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SUMMARY OF AIRPORT-AIR CARRIER AGREEMENTS

Roy Williams

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16. Abstract

This paper reviews and discusses twenty-seven long-term airport-air-carrier agreements. The discussion includes common features, fee-setting mechanisms, and concludes with a policy analysis.

These lease and use agreements, because of their long terms, may represent a barrier to entry for air carriers attempting to enter new markets. Even in a deregulated environment, the need to acquire terminal access for a new entrant may be frustrated by the agreements between the airport and the incumbent carriers. This report, by analysing these agreements, points to the specific aspects of the agreements which may present problems to new entrants. It concludes that these problems, though possible, are not likely to occur. Furthermore, should problems arise, the Congress can take steps to alleviate the problem.

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TABLE OF CONTENTS

INDEX OF TABLES

SUMMARY OF AIRPORT-AIR CARRIER AGREEMENTS

I. - An Overview

Operators of airports often make long-term agreements with passenger airlines for the use of airport facilities. These agreements may be called "leases" or they may be called "use agreements," although in general, any one agreement has elements of both types. The agreements often grant exclusive privileges to the signatory airline (hereafter called the "carrier"), including exclusive airplane ramps, ticket counter space, and boarding areas.

Airports attempt to minimize unused space in and around the terminal. The minimization of excess space combined with long-term agreements for exclusive use of areas of the terminal could constitute a severe hindrance to other airlines which are attempting to provide service to the airport for the first time. Such airlines could find that their newly-granted authority to fly to the airport was worthless, because they could not gain access to the terminal in the face of the prior exclusive agreements.

This paper provides an overview of twenty-seven long-term airport agreements used by seventeen different airports and the nature of the problem they represent to new entrants into a market (carriers attempting to serve an airport for the first time). It contains an analysis of the environment in which these agreements are made, a description of the basic features of the agreements, including the methods by which each party may terminate the agreement, and a discussion of the policy implications of the agreements.

II. - Utility of Airport Agreements in Airport Access Issues

People make agreements in writing for two main reasons. They want to make clear to each other exactly what they are agreeing to at the outset. They also want to maintain a more accurate record than their own memories should it be necessary to use outside arbitration to settle a disagreement. Airport operators and air carriers make written agreements for the same reasons. The agreements, therefore, reflect the parties' intentions and provide guidance to future outside arbitrators. The twenty-seven agreements studied make little or no mention of the possibility of new carriers and it seems, therefore, that most of the parties have not considered how they intend to deal with newcomers.

The second facet of the agreements, guidance provided to outside arbitrators, is perhaps more significant to this study. Courts of law, when faced with a written document and conflicting additional evidence, will almost always put great reliance in the written words and discount the other evidence. The rights and obligations set forth in the writing become the important, enforceable ones when a dispute goes to court. In a case involving airport access, the courts could become involved in three ways. The new entrant with the possible help of the Federal Government might sue to force the airport and the present air carriers to allow the new entrant to use the terminal. The airport might sue its present carriers in order to break present agreements and thus have space for the new entrant. Finally, the present air carriers might sue to force the airport to permit incumbents to provide new carriers access to the terminal (e.g., an assignment or sublease of terminal space to allow the present air carriers to reduce service).

In any of these situations, the rights and privileges granted and the obligations incurred will be determined by the courts from the written agreements.

The agreements give us guidance as to how the carriers and the airports view their relationship and how the courts may establish the legal status of the parties in the event of a lawsuit.

III. - Basic Components of Airport Agreements

Agreements between airports and air carriers suffer from two conflicting purposes. On one hand, the parties intend the agreement to be firm and binding, to completely list all the duties and privileges of each party. On the other hand, the parties intend the agreement to provide flexibility in the face of changing time and circumstance. No agreement can adequately provide for these conflicting purposes but the parties labor on in search of the perfect language. Many of their attempts remain in the agreements, left there for lack of better substitutes. The agreements may not be perfected, but they grow quite long as a result of this process of creation.

This study reviews twenty-seven agreement documents and one city ordinance within a framework of determining what the common agreement will contain. The agreements represent the airports of ten large, three medium, and two small cities. The agreements are listed in Appendix 1. Despite the differences in size of city served, the agreements displayed no consistent change between the large cities and the smaller ones. The only noticeable difference was that the agreements for the larger cities tended to be longer, with the John F. Kennedy - Wing Building agreement stretching some 170 pages. The basic common features of these agreements are discussed below. Table 1 lists the common features and shows which agreement had any particular feature.

1. Lease, Use Agreement, or Both--A lease is an agreement for the exclusive use of property for a definite period of time. A use agreement is any agreement which provides for the use of property by someone who is not the property owner. In this framework, all leases are use agreements, but not all use agreements are leases. In the actual operation of these agreements, the distinction matters little except insofar as certain airports use two agreements. At those airports, one agreement (the lease) conveys exclusive use of certain property, for example ticket counter space, while a second agreement gives the carrier access and use of the ramps, runways, aprons, etc. At airports which only execute leases without use agreements, the carrier gains the right to use the airport first because the lease almost certainly provides for unrestricted access to the leased premises and

TABLE 1

COMPONENTS OF AIRPORT AGREEMENTS

AIRPORT AGREEMENT: 1. JFK Unit Terminal; 2. JFK Wing Building; 3. Atlanta - 1960's; 4. Atlanta - United; 5. Atlanta - CPTC; 6. Atlanta - New Terminal; 7. Nashville; 8. Detroit; 9. New York - LaGuardia; 10. Boston - Logan; 11. FAA - TWA; 12. FAA - 1975; 13. FAA - #5166; 14. FAA - #5182; 15. FAA - Exhibit G; 16. FAA - VIASA Airlines; 17. Dallas-Fort Worth (DFW); 18. DFW - Delta; 19. Dade County; 20. Dade County (Miami); 21. Houston; 22. El Paso International; 23. Orlando; 24. Baltimore; 25. Cincinnati; 26. Chicago - O'Hare (Lease)*; 27. Chicago - O'Hare (Use Agreement)*; 28. Newport News - Patrick Henry International*; TOTAL ALL AGREEMENTS

AGREEMENT COMPONENTS	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	TOTAL
1. A. Lease	X	X			X	X	X	X	X	X	X	X		X						X		X				X			14
B. Use Agreement		X	X										X		X	X	X	X	X								X		9
C. Both Lease and Use Agreement				X																	X		X	X	X				[illegible]
2. Length of Agreement in Years	2	2	30	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]		1	28		25	1	[illegible]	4	[illegible]		NA
3. Exclusive Use Areas	X	X			X		X			X	X	X		X			X	X			X	X	X	X	X	X			18
4. Common Areas		X	X				X	X					X				X			X	X	X	X			X	X	X	[illegible]
5. Preferential Use Areas				X	X				X	X			X								X			X					7
6. Severability				X	X		X			X							X				X	X	X	X	X	X	X	X	13
7. Quiet Enjoyment	X	X		X	X		X			X			X			X	X	X			X	X		X	X	X	X		[illegible]
8. Unrestricted Use	X	X	X			X	X										X		X		X				X	X			[illegible]
9. Provision for Future Construction	X	X		X	X	X				X							X	X				X			X				[illegible]
10. Equal Fees			X			X											X						X						4
11. Equal Privileges		X		X	X		X	X					X			X					X		X		X	X	X		[illegible]
12. Subordination	X		X	X	X	X	X	X										X					X	X					10
13. No Waiver of Default	X	X	X	X	X	X	X	X					X			X	X				X	X			X	X	X		[illegible]
14. A. Fees Based on Aircraft Landing Weight			X				X	X	X						X	X	X	X	X	X	X	X	X				X	X	15
B. Rent Based on Square Footage	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	28
C. Fees Based on Number of Enplaned Passengers		X					X						X			X	X				X		X					X	8
D. Fees Tied to Bond Financing			X				X	X									X	X		X							X		7
E. Minimum Fee			X				X										X	X							X	X	X		7
15. Carrier Review of Budget							X	X									X			X	X								5
16. Arbitration of Disputes							X	X					X									X							4
17. Prohibition on Use of Adjacent Airports																							X						1
18. Force Majeur Including Government Requirements	X	X		X	X	X				X							X	X			X	X							10
19. Forbids Denial of Civil Rights		X		X	X		X	X		X			X				X				X			X					10
20. Forbids Unreasonable Withholding of Consent				X	X		X	X			X	X				X	X	X			X					X	X		12
21. Written Contract is Entire Agreement	X	X				X	X										X				X			X					7
22. Assignment and Sublease Clause	X	X	X	X	X	X	X	X	X	X			X			X	X	X			X	X		X	X	X	X		20

* The study reviews ordinances rather than agreements for Chicago and Newport News. The Chicago ordinance contained copies of the use and lease statements.

second because paying a landing fee creates an implied right to use the airport, subject to reasonable restrictions. The lack of a separate use agreement represents little or no problem to the carrier.

2. Length of Agreement in Years--Reflecting the parties' desire for stability, the agreements have very long terms, up to forty years. Almost all of the agreements provide for escalation in fees during the term of the agreement. The average term of the 27 documents studied was 25 years.

3. Exclusive Use Areas--The agreements usually give the carriers exclusive use of ticketing, baggage, holding lounge, and ramp areas. Eighteen of 28 documents, the majority that constituted leases or combined leases and use agreements, defined exclusive use areas.

4. Common Areas--The agreements usually give the carriers the right to use certain areas in common with others. Such areas may include walkways, lobbies, parking, roads, and concession areas. They may also include mobile skyways and ramp areas. Thirteen of 28 documents defined common areas.

5. Preferential Use Areas--A few agreements provide for space which may be used by a second carrier if the first carrier is not using it.

This arrangement usually applies to gates, ramps, and skyways. Only seven of the 27 documents made explicit provision for use by a second carrier.

6. Severability--If a court declares a section of an agreement to be invalid or unenforceable, a severability clause excises the invalid section and declares the intent of the parties that the rest of the agreement shall remain in force. Severability does not apply if the courts have not yet ruled; thus, a law declaring part of an agreement invalid would not activate the severability clause by itself.

7. Quiet Enjoyment--The owner of a property guarantees to the party using the property that the owner will not unreasonably interfere with the user's enjoyment of the property. Thus, the user is guaranteed "quiet" enjoyment. For example, an airport could not move a new carrier into another carrier's exclusive-use area unless the present carrier gave its permission.

8. Unrestricted Access--The airport guarantees that the carrier, its employees, and its customers shall always have a reasonable means of access to the carrier's areas. It does not guarantee that the access will always be by the same route. Thus, the airport can undertake construction and inconvenience the carrier, provided it does so reasonably and provides alternate access.

9. Provision for Future Construction--In anticipation of airport expansion, the agreement may provide for the changes in three ways. One, it may set forth a building program, detailing what is to be built and when. Two, it may detail how the parties will deal with future construction, e.g., which building the carrier will switch to while its original building is being reconstructed. Three, it may provide for changes in fees and their calculation as the new buildings come into use.

10. Equal Fees--The airport may not charge the carrier more for a service or area than it charges any other user of the airport. Only four of the 27 documents made explicit provision for equal fees.

11. Equal Privileges--The airport agrees that it will not provide more generous terms to any other airline. This clause also guarantees equal fees and is occasionally called a "Most Favored Nation" clause. It should not be confused with a right of first refusal, which allows a present air carrier the chance to take possession of an airport expansion at the same price as a possible newcomer. Twelve of the 27 documents made provision for equal privileges and these documents were generally not the same set as those providing for equal fees.

12. Subordination--The agreement between the parties is subordinate to any law of the state or Federal Government, either presently existing or passed during the term of the agreement. A subordination clause does not prohibit either party from challenging the law in the courts. The clause also specifies that it is not intended to change the property rights of the parties. Thus, the agreement would not be subordinate to a law which limited an air carrier to 1,000 square feet of terminal space. Either party would be free to challenge such a law in court, and since the law affects property rights, the clause would not apply.

13. No Waiver of Default--Should one party to the agreement fail to perform its obligations and the other party chooses to ignore the failure, the second party is free to hold the first party responsible if the first party defaults again. For example, the carrier has been using the wrong gate once a day for two years. Even though the airport has ignored the carrier's default for two years, the airport may bring it up and give notice of termination during the third year. The default was not waived. Similarly, if the carrier has been using the wrong gate for some time and the airport chooses to ignore the default and now the carrier makes some other infraction of the agreement, the airport may hold the carrier to the agreement on the second point even though it continues to ignore the first infraction.

14. Airport Fees--Each airport is quite unique as to its scheme of fees and user charges. Some seek to establish one fee for all the carrier's activities. Others charge for each service rendered individually. Those relying on bonded indebtedness frequently make certain that the agreement will provide sufficient revenue to retire the bonds. Almost all charge for at least some of the property used by the carrier on the basis of square feet. Within these many arrangements there are certain common features.

A. Fees Based on Landing Weight--The maximum allowable certificated landing weight for each type of plane, multiplied by the number of times that type of plane has landed, provides one measure of the carrier's use of the airport.

B. Rent Based on Square Footage--A common measure for assessing fees in exclusive-use areas. Square footage provides an easy calculation for hallways, lounges, and common-use areas as well, although it does not strictly represent the use each airline makes of the facilities in question.

C. Fees Based on Number of Enplaned Passengers--The number of enplaned passengers (those who board a plane at the airport; includes those changing planes) provides a good measure for the assessment of costs of security, baggage inspection, and passenger waiting areas.

D. Fees Tied to Bond Financing--Airports with bond financing often include a separate calculation to insure over the long-term that sufficient revenues are held to retire their bonded indebtedness. The airport may provide for a surcharge in lean years or the maintenance of a surplus fund from good years. Seven of the 27 documents had some element linking fees to bond financing requirements.

E. Minimum Fee--Airports set a minimum fee for two reasons. One, the minimum may be set to ensure the retirement of bonds. Two, the minimum may be set to provide an incentive to an air carrier to maintain service to the community. Seven of the 27 documents had some form of minimum fee provision.

Further details of fee-setting are included in Section IV.

15. Carrier Review of Budget--The carriers may review the budget of the airport and may request a meeting to advise the airport on possible changes. In some agreements, a majority of the airlines may veto particular items if a "majority-in-interest" opposes the item. The "majority-in-interest" is usually defined as 51 percent of the carriers and enough carriers to constitute 50 to 75 percent of the total landing weight of the preceding year. Only five out of 27 documents had this type of clause.

16. <u>Arbitration of Disputes</u>--Some or all disputes which may arise between the parties may be submitted to binding arbitration. Usually, the parties will split the costs fairly evenly.

17. <u>Prohibition on Use of Adjacent Airports</u>--Some agreements prohibit the carrier from using any other airport within 25-50 miles. The prohibition may be lifted if the airport in the agreement becomes unavailable. Only one airport document surveyed contained this provision.

18. <u>Forbids Denial of Civil Rights</u>--More recent agreements contain a requirement that the carrier not discriminate.

20. <u>Forbids Unreasonable Withholding of Consent</u>--The airport agrees that where the airport must give its consent to a proposed action of the carrier, it will not withhold that consent without reason. For example, the airport must give its approval to signs and decor to be installed by the carrier. This clause requires the airport to give its approval unless it has a good reason not to. The requirement is enforceable in court, where the carrier could force the airport to show that it had a good cause for denying consent. Twelve of the 27 documents contained this provision.

21. <u>Writing Constitutes Entire Agreement</u>--Should the two parties ever bring a disagreement of interpretation of their agreement into court, this clause instructs the court to ignore any evidence of outside

agreements, letters between the parties, or individual's recollections. At the time of signing, the parties had reduced all their understandings to written form and by this clause, committed themselves to live with the agreement for better or worse.

The clause is limited in effect by two considerations. First, it rarely excludes agreements made after the original one. Second, courts in different states vary in the extent to which they respect the clause. Some obey it implicitly while others look behind the written words to determine for themselves whether or not the document truly expressed the intent of the parties at the time it was signed.

22. Assignment/Sublease Clause--Traditionally, one who purchases an interest in land, here the air carrier, has the full and free right to transfer all or part of his interest to anyone he pleases. Since ultimately the property is returned to the use of the landowner, here the airport, most leases and use agreements place strict limits on such transfers in order to protect the property from unwise assignments or subleases. 1/ In the airport agreements, the airport

1 The distinction between a sublease and an assignment, although not important here, is as follows: An assignment is the transfer of a party's complete interest in land, both as to extent and duration. A sublease is the transfer of less than a complete interest in the land, either as to extent or duration. For example, a person renting an apartment for one year might sublease one room or might sublease the whole apartment for six months. If instead he rented the whole apartment for the full year to someone else, it would be an assignment. The legal significance of all this is that the first renter remains liable for the apartment if he subleases, but if he assigns his interest, he is free and clear of all further obligation.

forbids the carrier from transferring an interest unless the carrier first obtains permission from the airport. Thus, for the carrier's benefit, the airport agrees not to unreasonably withhold permission. Finally, the carrier need not obtain persmission if the party receiving the interest is the carrier's parent company or a company the carrier is merging into.

In addition to the features delineated above, almost every agreement defines responsibility for insuring areas leased, provides for necessary maintenance, provides for utilities, and decrees which concessions the air carrier can and cannot operate. Taken together, these many features create a long-term situation which should withstand most strains without the need for litigation or early termination. A later section describes the situations which might lead to such an early termination.

IV. - Fee Calculations

Each agreement sets forth a fee structure. For some airports, each airline is assessed but one fee, based on the total cost of operating the airport. At others, a separate fee is assessed for each service used by the carrier. Thus, the airport might have a fee for runway use, a fee for gate use, a fee based on square footage used, a parking fee, a ramp fee, and quite a few more. Although the greater number of fees allows the airport to know the use of each of its resources and, therefore, leads to sound decisionmaking, there may be a point of no return at which the cost of the accounting involved exceeds the value of the information produced.

The fee structures also vary in how often they provide for a redetermination of fees. Inflation and changing levels of use lead the airport's costs to change with time. Most fee structures provide for a fairly regular change in the fees to accommodate changes in costs and revenues. Some provide no mechanism for change and thus may be said to be "at risk" of having costs exceed revenue, should carriers cease to serve the airport or should costs increase. Others provide for annual or twice annual adjustments where any excess revenue is returned to the carriers and the fees for the next period are set to reflect the experience of the prior periods. Needless to say, if costs exceeded revenue in the prior period, the carriers will be billed for the difference.

Airports have two kinds of costs, capital and current. Current costs need to be recovered each year, while capital costs may be recovered over the life of the capital investment. In actuality, capital costs are recovered sooner than the life of the investment because of the uncertainty of the future. In recovering these two costs, airports may or may not explicitly separate them. As mentioned above, some agreements simply set a fee and do not describe the rate-setting method at all. Many, however, do describe their mechanism and they describe in detail the "costcenters" of the airport. These centers are usually physical areas in which the costs of operation can be easily separated from the costs of other areas. Thus, three common areas are "landside," the terminal itself, and "airside." The airport may use more centers or less, depending on its particular circumstances. As a particularly thorough example of the fee-setting mechanism, the formula used by the Dallas-Fort Worth Regional Airport is included as Appendix 2.

In order to construct the capital facilities in the first place, most airports rely on the issuance of bonds. The bonds may be general obligation securities of the local political entity or may simply be airport revenue bonds. Such bonds promise a steady return to investors in return for the use of their money to construct and add to the airport. Such bonds are typically for a long term of twenty or more years and if the airport is government operated, the income from the bonds is tax-exempt.

The relationship of bonds to fees paid by the air carriers is illustrated by the following description of financial arrangements at the Minneapolis-St. Paul International Airport:

> "Bonds issued by the airport are of two types: those issued to build general airport facilities pursuant to an indenture in which the authority pledges all its rights, title, and interests in the airline agreements and all other airport revenues; the other type of bonds are those which are issued to build special facilities for individual airlines which are issued pursuant to indentures in which airlines agree to make sufficient payments to the airport to amortize the principal and interest costs of these bonds. Under the airline agreements each of the airlines, with respect to any period during which it is a lessee, is obligated to pay an

amount which, together with airport revenues from other sources, will be sufficient to pay all operating expenses of the air carrier airport and the five general aviation reliever airports owned and operated by the airport, plus 105 percent of the amounts required to be deposited in the principal and interest fund during such period.

The airline agreements govern the operations of the airlines at the airport. The exclusive use of space in the terminal building, fuel storage areas, baggage claim areas, and other areas at the airport is based upon rentals per square foot. All other charges are included in monthly landing fees calculated to be sufficient, together with other airport revenues, to cover all operating and other expenses of the airports, plus 1.05 times debt service on the bonds. Any obligation as to which an airline may be in default will survive the termination of its airline agreement.

The landing fee for any month is computed by multiplying the total number of 1,000 pound units of landed weight during such month by the current landing fee rate, subject to an additional obligation on the part of the airline to reimburse any deficits incurred in annual operations.

The landing fee rate for each fiscal year is computed in advance as the quotient determined by dividing the budgeted "required landing fee income" for the fiscal year by the total estimated number of 1,000 pound units of landed weight of all airlines during the fiscal year. "Required landing fee income" is defined as the sum of airport operating expenses and 105 percent of the amounts required to amortize the bonds used to purchase and construct the fields and runways. If the estimated landing fee is insufficient to cover the airport operating expenses and 105 percent of the amounts required to amortize the bonds used to purchase and construct the fields and runways, the airlines agree to reimburse the airport for the deficit. Thus, the airline lease agreements provide the cash flow needed for day-to-day operations of airside.

In addition, new construction, and in some instances major modifications, are financed through the airport bonding program. General Obligation Revenue Bonds are purchased on the strength of long-term obligations of the servicing airlines. These obligations usually extend for the terms of the bond issue they secure and contain very limited termination provisions. The bonds are marketed primarily on the strength of the airline guarantors and their obligations. The airlines pay for all space, used or unused." 1/

Since a number of the agreements make explicit provision for the payment of bonded indebtedness through the fees paid by the carriers, it would seem that certain airports would be free to construct large capital improvements, secure in the knowledge that whatever they built, the airlines would have to pay for them. Some agreements reflect carrier concern over this possibility. In those agreements the carriers have provided for their review of the airport's budget, in some cases extending to an ability on the carriers' part to prohibit the airport from making certain expenditures. These provisions are detailed in Table 2. The provisions for the protection of the carriers include:

1. The carrier may review items in the current budget. The current budget includes expenses incurred on a day-to-day basis, for example, wages or supplies. This provision usually provides that the airport must submit its budget to the carrier before the budget goes into effect and that the airport must meet with the carrier to discuss anything questioned by the carrier. The carrier may not prevent any expenditure from taking place.

1/ From R. G. Glumack "The Effects of Airline Deregulation Airports," monograph submitted to FAA.

TABLE 2

AIRPORT FINANCING RESTRICTIONS

LIMITS TO AIRPORT DISCRETION / AIRPORT AGREEMENT	1. JFK Unit Terminal	2. JFK Wing Building	3. Atlanta - 1960's	4. Atlanta - United	5. Atlanta - CPTC	6. Atlanta - New Terminal	7. Nashville	8. Detroit	9. New York - LaGuardia	10. Boston - Logan	11. FAA - TWA	12. FAA - 1975	13. FAA - #5166	14. FAA - #5182	15. FAA - Exhibit G	16. FAA - VIASA Airlines	17. Dallas-Fort Worth (DFW)	18. DFW - Delta	19. Dade County	20. Dade County (Miami)	21. Houston	22. El Paso International	23. Orlando	24. Baltimore	25. Cincinnati	26. Chicago - O'Hare (Lease)	27. Chicago - O'Hare (Use Agreement)	28. Newport News - Patrick Henry International	TOTAL ALL AGREEMENTS
1. Carrier May Review Items in Current Budget		X					X	X			X	X	X	X	X	X			X	X		X	X	X		X			15
2. Carrier May Review Items in Capital Budget		X		X	X			X	X														X			X			7
3. Majority-In-Interest May Review Items in Current Budget																	X	X			X				X				4
4. Majority-In-Interest May Review Items in Capital Budget																	X	X	X	X					X				5
5. Majority-In-Interest May Veto Items in Current Budget							X																X						2
6. Majority-In-Interest May Veto Items in Capital Budget			X		X		X	X									X	X					X						7
7. Carrier May Refuse to Pay for Capital Improvements					X					X																			2

2. The carrier may review items in the capital budget. The capital budget includes those items which will be used for longer than the fiscal year. Again, the carrier gets to see the budget in advance and may request a meeting to discuss particular items.

3. A majority-in-interest may review items in the current budget. A majority-in-interest is usually defined as 51 percent of the airlines who have signed agreements with the airport, such majority is also required to have landed from 51 to 75 percent of all aircraft weight during the preceding year. This provision grants the majority a right of review as described in 1. above.

4. A majority-in-interest may review items in the capital budget. This provision grants the majority a right of review of the capital budget.

5. A majority-in-interest may veto items in the current budget. A few agreements allow the majority of the carriers to prevent the airport from making certain current expenditures. Because of the broad power this conveys to the airlines, such clauses are usually limited so that they cannot prevent the airport from expanding facilities to accommodate new carriers, nor may the veto be used to prevent the airport from complying with any government regulation.

6. A majority-in-interest may veto items in the capital budget. This provision allows the majority to prevent certain construction, usually only above some threshold amount like $25,000. Again, because of the broad power conveyed, the majority cannot use it to keep out new entrants or to keep the airport from complying with government mandates.

7. The carrier may refuse to pay for capital improvements. Although the carrier may not veto the capital construction, once it is built, the carrier may refuse to pay for it, provided the carrier objected to the construction at the time it was proposed. Presumably, the airport would not allow such a carrier to reap the benefit of the project until the carrier chose to pay its share.

Airport fees are clearly the most individualized aspect of airport agreements. In general, however, they all attempt to recover the costs of the airport from its users and provide a steady source of income to pay for the airport itself.

V. - <u>Termination Provisions</u>

Each agreement has a final termination date at which the agreement will expire. In many cases, however, other changes may intervene to release the parties from their obligations before the fixed end. First, the parties may assign or sublease their interests, as discussed above. Second, the parties may amend their agreement a few or many times to reflect changing conditions. Third, if the carrier should abandon and cease to use all or part of its area at the airport, the airport generally has the right to "reenter and mitigate." The right of reentry means that the property owner need not let the property stand idle. Instead, the owner may rent the property to another party and apply the proceeds to reduce the amount owed by the original carrier. Thus, the reentry mitigates the owner's loss.

Reentry, subleasing, and amendments may not be sufficient to deal with certain changes of conditions. The one answer for the parties may be termination of the agreement. For example, the desire to accommodate new carriers at an airport where all the space is presently leased may lead the parties to terminate their old agreements and reallocate the space. Generally termination is done unilaterally, when certain specified conditions have been met. Common conditions for termination are set forth below. In almost every case, the termination cannot occur until the party desiring termination has given the other party 30 to 60 days notice. If the other party makes a good faith effort to correct the problem after receiving notice, the termination does not go through.

A. <u>Termination By The Airport</u>

An airport may terminate its agreement with an air carrier for a number of reasons. Table 3 illustrates which of the agreements studied have a particular termination provision. Among the common provisions are:

TABLE 3

GROUNDS FOR TERMINATION OF USE AGREEMENT

BY THE AIRPORT

GROUNDS FOR TERMINATION / AIRPORT AGREEMENT	1. JFK Unit Terminal	2. JFK Wing Building	3. Atlanta - 1960's	4. Atlanta - United	5. Atlanta - CPTC	6. Atlanta - New Terminal	7. Nashville	8. Detroit	9. New York - LaGuardia	10. Boston - Logan	11. FAA - TWA	12. FAA - 1975	13. FAA - #5166	14. FAA - #5182	15. FAA - Exhibit G	16. FAA - VIASA Airlines	17. Dallas-Fort Worth (DFW)	18. DFW - Delta	19. Dade County	20. Dade County (Miami)	21. Houston	22. El Paso International	23. Orlando	24. Baltimore	25. Cincinnati	26. Chicago - O'Hare (Lease)	27. Chicago - O'Hare (Use Agreement)	28. Newport News - Patrick Henry International	TOTAL ALL AGREEMENTS
1. The Bankruptcy, Receivership, or Court Takeover of Carrier	X	X	X	X	X	X	X	X	X	X			X			X	X	X			X	X	X	X	X	X	X		21
2. Carrier's Loss of Authority to Fly Into the Airport		X							X				X																3
3. Permanent Inability of the Carrier To Fly Into the Airport			X			X							X			X					X			X					6
4. Voluntary Abandonment of Service To the Airport by the Carrier	X	X	X			X		X					X			X	X	X			X	X		X		X	X		14
5. Failure of the Carrier to Perform Any Covenant or Condition in the Agreement	X	X	X	X	X	X	X	X	X	X			X			X	X	X			X	X	X	X	X	X	X		21
6. Government Acquisition of the Carrier's Space							X	X	X		X	X	X	X	X						X	X							10

1. The agreement may be terminated if the carrier goes bankrupt, if the carrier goes into receivership, if a court takes control of the carrier's assets, if the carrier makes an assignment for benefit of its creditors, or if the carrier takes any similar action. This provision frees the airport to bring in new carriers without waiting for the outcome of the carrier's financial problems.

2. The agreement terminates if the carrier loses its authority to fly in to the airport, again freeing the airport to bring in a new carrier.

3. A more general clause, incorporating number 2 above, terminates the agreement if any reason prevents the carrier from flying into the airport on a permanent basis. Strikes, storms, or other temporary disturbances do not activate the clause.

4. The agreement may be terminated if the carrier voluntarily abandons service to the airport, or does not oppose a government decision to suspend the carrier's authority to use the airport. This clause usually does not apply if the airport has bonds outstanding. Instead, the carrier in such a case must pay a minimum fee if he abandons service, the fee set to provide for the retirement of the bonds.

5. Like most rental or lease agreements, either party may cancel the agreement if the other party fails to perform its obligations. Most importantly, this includes a failure to pay rent or other fees. After fair notice, the airport may terminate for any breach of the agreement.

6. The government may in time of war or for other reasons take part or all of the airport for its use. The airport may terminate the agreement in the face of the government presence.

B. Termination By The Air Carrier

An air carrier may terminate the agreement for a number of reasons. Table 4 reviews the presence of certain common termination provisions in the agreements studied. The common features are:

1. The carrier may terminate the agreement if a court prohibits it from using the airport for a set period of time, provided the carrier made a good faith attempt to defeat the court order.

2. Similarly, the carrier may terminate the agreement if the Federal Government prevents the carrier from using the airport for a set minimum period of time. An example would be the revocation of a certificate.

TABLE 4

GROUNDS FOR TERMINATION OF USE AGREEMENT BY AIR CARRIERS

GROUNDS FOR TERMINATION / AIRPORT AGREEMENT	1. JFK Unit Terminal	2. JFK Wing Building	3. Atlanta - 1960's	4. Atlanta - United	5. Atlanta - CPTC	6. Atlanta - New Terminal	7. Nashville	8. Detroit	9. New York - LaGuardia	10. Boston - Logan	11. FAA - TWA	12. FAA - 1975	13. FAA - #5166	14. FAA - #5182	15. FAA - Exhibit G	16. FAA - VIASA Airlines	17. Dallas-Fort Worth (DFW)	18. DFW - Delta	19. Dade County	20. Dade County (Miami)	21. Houston	22. El Paso International	23. Orlando	24. Baltimore	25. Cincinnati	26. Chicago - O'Hare (Lease)	27. Chicago - O'Hare (Use Agreement)	28. Newport News - Patrick Henry International	TOTAL ALL AGREEMENTS
1. The issuance of a court order which restrains carrier from using airport for at least 30 to 60 days.	X	X					X	X					X			X	X	X			X	X		X		X	X		13
2. The issuance of a Federal rule preventing carrier's use of airport for 30 to 60 days.	X	X		X	X		X	X	X				X			X	X	X			X	X		X		X	X		16
3. Unforeseeable closure of airport, unless caused by carrier's acts.	X	X		X	X		X	X					X			X		X					X	X		X	X		13
4. Failure of airport to perform any covenant or condition of agreement.	X	X	X	X	X	X	X	X	X	X			X			X	X	X			X	X	X	X	X	X	X		21
5. Erection of an obstacle to carrier's operations at airport.													X			X													2
6. Termination of carrier's air mail contract.													X			X					X	X							4
7. Cancellation of parallel agreement between parties.		X				X							X																3
8. The occurrence of any act which deprives carrier of necessary rights to conduct its business.			X			X	X						X				X	X			X	X	X			X			10
9. If such parties cannot settle their differences over the reallocation of airport space.				X	X								X											X					4

3. If the airport is closed by an unforeseeable occurrence, whether natural or man-made, for a set minimum period of time, the carrier may terminate the agreement. This provision does not apply if the airport is closed due to acts of the air carrier.

4. If the airport fails to perform its obligations under the agreement, the carrier may terminate the agreement.

5. Some agreements make provision for obstacles which might be erected near the airport. If such an obstacle prevents the carrier from using the airport for a set minimum of time, the carrier may terminate the agreement.

6. Termination of the carrier's right or contract to carry U.S. mail may allow the carrier to terminate.

7. In situations where both a lease and a use agreement have been created between the parties, the cancellation of one allows the carrier to terminate the parallel agreement. Without a right to use the runways, a carrier could make little use of the airport's terminal facilities.

8. An all-inclusive right of termination if any act occurs which deprives the carrier of rights necessary to the conduct of its business. This termination clause includes numbers 1, 2, and 3 above in its general scope.

9. A few agreements make specific arrangements for the entrance of new carriers to the airport. Since such new entry necessitates a reallocation of space until new facilities can be built, some of these agreements allow the carrier to terminate the agreement if it and the airport cannot reach an agreement on the reallocation. The clause requires, however, that before the carrier may terminate, it must have bargained in good faith with the airport over the reallocation. Only four of the 27 documents surveyed had such a clause.

VI. - Features Unique to Certain Agreements

Certain agreements break out of the mold and contain unusual and uncommon features. These features are present either in response to specific conditions at one airport or they represent an effort by a lawyer to anticipate a future problem that few others foresee. Among these unique features are the following:

1. The Patrick Henry ordinance declares that agreements made pursuant to it will not supercede existing agreements. This is in direct contrast to most agreements which do suspend and supercede prior agreements.

2. The Dallas-Delta Air Lines agreement provides that if expected new terminal construction is deferred, Delta agrees to joint occupancy of an existing terminal with another airline.

3. In a unique approach to insuring bond retirement, Detroit Metro allows carriers to cease payment should they lose their operating authority, but if outstanding bonds exist at that time, the carrier must pay three times its annual fee to help retire those bonds.

4. Also at Detroit, both parties may appear in court to oppose eminent domain hearings, rather than one party representing both.

5. The FAA-VIASA agreement makes explicit provision for the reallocation of space in the face of new entrants.

6. All the FAA use agreements provide that increased use of Dulles International Airport will reduce the carrier's landing charge at National Airport.

7. The LaGuardia agreement limited the stage length of flights to it until 1964 and also placed limits on the types of planes which could be flown into the airport.

8. The Atlanta New Terminal agreement, among others, provides present carriers with the right of first refusal over available space before new entrants can have access to the space.

9. The Houston agreement allows a carrier to sublet part of its premises if first it no longer needs them and second the airport refuses to take back possession of the excess areas.

10. The JFK Wing Building agreements provide that much of the construction will be done by the airlines. Upon completion of the construction, it becomes the property of the airport.

11. At Baltimore-Washington International, the agreement will terminate if the parties cannot agree on a fee schedule or if the parties cannot agree on their cooperation in expansion plans.

12. Cincinnati does not allow a carrier to terminate the agreement for any reason until the airport bonds have been retired. After that period, however, the carrier may terminate for any reason whatsoever, provided notice is given.

13. Rather than just pay fees, the airlines signing the O'Hare use agreement agree that they will use the airport for the whole term.

VII. - Conclusions

For reasons of stability and bondability, many airports utilize long-term agreements with their air carriers. However effective they may be in furthering the airport's and carrier's goals, they make little provision for new entrants to the airport. Very few even make plans for reallocating space at the terminal. The explicit terms of the agreements do not facilitate easy entry into new markets by carriers.

The real picture is not nearly so gloomy. The written word is not quite the same as the actual practice. So far, practice has been that new entrants have had little trouble in utilizing their routes. They have not been frozen out by the present carriers. Subleases and assignments have proliferated as carriers squeeze other lines into the same ticket area. Reno is handling six new carriers, Las Vegas eight, and Tampa six. Two years ago none of these airports would have appeared able to handle the increased traffic.

What is preventing the long-term leases and use agreements from hampering new entrants? First, these agreements are not as set in stone as it might appear. Just within the leases reviewed, one, El Paso, included a supplemental agreement which extensively altered the size of the premises leased and the fees charged. These supplemental adjustments are not uncommon and will certainly become more common as carriers change routes and service under deregulation.

Second, it is often in each party's interest to cooperate in accommodating new carriers. 1/ The airport is almost always happy to see more

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1/ This assumes that incumbent carriers with leases are not fully utilizing the capacity of the facilities which they lease.

service. It adds to revenues, improves the utilization of airport resources and perhaps most importantly, it improves the status of the airport (e.g., four airlines are better than two, even should they represent the same number of flights). For the present carrier, even though it might be tempted to keep out the new carrier, three reasons stand in the way. First, if there is more than one present carrier at the airport, refusing to sublease to the new arrival runs the risk that another present carrier will sign an agreement with the new entrant. The new entrant would get space in the terminal and the holdout would not get any rent revenues. Second, whether there are one, two, or many present carriers, holding out might keep the carrier out for now, but sooner or later the airport management will build new space to accommodate new carriers and the new entrant will be in anyway. Third, trying to inconvenience the new entrant may lead the new entrant to inconvenience the present holdout. In particular, the new entrant might make it difficult for the holdout to sublease in some other market. Certainly rare is the airline that has no dreams of adding at least one more market at some time. Overall, a present carrier who fought the entry of a new carrier into the market by attempting to deny the new entrant terminal space or use might be wise in the short run but almost certainly gains no advantage in the long run and may even put itself at a disadvantage as the new entrant retaliates.

Conceivably, some bottlenecks will arise. Some air carriers may be intransigent about subleasing to new entrants. Even more probable, some airports faced with environmental problems may limit or exclude new entry to placate airport neighbors. For example, Burbank proposed to exclude new carriers unless they met a stricter noise standard than Burbank required of incumbents. Fortunately, the ordinance adopted contains no such bias but airports may discriminate against new entrants in fact as well as in law. Airports may also choose to discriminate by allowing in a few entrants and holding back on others. That is, the airport may feel capable of handling two new entrants, but not six. In any of these instances, the airport-air carrier agreements would represent a road block to new entrants attempting to gain airport access.

VIII. - Policy Implications

Should the need arise, agreements restricting access can be dealt within three ways. First, the government can enforce the restrictions which are written into each aid-to-airport grant. The restrictions come from the 1958 FAA act (49 U.S.C. 1349(a)) and provide that the airport promises that it will not give anyone the exclusive use of runways or facilities built with grant money. If the agreements are keeping new entrants from using facilities built with FAA grant money, they are invalid, whether they have a subordination clause or not. Those with subordination clauses almost always state within the agreement that the agreement is subordinate to any restriction contained in an FAA grant. Should the grant-based approach be insufficient, Congress could declare that the agreements represent state interference within interstate commerce and could preempt the agreements by declaring that any such agreements have a maximum term of perhaps six months. This would probably face a court challenge but is most likely a valid exercise of Congressional power. Finally, long-term agreements might be attacked as illegal restraints on trade. Such restraints are prohibited by the antitrust acts and could be rendered unenforceable by the courts.

In the future, the trend in agreements will probably be toward a drastic shortening of their term. Always the main justification for long terms has been to ensure funds to retire bond issues. Without long-term commitments from the carriers, it was felt that the bonds would require higher interest rates. Experience at a few brave airports, for example Phoenix, has shown that long-term leases are not necessary to successful bond issues at least for larger airports. In time, it seems likely that the larger, more popular airports will dispense with long-term agreements gaining flexibility to handle new entrants without losing any real advantages. Since the airport will always have business from its local market, the long-term leases really provide no more stability than is already there. Thus, the airports will choose to dispense with long-term agreements to have the flexibility to offer their terminal and facilities to the highest bidder. New entrants will no longer be faced with removing the opposition.

In conclusion, recent history suggests that long-term agreements will not pose a major problem to air carriers seeking to enter new markets. In the event that they do, the Congress has power to correct the problem.

APPENDIX 1

AIRPORT/AIR CARRIER AGREEMENTS

1. Port Authority of New York, John F. Kennedy International - Unit Terminal.
2. Port Authority of New York, John F. Kennedy International - Wing Building.
3. City of Atlanta; 1960's Agreement.
4. City of Atlanta - United Airlines (Center Passenger Terminal Complex).
5. Atlanta - Central Passenger Terminal Complex.
6. Atlanta - United Airlines - New Terminal Area.
7. Metropolitan Nashville Airport Authority.
8. Detroit Metropolitan-Wayne County.
9. Port Authority of New York; LaGuardia.
10. *Massachusetts Port Authority* - *South Terminal* Corporation, Logan Airport.
11. FAA - Trans World Airways; Dulles and National Airports.
12. FAA - (1975).
13. FAA - National Airlines; Contract #5166.
14. FAA - National Airlines; Contract #5182.
15. FAA; Exhibit G (Rate-Setting Methodology).
16. FAA - VIASA Airlines.
17. Dallas-Forth Worth (Published Form Agreement).
18. Dallas-Forth Worth - Delta Air Lines.
19. Dade County (Miami).
20. Dade County (Miami) - Eastern Air Lines; Supplemental Lease.

21. City of Houston (Houston Intercontinental Airport).

22. El Paso International - American Airlines; 1965 Agreement With Supplement.

23. Orlando International Airport - Delta Air Lines.

24. Maryland Department of Transportation (Friendship International; Now Known as BWI Airport).

25. Kenton County (Greater Cincinnati Airport); Agreement and Seven Supplements.

26. Chicago (O'Hare); Lease.

27. Chicago (O'Hare); Use Agreement.

A. Newport News (Patrick Henry International Airport); City Ordinance.

from Dallas-Fort Worth Use Agreement

ARTICLE V

Rentals, Fees and Charges

Section 5.1 GENERAL COMMITMENT. (a) For and in consideration of the Board's constructing, developing and equipping the Airport with funds derived from the sale of Bonds, Airline, notwithstanding any covenant, term or condition contained elsewhere in this Agreement, agrees to pay rentals, fees and charges for its use, operation (or right to operate) and occupancy of the Airport premises and facilities, and the services appertaining thereto, in an amount which, together with rentals, fees and charges paid by other airlines and others using the Airport premises and facilities, will be sufficient to produce total Gross Revenues in each Fiscal Year required to satisfy the Board's obligation under the first sentence of Section 9.4.B of the 1968 Concurrent Bond Ordinance.

(b) In order to minimize the general commitment of Airline under subsection (a) next above, Board agrees through the application and imposition of rentals, fees and charges to promote and develop revenues from other users of the Airport. Board further agrees to include in any agreement substantially similar to this Agreement that is executed with any other Signatory Airline or Non-Signatory Airline all of the provisions of Articles III, V, IX, X and XIII hereof.

Section 5.2 SPECIFIC USE PAYMENTS BY AIRLINE. (a) Board agrees that so long as Airline is not in default hereunder, or so long as Board is not in default in its obligations under the first sentence of Section 9.4.B of the 1968 Concurrent Bond Ordinance, the Board will, from and after the Effective Date of this Agreement, bill, and Airline hereby agrees to pay, the following specific rentals, fees and charges at the times, for the purposes and calculated in the manner specified in the succeeding provisions of this Article V, to-wit: (i) Rental and Use Fee for the right (on the part of Airline and non-airline users authorized by the Board) to use and occupy the Airline's Terminal Complex; plus (ii) Landing Fees for the use of the Runway and Taxiway Complex; plus (iii) a charge for the use of the Air Conditioning and Heating System; and plus (iv) other charges pursuant to this Agreement.

(b) If the Effective Date of this Agreement shall be other than the first day of the month, the rentals, fees and charges payable hereunder shall be prorated on a daily basis for the period from the Effective Date to the end of the month in which the Effective Date shall occur.

(c) To the extent that it is prudent, considering the requirements attached to the acceptance of such funds, Board shall apply for and make use of Federal and State funds for the development of the Airport. Except when otherwise provided by law or by the terms of this Agreement, any Federal or State funds received and used for the development of the Airport shall be taken into consideration and Signatory Airlines given full credit, where applicable, in the determination of rentals, fees and charges as calculated and adjusted from time to time under the terms of this Agreement.

(d) The Board shall, unless precluded by superior authority from doing so, collect a charge at the control plazas for vehicles utilizing the Airport.

(e) The Board shall collect compensatory fees and charges from Aircraft Operators utilizing the facilities of the Airport, taking into account the degree of utilization of air field and air space capacity by such Aircraft Operators in reasonable relationship to the Airport investment.

Section 5.3 ADJUSTMENTS OF FEES. The Rental and Use Fee and Landing Fee rate payable hereunder shall be established by the Board at the beginning of each fiscal year and adjusted after the close of each six (6) month period thereafter, using the latest available data relating to changes in the variable components of the formulae recited in Sections 5.6 and 5.7 hereof. Each such adjustment shall consist of two elements — (a) a prospective adjustment to determine the Preliminary Rental and Use Fee and Preliminary Landing Fee rate payable in the next succeeding six (6) month period and (b) a retrospective adjustment to determine the Actual Rental and Use Fee and Actual Landing Fee rate that should have been paid in the six (6) month period immediately preceding the date of adjustment. Overpayments or deficiencies shall be handled in accordance with Sections 5.6(c) and 5.7(c) hereof. As experience may dictate, the Board may, with the prior approval of a Majority-In-Interest of Airlines, make an interim adjustment of the Rental and Use Fee and/or Landing Fee rate at any time within any six (6) month period. (See Schedules A, B, C, D, and E attached hereto as examples of implementation of the formulae contained herein this Article V. The figures used are for illustration only.)

Section 5.4 ALLOCATION OF DEBT SERVICE. Debt service requirements shall be allocated on the basis of the ratio that the Contract Cost of each Cost Center (such as the Passenger Enplaning and Deplaning Complex, the Runway and Taxiway Complex, the Air Conditioning and Heating System, Airport Services and all other Cost Centers) individually bears to total Contract Costs of the Airport which are not financed with private capital or Special Facility Bonds.

Section 5.5 ALLOCATION OF AIRPORT SERVICES. The Airport Services Component of each rate, fee or charge shall be determined in accordance with the following procedures:

(a) The preliminary rate per acre per annum shall be computed by the Board (in the manner illustrated in Schedule A attached hereto) not less than ten (10) days prior to the close of each six (6) month period and shall be applicable during the succeeding six (6) month period, which preliminary rate per acre per annum shall be determined in accordance with the following formula:

$$\frac{A}{B} = C$$

A — Airport Services Costs projected to be incurred by the Board during the next succeeding six (6) month period.

B — Total Developed Acreage on the Airport projected for the first day of the next succeeding six (6) month period.

C — Preliminary rate per acre per annum to be used during the next succeeding six (6) month period.

(b) The actual rate per acre per annum for the preceding period shall be computed by the Board at the close of each six (6) month period, which actual rate per acre per annum shall be determined in accordance with the following formula:

$$\frac{A}{B} = C$$

A — Actual Airport Services Costs incurred by the Board during the period just closed.

B — The average number of Total Developed Acreage on the Airport during the period just closed.

C — Actual rate per acre per annum for the period just closed.

(c) The Airport Services Component shall be determined by multiplying "C" in the above formula by the number of acres allocated to a particular Cost Center in calculating rentals, fees and charges pursuant to this Agreement.

Section 5.6 RENTAL AND USE FEE. For the use and occupancy of its assigned portion of Airline's Terminal Complex, Airline shall pay a Rental and Use Fee, computed as an annual and semiannual amount and due and payable in installments upon presentation of an invoice for the monthly rental.

(a) The Preliminary Rental and Use Fee shall be computed by the Board (in the manner as illustrated in Schedule B attached hereto) not less than ten (10) days prior to the close of each six (6) month period and shall be applicable during the next succeeding six (6) month period, which Preliminary Rental and Use Fee shall be determined in accordance with the following formulae:

(i)

$$\frac{A + B + C}{D} = E$$

(ii)

$$(E \times F) - (E \times G) - (H \times \frac{F}{D}) = I$$

A — Airport Services Component for PEDC projected to be incurred by the Board during the next succeeding six (6) month period.

B — Operations and maintenance costs for PEDC projected to be incurred by the Board during the next succeeding six (6) month period.

C — Debt service requirement for PEDC at 1.0 to 1.0 coverage projected to be incurred by the Board during the next succeeding six (6) month period.

D — Total Square Footage in PEDC projected for the first day of the next succeeding six (6) month period.

E — Projected gross rate per square foot in PEDC for the next succeeding six (6) month period.

F — Projected Square Footage in PEDC chargeable to Airline, including Terminal Structure Concessionaire space, for the first day of the next succeeding six (6) month period.

G — Projected Square Footage in PEDC of Terminal Structure Concessionaire space chargeable to Airline for the first day of the next succeeding six (6) month period.

H — Projected total of rents and/or fees to be paid by Terminal Structure Concessionaires located in PEDC, less ("E" x total Terminal Structure Concessionaire space located in PEDC), during the next succeeding six (6) month period.

I — Preliminary Rental and Use Fee chargeable to Airline during the next succeeding six (6) month period before credit for reasonable operating and maintenance costs collected from Terminal Structure Concessionaires, as set forth in Section 6.1(d) hereof.

$\frac{I}{6}$ — Preliminary equal monthly installment.

(b) The Actual Rental and Use Fee for the preceding period shall be computed by the Board at the close of each six (6) month period thereafter, which Actual Rental and Use Fee shall be determined in accordance with the following formulae:

(i)

$$\frac{A + B + C}{D} = E$$

A — Actual Airport Services Component for PEDC incurred by the Board during the period just closed.

B — Actual operations and maintenance costs for PEDC incurred by the Board during the period just closed.

C — Actual debt service requirement for PEDC at 1.0 to 1.0 coverage incurred by the Board during the period just closed.

D — The average total Square Footage in PEDC during the period just closed.

E — Actual gross rate per square foot in PEDC for the period just closed.

F — Actual average Square Footage in PEDC chargeable to Airline, including Terminal Structure Concessionaire space, during the period just closed.

G — Actual average Square Footage in PEDC of Terminal Structure Concessionaire space chargeable to Airline during the period just closed.

(ii)

$$(E \times F) - (E \times G) - (H \times \frac{F}{D}) - (I + J) = K$$

H — Actual total of rents and/or fees paid by Terminal Structure Concessionaires located in PEDC, less ("E" x total Terminal Structure Concessionaire space located in PEDC), during the period just closed.

I — Actual amount of Preliminary Rental and Use Fee paid by Airline during the period just closed.

J — Actual amount of Airline's operations and maintenance expenses collected from all Terminal Structure Concessionaires in Airline's portions of the Terminal Structure during the period just closed, as set forth in Section 6.1(d) hereof.

K — Amount due from or credit due to Airline for Actual Rental and Use Fee for the period just closed.

(c) In the event the Actual Rental and Use Fee as above determined:

(i) shows an overpayment by Airline during the six (6) month period just closed, then the Board will credit such overpayment against the next monthly installments of Airline's Preliminary Rental and Use Fee until such credit has been exhausted or the Board shall credit Airline for such overpayment in such other manner as the Board and a Majority-In-Interest of the Airlines may mutually agree;

(ii) shows a deficiency in payments by Airline during any six (6) month period ending March 31, then the Board shall pro rate the deficiency over the remainder of the six (6) month period then in effect and add it to Airline's Preliminary Rental and Use Fee for such perio' and Airline shall pay such deficiency as additional Rental and Use Fee; or

(iii) shows a deficiency in payments by Airline during any six (6) month period ending September 30, then the Board shall bill Airline for such deficiency and Airline shall forthwith pay such deficiency in full as additional Rental and Use Fee.

(d) Inasmuch as the Rental and Use Fee required by this Section 5.6 includes allocable charges for the use of the lands described in the PSF Agreement as to Airline, the Ground Rent requirements of Section 4.1 of the PSF Agreement are hereby rescinded as to Airline, and no separate or additional Ground Rent shall be due from Airline under the PSF Agreement.

(e) In the event Airline fails, neglects or refuses to perform or fulfill any of the covenants or obligations of this Agreement (including the obligations set forth in Section 4.6(a) hereof) on Airline's part to be performed or fulfilled (other than the payment of rentals, fees and charges), the Board may, on thirty (30) days' written notice to Airline, perform or fulfill such covenants or obligations of Airline, and Airline agrees to pay as additional Rental and Use Fee the reasonable sums paid or reasonable expenses incurred by Board in such performance or fulfillment, including all applicable interest, damages and penalties. Where a covenant or obligation requires performance or fulfillment of a continuing nature, Airline's commencement to perform or fulfill such covenant or obligation and continued diligent prosecution shall be sufficient. Where a covenant or obligation cannot reasonably be completed within the foregoing notice period, Board shall take no action hereunder if Airline commences performance or fulfillment of such covenant or obligation within the notice period and diligently prosecutes the work to completion.

Section 5.7 LANDING FEES. From and after the Effective Date hereof, for each and every landing of each and every aircraft landed by Airline at the Airport, Airline shall pay Landing Fees as established by the Board pursuant to this Section 5.7. As used herein, the term "Landing Fees" shall mean the product of the Landing Fee rate times Airline's total Maximum Approved Landing Weight of Aircraft landed at the Airport in any month. The term "Landing Fee Rate" shall mean a unit fee expressed in cents-per-thousand pounds of Maximum Approved Landing Weight of Aircraft adjusted to the nearest hundred pounds.

(a) The Preliminary Landing Fee rate shall be computed by the Board (in the manner as illustrated in Schedule D) not less than ten (10) days prior to the close of each six (6) month period thereafter and shall be applicable during the next succeeding six (6) month period, which Preliminary Landing Fee rate shall be determined in accordance with the following formula:

$$\frac{A + B + C + D}{E} = F$$

A — Airport Services Component for RTC projected to be incurred by the Board during the next succeeding six (6) month period.

B — Operations and maintenance costs for RTC projected to be incurred by the Board during the next succeeding six (6) month period.

C — Debt service requirement for RTC at 1.1 to 1.0 coverage projected to be incurred by the Board during the next succeeding six (6) month period.

D — Ancillary Net Revenues projected to be collected or incurred by the Board during the next succeeding six (6) month period.

E — Total Maximum Approved Landing Weight of Aircraft at the Airport in thousand pound units for all Signatory Airlines projected for the next succeeding six (6) month period.

F — Preliminary Landing Fee rate per thousand pounds of Maximum Approved Landing Weight of Aircraft at the Airport for Signatory Airlines.

(b) The Actual Landing Fee rate for the preceding period shall be computed by the Board at the close of each six (6) month period, which Actual Landing Fee rate shall be determined in accordance with the following formulae:

(i)

$$\frac{A + B + C + D}{E} = F$$

(ii)

$$(F \times G) - H = I$$

A — Actual Airport Services Component for RTC incurred during the period just closed.

B — Actual operations and maintenance costs for RTC incurred by the Board during the period just closed.

C — Actual debt service requirement for RTC at 1.1 to 1.0 coverage incurred by the Board during the period just closed.

D — Actual Ancillary Net Revenues collected or incurred by the Board during the period just closed.

E — Actual total Maximum Approved Landing Weight of Aircraft at the Airport in thousand pound units for all Signatory Airlines during the period just closed.

F — Actual Landing Fee rate per thousand pounds of Maximum Approved Landing Weight of Aircraft at the Airport for all Signatory Airlines for the period just closed.

G — Actual total Maximum Approved Landing Weight in thousand pound units for Airline at the Airport for the period just closed.

H — Actual amount of Preliminary Landing Fees paid by Airline during the period just closed.

I — Amount due from or credit due to Airline for Actual Landing Fees during the period just closed.

(c) In the event the Actual Landing Fees as above determined:

(i) shows an overpayment by Airline during the six (6) month period just closed, then the Board will credit such overpayment against the next monthly installments of Airline's Preliminary Landing Fees until such credit has been exhausted, or the Board shall credit Airline for such overpayment in such other manner as the Board and a Majority-In-Interest of the Airlines may mutually agree;

(ii) shows a deficiency in payments by Airline during any six (6) month period ending March 31, then the Board shall pro rate the deficiency over the remainder of the six (6) month period and Airline shall pay such deficiency as additional Landing Fees; or

(iii) shows a deficiency in payments by Airline during any six (6) month period ending September 30, then the Board shall bill Airline for such deficiency and Airline shall forthwith pay such deficiency in full as additional Landing Fees.

(d) In the event the computations of Actual or Preliminary Landing Fee rates pursuant to this Section 5.7 produce negative Landing Fees, then the Board shall credit to Airline its share of the amounts of such negative Landing Fees in the ratio that Airline's total Maximum Approved Landing Weight of Aircraft at the Airport bears to the total Maximum Approved Landing Weight of Aircraft of all Signatory Airlines at the Airport in the adjustment period. Such credit shall first be applied to Airline's Preliminary Landing Fees, if any, and then to Airline's Preliminary Rental and Use Fees until exhausted.

(e) To enable the Board to perform the computations required of it hereunder, Airline shall furnish to the Board (i) not later than the fifth (5th) day of each month, a flight activity statement, signed by an authorized representative of Airline, certifying the actual number of landings by type and model of aircraft landed by Airline at the Airport during the preceding month, (ii) not later than the Effective Date hereof, a schedule of Maximum Approved Landing Weights of Aircraft operated by Airline at the Airport and Airline shall promptly notify the Board of any subsequent changes or additions thereto or deletions therefrom and (iii) a copy of Airline's current published flight schedule. Upon receipt of the foregoing data, the Board shall promptly furnish Airline an invoice for Landing Fees based on Airline's activity during the preceding month. Such Landing Fees are due and payable on presentation of such invoice. In the event Airline fails to furnish the flight activity statement as required herein, the Board shall bill Airline for Landing Fees based on the most recent flight activity statement received from Airline. Upon receipt of such required statement, the Board shall adjust the invoice for Airline's Landing Fees accordingly.

Section 5.8 AIR CONDITIONING AND HEATING CHARGE. For the use of the Airport's Air Conditioning and Heating System, Airline shall pay the monthly Air Conditioning and Heating Charge, which Charge is due and payable upon presentation of the monthly invoice.

(a) Commencing on the first day of the month following that in which the Effective Date occurs, and on the first day of each succeeding month throughout the balance of the term of this Agreement, the Board shall compute the Air Conditioning and Heating Charge for the Air Conditioning and Heating System in accordance with the following formula, to-wit:

$$\frac{A + B - C}{D} \times E + F \times \frac{3I + J}{3G + H} \times \frac{E}{K} = L$$

A — Airport Services Component for the Central Utilities Plant projected to be incurred by the Board during the month, plus or minus an adjustment if necessary, for actual costs for the prior month.

B — Debt service requirement for the Air Conditioning and Heating System at 1.1 to 1.0 coverage projected to be incurred by the Board during the month, plus or minus an adjustment, if necessary, for actual costs for the prior month.

C — Revenues collected from other users based on fixed-rate-per-square-foot-served charge.

D — Total heated or enclosed area in square feet served by the Air Conditioning and Heating System, less the area in square feet served on a fixed-rate-per-square foot basis as of the first day of the month.

E — Total heated or enclosed area in square feet in the Terminal Structure served by the Air Conditioning and Heating System chargeable to Airline as of the first day of the month.

F — Operations and maintenance costs for the Air Conditioning and Heating System projected to be incurred by the Board during the month plus or minus an adjustment, if necessary, for actual costs for the prior month.

G — Meter reading BTU's — total cooling system.*

H — Meter reading BTU's—total heating system.*

I — Meter reading BTU's — for cooling system chargeable to the Airline's Terminal Structure.*