

**AGREEMENT BETWEEN NORFAM CORPORATION AND  
THE TOWN OF NORTH HAVEN, MAINE CONCERNING USE OF  
NORFAM AIRSTRIP**

**I. RECITALS**

WHEREAS, Norfam Corporation (hereafter “Norfam”) is the owner of (i) a strip of land on North Haven which has been developed by shareholders of Norfam as a landing strip for use for aircraft landings and departures, as more accurately shown on the survey attached as Exhibit A hereto (hereafter the “Airstrip”) and (ii) certain property adjacent to the Airstrip; and

WHEREAS, the Town of North Haven (hereafter the “Town”) is a Maine municipal corporation located on the island of North Haven (hereafter “North Haven”) in the County of Knox and State of Maine; and

WHEREAS, the Town has in the past been relieved, and wishes to be relieved in the future, of the need to provide an alternate airstrip facility that might be less convenient and more expensive for the Town in order to meet the needs of its residents and visitors to obtain transportation to North Haven; and

WHEREAS, the Town wishes to have access to the Airstrip for the purpose of providing air transportation during “bona fide medical emergencies” as defined in this Agreement;

WHEREAS, for Norfam to provide the Town’s residents and visitors access to North Haven by means of the Airstrip will enhance the quality of life within the Town; and

WHEREAS, the Town acknowledges that Norfam’s maintenance of the Airstrip as called for in this Agreement constitutes an expense and inconvenience to Norfam and will result in the Town’s use of Norfam’s private property; and

WHEREAS, the Town acknowledges that Norfam’s commitments under this Agreement constitute a sacrifice by Norfam through, among other things, (a) the intrusion on the Norfam Affiliates' privacy arising from use of the Airstrip by persons other than Norfam Affiliates; and (b) Norfam’s additional costs of maintenance of the Airstrip arising from more frequent use of the Airstrip by persons other than Norfam Affiliates; and

WHEREAS, before the parties entered into an Agreement dated December 19, 1991, the Town, its residents and its visitors had in the past asserted a right to use the Airstrip on the basis of certain prior statements and actions of Norfam and the Town, and by said Agreement dated December 19, 1991 the Town expressly relinquished its claims with respect to the use of the Airstrip in consideration of the terms of said Agreement dated December 19, 1991; and

WHEREAS, the Town has determined, and hereby acknowledges and agrees, that it is in its best interest and in the best interest of the residents of the Town (both year round and seasonal) that Norfam continue to maintain the Airstrip at its expense and agree to the limited use of the Airstrip provided for herein by persons other than Norfam Affiliates; and

WHEREAS, the parties agree that, due to changed conditions, it is appropriate to amend and replace said Agreement dated December 19, 1991;

NOW, THEREFORE, Norfam and the Town agree as follows:

## **II. DEFINITIONS**

For purposes of this Agreement, the following terms shall have the following meanings:

*“Bona fide medical emergency”* means only such circumstances where, in the opinion of a qualified medical professional, there is immediate and compelling urgency to save or protect the lives and health of persons physically present in the Town of North Haven and where no other reasonable transportation alternative to air travel exists.

*“Charter flight”* means a flight booked by an individual on a specific aircraft on an as-needed basis, and specifically excludes any regularly-scheduled air transportation provided by any private or commercial air carrier.

*“Entity”* means any business, government, organization, agency, association, or group of individuals recognized by the laws of the State of Maine as having legal standing of any kind, other than a single human being.

*“Mail”* means only such letters, envelopes, sealed parcels, and food products as are acceptable for delivery within the United States by the United

States Post Office and by common carriers such as the United States Postal Service, Federal Express, UPS, and the like. The term “mail” shall also be deemed to include groceries and misplaced luggage belonging to authorized air passengers. No other property of any kind or description is included within the definition of “mail” as used in this Agreement, and thus cannot be transported in those instances where delivery or receipt of “mail” is authorized by this Agreement.

“*Norfam Affiliate*” includes any and all of the following: Thomas J. Watson, III, Jeannette W. Sanger, Helen W. Blodgett, Lucinda B. Watson, Susan W. Whitman, Olive F. Watson, their spouses, descendants, spouses of their descendants, and their invitees to the Norfam properties within the Town. In order to prevent ambiguity, Norfam shall provide the Town with a written listing of the names of all persons deemed to be “Norfam Affiliates” for the purposes of this Agreement and shall update that list when and as needed. Neither the Town nor any person or entity using the Airstrip solely in the exercise of rights granted by this Agreement, rather than with the personal permission of Norfam and/or of a Norfam Affiliate, shall constitute an “invitee” of Norfam or the Norfam Affiliates.

“*Property*” means all goods, cargo, supplies, pet animals, and/or any other objects of any kind or description other than “mail” as specifically defined above in this Agreement.

“*Regularly scheduled air passenger flight*” means any air passenger flight by an air carrier that is scheduled to take-off or land at a specified location at a specified time and date regardless of whether the air transportation provider receives a prior request from a passenger for that specific air passenger flight.

“*Summer*” means that period beginning at 12:00:01 A.M. on May 15 of one year and ending at 12:00:00 A.M. on September 30 of the same year.

“*Winter*” means that period of each year beginning at 12:00:01 A.M. on September 30 of one year and ending at 12:00:00 A.M. on May 15 of the immediately succeeding year.

### **III. ACKNOWLEDGEMENT BY TOWN OF AUTHORIZED USES OF AIRSTRIP**

#### **A. Use Limitations Applicable During the Summer**

During the period of the “Summer” as defined herein, use of the Airstrip shall be strictly limited to the following, and to no other uses:

1. air transportation of Norfam Affiliates and/or their property to North Haven, at any hour of the day and on any day of the week;
2. air transportation of other persons and/or their property to North Haven, at any hour of the day and on any day of the week, provided that a Norfam Affiliate has previously and expressly authorized such transportation;
3. air transportation for any person or entity related directly to a bona fide medical emergency and/or officially-authorized law-enforcement purposes, at any hour of the day and on any day of the week; and
4. delivery and receipt of mail to and from residents of and visitors to the Town, provided that such mail flights shall be limited to two landings per week, which landings shall occur only between the hours of 11:00 AM and 1:00 PM on no more than two days per calendar week, which days shall exclude Saturday and Sunday.

During the period of the “Summer” as defined herein, the Town shall with the resources available to it advertise the prohibition against the use of the Airstrip by any person or entity for air transportation of persons, property, or mail except as expressly authorized by Section III(A) of this Agreement.

**B. Use Limitations Applicable During the Winter**

During the period of the “Winter” as defined herein, use of the Airstrip shall be strictly limited to the following, and to no other uses:

1. any use that would be permitted during the Summer under paragraphs III(A)(1)-(3) of this Agreement;
2. delivery and receipt of mail to and from residents of and visitors to the Town, provided that such mail flights shall be limited to a frequency of no more than twelve (12) flights in any single day and forty (40) flights in any single calendar week, whichever is less; and also provided that no such flights may land before 7:30 a.m. on any day;

3. charter flights of persons in addition to Norfam Affiliates and/or persons authorized by Norfam Affiliates, provided that such charter flights shall be permissible at a frequency of no more than twelve (12) flights in any single day and forty (40) flights in any single calendar week, whichever is less; and also provided that no such flights may land before 7:30 a.m. on any day;

4. based upon approval of the following flight schedule by persons residing near the Airstrip at a public hearing held by the Town Board of Selectmen on April 5, 2016, the total number of flights authorized by paragraphs III(B)(2) and (3) of this Agreement shall be cumulative and shall at no time exceed a total of twelve (12) flights in any single day and forty (40) flights in any single calendar week, whichever is less, for any and all of the purposes authorized in either of those paragraphs (that is, regardless of whether each individual flight is for the purpose of transporting mail, transporting charter passengers, or transporting a combination of mail and charter passengers, the total number of all such flights shall not exceed twelve (12) in any single day and forty (40) in any calendar week, whichever is less);

During the period of the “Winter” as defined herein, the Town shall with the resources available to it advertise the prohibition against the use of the Airstrip by any person or entity for air transportation of persons, property, or mail, and/or for training pilots in the use of the Airstrip, except as expressly authorized by Section III(B) of this Agreement.

**C. Use Limitations Applicable During both the Summer and the Winter**

1. Any and all passenger flights authorized by this Agreement for persons other than Norfam Affiliates and/or persons authorized by Norfam Affiliates shall be limited to “charter flights” as defined herein.

2. Without limiting any other rights it may have as owner of the Airstrip, Norfam expressly reserves the right to use the Airstrip for any purpose whatsoever during either the Summer Season or the Winter Season, and to permit Norfam Affiliates (and persons so authorized by Norfam Affiliates) to use the Airstrip at any time and for any purpose.

3. Norfam expressly reserves the right to grant to persons other than Norfam Affiliates the right to use the Airstrip from time to time and for such periods as it deems appropriate for purposes not otherwise authorized herein. Any such grant of permission to use the Airstrip shall in no way be construed to alter any interpretation of any provision of this Agreement or to grant any further rights pursuant to the terms of this Agreement. Any such right or permission so given by Norfam may be revoked at any time.

4. The Town acknowledges and agrees that Norfam has the right to suspend temporarily the benefits granted under this Agreement, upon reasonable notice to the Town, in order to allow Norfam to undertake appropriate maintenance and repairs to the Airstrip. Norfam agrees that it will make reasonable efforts to ensure that any such suspension shall not be of any longer duration or affect any greater portion of the Airstrip than is reasonably necessary to carry out such maintenance and repairs.

5. The Town acknowledges and agrees that Norfam shall have the right to terminate the use of the Airstrip as an airstrip, upon notice to the Town. In such event, all rights to use the Airstrip by the Town and by persons other than Norfam, Norfam Affiliates, and persons so authorized by Norfam Affiliates will permanently terminate; provided, however, that, Norfam agrees that if at any time after such a termination, Norfam decides to restore the use of the Airstrip, it will negotiate in good faith with the Town for the establishment of a new agreement which has terms and conditions substantially similar to the terms and conditions herein contained but which also fairly reflects any changes of circumstances.

6. The Town further acknowledges and agrees that Norfam shall have the right to terminate the benefits granted hereunder for any material breach of this Agreement that is not cured within a reasonable period after written notice of such breach is given by Norfam to the Town.

7. At no time shall the Airstrip be put to any commercial use other than for the landing and takeoff of charter flights.

**IV. NORFAM'S RESERVED RIGHT TO CREATE ADDITIONAL REASONABLE REGULATIONS CONCERNING TO THE TOWN'S USE OF THE AIRSTRIP**

Norfam reserves the right from time to time to establish reasonable rules and regulations governing, among other things, (1) access to the Airstrip and (2) parking of airplanes and private passenger vehicles, ancillary to the permitted use of the Airstrip.

## **V. TOWN'S ENFORCEMENT RESPONSIBILITIES**

The Town agrees to publicize any and all limitations and restrictions on the use of the Airstrip as herein provided and not to participate in, or sanction, any effort which would encourage or suggest the possible use of the Airstrip for any purpose other than the purposes expressly permitted hereunder. Without in any way limiting the foregoing, the Town shall obtain on a monthly basis from any carrier regularly using the Airstrip a list by day and time of all arrivals and departures from the Airstrip, together with a certification from the carrier that no cargo other than mail (as defined in § II) and/or passengers (and their personal luggage) was picked up from or delivered to North Haven. In the event the Town, as a result of reviewing that monthly list and certification, discovers that any air carrier or any other person has violated the rules set forth herein with respect to the use of the Airstrip, the Town agrees to notify both Norfam and the carrier of all such violations.

## **VI. MAINTENANCE OF AIRSTRIP**

Norfam agrees to make reasonable efforts to maintain the Airstrip in its present condition, including, but not limited to, the removal of snow and ice from both the Airstrip and from any landing light system with which the Airstrip is equipped. The Town shall, no later than July 1 of each year, reimburse Norfam for the cost of all labor, materials, equipment, and fuel reasonably required by Norfam for the removal of such snow and ice during the preceding winter. Nothing in this Agreement shall be construed to impose any liability on Norfam to the Town or to any other person by reason of any consequence arising, directly or indirectly or in whole or in part, from the condition of the Airstrip, including, without limitation, any asserted failure to maintain or to remove snow or ice from the Airstrip or the landing light system.

## **VII. ANNUAL USAGE FEE**

The Town acknowledges and agrees that the rights to use the Airstrip Norfam has granted to the Town under this Agreement expose Norfam to legal liabilities that far exceed the scope of the legal liabilities to which Norfam would be exposed if it had not entered into this Agreement. Therefore, in exchange for the rights granted under this Agreement, the Town shall pay to Norfam an annual usage fee equaling the actual cost to Norfam of the annual premium for comprehensive general liability insurance, with policy terms satisfactory to Norfam in its sole discretion, against claims for property damage, bodily injury, or death arising out of the use of the Airstrip by any person or entity, with limits of not less than U.S. \$ 20,000,000.00 per occurrence and in the aggregate, said limits to be adjusted upwards every 5 years based on increases in the consumer price index for the geographical area including Portland, Maine. Norfam shall provide the Town written evidence of the amount of said premium no later than 60 days prior to the commencement of the policy year to which said premium is attributable, along with evidence of when said premium is due and payable. The Town shall tender to Norfam a certified check for the full amount of said premium no later than 30 days prior to the date on which said premium is due and payable. Failure by the Town timely to pay said premium shall result in the immediate suspension of any and all of the Town's rights under this Agreement without further notice to the Town or need of further action by Norfam and thereafter neither the Town nor its residents nor visitors shall make any use of the Airstrip whatsoever until said breach is cured.

## **VIII. INDEMNIFICATION, ASSUMPTION OF RISK, AND RELEASE**

Notwithstanding, in addition to, and independent of the Town's obligations under Section VII of this Agreement, the following provisions shall apply to the Town:

### **A. Indemnification**

The Town agrees to save, indemnify, protect, and hold Norfam and the Norfam Affiliates harmless from any claims, demands, causes of action, and defense costs arising, directly or indirectly or in whole or in part, from the condition or the use of the Airstrip by persons other than Norfam and/or the Norfam Affiliates except to the extent that the same shall occur solely as a result of the gross negligence or willful misconduct of Norfam and/or the Norfam Affiliates.



## **B. Assumption of Risk**

The Town hereby acknowledges the conditions at the Airstrip and the inherent dangers associated with landing at, taking off from, and otherwise using an uncontrolled air strip in a remote area such as North Haven. The Town, on its own behalf and on behalf of all persons and entities authorized to use the Airstrip pursuant to this Agreement, hereby expressly assumes all risks associated with use of the Airstrip, including, but not limited to, risks of striking livestock, wildlife, or other objects on or near the Airstrip; risks associated with landings and takeoffs without the aid of air traffic control, ground based radio equipment, or instrument landing equipment; and risks of damage to the aircraft and/or their occupants and any cargo while on the ground, regardless of the cause of such risks, including the negligence of Norfam and/or that of the Released Parties (as defined below). Norfam makes no representations or warranties whatsoever, express or implied, as to the use or suitability of the Airstrip for the landing or takeoff of any aircraft or for any other use, and hereby disclaims any and all such warranties. The Town accepts use of the Airstrip "as is" and "with all faults."

## **C. Release**

In consideration of the rights granted under this Agreement and other good and valuable consideration, the Town, on its own behalf and on behalf of all persons and entities authorized to use the Airstrip pursuant to this Agreement, and anyone claiming through, by or under them (hereafter the "Releasing Parties") hereby completely releases and forever discharges Norfam, any and all Norfam Affiliates, and any and all of its or their respective heirs, beneficiaries, administrators, executors, respective past and present agents, attorneys, representatives, employees, officers, directors, shareholders, managers, partners, members, trustees, predecessors and successors in interest, assigns, consultants, experts, insurers, reinsurers, and each of them, and anyone claiming through, by or under them (hereafter the "Released Parties"), from any and all claims, demands, causes of action, actions, damages, losses, costs, expenses, interest, collateral, security, liens, attorneys' fees, accountants' fees, expert fees, compensation and all other damages and liabilities of any kind or nature whatsoever, direct or indirect, whether or not now known or unknown, suspected or unsuspected, contingent or non-contingent, foreseeable or unforeseeable, liquidated or unliquidated (hereafter the "Claims"), which the Releasing Parties, and each of them, in the past ever had, now have, or may in the future have, against the Released Parties, or any of them, by reason of any matter, act, transaction, or occurrence relating in any way to or arising from the rights granted in this Agreement, the

exercise thereof, and/or any use of the Airstrip and/or surrounding property, including without limitation any Claims for personal injury, wrongful death, and/or property damage (hereafter the "Released Claims") and further agrees not to sue the Released Parties or any of them on account of any of the Released Claims.

The Town acknowledges and agrees on behalf of the Releasing Parties that it may hereafter discover facts, evidence or legal theories in addition to or different from those which it now knows and/or believes to be true with respect to the subject matter of the release herein. However, it is the Town's intent and that of the Releasing Parties fully, finally, and forever to release all claims, known or unknown, suspected or unsuspected, contingent or non-contingent, foreseeable or unforeseeable, liquidated or unliquidated, which now exist, previously existed, or may in the future exist, against the Released Parties. In furtherance of such intention, the Town acknowledges and agrees on behalf of the Releasing Parties that the release given herein shall be and remain in effect as a full and complete general release, notwithstanding the discovery or existence of any such additional or different facts, evidence, or legal theories.

#### **IX. RIGHT OF TOWN TO TERMINATE**

The Town may terminate the use of the Airstrip by itself and/or by persons other than Norfam, Norfam Affiliates, and/or persons authorized by Norfam Affiliates to use the Airstrip, at any time upon reasonable notice to Norfam.

#### **X. NO FURTHER RIGHTS OF TOWN**

The Town acknowledges and agrees that the Norfam is the owner of the Airstrip; that the Town and all persons and entities other than Norfam, the Norfam Affiliates, and/or persons authorized by Norfam Affiliates to use the Airstrip have no rights of any nature or description to the Airstrip or to use of the Airstrip, except as expressly authorized pursuant to this Agreement; and that the Town hereby terminates, releases, surrenders, and waives any claims to, or rights in, the Airstrip or to its use which the Town may have previously asserted on behalf of the Town or any other person.

## **XI. GENERAL PROVISIONS**

### **A. Changes in Laws, Rules or Regulations**

Without limiting any other provision herein contained, should the Federal Aviation Administration or any other local, county, state, federal or international governmental agency, with jurisdiction over airstrips or over flights of aircraft to and from North Haven, impose, or seek to impose, by any laws, rules or regulations, burdens upon the ownership or use of the Airstrip, which Norfam deems significant in its reasonable judgment and which would not apply or would apply to a significantly lesser extent if the Airstrip were not used by persons other than Norfam and the Norfam Affiliates, Norfam shall have the right to terminate the use of the Airstrip by persons other than Norfam and the Norfam Affiliates during the period any such laws, rules, or regulations are in effect.

### **B. Force and Effect of Agreement**

Norfam's obligations and the Town's benefits under this Agreement shall go into force and effect upon the final approval of this Agreement by the voters of the Town at a Town Meeting, which Town Meeting shall be duly called and held with appropriate reference to this Agreement in the Warrant of the meeting. Should the voters of the Town at Town Meeting grant final approval to this Agreement, the Agreement of December 19, 1991 shall be terminated and be of no further force or effect. Should the voters of the Town at Town Meeting fail to grant final approval to this Agreement, the Agreement of December 19, 1991 shall remain in full force and effect.

### **C. Mediation of Disputes**

Should the parties be unable to agree upon the proper interpretation of any provision hereunder or should any other dispute arise out of, or in any way be connected with, the subject matter hereof, then the parties agree to try to resolve the controversy by mediation. Norfam and the Town shall each appoint a member of the mediation panel and the two members thereby appointed shall in turn select a third. The recommendation of a majority of the three members of the panel shall be considered by each party but shall not be final or binding upon any party. Nothing herein shall prevent Norfam or the Town from enforcing their rights as they determine them, pending the mediation process.

**D. Notices**

The parties shall, from time to time, furnish to each other in writing the name, address, and phone number(s) of each person authorized to act as agent for that party, through whom all contacts contemplated herein shall be made. Any changes shall be promptly sent in writing to the other party.

**E. Execution in Counterparts**

This Agreement may be executed in any number of counterparts with the same effect as if all of the parties had signed the same document.

**F. Execution of Addition Instruments**

Each of the parties hereto shall execute and deliver to any other party hereto so requesting such additional instruments and documents as may be reasonably required to implement the terms and provisions of this Agreement.

**G. Interpretation of Agreement**

This Agreement shall be construed in its entirety, with no emphasis or meaning being given to the headings or captions utilized in this Agreement.

**H. Entire Agreement**

This Agreement supersedes any and all prior agreements, either oral or in writing, between the parties with respect to the subject matter of this Agreement.

**I. Governing Laws**

This Agreement shall be governed by and construed in accordance with the laws of the State of Maine.

**J. Third Party Beneficiaries**

No person other than the Town, Norfam, or one of successors or assigns of Norfam shall have the right at any time to bring any proceeding (judicial or otherwise) to construe or enforce any term or provision of this Agreement.

**K. Binding Effect**

This Agreement shall extend to, be binding upon and inure to the benefit of the parties to this Agreement, their respective heirs, executors, successors, assigns, transferees and personal representatives.

NORFAM CORPORATION

by \_\_\_\_\_  
Helen W. Blodgett, President

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_, 2016  
\_\_\_\_\_

Then personally appeared the above named Helen W. Blodgett, President of Norfam Corporation, and acknowledged the foregoing instrument to be her free act and deed in said capacity and the free act and deed of said Norfam Corporation, thereunto duly authorized, before me.

\_\_\_\_\_  
Attorney at Law/Notary Public

\_\_\_\_\_  
Printed Name

TOWN OF NORTH HAVEN

by

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Jon A. Emerson, Chair  
Town of North Haven Board of  
Selectmen

STATE OF MAINE  
COUNTY OF  
KNOX

\_\_\_\_\_, 2016

Then personally appeared the above named Jon A. Emerson, Chair of the Board of Selectmen of the Town of North Haven and acknowledged the foregoing instrument to be his free act and deed in said capacity and the free act and deed of the Town of North Haven, thereunto duly authorized, before me.

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Attorney at Law/Notary Public

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Printed Name