



Handout



LANDLORD'S CONSENT AGREEMENT AND WAIVER

November __, 2014

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Town of Nantucket, acting by and through the Nantucket Memorial Airport Commission, having a principal place of business located at Nantucket Memorial Airport, 14 Airport Road, Nantucket, Massachusetts 02554 (the "Landlord"), and executes this consent and waiver in favor of Eastern Bank (the "Bank") execute this Consent Agreement.

1. ~~Landlord represents that~~ The Town of Nantucket, which acts through Landlord in connection with the Premises, is the owner of a certain premises -known as Nantucket Memorial Airport, including the area referred to as 42 Bunker Road, more particularly described in the Lease described defined below (the "Premises").

2. ~~Landlord represents that~~ The Premises are currently occupied by Harbor Fuel Oil Corporation, a Massachusetts corporation (the "Borrower"), pursuant to a lease by and between the Landlord and Nantucket Gas, Inc. as tenant, dated November 1, 1999, as amended, as to which Harbor Fuel Oil Corporation is a successor to Nantucket Gas, Inc., a copy of which is annexed hereto as Exhibit A (hereinafter, the "Lease").

3. The Landlord has been advised that the Bank has been granted a security interest by the Borrower in and to the Borrower's assets which are defined as but which assets exclude the Lease (all of which is referred to hereinafter as the "Collateral") certain of which is presently located, or may at any time hereafter be located in, at, or upon the Premises.

Commented [A1]: Does the Collateral include the Lease?

4. The Landlord agrees:

(a) That until such time as all liabilities of the Borrower to the Bank are paid in full, the Landlord disclaims any interest in such of the Collateral as is now or may hereafter be located in, at, or upon the Premises, agrees not to distraint any of the Collateral ~~nor to assert any claim against the Collateral for any reason~~, and waives any statutory right to encumber the Collateral with a landlord lien; and

Commented [A2]: Provided the Lease is not included in the Collateral.

~~(b) Not to interfere with any enforcement by the Bank of the Bank's rights in and to the Collateral; and~~

(e)(b) To permit the Bank to have access to the Premises for reasonable purposes and to exercise its rights upon ~~tweten~~ (210) business days' written notice to the Landlord and in the company to be accompanied by of a representative of the Landlord at its (Landlord's) election, and subject to Bank's compliance with Landlord's safety and security procedures and the terms of this Consent Agreement, and any other premises owned or leased by the Landlord

at which the Collateral may be found at any time, and from time to time, in order to exercise the Bank's rights; and

~~(e)(c)~~ To permit the Bank to take possession of the Premises to the exclusion of the Borrower, and in connection therewith, to change the locks on, and keys to, the Premises to those controlled solely by the Bank and the Landlord and to deliver a set of keys of the Premises to the Landlord take assignment of the Lease (in whole, not in part) to the extent Bank forecloses upon its agreements with Borrower for the Premises, and promptly cures any material defaults then existing under said Lease; and

Commented [A3]: If they are taking control of the Premises are they assuming the Lease and its obligations?

~~(e)(d)~~ To permit the Bank to remove the Collateral from the Premises, and from any other premises at which the Collateral may be found, without any liability upon the Bank; provided, however, that the Bank shall promptly repair and restore the Premises to its original condition at the Bank's expense, and cure for any physical damage to the Premises actually caused by such removal, but shall not be liable for any diminution in value of the Premises caused by the removal or absence of the Collateral; and

~~(f)~~ Not to interfere with the Bank's disposal of the Collateral by sale (by public auction or otherwise) conducted on the Premises provided the Landlord has received written notice five (5) business days prior to said sale; and

~~(e)~~ To endeavor in good faith to provide the Bank with a copy of any notice of default or termination as and when issued by the Landlord to the Borrower, provided that any good faith failure to do so shall not constitute a material breach of this Consent Agreement.

~~(g)~~ 4. In addition to and not in limitation of any other rights and remedies available to Landlord: The Bank shall indemnify, defend, and hold harmless the Landlord from all claims and demands of third persons, including, without limitation, the the employees of the Bank, which claims and demands shall include, but not limited to, those for death, bodily injuries, or for property damage arising out of or in connection with the activities of the Bank in carrying out the activities of the Bank under this Consent Agreement, and/or arising out of or in connection with any of the acts or omissions of the Bank, its employees, agents, representatives, contractors and invitees, and all others doing business with the Bank where such acts or omissions are on the Premises or elsewhere on the facility known as the Nantucket Memorial Airport.

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5. The persons signing this Consent Agreement are execution of the within waiver constitutes a representation by such person that such person is authorized to do so on behalf of the Party for whom they sign execute the within waiver.

6. The Landlord represents that the Lease is in full force and effect, has not been amended, and (without any duty of inquiry by Landlord) there exists no known event of material default or right of setoff or counterclaim on the part of either by the Landlord or the Borrower thereunder.

Commented [A4]: Any amendments to the Lease?

7. All notices, requests or demands to or upon Bank or Landlord shall be given or made in writing, directed to the Bank/Landlord at the addresses indicated below or to such other

addresses as Bank/Landlord may have designated in writing ~~to the Landlord~~. No other method of giving any notice, request or demand is hereby precluded.

If to the Bank:

Eastern Bank
10 Cordage Park Circles, #231
Plymouth, Massachusetts 02360
Attn: Catherine S. Adams, Vice President

With a copy to:

Seyfarth Shaw LLP
World Trade Center East
Two Seaport Lane, Suite 300
Boston, MA 02210-2028

Nantucket Memorial Airport
14 Airport Road
Nantucket, MA 02554

Richard T. Holland, Esq.
Kopelman and Paige, P.C.
101 Arch Street
Boston, MA 02110

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The within ~~waiver~~ Consent Agreement shall inure to the benefit of the Landlord and Bank, ~~its~~ and ~~their~~ successors and assigns, shall be binding upon the Bank and Landlord, ~~its~~ and ~~their~~ heirs, assigns, representatives, and successors, and shall ~~take~~ take effect as a sealed instrument.

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"LANDLORD"

By: _____
Print Name: _____
Title: _____

"BANK"

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By: _____
Print Name: _____
Title: _____

Exhibit A

Lease

510835/NANT/19715/0001

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Handout

FY16 BUDGET DRIVERS

ProDigiq Part 139	\$	13,300.00
Slider door repairs/contract maintenance of approx \$6k	\$	6,000.00
Fuel Farm Annual Inspection (\$40k) and Fuel Farm Fire Supp System Inspection (\$20k)	\$	60,000.00
\$10k for paint/removal and repaint of markings and also \$36k due to the need for brush mowing south of 12/30	\$	46,000.00
Electricity: accounting for increase in energy prices and being in new building for entire year	\$	115,000.00
Increased this account by \$30k for FUDS & Stockpile X related professional services	\$	30,000.00
Increase for quote from Exelis as opposed to Passur	\$	21,000.00
\$65k in unemployment taxes plus repayment to the Town	\$	200,000.00
	\$	<u>491,300.00</u>