

## AIRSTRIP LEASE AND AGREEMENT

This Lease and Agreement is made by and between the **Inhabitants of the Town of Vinalhaven**, a municipality existing under the laws of the State of Maine ("the TOWN") and **Waters Aero-Marine, Inc. d/b/a Penobscot Island Air**, of South Thomaston, ME ("WAM").

### RECITALS

A. The TOWN is the owner of certain real property located on the Island of Vinalhaven, Maine, as described in that Certificate of Municipal Clerk of the Town of Vinalhaven to be recorded at the Knox County Registry of Deeds ("the Property"). The Property includes an airstrip, consisting of 9.2 acres of land and a gravel landing strip located on the southwesterly side of Round the Island Road, as depicted on the sketch of the K. Woodward Air Strip in Vinalhaven, Me by D.C. Webster, Licensed Surveyor (Rev. 27 June 1992) to be recorded at the Knox County Registry of Deeds ("the AIRSTRIP").

B. Kevin Waters is a professional pilot and owner of WAM, a Maine corporation having a principal place of business at South Thompson, Maine. WAM is a single service provider, which owns aircraft and currently holds the contract to carry mail to and from the TOWN.

C. The TOWN acquired the Property in order to provide the residents of the TOWN with a facility for emergency medical evacuations, mail delivery, and public transport on a regular and dependable basis, at fair and reasonable rates.

D. WAM wishes to secure the exclusive right to use the AIRSTRIP for the purpose of landing aircraft and the pickup and discharge of passengers, cargo, and mail.

NOW, THEREFORE, the TOWN hereby leases to WAM the AIRSTRIP on the terms and conditions set forth below:

1. **Term:** The term of the lease shall commence on its date of execution by all parties and continue until December 31, 2019, unless sooner terminated as provided in this Agreement.

2. **Rent:**

(a) As consideration for the use of the Premises, WAM agrees to pay TOWN promptly on the 1st day of each month in advance, a beginning monthly rental, without notice, demand,

deduction or setoff in the amount of One and no/100 Dollars (\$1.00), commencing on January 1, 2018, and on the same day of each succeeding month thereafter through the end of the Lease Term. No security deposit is required of WAM under this Lease.

(b) The time of payment of the rent is of the essence. If any installment is not paid within 5 days of its due date, a late charge equal to 10% of the installment will be immediately due and payable.

3. **Exclusive Use:** Except as otherwise provided herein, WAM shall have the right to the exclusive use and occupancy of the AIRSTRIP during the term of the Lease.

4. **Governmental Use of Premises:** The TOWN'S Selectmen shall have the right to permit State and Federal agencies, and other public and quasi-public entities, to take-off and land from the AIRSTRIP from time to time, in the event of an emergency, and for emergency training and planning, and similar purposes. In the event of such permitted use, WAM shall not be liable to the TOWN, such entities or third parties, in the event of any property damage, personal injury or death, unless caused in whole or in part by the negligence of WAM. WAM shall have no obligation to maintain the AIRSTRIP to standards sufficient for use by such entities. Such permitted use shall not unreasonably interfere with WAM'S right under this Lease and Agreement.

5. **Access Rights of the Town:** At all times during the term of this Lease, the TOWN shall have reasonable access to the Premises for the purpose of examining the same, or to make any repairs or reconstruction deemed necessary by TOWN, but the making of such repairs or reconstruction or such examination shall not unduly interfere with WAM's use of the Premises. Reasonable access includes, but is not limited to; however, the TOWN'S Board of Selectmen and their agents shall have the right to inspect the premises at any time during the period from 7:00 a.m. to 5:00 p.m. without notice. At least one hour's telephonic notice will be given to WAM for any inspection to take place outside of this time period, except in case of an emergency, when no notice is required.

If the TOWN wishes to enter the AIRSTRIP to install and/or maintain improvements, the TOWN shall give at least three (3) days written notice to WAM. The parties agree that no improvements shall be installed which adversely affect the safe operation of the AIRSTRIP.

6. **Emergency Medical Flight Service:** Weather permitting

and strip conditions permitting, emergency medical evacuation services shall be available 365 days per year during working daytime hours if WAM has coverage. During the period of June 15<sup>th</sup> through September 15<sup>th</sup>, such hours are from 6:00 a.m. to 8:30 p.m. For the rest of the year, such hours are from 7:00 a.m. to 4:00 p.m.

**7. Operation and Rates:** Within thirty (30) days after execution of this Lease and Agreement by all parties, WAM shall submit to the Selectmen and publish in the Town of Vinalhaven a notice showing planned hours of operation and the rates for carriage of passengers and cargo into and out of Vinalhaven.

**8. Care of Premises, Requirements of Law, Indemnity, Repairs, Surrender:**

WAM will take good care of the AIRSTRIP, and its appurtenances, suffer no waste or injury; make all repairs to the AIRSTRIP and appurtenances necessitated by the fault of WAM, its employees, agents, assignees or customers; conform to all laws, orders, and regulations of the Federal, State or Municipal governments, or of any of their departments, applicable to the AIRSTRIP; save harmless the TOWN from any liability arising from injury to person or property caused by any act or omission of WAM, its employees, agents, assignees or under-tenants; repair at or before the end of the term, all injury done by the installation or removal of equipment and other property; and at the end of the term, surrender the AIRSTRIP in as good condition as they were at the beginning of the term, reasonable wear and damage by the elements excepted.

In addition, WAM shall be responsible for promptly notifying the TOWN in writing of any work which is required pursuant to safety regulations promulgated, at any time during the term of this Lease, by any state or federal agency having jurisdiction over the AIRSTRIP. The TOWN shall then have the right to undertake the repairs and improvements or to terminate this Lease upon ten (10) days written notice to WAM.

**9. Utilities:** The TOWN will pay for all metered electrical service to the AIRSTRIP and for snow removal and sanding services. WAM will pay for all other utilities and services required for the proper operation of the AIRSTRIP including, but not limited to, water, sewer, heat, telephone, trash removal, and security.

**10. Disclaimer of Warranties:** The AIRSTRIP is let to WAM, and WAM hereby accepts the AIRSTRIP "AS IS; WHERE IS" CONDITION.

The TOWN makes no representation or warranties regarding the adequacy or safety of the AIRSTRIP for the landing and taking off of aircraft or for any other uses. It is expressly agreed that WAM shall be solely responsible for determining the condition of the AIRSTRIP prior to each and every take-off or landing thereon by WAM aircraft; and the TOWN shall not be obligated in any way to notify or advise WAM as to the condition of the AIRSTRIP or any change in such condition.

11. **Insurance:** As a condition of this Lease and Agreement, WAM shall provide a policy of general public liability insurance at all times, naming the TOWN as an additional insured with waiver of subrogation, and obliging the insurer to provide the TOWN with prior written notice in the event of cancellation. WAM shall deliver certificates, evidencing continued coverage, not less than ten (10) days prior to the expiration of each term. At no time during the term of this Lease and Agreement shall such liability insurance coverage be less than one million dollars (\$1,000,000) per person per occurrence, for bodily injury or death, and one million dollars (\$1,000,000) for property damage, with no deductible.

12. **Indemnification:** WAM assumes all risks and liabilities for injuries or deaths of persons and damage to property arising from or in connection with the use or maintenance of the AIRSTRIP and its appurtenances by WAM and its employees, agents, customers, invitees, and passengers, whether or not such injuries, deaths, or damages are covered by insurance. WAM further agrees to indemnify the TOWN and hold it harmless from all losses, damages, claims, penalties and expenses, including attorney's fees, arising out of or incurred because or incident to the use or maintenance of the AIRSTRIP and/or its appurtenances by WAM or its employees, agents, customers, invitees and passengers, and any other person on the AIRSTRIP.

13. **Registration of Airstrip:** During the term of this Lease and Agreement, WAM will undertake all acts necessary or appropriate to keep the AIRSTRIP registered as a restricted, private airstrip with the State of Maine.

14. **Financial Information:** If WAM wishes to extend or modify this Lease, it shall provide the TOWN'S Board of Selectmen on or before October 31, 2019 with the following information:

a. A statement showing the number of flights into and out of Vinalhaven, on a monthly basis, the number of passengers carried per month, the gross revenue generated from such flights;

b. A profit and loss statement covering the period from commencement of the Lease through October 1, 2014.

15. **Attorneys' Fees:** In addition to any other remedies provided hereunder or at law, in the event an action for damages, specific performance or other relief shall be instituted by either party, in or out of bankruptcy, the prevailing party in such action shall be entitled and the losing party shall pay upon demand all of the prevailing party's reasonable costs, charges and expenses, including but not limited to fees of counsel, agents and others retained by the prevailing party incurred in connection with such action.

16. **The Town's Rights on Default:**

A. If WAM fails to pay the Rent, or any part thereof, within five days from the due date; or if any default is made in the performance of any other covenants or agreements contained in this Agreement, and if the default is not cured within ten (10) days from the date the TOWN gives WAM notice of such default, then all remaining unpaid installments of rent (together with costs of collection, including reasonable attorney's fees) shall become immediately due and payable, WAM's right of possession of the AIRSTRIP shall expire and the TOWN may resume possession at any time thereafter. However, WAM's obligations for payment of rent under this lease in such a case shall not expire provided that any rent paid by any subsequent tenant during the lease term shall be applied against WAM's obligations.

B. The TOWN'S Board of Selectmen shall also have the right to terminate this Lease and Agreement immediately, upon written notice to WAM at the address set forth below, and without further obligation to WAM if, at any time, WAM loses its contract with the U.S. Postal Service to transport mail to the Town or ceases to provide public passenger transport on a regular basis, at fair and reasonable rates.

If the Selectmen give notice of intent to terminate because of failure to provide transport at fair and reasonable rates, WAM shall be given the opportunity to demonstrate, within thirty (30) days of receipt of that notice, that the rates then charged are justified by ordinary and necessary business expenses. As used above, a "regular basis" shall mean as requested by residents of the TOWN unless weather conditions or unusual terrain conditions, such as excessive mud, make take-off or landing temporarily unsafe.

17. **Limitation of Liability:** If the TOWN wrongfully terminates this Lease, any monetary damages awarded to WAM may not exceed the amount of rent actually paid to the TOWN by WAM during the year immediately preceding the year in which the wrongful termination occurred or the sum of Two Thousand Dollars, whichever is greater.

18. **Notice:** Any notice by either party to the other shall be in writing and shall be deemed to be duly given only if delivered personally or mailed by certified mail in a postpaid envelope addressed as follows:

if to WAM, at the following address:

Waters Aero-Marine, Inc.  
P.O. Box 273  
South Thomaston, ME 04858

if to the TOWN, at the following address:

Town of Vinalhaven  
Attention: Town Manager  
P.O. Box 815  
Vinalhaven, ME 04863

Notwithstanding the foregoing, if either party shall admit, either in writing or under oath, the receipt of notice, evidence of service in accordance herewith shall not be necessary.

19. **Nonassignability:** The rights and obligations under this Lease and Agreement shall not be assignable, in whole or in part, by WAM without the prior written consent of the TOWN'S Board of Selectmen.

20. **Survival:** The indemnification and limitation of liability provisions herein shall survive the expiration or termination of this Lease and any renewal or extension thereof.

21. **Waiver of Trial by Jury:** TOWN AND WAM HEREBY WAIVE TRIAL BY JURY IN ANY AND ALL ACTIONS INVOLVING OR RELATED TO THIS LEASE AND AGREEMENT.

22. **No Waiver:** The failure of either party to insist in any instance on strict performance of any covenant hereof shall not be construed as a waiver of such covenant in any other instance. No modification of any provision hereof and no cancellation or surrender hereof shall be valid unless in writing, and signed by

the TOWN and WAM.

23. **Integrated Contract:** This writing expresses the entire agreement between the parties and supersedes any and all prior discussions or agreements which are merged into this Lease and Agreement. This Lease and Agreement cannot be modified or amended except in writing. If any portion of this Lease and Agreement is determined to be unlawful or unenforceable, such portion shall be void and of no effect, and the remaining portions shall continue in effect as if any such unlawful or unenforceable portion was never included. This Lease and Agreement shall be construed under and governed by the laws of the State of Maine.

24. **Successors Bound:** The provisions of this lease shall bind and inure to the benefit of the TOWN and WAM, and their respective successors, legal representatives and assigns.

Signed, Sealed & Delivered  
in Presence of:

THE INHABITANTS OF THE TOWN  
OF VINALHAVEN

\_\_\_\_\_  
Eric Gasperini

\_\_\_\_\_  
Phil Crossman

\_\_\_\_\_  
Pam Alley

\_\_\_\_\_  
Donald Poole

\_\_\_\_\_  
Jake Thompson

PENOBSCOT ISLAND AIR

WATERS AERO-MARINE, INC. D/B/A

\_\_\_\_\_  
Kevin Waters, its President

For good and valuable condition, receipt whereof is hereby acknowledged, the undersigned unconditionally guarantees WAM's faithful performance of all of its obligation under the foregoing Lease and Agreement.

---

Kevin Waters

DRAFT