

AMENDED AND RESTATED
PAYMENT-IN-LIEU-OF-TAXES AGREEMENT
BETWEEN
THE MASSACHUSETTS PORT AUTHORITY
AND
THE TOWN OF WINTHROP

This AGREEMENT (the "Agreement") is amended and restated as of this 22nd day of December, 2005 (the "Commencement Date"), by and between **THE MASSACHUSETTS PORT AUTHORITY** (the "Authority"), a Massachusetts body politic and corporate and a public instrumentality of The Commonwealth of Massachusetts, and **THE TOWN OF WINTHROP, MASSACHUSETTS** (the "Town"), a municipal corporation chartered by The Commonwealth of Massachusetts.

WHEREAS, Chapter 465 of the Acts of 1956 of the Commonwealth of Massachusetts, as amended (the "Enabling Act"), in Section 17, authorizes and directs the Authority to enter into an agreement for annual payments in-lieu-of-taxes with, among others, the Town; and

WHEREAS, the Authority and the Town entered into an Agreement under Chapter 497 of the Acts of 1980 dated as of July 1, 1981 (the "Winthrop PILOT Agreement"), pursuant to which the Authority agreed to make payments in-lieu-of-taxes to the Town of Winthrop as authorized by Section 17 of the Enabling Act; and

WHEREAS, pursuant to amendments of the Winthrop PILOT Agreement dated as of June 30, 1982, June 30, 1983, June 30, 1985, June 30, 1986, June 30, 1987, June 30, 1988, June 30, 1989, June 30, 1992, March 31, 1994, August 13, 1997 and October 31, 1997 (collectively, the "Amendments" and, with the Winthrop PILOT Agreement, the "Original Agreement"), the term of the Original Agreement was extended through June 30, 1999, and the Original Agreement also included a provision that stated that payments under the Original Agreement would extend for an additional five years, until June 30, 2004, if not further extended; and

WHEREAS, subsequent to the Amendments, the Original Agreement was not extended and expired according to its terms on June 30, 2004; and

WHEREAS, since the Amendments to the Winthrop PILOT Agreement, activities related to the operation of Boston-Logan International Airport ("Logan Airport") and planned development at Logan Airport have impacted and are expected to further impact the Town; and

WHEREAS, such activities and development are anticipated to continue at least at current or increased levels for the foreseeable future; and

WHEREAS, the Authority and the Town now wish to amend and restate the Original Agreement to, among other things, reflect the further developments and changes to the Authority's projects and facilities which have occurred since the Original Agreement was last amended in 1997 and the future modernization of the Authority's existing projects, including Logan Airport (including, without limitation, the improvements identified in the Authority's Environmental Data Report (the "EDR") dated June 2004) over the term of the Agreement; and

WHEREAS, the Authority and the Town, in establishing the level of annual payments to be made pursuant to this Agreement, have considered the general level of property taxation in effect in the Town; the effect of the projects, facilities or activities of the Authority on the Town; the general economic condition of the users or the persons who pay the tolls, rates, fees, rentals or other charges of the Authority; and the needs of the Authority to maintain or improve its facilities or projects; and

WHEREAS, the Authority has also considered the cost and value of benefits conferred upon the Authority and its patrons, tenants and other users in the form of specific services and general government by the Town, and the Board hereby determines that the sums agreed upon in the proposed Amendment for payment by the Authority do not exceed the apparent level of such conferred benefits; and

WHEREAS, in order to provide for stability and predictability, the Town and the Authority have agreed to a fixed annual payment rather than to a base payment that increases over time in accordance with an index or an aggregate of payments allocable to specified programs or projects of the Town, provided that if inflation is either greater than eight percent (8%) per year or less than two percent (2%) per year during the first ten years of the term, the annual payment shall be adjusted for the remainder of the extended term;

NOW, THEREFORE, for and in consideration of the aforesaid premises and the covenants, terms and conditions hereinafter set forth, the parties do hereby agree that the terms and provisions of the Original Agreement are hereby amended and restated in their entirety as follows:

1. **Definitions.** For purposes of this Agreement, the following terms shall have the definitions set forth below:

"Chapter 332": Chapter 332 of the Massachusetts Acts of 1978, as it may be amended from time to time.

"Chapter 465": Chapter 465 of the Massachusetts Acts of 1956, as it may be amended from time to time.

"Chapter 497": Chapter 497 of the Massachusetts Acts of 1980, as it may be amended from time to time.

"CPI": The Consumer Price Index for all Urban Consumers (CPI-U) U.S. City Average --

facility charges" ("PFCs") under federal law, or (c) to impair the Authority's ability to recover from users or tenants of any of its facilities, property or projects any portion of the PILOT Payment made to the City under this Agreement; or

2. The commencement of any action or proceeding in a court or governmental agency of competent jurisdiction which seeks a ruling that a fee or charge assessed by the Authority is invalid under any constitutional or statutory provision by virtue of the inclusion of any or all of the Authority's expense in making the PILOT Payments established by this Agreement in the calculation of that fee or charge.

2. **Term.** The term of this Agreement shall commence as of July 1, 2004 and extend to and through June 30, 2025.

3. **Amount of Annual Payments; Use.** Subject to certain adjustments described herein and all of the other terms and conditions contained herein, for each fiscal year commencing on and after the Commencement Date, the Authority agrees to make to the Town an annual in lieu of tax payment equal to Nine Hundred Thousand Dollars (\$900,000.00). Notwithstanding any provision to the contrary contained in the Original Agreement, including without limitation any of the Amendments, the PILOT Payments received by the Town hereunder may be applied by the Town to any lawful capital or operating costs or expenses of the Town; provided, however, that notwithstanding the foregoing the Town acknowledges and agrees that no sums paid by the Authority to the Town hereunder shall be applied to fund, directly or indirectly, any law suit or other legal action, in law or in equity, against the Authority.

4. **Payment With Respect to Fiscal Year 2005.** Within thirty (30) days after the execution and delivery of this Agreement by both the Town and the Authority, the Authority shall pay to the Town the sum of Five Hundred Fifty-One Thousand Dollars (\$551,000), representing the sum that would have been payable to the Town by the Authority with respect to fiscal year 2005 had the term of the Original Agreement been extended for an additional year.

5. **Adjustments to Annual Payments.**

(a) If the average rate of increase in the CPI for the period from July 1, 2005 through June 30, 2015 is either (x) greater than eight percent (8%) or (y) less than two percent (2%), the amount of the PILOT Payment and the maximum total amount of payments hereby authorized shall be adjusted as follows: If the average increase of the CPI is greater than eight percent (8%) per annum for the period from July 1, 2005 through June 30, 2015 (the "Test Period"), then the PILOT Payment for each year from July 1, 2015 through June 30, 2025 shall be increased by an amount equal to the product of (i) the difference between the CPI for the Test Period and eight percent, expressed as a percentage, multiplied by (ii) the PILOT Amount. If the average increase of CPI is less than two percent (2%) per annum for the Test

Period, then the PILOT Payment for each year from July 1, 2015 through June 30, 2025 shall be decreased by an amount equal to the product of (i) the difference between the CPI for the Test Period and two percent, expressed as a percentage, multiplied by (ii) the PILOT Amount.

(b) This Agreement has been entered into with the intent that the Authority, its projects, property, facilities, activities and the income therefrom, as well as the persons using, occupying or leasing its projects, property or facilities, shall at all times be free from taxation or assessment, except to the extent otherwise provided in Section 17 of Chapter 465, as in effect on July 1, 2005. In the event any New or Additional Tax is imposed, the amounts payable to the Town pursuant to Paragraph 3 of this Agreement in any fiscal year shall be reduced by an amount equal to the amount of the New or Additional Tax directly, or indirectly through the Commonwealth, received by the Town during such fiscal year from the Authority or from or on account of other persons, including without limitation its tenants, permittees or licensees, on account of their use, occupancy or tenancy of or with respect to the Authority's projects, property or facilities.

(c) In addition to the offsets listed above, the parties acknowledge that the PILOT Payment for any year may also be reduced pursuant to Paragraph 7.

6. **Triggers.** Upon either the Town or the Authority becoming aware of the occurrence of any Trigger Event, such party shall immediately make the other party aware of such Trigger Event and the parties shall promptly meet to discuss this Agreement in accordance with the provisions of this Section 6. Upon the occurrence of a Trigger Event, the parties shall immediately cooperate to defend the legality and enforceability of this Agreement; provided, however, that the Authority shall be primarily responsible for the defense of this Agreement and shall use diligent efforts to so defend the legality and enforceability of this Agreement, which efforts shall include, without limitation, the obligation to file and timely pursue an appeal of any adverse decision affecting this PILOT Agreement or any PILOT Payments to be made pursuant to this PILOT Agreement if there is a reasonable basis therefor. Pending a final determination, including resolution of all appeals or the lapsing of any period during which such appeals may be taken, immediately upon the rendering of any finding, directive, determination, decision, order, ruling or judgment relating to any Trigger Event by a court or governmental agency of competent jurisdiction, the parties shall immediately take all steps, if any, necessary (including without limitation the reduction or suspension of PILOT Payments as set forth in this paragraph) to comply with such finding, directive, determination, decision, order, ruling, or judgment in order to bring the parties hereto into compliance with all applicable federal and state laws and regulations, to cure any violation of law or regulation, to cure any breach of any agreement governing the Authority's receipt of federal grants and to maintain the Authority's full eligibility for all available federal and state funding, including without limitation the right to receive federal grants and the ability to impose and expend PFCs. Immediately upon the occurrence of a Trigger Event, all or a portion of each subsequent PILOT Payment may, at the Authority's sole discretion, be paid into escrow pending the final decision of such court or governmental agency and the exhaustion of all appeals thereof or the expiration of the period for prosecuting such appeals; provided, however, that the Authority shall not be required hereunder to pay any such sum into escrow if a

court or governmental agency of competent jurisdiction shall find, direct, determine, decide, order, rule, or adjudge that, pending such final decision, such payment is prohibited by applicable law or regulation or that any such payment could limit the Authority's ability to receive federal grants or other federal funds or its ability to impose or expend PFCs. Such escrowed funds may be invested at the direction of the Authority. Upon the final decision of a court or government agency of competent jurisdiction, including a decision upon any and all appeals thereof, or the expiration of the time in which any appeal thereof may be taken, all of such escrowed PILOT Payments shall be paid to the City or returned to the Authority, in whole or in part, in accordance with such final determination, interest to follow principal. All such discussions required by this Paragraph 5 shall be conducted in good faith by both parties and shall involve staff and policy-makers from both parties having the requisite authority necessary to renegotiate this Agreement in light of the changed circumstances.

7. **Time and Manner of Payments.** For fiscal year 2006, a payment of \$900,000 shall be made on February 1, 2006. For each fiscal year thereafter, each PILOT Payment for any fiscal year under this Agreement shall become due and payable in two annual installments as set forth below. The first such annual installment shall be made on August 1 of each fiscal year and shall consist of a payment in the amount of \$450,000. The second such annual installment shall be made on February 1 of each fiscal year and shall consist of a payment in the amount of \$450,000. Payments shall be made to the Town Manager of the Town. Adjustment of any PILOT Payment on account to the payment amount finally due shall be made: (i) by setoff taken by the Authority against future installments of PILOT Payments owed to the Town, or (ii) by actual additional payments made to the Town by the Authority for additional amounts which may be due. Any claim of the Authority that the PILOT Payment on account made in any fiscal year exceeded the Paragraph 8 limitation or shall be otherwise adjusted as provided in this Agreement shall be asserted by the Authority in writing by December thirty-first of the next succeeding fiscal year.

8. **Statutory Limitations.** Notwithstanding any provision of this Agreement to the contrary:

(a) No annual payments (including, without limitation, accruals of prepaid amounts) and any amendments thereto under this Agreement and under any other agreement with the Town, or the City of Chelsea authorized by Chapter 332, or the City of Boston authorized by Chapter 332, shall exceed in the aggregate for any fiscal year an amount equal to the balance of the Authority's revenues remaining for such fiscal year after payment of all the current expenses of the Authority (including, without limitation, all amounts of debt service of the Authority paid or payable in such fiscal year), any payments to the State Treasurer which may be required under the provisions of Section 6 of said Chapter 465, the deposits to the credit of any maintenance reserve or like fund and the interest and sinking fund provided for in any trust agreement referred to in Section 12 of said Chapter 465.

(b) To the extent that any trust agreement referred to in Section 12 of said Chapter 465 may so provide, annual payments and amendments thereto under this Agreement may be set

aside or payable or paid to the Town only after the Authority has set aside or paid all the current expenses of the Authority (including, without limitation, all amounts of debt service of the Authority paid or payable in such year), any payments to the State Treasurer which may be required under Section 6 of said Chapter 465, and the deposits to the credit of any maintenance reserve or like fund and the interest and sinking fund provided for in said trust agreement, as from time to time in effect.

9. **Basis for Annual Payment Amount.** In considering the factors specified by Chapter 465 for determining the appropriate level of the in lieu of tax payments, the Authority and the Town in entering into this Agreement have considered the general level of property taxation in the Town; the effect of the Authority's projects, facilities or activities on the Town; the general economic condition of the users or the persons who pay the tolls, rates, fees, rentals or other charges of the Authority; and the needs of the Authority to maintain or improve its facilities or projects.

10. **Severability.** In the event any provision of this Agreement other than the provisions of Paragraphs 3, 4, 6 or 8 shall be held invalid or unenforceable by any court or governmental agency of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. In the event any provision of Paragraphs 3, 4, 6 or 8 shall be held invalid or unenforceable by any court or governmental agency of competent jurisdiction then representatives of the Town and the Authority shall meet forthwith to amend or restate this Agreement to preserve, to the fullest extent legally permissible, the economic benefits and burdens of this Agreement on each of the respective parties.

11. **Amendment.** This Agreement may not be amended nor any of its terms modified, except in writing duly signed by both parties.

12. **Governing Law.** This Agreement shall be deemed a Massachusetts contract to be governed by and construed under the laws of said Commonwealth.

13. **Notices.** All notices or other communications, except for the making of payments as set forth in Paragraph 7, required or permitted to be given hereunder shall be signed by a duly authorized officer of the sending party, and shall be deemed delivered hereunder if mailed postage prepaid, by registered or certified mail, return receipt requested, or delivered by hand or telecopied to the principal office of the intended party, which is as follows, unless otherwise designated by written notice to the other parties:

The Authority:

Massachusetts Port Authority
One Harborside Drive, Suite 200S
East Boston, MA 02116
Attn: CEO and Executive Director
And Chief Legal Counsel
Telecopier: (617) 568-1022
(617) 568-3151

The Town:

Town of Winthrop
Town Hall
One Metcalf Square
Winthrop, MA 02152

Attn: Town Manager
And Town Attorney
Telephone: (617) 846-1077
Telecopier: (617) 539-5458

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

MASSACHUSETTS PORT AUTHORITY

By: Leslie A. Kuwai

Title: Director of Administration & Finance
And Secretary/Treasurer

THE TOWN OF WINTHROP

By: [Signature]

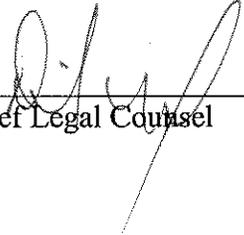
Title:
By: Susan J. Balster

Title: Selectperson

By: _____

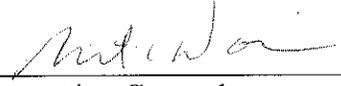
Title: _____

Approved as to Form:

Deputy


Chief Legal Counsel

Approved as to Form:



Corporation Counsel
Town