “Exhibit 1.” See Exhibit C, attached hereto.

- b. Eichleay’s claim that FlightLevel has property rights pursuant to “FlightLevel’s Lease Lot G and associated ‘25’ Tank Farm Access Easement’ (to the east) for access to FlightLevel’s fuel farm on Lot H” is also untrue. Eichleay is Trustee of EAC Realty Trust II and EAC Realty Trust IV. FlightLevel does not conduct any operations on Lot G, other than to access the fuel farm via the Tank Farm Access Easement. BEH, on the other hand, operates from Lot G (which also includes a portion of Lot H) in the condo hangar units as noted above.
- c. Eichleay also claims that it has property rights to Lot H (on BEH’s leasehold) by stating that: “On February 15, 2017, FlightLevel was granted an access casement or similar right of way to use in connection with its fuel farm by unanimous vote of the Norwood Airport Commission.” (emphasis added). This is not true. No casement for the benefit of FlightLevel was ever granted by the NAC. Were such an easement to exist, surely FlightLevel would have produced a copy to the Court. Moreover, Eichleay has previously acknowledged under oath that the Town “cut off all communication with FlightLevel concerning access rights over Lot H” after the vote was taken.
- d. Eichleay also fails to mention that BEH has been operating from Lot G, via the two subleased hangars on Lot G, and a portion of Lot H, as noted above and as depicted on Exhibit C. BEH has parked vehicles and aircraft, as it has rights to do so under the condo hangar subleases, since 2010.

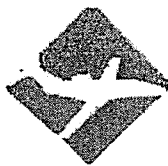
- e. Exhibit 3 to Eichleay's Affidavit was not based on any known standards or regulations. The plan, completed by Norwood Engineering, does not show the West Apron areas now leased to BEH. The plan also fails to show the delivery of Avgas to FlightLevel's fuel farm, which can also be used to off-load Jet-A fuel, without trespassing on BEH's lease of the West apron.
- f. The "AutoTurn Plan" attached to the Affidavit of Peter Eichleay as Exhibit 3 is not based on any known or written standards or regulations. FlightLevel incorrectly asserts that certain areas at the Airport prohibit fueling due to NFPA 407, and based its "plan" on the NFPA setbacks. There are, however, no NFPA setbacks at the Airport, as the Airport regulations do not contain any reference to NFPA 407. This was confirmed by Lt. Paul Butters from the Norwood Fire Department, acting as the fire prevention officer for the town of Norwood and the NFD, during a deposition on June 20, 2018. In his testimony, Lt. Butters stated that "[i]n the Commonwealth of Massachusetts, under the fire prevention regulations, no fire department has any jurisdiction or authority over fueling or refueling of aircraft at an airport." He further testified that, "[a]s a fire prevention officer, I have no authority to say that you have to follow NFPA 407, because it is not the law." Lt. Butters further testified that it was not part of the Norwood Fire Department's review process to review fueling plans. The Airport Manager, Russ Maguire, also testified that he would not expect or require the Norwood Fire Department to review fueling plans.

Signed under the pains and penalties of perjury on this 16th day of March 2021.

A handwritten signature in black ink, appearing to read "Chris Donovan", written over a horizontal line.

Christopher R. Donovan

EXHIBIT A



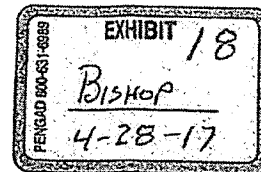
**FLIGHTLEVEL
AVIATION**

6-20-13

PHONE: 781.769.8680
FAX: 781.769.7180
www.flightlevelaviation.com

June 20th, 2013

Norwood Airport Commission (NAC)
cc: Mr. Russ Maguire, Airport Manager
125 Access Road
Norwood, MA 02062



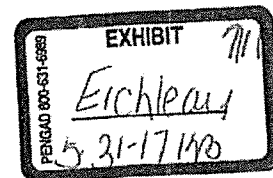
Re: Norwood Airport Fueling Concerns

Dear Mr. Chairman and NAC Members:

FlightLevel Norwood (FLN) would like to voice some serious and legitimate concerns we have in connection with the operation of Boston Executive Helicopter's (BEH) proposed fueling facility at the Norwood Memorial Airport, all of which we feel require immediate attention. I've held off until now because it had been unclear to me until this most recent meeting (June 19th) that construction of the fueling facility had progressed to the point of full approval by the NAC and was moving forward. Also, given FLN's very close proximity to BEH's leasehold, we were expecting the opportunity to review BEH's fueling operations plan, which, as I understand it, has yet to be submitted in spite of the NAC and Airport Manager's repeated request for one (I've attached at the end of this letter a satellite view of the Norwood Airport's ramps with approximate delineations of FLN's various leaseholds and BEH's leasehold for reference). Each of FLN's concerns, along with explanation and impetus where applicable, is listed below:

- 1. Taxiway and Taxilane Object Free Area (TOFA) and Fueling Setback from Structures Restriction:** As stated by the the FAA, TOFA clearing standards specifically prohibit parked airplanes within their radius (see Exhibit 1 for full FAA TOFA excerpt attached). Norwood's 57 foot TOFA, in conjunction with the restriction that prohibits aircraft fueling within 25 feet of a hangar (see Exhibit 2 for email confirmation from the Airport Manager and Norwood Fire Dept) would physically eliminate any space for a parked aircraft to be fueled within BEH's leasehold once their hangar is complete (see Exhibit 3 for closeup of BEH leasehold with precise TOFA and Setback measurements for clarification). FLN has been ordered to be in compliance with these rules and we are (see email from the Airport Manager attached). It should also be noted that TOFA restrictions were incorporated into the Norwood Airport Rules and Regulations as triggered by the motion at the May, 2013 NAC meeting.
- 2. Obstructing the Gate 3 Taxilane:** Pursuant to the TOFA restrictions outlined above, FLN relies heavily on the Gate 3 taxilane for the ingress / egress and basic maneuvering of aircraft required in connection with the operation of our hangar known as Y2K, located directly across from BEH's leasehold. Any prolonged obstruction of that taxilane, which is to say a violation of the TOFA, be it by a delivery tanker truck or an aircraft being refueled would cause undue detriment to our business. Needless to say, fuel deliveries (which can last in excess of one hour), aircraft refueling and parking of any kind is not allowed within any taxilane or taxiway.

125 Access Road
Norwood, MA 02062
www.flightlevelaviation.com



NORW004166

2

Since the precedent for enforcing these standards has properly already been set, we're simply requesting that they be consistently and uniformly enforced across the board as they are on us. If, in doing so, certain entities or individuals are precluded from doing certain things (obviously in this case BEH fueling), the onus is not on the airport to defy the standards, all of which exist for very good reasons, just to accommodate them -- nor should it be.

And, if you'll allow me, this is where I'd like to deviate from the initial tone of this letter and speak frankly on some hypothetical scenarios from the perspective of an owner with a massive investment at this airport:

For starters, would it be the NAC's intent to limit BEH's fueling activities to self-fueling (for which laxer standards apply) or to grant them the right to sell fuel to the public? In the case of the latter, the airport minimum standards would naturally have to be upheld, but even if they were and the TOFA and Setback restrictions were not enforced, it seems given the real estate constraints, it would make for an incredibly unsafe cluster-type situation, especially when multiple aircraft were in that area. Needless to say, we wouldn't allow a competitor use of any of our leaseholds under any circumstances.

~~It also goes without saying that BEH's entry into the fuel business would severely undermine not only our own fuel business and planned capital improvement projects, but also our aircraft maintenance and real estate businesses as well. Fuel is our life-blood and, consistent with industry standard, it largely subsidizes both those other segments (segments which in our humble opinion are critical service offerings for the local flying public). Greatly diminished fuel sales would certainly compromise our ability to keep the maintenance shop open (we're currently the only shop on the field), and of even greater concern, continue to bear the expense of the hundreds of thousands of dollars we pay annually to the town and BMA through our land leases. Considering that BEH's lease payments will be going exclusively to BMA, the town could only stand to lose by granting BEH commercial fueling privileges.~~

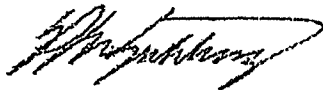
While I certainly understand that any municipal governing body has to be and should be pro-competition, I don't think exceptions to the rules should be made just for competition's sake. Fair and equal treatment should always prevail. ~~When two competing FBOs existed at Norwood years ago in the best of times, fair and equal treatment was applied. Yet the end result there was that it proved economically unsustainable. It also made for a chaotic and less safe operating environment as those who were there can attest. I don't think it's in anyone's interests to establish an uneven playing field just as we're emerging from a deep recession to set up a scenario for history to repeat itself.~~

In closing, having attended just about every monthly NAC meeting over the past year, I was certainly taken aback and alarmed to hear of the sudden accelerated timeline for the installation of BEH's tanks at the June 19th meeting. Considering that BEH still hasn't submitted an operational plan to address many of these concerns in spite of the NAC's and Airport Manager's repeated requests for such, it would seem the intention here is to ram this project through unchecked by simply neglecting to address the issues that would and should stop it from happening at all. That way BEH can simply fall back on the defense that it's already done and nobody stopped them and therefore exceptions must be made.

Based on the information BEH conveyed at the June 19th commission meeting, FLN kindly but strongly requests that these issues be addressed as soon as a possible and certainly prior to the arrival of the tanks on July 1st.

Thank you very much for you attention to this matter and please don't hesitate to contact me with any questions, comments or concerns (Exhibits are attached on following pages).

Sincerely and Respectfully,



Peter Elchleay
FlightLevel Aviation - President
125 Access Road
Norwood, MA 02062
W: 781.769.8680 ext. 128
E: peter@flightlevelaviation.com
F: 781.769.7180

EXHIBIT B

9-24-13

1 Blabla 1

September 24th, 2013

Norwood Airport Commission (NAC)
cc: Mr. Russ Maguire, Airport Manager
125 Access Road
Norwood, MA 02062

Re: FlightLevel Norwood, LLC Leasehold Property Rights

Dear Mr. Chairman and NAC Members:

Last week, we called Thomas Vick from the FAA's "New England Region Airports Division" to enquire about the FAA's stance on leasehold property rights at grant eligible airports and to voice to him our stance on the same. Needless to say, our stance is the common sense one that holds true for all American enterprise according to common law: namely that no business would ever be compelled to allow its assets to be used to their own detriment let alone to enable a competitor without just compensation (e.g. Ernie Boch wouldn't allow Herb Chambers to sell cars on his lots; Ford would never grant Honda access to its plants; etc.).

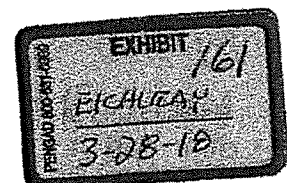
Upon speaking with Mr. Vick and querying him for commentary, he made it clear that the FAA does not get involved in such matters in any way, shape or form unless/until they have escalated to a full legal dispute. He also confirmed that it is the role and responsibility of the airport owner, in this case the NAC, to uphold and enforce property rights on their airport according to the common law and the terms of the leases they have in place.

I have certainly interpreted through the minutes of recent monthly NAC meetings that the NAC understands and shares this common sense position. It was also confirmed through those minutes that Mass DOT does as well.

However, in light of the following:

1. The day-to-day threats we face to the viability of our business including those with regard to our property rights
2. The significant capital improvement projects we have planned at the airport
3. The nearly \$2 million we've already paid in land leases and taxes on the airport over the past 6 years for those property rights
4. The fact that the very insurance the NAC requires us to carry according to our leases would be unobtainable were our property rights allowed to be violated (e.g. should another business be allowed to provide competing services on our leaseholds).
5. The fact that our Title Insurance Policy would kick in if our property rights were somehow taken away

FlightLevel respectfully requests that the NAC simply states its position on this subject.

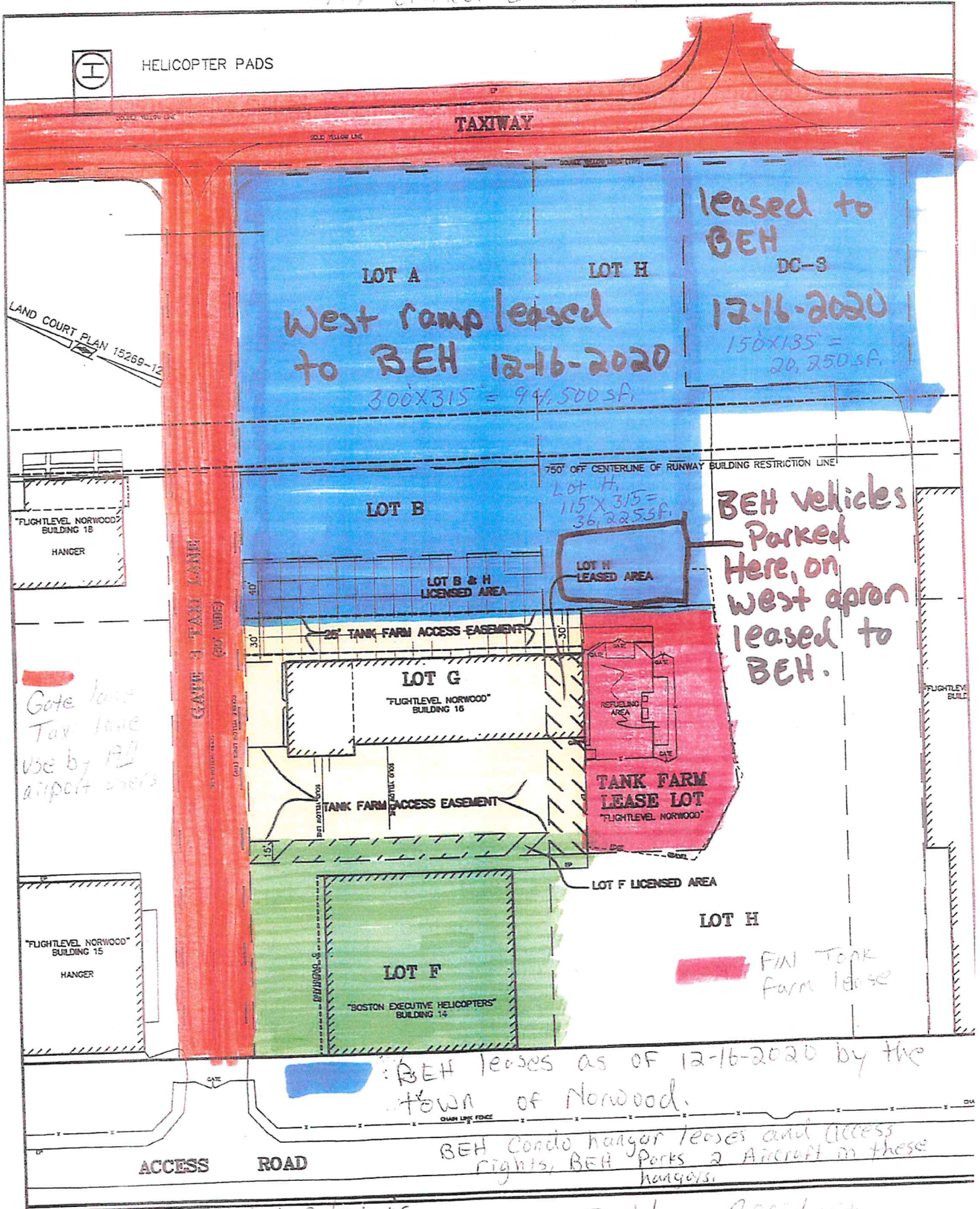


Thank you for your time and I look forward to your response.

Sincerely and Respectfully,

Peter Eichleay
FlightLevel Aviation - President
125 Access Road
Norwood, MA 02062
W: 781.769.8680 ext. 128
E: peter@flightlevelaviation.com
F: 781.769.7180

EXHIBIT C



Gate lane
Taxi lane
use by ALL
airport users

BEH vehicles
Parked
Here, on
west apron
leased to
BEH.

FIN Tank
farm lease

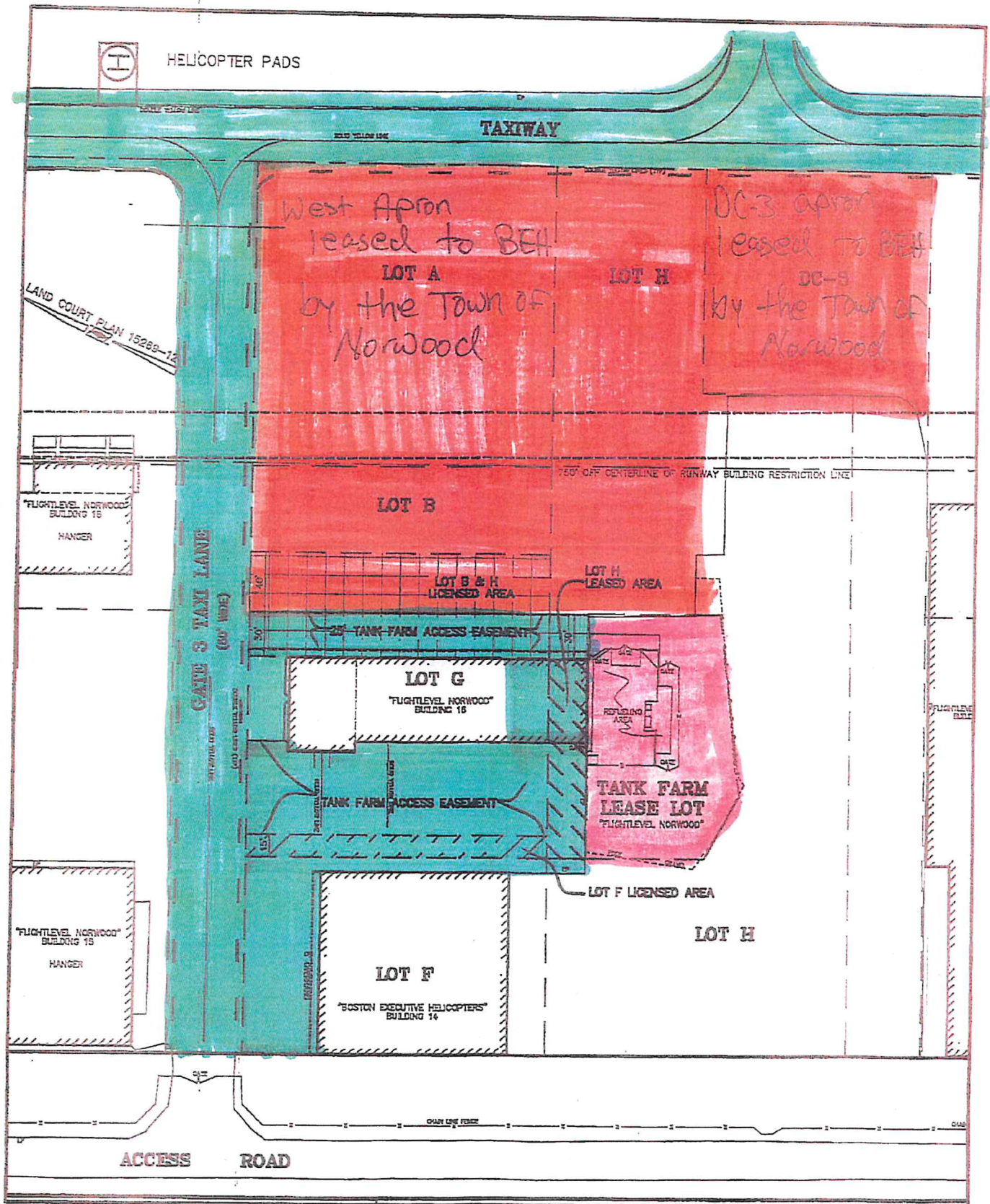
BEH leases as of 12-16-2020 by the
town of Norwood.

BEH Condo hangar leases and access
rights, BEH Parks 2 Aircraft in these
hangars.

BEH lot F hangar

Eichleay Affidavit

Exhibit 1 From 2-26-2021 order by Judge Kirpalani



BEH has rights under existing leases - sub leases, to access these areas, conduct aviation operations, park aircraft and vehicles

West Apron leased to
BEH by the town of
Norwood

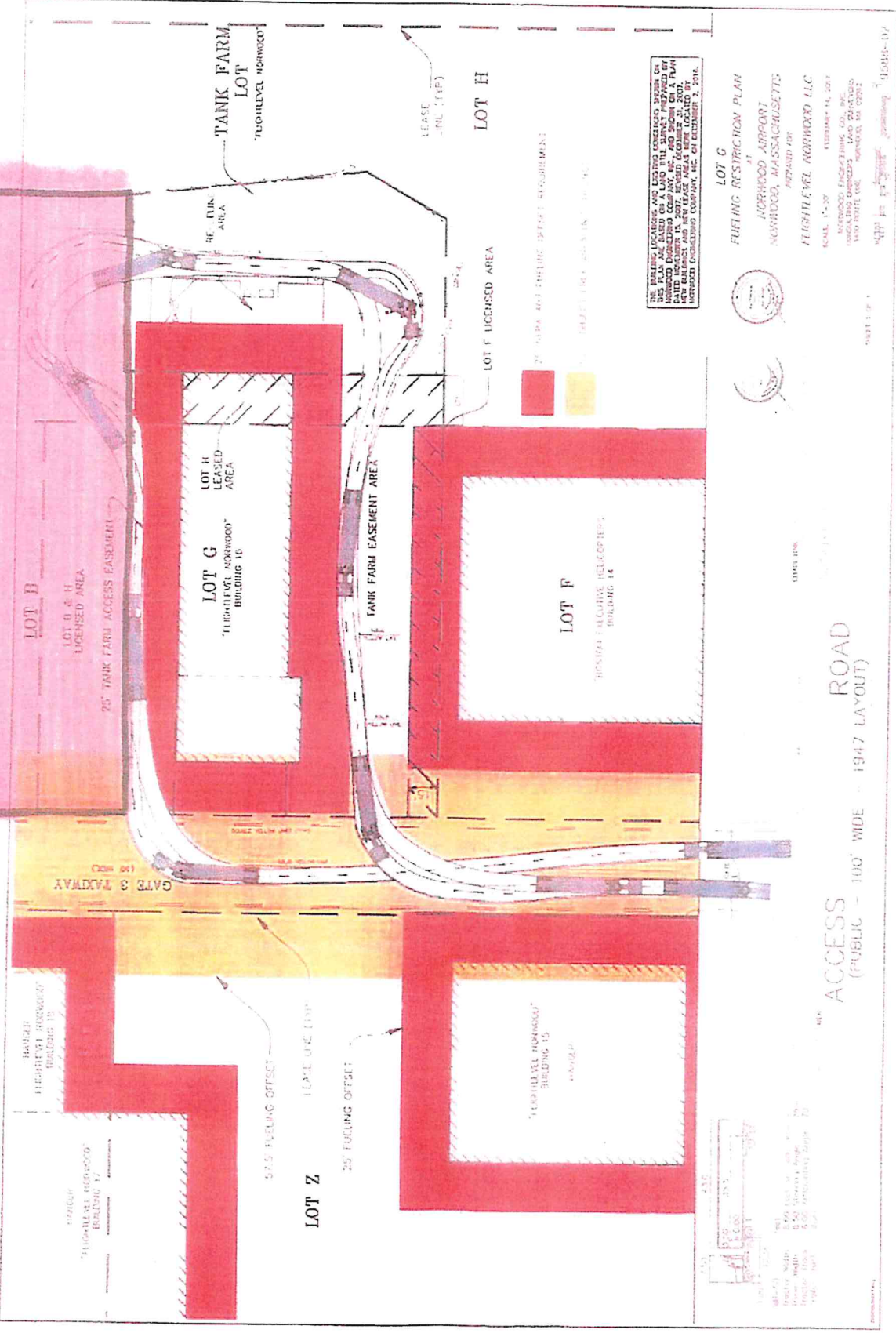


EXHIBIT D

LICENSE AGREEMENT

THIS AGREEMENT dated this 24th day of January, 1996, is between **EASTERN AIR CENTER, INC.**, a Massachusetts corporation with its principal office at Norwood Airport, Norwood, Massachusetts and formerly known as Eastern Air Charter, Inc. (the "Licensee"), **THE TOWN OF NORWOOD, BY THE NORWOOD AIRPORT COMMISSION** (the "Licensor"), and **BOSTON METROPOLITAN AIRPORT, INC.**, a Massachusetts corporation with its principal office at Norwood Airport, Norwood, Massachusetts (the "Licensor's Agent").

1. The Licensor is the owner of that certain property designated as Existing Lease Lot B on the plan attached hereto as Exhibit A, entitled "Plan of Land of Municipal Airport in Norwood, Mass., dated June 27, 1989, prepared by Norwood Engineering Co., Inc. (the "Plan")." The Licensor (as to Existing Lease Lot B) and Licensor and Licensor's Agent (as to Existing Lease Lot H) hereby grant a non-exclusive license to use for access to and egress from the Subleased Premises (as defined herein), that certain strip of land seventy (70) feet wide on Existing Lease Lot B, and thirty (30) feet wide on Existing Lease Lot H (including therein the strip of land 25 feet wide on Existing Lease Lot B and Existing Lease Lot H designated as "Proposed 25' wide tank farm access easement"), (said area collectively referred to herein and designated on the Plan as the "Lot B&H Licensed Area"), subject to the following terms and conditions:

1.1. The License shall be for the benefit of Licensee on its own behalf and as trustee or partner of any entity which accepts an assignment of the Sublease, and occupants, invitees, and guests of the Hangar located on Lot G and a portion of Lot H (as shown on the Plan) under that certain sublease dated November 9, 1977, as amended by Amendments to Lease dated May, 1981 and January 1, 1987 (as so amended, the "Sublease"), which Sublease is evidenced by a Notice of Sublease filed with the Land Registration Office, Norfolk District, as Document No. 378799 on March 27, 1978, on Certificate of Title No. 83911, of certain land located at Norwood Memorial Airport, Norwood, Massachusetts (the "Subleased Premises").

1.2. The License shall remain in effect for the duration of the Sublease, unless sooner terminated in accordance with Section 1.5 of this License Agreement, and shall not be transferable. The License as to Lot H shall also be for the benefit of Licensee, invitees, and guests in connection with the use of the Tank Farm Lease Lot as shown on the Plan, and shall remain in effect for so long as Licensee's sublease of the Tank Farm Lease Lot remains in effect (See Notice of said sublease at Document No. 572412 on Certificate of Title No. 83911).

1.3. Licensee agrees to maintain (and repave if necessary) the asphalt on the Lot B Licensed Area during the term of the Sublease, including snow removal.

1.4. The License shall be valid only for passing and repassing of aircraft and other vehicles in common with others; parking of aircraft and other vehicles on any part of the Licensed Area is prohibited.

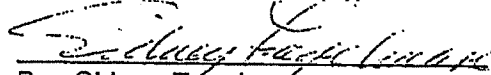
1.5. The License may be terminated for cause, in the event that Licensee fails to correct any condition or duly remedy any default in its obligations hereunder, after reasonable notice.

1.6. The License is granted without monetary consideration; the sole consideration being the agreements set forth herein.

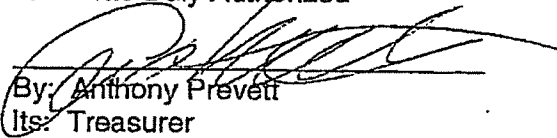
See Certificate of Title 27608, filed with the Land Registration Office, Norfolk District, for Licensor's title to Lot B. See Certificate of Title No. 83911, filed with the Land Registration Office, Norfolk District, for Licensor's Agent's title to Lot H.

WITNESS the execution hereof under seal as of the date above written.

EASTERN AIR CENTER, INC.

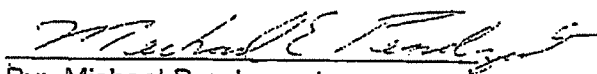


By: Sidney Fagelman
Its: President
Hereunto Duly Authorized



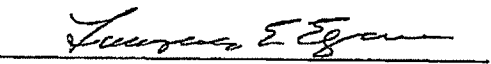
By: Anthony Prevett
Its: Treasurer
Hereunto Duly Authorized

**BOSTON METROPOLITAN
AIRPORT, INC.**

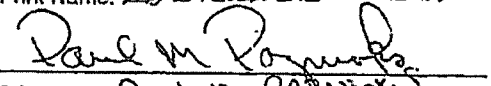


By: Michael Pendergast
Its: President and Treasurer
Hereunto Duly Authorized

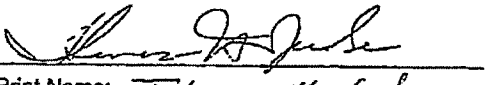
NORWOOD AIRPORT COMMISSION:




Print Name: LAWRENCE E. EGAN



Print Name: PAUL M. PARNICOLA



Print Name: Thomas H. Judge


Print Name: Edward A. Luce

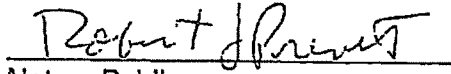
Print Name: _____

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss

January 23, 1996

Then personally appeared the above-named Sidney Fagelman, to me personally known, and acknowledged the foregoing instrument to be his free act and deed as President of **EASTERN AIR CENTER, INC.**

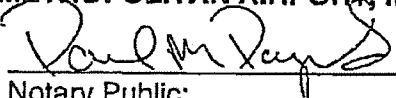

Notary Public: **ROBERT J. PREVETT**
My Commission expires: Notary Public
My Commission Expires Oct. 4, 2002

COMMONWEALTH OF MASSACHUSETTS

Norfolk
January, ss

January 24, 1996

Then personally appeared the above-named Michael Pendergast, to me personally known, and acknowledged the foregoing instrument to be his free act and deed as President and Treasurer of **BOSTON METROPOLITAN AIRPORT, INC.**


Notary Public:
My Commission expires: 7-27-01

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss

January 24, 1996

Then personally appeared the above-named Louise E. Egan, Commissioner of the Norwood Airport Commission, to me personally known, and acknowledged the foregoing instrument to be the free act and deed of the **NORWOOD AIRPORT COMMISSION.**


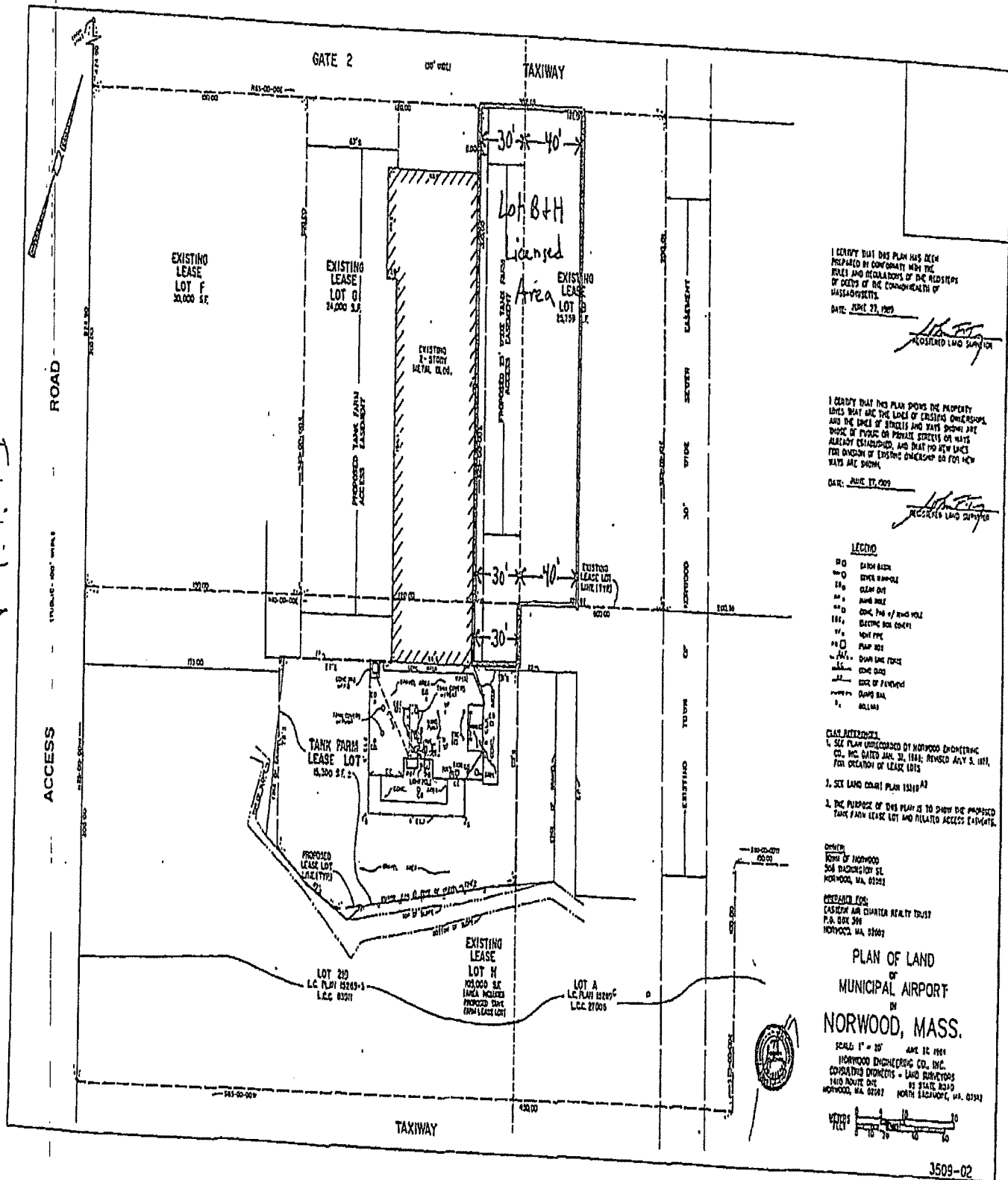

Notary Public:
My Commission expires: 7-27-01

Exhibit A



I CERTIFY THAT THIS PLAN HAS BEEN PREPARED IN CONFORMITY WITH THE RULES AND REGULATIONS OF THE REGISTER OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS.
DATE: JUNE 27, 1964

[Signature]
REGISTERED LAND SURVEYOR

I CERTIFY THAT THIS PLAN SHOWS THE PROPERTY LINES THAT ARE THE BASIS OF EXISTING DIMENSIONS AND THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF RECORD OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED, AND THAT THE NEW LINES FOR DIVISION OF EXISTING DIMENSIONS SO FOR NEW WAYS ARE SHOWN.

DATE: JUNE 17, 1964

[Signature]
REGISTERED LAND SURVEYOR

LEGEND

- 6" DIM. SIGN
- 12" DIM. SIGN
- 18" DIM. SIGN
- 24" DIM. SIGN
- 30" DIM. SIGN
- 36" DIM. SIGN
- 42" DIM. SIGN
- 48" DIM. SIGN
- 54" DIM. SIGN
- 60" DIM. SIGN
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- 72" DIM. SIGN
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- 90" DIM. SIGN
- 96" DIM. SIGN
- 102" DIM. SIGN
- 108" DIM. SIGN
- 114" DIM. SIGN
- 120" DIM. SIGN

CLASSIFICATIONS

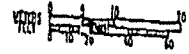
1. SEE PLAN DESCRIBED BY NORWOOD ENGINEERING CO., INC. DATED JAN. 31, 1962; REVISED MAY 3, 1964, FOR OPERATION OF LEASE LOTS.
2. SEE LAND DEED PLAN 15218-12
3. THE PURPOSE OF THIS PLAN IS TO SHOW THE PROPOSED TANK FARM LEASE LOT AND RELATED ACCESS EASEMENT.

DRAWN BY:
JOHN W. NORWOOD
306 BRACKENRIDGE ST.
NORWOOD, MASS. 02062

PREPARED FOR:
CASHIER AIR CHARTER REALTY TRUST
P.O. BOX 394
NORWOOD, MASS. 02062

PLAN OF LAND
OF
MUNICIPAL AIRPORT
IN
NORWOOD, MASS.

SCALE: 1" = 20'
JUNE 18, 1964
NORWOOD ENGINEERING CO., INC.
CONSULTING ENGINEERS - LAND SURVEYORS
1470 ROUTE ONE
NORWOOD, MASS. 02062 NORTH BRANFORD, MASS. 03054



3509-02

EXHIBIT E

AGREEMENT

THIS AGREEMENT dated ^{Assign} this 17th day of DECEMBER, 1988, is between **EASTERN AIR CHARTER, INC.**, a Massachusetts corporation with its principal office at Norwood Airport, Norwood, Massachusetts (the "Assignee"), **DONALD J. MOORE, JR.** and **JAMES M. FITZGIBBONS**, both of Brookline, Massachusetts, Trustees of **HANGAR NOMINEE TRUST**, under Declaration of Trust dated October 27, 1977 (the "Trustees") and **BOSTON METROPOLITAN AIRPORT, INC.**, a Massachusetts corporation with its principal office at Norwood Airport, Norwood, Massachusetts (the "Sublessor").

*recorded
herein*

WITNESSETH:

WHEREAS, the Sublessor is the sublessor, and the Trustees are the sublessee, under that certain sublease dated July 17, 1987 (the "Sublease"), of certain land (the "Subleased Premises") located at Norwood Memorial Airport, Norwood, Massachusetts (the "Subleased Premises"), a true and correct copy of which is attached hereto and made a part hereof as Exhibit A; ~~and a notice of which is recorded hereinto;~~ *and*

WHEREAS, the Trustees desire to assign all of their right, title and interest as sublessee under the Sublease to the Assignee; the Assignee desires to accept such assignment; and the Sublessor desires to consent to such assignment, all pursuant to a certain Assignment of Sublease; a true and correct copy of which is attached hereto and made a part hereof as Exhibit B (the "Assignment"); and *recorded hereinto*

WHEREAS, the Trustees, the Assignee and the Sublessor desire to make certain corrections to the Sublease and to implement the intention of the parties hereto with respect to the Sublease; and

WHEREAS, in connection with the Assignment, the Assignee has requested that the Sublessor certify as to the accuracy of certain facts relative to the Sublease; and

WHEREAS, in connection with the Assignment, the Assignee has requested that the Sublessor clarify and amend certain of the terms of the Sublease.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The Sublease is hereby amended by replacing the plan attached thereto with the plan attached hereto as Exhibit C (the "Plan"). The Subleased Premises are referenced thereon as the "Tank Farm Lease Lot," and are located within Lease Lot H as shown on a Subdivision Plan of Land in Norwood, Mass. dated January 31, 1969, 1" = 100' (for leasing purposes only), a copy of a portion of which is attached hereto as Ex-

hibit D (the "Leasing Plan").

2. The Trustees, sublessees under a sublease dated November 9, 1977, to which Sublessor is the sublessor (the "Hangar Lease"), and Sublessor (to the extent Trustees' rights may be terminated or to the extent Sublessor's grant or approval is otherwise required), jointly and severally, grant to Assignee the non-exclusive right to use for access to and egress from the Subleased Premises, a strip of land 25 feet wide on Lease Lot B, 5 feet removed from the westerly boundary of Lease Lot B (as shown on the Plan), and a strip of land approximately 63 feet wide on Lease Lot G, from the westerly side of the hangar located on Lease Lot G to the westerly boundary of Lease Lot G (as shown on the Plan), all of which rights shall be in effect for so long as the Sublease remains in effect; provided that as to the latter easement, said easement shall be reduced as to any widening of the hangar on lot G provided any such widening shall not exceed nine feet. See, Document No. 378799 on Certificate of Title 83911 for Trustees' leasehold title. Further, in the event of the termination of the Hangar Lease, the Sublessor agrees to recognize the Assignee's rights under a certain sublease granted in connection with the operation of the fuel farm, of a small room at the southwest end of the hangar located on Lot G; provided the Assignee is not then in default thereunder and agrees to attorn to the Sublessor.

3. The Sublessor represents and warrants to the Assignee that all of the following statements are accurate and complete as of the date of this Agreement:

(a) The Sublessor has been duly organized, is legally existing, is in good standing under the laws of the Commonwealth of Massachusetts, and has the capacity and authority to enter into this Agreement.

(b) The Sublessor is the lessee under that certain lease of the Subleased Premises (and other lands), in which The Town of Norwood is the lessor, dated December 13, 1967, and filed with the Land Registration Office, Norfolk District, as Document No. 288221 on December 28, 1967, on Certificate of Title No. 83911 (the "Prime Lease"). The Sublessor's rights as lessee under the Prime Lease are free and clear of all mortgages, security interests, liens, encumbrances, restrictions, conditions, encroachments, and other defects or claims.

(c) The Prime Lease is in full force and effect; and there exists no default, or state of facts which with notice, the passage of time, or both, could ripen into a default, on the part of either the Town of Norwood or the Sublessor. No disputes exist between the Sublessor and the Town of Norwood relative to the Prime Lease or the Subleased Premises.

(d) The copy of the Prime Lease attached hereto as Exhibit E is a true and complete copy thereof and the Prime Lease has not otherwise been amended.

There are no other agreements relative to the Prime Lease or the Subleased Premises between the Sublessor and the Town of Norwood.

(e) To the best of the Sublessor's knowledge, there is no pending or threatened litigation, administrative or executive proceedings, investigations, or claims against the Sublessor in connection with the Sublease, or the Sublessor's interest in the Subleased Premises.

(f) The Sublease is in full force and effect and is binding upon the Sublessor and the Trustees; and there exists no default, or state of facts which with notice, the passage of time, or both, could ripen into a default, on the part of either the Trustees or the Sublessor. No disputes exist between the Trustees and the Sublessor relative to the Sublease or the Subleased Premises.

(g) The copy of the Sublease attached hereto as Exhibit A is a true and complete copy thereof and the Sublease has not otherwise been amended. There are no other agreements relative to the Sublease or the Subleased Premises between the Sublessor and the Trustees.

(h) The original term of the Sublease commenced on July 17, 1987, and terminates on April 30, 1993, subject to the rights of the lessee thereunder to extend the original term for three (3) successive periods of fifteen (15) years, as set forth in paragraph 11 of the Sublease.

(i) Rent, fuel charges and all other charges due under the Sublease have been paid through and including July 31, 1989, except for real estate taxes for the first half of fiscal year 1990, which are not yet due and payable.

(j) All of the structures and improvements (except the tanks) located at the Subleased Premises are the property of the Trustees, and may be sold to the Assignee, without claim therefore by the Sublessor.

(k) The Sublessor has not heretofore assigned, mortgaged, pledged or hypothecated its interest under the Prime Lease, or the Sublease, or the rents payable thereunder, to any party.

4. The Sublessor acknowledges that the Assignee is the "second full service fixed base operator" referenced in paragraph 8 of the Sublease, and that the Assignment is being delivered to the Assignee in satisfaction of the obligations in the third and fourth sentences of said paragraph.

5. Notwithstanding anything to the contrary in the Sublease, and subject to the terms of the Prime Lease, the Sublessor agrees that the options to extend referenced in paragraph 11 of the Sublease shall be self-exercising, unless the Assignee gives the Sublessor written notice of the election not to extend, at least six (6) months prior to the date the Sublease would expire but for the exercise of such option. The Sublessor rep-

resents that it has exercised the first option to renew the Prime Lease (expiring December 12, 2007), and that so long as the Sublease is in effect, the Sublessor agrees that it shall exercise all additional options to renew the Prime Lease.

6. The following language shall be added to the end of paragraph 14 of the Sublease:

"Notwithstanding anything to the contrary above, any holder of a leasehold mortgage upon the Lessee's interest hereunder (of which the Lessor is notified of in writing) shall be entitled to reasonable notice and the opportunity to cure any such default, and to thereafter be acknowledged as Lessee's successor-in-interest hereunder, subject to the provisions hereof."


7. The Trustees and the Sublessor agree to execute any additional documents and to take any actions as may be reasonably necessary or desirable to carry out the intent and to fulfill the provisions of this Agreement and the sale of assets by the Trustees to the Assignee in connection herewith.

8. Except as specifically modified hereby, all of the terms and conditions of the Sublease are hereby ratified and shall remain in full force and effect.

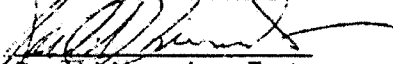
9. By assenting to this Agreement, the the Town of Norwood Airport Commission (the "NAC"), agrees that in the event of any default by the Sublessor hereunder, under the Prime Lease, or in the event of the termination of the Prime Leases, the Assignee's possession of the Subleased Premises under the Sublease and hereunder shall not be disturbed or impaired by the NAC or any party claiming by, under or through it, so long as the Assignee continues to observe and perform all of its obligations thereunder.

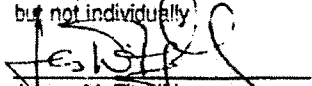
WITNESS the execution hereof under seal by the parties hereto on the date first above written.

EASTERN AIR CHARTER, INC.

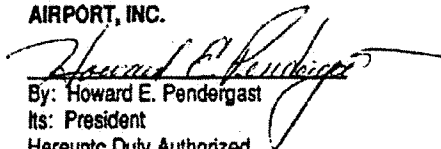

By: Sidney Fageiman
Its: President
Hereunto Duly Authorized

HANGAR NOTINBE TRUST

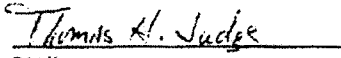

Donald J. Moore, Jr., as Trustee,
but not individually


James M. Fitzgibbons, as
Trustee, but not individually

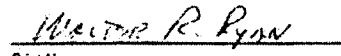
**BOSTON METROPOLITAN
AIRPORT, INC.**

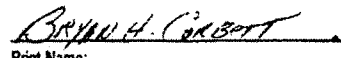

By: Howard E. Pendergast
Its: President
Hereunto Duly Authorized

The foregoing Agreement is hereby assented to by the Norwood Airport
Commission:


Print Name:


Print Name:


Print Name:


Print Name:



Print Name:

EXHIBIT 6

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT

_____)	
BOSTON EXECUTIVE HELICOPTERS LLC,)	
ET AL.,)	
)	
Plaintiffs/Defendants-in-Counterclaim,)	
)	CIVIL ACTION NO. 1582CV00213
v.)	
)	
FLIGHTLEVEL NORWOOD, LLC, ET AL.,)	
)	
Defendants/Plaintiffs-in-Counterclaim.)	
_____)	
)	CONSOLIDATED WITH
)	
FLIGHTLEVEL NORWOOD, LLC, ET AL.,)	
)	
Plaintiffs,)	
)	
BOSTON EXECUTIVE HELICOPTERS LLC,)	CIVIL ACTION NO. 1582CV01637
ET AL.,)	
)	
Defendants.)	
_____)	

FLIGHTLEVEL’S OPPOSITION TO BEH MOTION TO VACATE INJUNCTION

Plaintiffs (collectively, “FlightLevel”) submit this Opposition to the Motion of Boston Executive Helicopters LLC (“BEH”) to vacate the injunction entered by this Court dated February 26, 2021 (the “Injunction Order”). The BEH Motion not only seeks to relitigate the Injunction Order, without any legitimate factual or legal basis to do so, it is also a brazen attempt to dramatically expand BEH’s purported property rights at the Norwood Municipal Airport (the “Airport”) and a ploy to revive claims and issues conclusively and properly rejected by this Court in its October 22, 2019 Order.

As set forth below, the Injunction Order is not overly broad, and it does not infringe on any legitimate BEH operations at the Airport. The extensive rights BEH claims to operate unconstrained at the Airport do not exist. They are not found in the non-exclusive December 2020 West Apron Lease BEH executed with the Norwood Airport Commission (“NAC”), which expressly prohibits interference with other Airport users and Fixed Base Operator (“FBO”) operations. The Court’s Preliminary Injunction Order merely enjoins BEH from *interfering with* “access to FlightLevel Norwood, LLC (“FlightLevel”)’s fuel farm” and “FlightLevel’s rights under its Tank farm Sublease.” It then addresses the typical means by which BEH has historically sought to interfere with FlightLevel’s access, specifically: the parking of vehicles or aircraft or the placement of obstructions in:

1. the Gate 3 Taxilane Object Free Area”;
2. on FlightLevel’s Lot G Sublease premises;
3. on FlightLevel’s “25’ Tank Farm Access Easement area;
4. on the Lot B&H Licensed Area; and,
5. in the “wide turn area” so called on Lot H depicted at Exhibit 2 to the Preliminary

Injunction Order.

There is nothing obstructionist or overly broad in scope about how the Court’s Preliminary Injunction Order bears on BEH. Every other Airport entity, acting in good faith, wouldn’t have to be restrained to comply with these simple and appropriate measures. *See* Second Affidavit of Peter Eichleay, ¶¶ 67, 68 (“Second Eichleay Aff.”). The Injunction Order has no effect whatsoever on rights that BEH does not have in the first place, such as a supposed right to use Lot G, which this Court rejected in its October 22, 2019 Order.

Further, as to the supposed existence of an “alternative” route for FlightLevel’s fuel deliveries, the theories proffered in the Affidavit of Halim Choubah, submitted with the Motion, are contradicted by the facts, common sense, and the considerable experience and expertise of FlightLevel’s President Peter Eichleay and its Director of Fuel Operations Kevin Putnam, and they do not warrant lifting or modifying the Injunction Order.

The Motion should be denied, and the Injunction Order should remain in place.

I. The Court Should Reject BEH’s Attempt to Use Its Motion to Expand Its Property Rights at the Airport

The extensive rights BEH claims to operate unconstrained at the Airport are not found in the non-exclusive December 2020 West Apron Lease BEH executed with the NAC, which permits BEH’s use of the West Apron “so long as doing so does not interfere with [...] any other Airport user’s lawful activities at the Airport” or “Third party commercial activity customarily associated with FBO operations shall be authorized and permitted.” *See* West Apron Lease, Section IV, attached as Exhibit A to the February 26, 2021 Affidavit of Christopher Donovan (“February 26 Donovan Aff.”) and Exhibit 4 to the Affidavit of Peter Eichleay dated February 23, 2021 (“Eichleay Aff.”). The NAC recently notified BEH that its parking of vehicles to block FlightLevel’s fuel deliveries places it in default of the West Apron Lease. *See* March 18, 2021 Default Notice to BEH (“Default Notice”). The Default Notice states, in pertinent part:

In addition, the NAC has been made aware that BEH vehicles have been parked in a manner on the West Apron that prevents others’ use of the airport, and that a preliminary injunction has been entered by the Norfolk Superior Court enjoining BEH such parking. Please be advised that parking vehicles in a manner that prevents access across the West Apron by others lawfully permitted to use the airport is explicitly prohibited pursuant to Section IV of the West Apron Lease. Failure to comply with this provision of the Leases will also place BEH in default thereunder.

See Second Eichleay Aff., ¶ 9, Default Notice, at 2, Exhibit 3 (emphasis added).

BEH seeks to acquire through the filing of its Motion rights that it never had, and that it did not obtain in the West Apron Lease. For example, BEH President Christopher Donovan complains in his Affidavit of March 16, 2021 (“Donovan Aff.”) that the Injunction Order “prohibits BEH from parking of vehicles or aircraft on FlightLevel’s Lot G Sublease premises,” Donovan Aff., ¶ 11, implying that BEH has a right to park vehicles or aircraft on Lot G. That contention is false. BEH does not have any rights to Lot G. This Court in its October 22, 2019 Order conclusively found that BEH has no right to use the taxiway on Lot G. There, the Court states, in pertinent part:

The undisputed evidence in the record demonstrates that BEH, as the sublessor of Lot F, has no right to use the taxiway on Lot G.

See October 22, 2019 Order, at 17.

Mr. Donovan also complains that the Injunction Order prohibits BEH from parking in the Gate 3 Taxilane Object Free Area (“TOFA”), Donovan Aff., ¶ 15, implying that BEH has a right to park in the Gate 3 TOFA. This contention is also false. No one, including FlightLevel, has any right to park vehicles or aircraft in the Gate 3 TOFA. *See* Second Eichleay Aff., ¶ 88. Parking in the TOFA is prohibited because the taxilane is required to be free of objects. *Id.* at ¶ 41 and fn. 1.

Moreover, the Injunction Order is narrowly aimed at prohibiting BEH’s interference with FlightLevel’s fuel deliveries. Even if BEH had the expansive rights on Lot G, Lot H, and the Gate 3 TOFA as it claims, which is denied, those rights would not be infringed upon in any way by the Injunction Order. The Injunction Order prohibits “parking of vehicles or aircraft” and “placement of obstructions” on the areas of Lot G, Lot H, and the Gate 3 TOFA; it does not prohibit all use of those areas by BEH. *See* Injunction Order at 2. The Injunction Order does not “deprive BEH ... the use of its leased hangars and property,” Donovan Aff. ¶ 11; nor does it

“deprive BEH of the use of its ramp space on Lot F, for aircraft and vehicles.” Donovan Aff. ¶ 15. Further, the Injunction Order does not “affect BEH’s property rights outside of the area complained of by FlightLevel in order to allegedly access its fuel farm.” Donovan Aff., ¶ 15. Nothing in the Injunction Order remotely supports the contention that it “essentially put[s] BEH out of business.” Donovan Aff., ¶ 11.

II. The Court Should Reject BEH’s Attempt to Relitigate Issues Disposed of by this Court’s October 22, 2019 Order

Seeking to divert attention from its own unlawful conduct and interference with FlightLevel’s ongoing rights to supply its fueling operations, BEH attempts to resurrect its “competition”-related claims that were conclusively disposed of in this Court’s October 22, 2019 Order. BEH wrongly asserts FlightLevel is making “baseless claims of obstruction and interference by BEH in order to prevent competition at the Airport.” Mot. at 11. The Donovan Affidavit claims FlightLevel “has done everything it can to prevent BEH from becoming an FBO at the Airport” and dredges up FlightLevel correspondence from 2013 – six years before these issues were addressed and resolved by this Court. Donovan Aff., ¶ 4, 5, 6. All of the claims raised by BEH concerning “competition” and “monopoly” were dismissed from this Case at the summary judgment stage in the October 2019 Order. The Court dismissed BEH Counts III and IV (alleging violations of Ch. 93, § 4, 5); Counts V (interference with contractual relations) and VI (intentional interference with advantageous business relations; and Count VII (Ch. 93A). *See* October 22, 2019 Order, at 23-24. These discredited “competition”-related claims provide no support for the relief sought by BEH in its Motion, and they should be rejected in their entirety.

III. The Court Should Reject BEH’s Theory that an “Alternative” Fuel Delivery Route Is Available

The main thrust of the Motion is BEH’s theory that no injunctive relief is needed because FlightLevel’s supply trucks can access the fuel farm even if BEH blocks FlightLevel’s approved

fueling route. Mot., 3-10. Although styled as an attack on the “irreparable harm” element of the standard for injunctive relief, BEH’s argument boils down to the contention that BEH’s interference, in violation of the October 22, 2019 Order, is permissible so long as some other fuel delivery route is theoretically possible. That contention is unsupported by facts or law.

FlightLevel knows better than BEH how to provision FlightLevel’s own fuel farm. The route used by FlightLevel was approved by the Norwood Airport Commission (“NAC”) on February 15, 2017 *See* Eichleay Aff., ¶ 9, Exhibit 3. FlightLevel has been selling fuel at the Airport since 2008. Eichleay Aff., ¶ 6. BEH has never sold fuel at the Airport. *Id.* Accordingly, BEH is not in a position to dictate to FlightLevel or the NAC how jet fuel may be safely delivered to FlightLevel’s fuel farm using the route approved by the NAC.

Further, BEH is simply incorrect when it claims there is another viable, safe route for delivery of jet fuel to FlightLevel’s fuel farm. As shown in the accompanying Affidavit of Kevin Putnam, no such “alternative route” exists. *See* Putnam Aff., ¶¶ 93-115.

Mr. Putnam is Director of Fuel Operations for FlightLevel Norwood, LLC at the Airport. Putnam Aff., ¶ 1. He has been with the company since 2008, overseeing fueling operations since 2010. Putnam Aff., ¶ 2. As Director of Fuel Operations, Mr. Putnam is responsible for FlightLevel’s fuel farm on Lot H, FlightLevel’s fuel servicing ground support equipment, FlightLevel’s Aircraft fueling operations, and the safe handling of hundreds of thousands of gallons of combustible aviation fuels on an annual basis. Putnam Aff., ¶ 3. Mr. Putnam is the certificated Class A/B Operator designated as the operator of FlightLevel’s UST Fuel Farm on Lot H at the Airport. Putnam Aff., ¶ 9. Unlike BEH’s hired so-called expert Mr. Choubah¹, Mr. Putnam knows aircraft fueling, and he knows airport operations. Putnam Aff., ¶¶ 12-13.

¹ Mr. Choubah’s affidavit does not set forth any information on Mr. Choubah’s qualifications for opining on safe fuel farm provisioning practices at the Norwood Memorial Airport or any other airport.

Mr. Putnam has reviewed the March 12, 2021 Choubah Affidavit and the engineering drawings as Exhibits A through D to that Affidavit. Putnam Aff., ¶ 93. As explained below and in Mr. Putnam's Affidavit, the theories advanced by Mr. Choubah are contradicted by the facts concerning the actual requirements for safe fueling operations on Lot H and undermined by Mr. Choubah's apparent unfamiliarity with FlightLevel's fueling and delivery operations at the Airport.

Mr. Choubah contends that FlightLevel can provision the Jet A side of its Fuel Farm without going on BEH's non-exclusive leasehold, but nowhere in his Affidavit does he say that the methods he offers are wise, safe, consistent with the permitted design of the fuel farm, compliant with an approved Spill Prevention Control and Countermeasure ("SPCC") Plan, the Airports Storm Water Pollution Prevention Plan ("SWPPP"), authorized by the airport authority, or even recommended. Putnam Aff., ¶ 94.

Paragraph 15 and Exhibit A of the Choubah Aff. significantly overstate the size of the area on Lot H where FlightLevel's Jet A delivery transports need to execute their wide turn, claiming FlightLevel is "preventing" BEH the use of 8,000 square feet of ramp indicated with the red outline shown in Exhibit A. Mr. Choubah's line extends east about 30' past the light pole (which itself is east of the wide turn area) and south about 25' past the fuel farm itself. His erroneous calculations make the 2 tie downs closest to the fuel farm unusable, notwithstanding the fact that FlightLevel's Jet A transports have always been able to make the wide turn with aircraft on both tie downs. Putnam Aff., ¶ 96.

Exhibit B to the Choubah Aff. shows a Jet A transport executing a counter clockwise approach to and departure from FlightLevel's fuel farm. There are several reasons why this will not work. Putnam Aff., ¶ 97. First, in 2014, BEH ripped up and repaved approximately 5,000

square feet of serviceable asphalt on FlightLevel's Lot G in the exit path of FlightLevel's delivery transports. When asked to provide a description of the materials removed from Lot G, how the site was prepared for asphalt, the kind quantity and volume of materials including asphalt applied, BEH refused to respond. Putnam Aff., ¶ 98.

While it is clear that the replacement asphalt can support the empty weight of a Jet A transport, it would be both unwise, and unsafe to assume, without the benefit of a forensic structural analysis, that the replacement asphalt can support the weight of a fully loaded Jet A transport. Putnam Aff., ¶ 99.

Assuming the fully loaded Jet A transport will not sink into the Lot G ramp, Mr. Choubah next shows it driving off the paved portion of the Tank Farm Lease Lot, and onto the unpaved area south of the fuel farm to a point within feet or even inches of the wetland. Putnam Aff., ¶ 100. The ground in that location is porous. It gets soft when it rains, and when the groundwater table is high. Mr. Choubah's site plan actually identifies it as "FLOOD ZONE B." Moreover, the gravel area stops abruptly at that location, dropping sharply several feet to the wetland with little or no shoring. It would be exceedingly dangerous to place an 18 to 22 wheel transport loaded with 34.4 tons (68,400 lbs.) of jet fuel in that location without extensive site work to ensure it could accept the weight. Failure to do so could result in the transport getting stuck, or actually rolling over into the wetland. Putnam Aff., ¶ 101.

In addition, Mr. Choubah's theory ignores the cost of the project, and layers of regulatory hurdles, including compliance with the Airport's Spill Prevention Control and Countermeasure Plan (SPCC) and Storm Water Pollution Prevention Plan (SWPPP), the jurisdiction of the Conservation Commission over the wetland, and the possibility that a permit for the project may never issue. Putnam Aff., ¶ 102.

Mr. Choubah's theory further ignores the consents that would be required from Boston Metropolitan Airport ("BMA") who leases the land from the Town of Norwood, and the NAC that oversees the Airport and requires that FBO fueling plans be presented and approved. Putnam Aff., ¶ 103.

The fully loaded Jet A transport would next have to reverse, on a curve, along the entire length of the wetland, to a point approximately 30' west of FlightLevel's Tank Farm Lease Lot, surviving similar opportunities for incident, before pulling forward onto the Jet A loading and containment pad. Putnam Aff., ¶ 104.

Once on the Jet A loading pad, the transport's controls and ports would be facing the wrong way (south instead of north), with the transport blocking the operator's line of sight to the fuel farm. The hose coming out of the right side would have to accept a 180 degree bend under the transport in order to connect to the loading ports on the Jet A cabinet. It would also make it impossible to empty the fuel from the hose after the transfer, because the transport's undercarriage would prevent the operator from lifting the hose high enough to evacuate the fuel. Putnam Aff., ¶ 105.

Jet A is mechanically pumped through the filter/separator before being delivered to the storage tank, and the Jet A cabinet's filling port, which is higher than the transport's delivery port, requires the lifting of the hose to evacuate the fuel. This is another reason why transport operators use short 10' to 12' hoses. Putnam Aff., ¶ 106.

Alternatively, greater than 60' of delivery hose would have to be coupled on the ground to circumnavigate the fuel transport, significantly increasing the risk fuel release, fuel contamination, and personal injury. Putnam Aff., ¶ 107.

Mr. Choubah states at Paragraph 20 of his Affidavit that transports “carry hose lengths of approximately 60 feet” and can “unload fuel up to a distance of 60 feet.” From Mr. Putnam’s observations, having overseen more than 600 fuel deliveries, transport operators don’t carry 60’ long hoses (which would exceed the length of the tractor and tank trailer), but rather carry differing lengths of hose. They do this not so they can daisy-chain them together, but so they can select the shortest single length of hose required to complete the connection between the transport and the receiving port, as that is the safest, lightest, most efficient, and most environmentally friendly way to complete the fuel transfer. Putnam Aff., ¶ 108.

Mr. Choubah addresses the fuel farm fence at Paragraph 24 of his Affidavit, concluding that because he cannot find any legal or regulatory provision requiring a fence, FlightLevel should take it down or move it. The primary reasons for enclosing the Jet A loading area, are to prevent fully loaded Jet A transports from straying onto the unpaved area south of the fuel farm, and to guaranty that Jet A transports position over the containment pad prior to transferring fuel - given the close proximity of the wetland. Putnam Aff., ¶ 109.

As to moving the fence closer to the cabinets, that would invite fully loaded transports to stray onto the unpaved area south of the fuel farm. It would also interfere with daily operations by blocking the upload hoses used to refill our refuelers. It would also block access to the fire extinguishers and the emergency shut off switch needed if something were to ever go wrong, and make it very difficult to perform any maintenance on the fuel farm that may be needed due to a mechanical failure or changing the filter elements. Putnam Aff., ¶ 110.

In Paragraph 25, Mr. Choubah states that he is “unaware of any professional standard, or regulatory requirement for FlightLevel’s transports of Avgas or ‘Jet A’ to provision FlightLevel’s tanks from the so-called ‘Jet A containment pad’ on the south side of FlightLevel’s

fuel farm.” He then declares that “FlightLevel’s delivery vehicles do not need to be parked on or near the so-called containment pad to off load fuel of any type,” and repeats the contention that transports should approach from the wrong direction. However, the Airport’s SPCC plan requires that transport tankers be positioned over the containment pads during bulk loading and unloading. Putnam Aff., ¶ 111.

Exhibit B to the Choubah Affidavit shows Jet Fuel hoses connected to an Avgas cabinet, and what appears to be the diesel fuel tank of the Jet A transport connected to the Avgas drop port. This doesn’t make sense, and suggests that Mr. Choubah may not be as familiar with FlightLevel’s fuel farm as he would have the Court believe. Putnam Aff., ¶ 112.

Exhibit C to the Choubah Affidavit shows a transport positioned over the Avgas delivery and containment pad, with Jet A delivery hoses connecting to the north side of the Avgas dispensing cabinet and the Jet A receiving and dispensing cabinet. Connecting multiple daisy-chained hoses together is a disfavored practice for many reasons. Also, the receiving port of the Jet A cabinet faces south, rather than north, likely requiring greater than 60’ of hose to achieve the suggested, but ill advised, delivery method. Putnam Aff., ¶ 113.

Exhibit D to the Choubah Affidavit shows a transport positioned west of the fuel farm where there is no containment pad, having accessed the farm over Lot G, with Jet A and Avgas delivery hoses connecting from the wrong side of the transport, through or over the 6’ chain link fence, to points in the farm as far away as 90’. As discussed above, connecting multiple daisy-chained hoses together is a disfavored practice, as is a counter clockwise approach to a farm designed for clockwise operations. Putnam Aff., ¶ 114.

The FlightLevel fuel farm has been in service for more than thirty years. During its life, it has received an estimated 1700 fuel deliveries, and dispensed an estimated 16,000,000 gallons of

aviation fuel. For all of this time, FlightLevel and its predecessors operated the farm with a perfect safety record. Putnam Aff., ¶ 115. FlightLevel did so by operating it as it was designed to be operated, utilizing a clockwise delivery pattern, a wide turn area, a gate around the Jet A loading pad, and the shortest delivery hoses necessary to achieve safe fuel transfers. *Id.* These procedures ensured the dispatch reliability of the airport, the quality of the fuel, safety of life and limb, and the integrity of the wetland just 30 feet to the south. This time-tested operational model survived three decades without assault, and was only called into question when BEH figured out that it could disrupt FlightLevel's operations by leasing the entire West Apron and the DC-3 Apron from the Town. *Id.*

Finally, the standard invented by BEH is not the applicable legal standard for injunctive relief. FlightLevel is not required to show it cannot under any circumstances access the fuel farm in the absence of the Injunction Order. Rather, the Court must evaluate (1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the moving party's likelihood of success on the merits, the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party in granting the injunction. *Boston Police Patrolmen's Ass'n, Inc. v. Police Dept. of Boston*, 446 Mass. 46, 49 (2006). FlightLevel meets this standard, and the balance of harms clearly favors FlightLevel.

IV. FlightLevel Has Existing Lease and Access Rights Which Permit Its Use and Provisioning of its Fuel Farm on Lot H

BEH contends FlightLevel's request for injunctive relief is based on property rights that do not exist. BEH Mot., 11-14. That contention is plainly wrong, as FlightLevel has existing lease and access rights which permit its use and provisioning of its fuel farm on Lot H at the Airport. The four sources of FlightLevel's right to access its fuel farm by using certain portions of Lot B, Lot H and the DC-3 Apron are described in the Affidavit of Peter Eichleay dated

February 23, 2021 (“Eichleay Aff.”): (1) the Lot G Sublease and its “25’ Tank Farm Access Easement” rights; (2) the Tank Farm Sublease and its “25’ Tank Farm Access Easement” rights - and its rights to Lot H and the DC-3 apron; (3) the License Agreement and its “Lot B&H Licensed Area” rights; and (4) the February 15, 2017 unanimous Norwood Airport Commission (“NAC”) vote and its access right over Lot H. Eichleay Aff., ¶ 4. These are the rights that permit FlightLevel to use the approved fueling route that includes the “wide turn” on Lot H. *See* Eichleay Aff., ¶ 12.

Indeed, this Court ordered BEH to stop interfering with FlightLevel’s rights on Lot H in the October 22, 2019 Order. There, the Court expressly prohibited BEH from “interfering with [FlightLevel’s] rightful use and quiet enjoyment of their leasehold at the Airport including [FlightLevel’s] Lot G and H leaseholds.” October 22, 2019 Order at 25.

V. Continued Injunctive Relief Is Appropriate Because BEH Remains in Contempt

Finally, continued injunctive relief is appropriate for the additional reason that BEH remains in contempt of the October 22, 2019 Order. After the Court’s hearing on February 26, 2021, BEH did move its vehicles that were obstructing the third party fuel transport truck that was attempting to provision FlightLevel’s fuel farm on Lot H at the Airport. *Second Eichleay Aff.*, ¶ 3. But rather than park them elsewhere on its 30,000 sf Lot F, its 73,230 sf West Apron, or its 14,930 sf DC-3 Apron, BEH moved at least one of its vehicles to FlightLevel’s Lot G, which is prohibited by this Court’s October 22, 2019 Order. *Id. See Second Eichleay Aff.*, ¶¶ 3-4, 5-6.

In addition, BEH has notified the NAC that it intends to place large storage containers in the Lot B & H licensed area (where FlightLevel’s fuel transports travel), the wide turn area

where BEH had parked its vehicles that blocked FlightLevel's third party fuel transport, and the area where FlightLevel has proposed installing an aviation fuel cabinet. *See* Second Eichleay Aff., ¶¶ 5-6 and Exhibit 2 (showing the position of proposed storage containers in red highlights). To FlightLevel's knowledge, BEH has not withdrawn these plans despite this Court's February 26, 2021 Injunction Order, and are due to be considered by the NAC at its next public meeting. Second Eichleay Aff. ¶¶ 6-7. These plans evidence further intent of BEH to violate the Court's October 22, 2019 Order, as well as the February 26, 2021 Injunction Order, and breach of BEH's West Apron Lease with the NAC. Thus, BEH has demonstrated through its conduct that continued injunctive relief is necessary and appropriate.

For the foregoing reasons, FlightLevel has satisfied the elements entitling it to the requested injunction, and, accordingly, continued injunctive relief is appropriate.

WHEREFORE, BEH's Motion should be denied, and the Injunction Order should remain in effect.

FLIGHTLEVEL NORWOOD, LLC,
EAC REALTY TRUST II,
EAC REALTY TRUST IV, and
PETER EICHLEAY, in his capacity as Trustee
of EAC Realty Trust II and EAC Realty Trust IV,
By their attorneys,

/s/ A. Neil Hartzell

A. Neil Hartzell, BBO # 544752
Ben N. Dunlap, BBO # 661648
Freeman Mathis & Gary, LLP
60 State Street, 6th Floor
Boston, MA 02109
Phone: 617.963.5975
nhartzell@fmglaw.com
bdunlap@fmglaw.com

Date: March 30, 2021

CERTIFICATE OF SERVICE

I, A. Neil Hartzell, certify that on the 30 of March 2021, I served a copy of the foregoing by email and mail, first-class, postage pre-paid to counsel:

Eric Hans Loeffler, Esq.
Davids & Cohen, P.C.
40 Washington Street, Suite 20
Wellesley, MA 02481

/s/ A. Neil Hartzell

A. Neil Hartzell