

**WESTCHESTER COUNTY AIRPORT
TERMINAL USE AGREEMENT**

THIS AGREEMENT ("Agreement") made effective as of the 4th day of ~~May 2004~~, ^{JANUARY, 2007} by and among:

THE COUNTY OF WESTCHESTER, a municipal corporation existing by virtue of the law of the State of New York, having an office and principal place of business in the Michaelian Office Building, 148 Martine Avenue, White Plains, New York 10601

(hereinafter referred to as the "County")

and

JetBlue Airways Corporation ("Permittee"), which has executed this Agreement by signing below.

WITNESSETH:

WHEREAS, in or about March 1985, the Westchester County entered into a Stipulation and Order of Partial Settlement and Dismissal (the "Stipulation") with various named airlines, the Federal Aviation Administration and the U.S. Attorney in connection with certain litigation entitled Midway Airlines, Inc., et al. v. County of Westchester, New York, et al., 84 Civ. 2229 (EW); and

WHEREAS, the Stipulation contained a plan for the allocation for the access to the Westchester County Airport (the "Airport" or "HPN") promulgated pursuant to an order dated April 19, 1984, of the Hon. Edward Weinfeld, U.S.D.J., S.D.N.Y., issued in connection with the above-referenced litigation; and

WHEREAS, the Stipulation provided, *inter alia*, that the normal operating capacity of the existing terminal was "240 passengers per half hour, assuming an almost even division between arriving (deplaning) and departing (enplaning) passengers and assuming an almost uniform distribution for all passengers throughout the period," and

WHEREAS, on June 6, 1984, in response to the aforesaid order, the County Board of Legislators adopted Resolution 95-1984 establishing and approving the allocation mechanism for all airlines seeking to conduct operations at the Airport as later incorporated into the Stipulation; and

WHEREAS, said Resolution 95-1984 set forth the County's Policy with respect to the future use and operation of the Westchester County Airport, set forth the County's Policy concerning access to the Airport by airlines, established the Airport terminal capacity to accommodate airlines and adopted a mechanism for allocating said capacity among airlines seeking access; and

WHEREAS, the Westchester County Board of Legislators has enacted subsequent Resolutions that have established, reaffirmed and modified County policy with respect to the Airport, including but not limited to Resolution 266-1985 on or about October 7, 1985 and Resolution 59-1985 on about February 28, 1985; and

WHEREAS, on or about April 5, 1987, the County and specified airlines conducting operations at the Airport entered into an instrument entitled "Terminal Building Westchester County Airport Statement of Facility Capacity" (the "Capacity Statement") which reaffirmed the basic provisions of the Stipulation; modified the terminal capacity limit to 240 passengers per half hour "...without regard to whether the passengers are enplaning or deplaning"; committed the County to perform specified interim renovations to the existing terminal; proposed the construction of a new terminal by the County substantially in accordance with plans attached thereto; and established the terminal capacity limit for the proposed new terminal as 240 passengers per half hour without regard to whether the passengers are enplaning or deplaning; and

WHEREAS, a new terminal was in fact built which was designed to accommodate 240 passengers per half hour; and

WHEREAS, on or about July 7, 1994, the County and specified airlines conducting operations at the Airport entered into an instrument entitled "Westchester County Airport Terminal Capacity Affirmation and Extension Agreement" ("1994 Terminal Capacity Agreement") which reaffirmed the basic provisions of the Stipulation and the Capacity Statement and the prior Board of Legislators Resolutions with regard to the capacity of the terminal and adjacent aircraft ramp space; and

WHEREAS, the 1994 Terminal Capacity Agreement expires by its terms on December 31, 2004; and

WHEREAS, on or about October 7, 2003, the Board of Legislators adopted Resolution 245-2003 which reaffirmed the County's commitment to preserve current limitations on airport facilities; and

WHEREAS, the County and the Airlines desire to reaffirm and extend the terms and provisions contained in the Stipulation, Capacity Statement, and 1994 Terminal Capacity Agreement, in compliance with County policies and practices implemented as a result of and various Board of Legislators Resolutions and at the same time desire to modify certain operational matters at the Airport;

NOW, THEREFORE, the parties hereto agree as follows:

1. Term. This Agreement shall be effective as of the effective date of Section 712.462 of the Laws of Westchester County ("Section 712.462"), substantially in the form contained in Exhibit 1 to this Agreement, and shall expire on December 31, 2014, unless earlier extended for up to two

additional five (5)-year periods at the County's option, subject to all necessary legal approvals. Upon the effective date of Section 712.462, the County shall substitute for the draft version of Section 712.462 in Exhibit I the version of Section 712.462 as enacted by the Board of Legislators.

2. **Definitions.**

- a. **Airport.** "Airport" shall mean the Westchester County Airport.
- b. **Affiliate Group.** "Affiliate Group" shall mean one or more Qualified Airlines whose operations at the Airport are reported under a single airline code in the Official Airline Guide ("OAG").
- c. **Commissioner.** "Commissioner" shall mean the Commissioner of Transportation of Westchester County or his or her designee, which designee may include the Airport Manager of the Westchester County Airport.
- d. **Qualified Airline.** A "Qualified Airline" shall mean any airline that: (1) holds a valid operating certificate from the Federal Aviation Administration for the type of service it provides or seeks to provide; (2) has, or has immediate and demonstrable access to, sufficient aircraft and operating personnel to provide the service it provides or seeks to provide; (3) has executed this Agreement; (4) furnishes proof of insurance pursuant to the terms of Paragraph 40 of this Agreement; (5) has designated a representative for purposes of Section 712.462; and (6) is current on its financial obligations to the County.
- e. **Terminal Ramp.** "Terminal Ramp" shall refer to that portion of the apron at the Airport which is immediately adjacent to the Terminal building and which is available for scheduled Airline operations.

3. **Terminal Capacity.** The parties expressly agree that the design capacity of the Airport Terminal safely and comfortably to accommodate passengers is 240 passengers per half hour regardless of whether such passengers are enplaning or deplaning. The parties commit and agree to abide by the Terminal capacity limitation of 240 passengers per half hour throughout the term of this Agreement, based on the provisions contained in Section 712.462 as adopted and waive any right or privilege to request a reassessment of such Terminal capacity during the term of this Agreement.

4. **Terminal Ramp Capacity.** The parties expressly agree that the Terminal Ramp can only safely and efficiently accommodate four scheduled aircraft at one time. The parties commit and agree to abide by the Terminal Ramp

limitation of four scheduled aircraft per half hour throughout the term of this Agreement and waive any right or privilege to request a reassessment of such Terminal Ramp capacity during the term of this Agreement.

5. **Airport Function.** The parties agree that the Airport is a public use airport serving general aviation and commercial service aviation needs within a service area comprised primarily of Westchester County and nearby adjoining areas. They further agree that the Airport's principal function at present and in the foreseeable future is one of accommodating general aviation with an emphasis on business use; by comparison, its commercial service function is relatively modest.
6. **Terminal Use.** The Permittee reaffirms, ratifies, commits and agrees to abide by and follow the Terminal Use Procedures set forth in Section 712.462, including without limitation, the measurement of actual Terminal usage, the enforcement of the capacity limits, and the regulation of airline access. Further, the Permittee agrees not to challenge the validity or legality of Section 712.462 in a court of law or administrative proceeding for the term of this Agreement.
7. **Lottery System; Recordkeeping.** The parties agree that the lottery system has been effective for nearly twenty years for allocating scarce Terminal and Terminal Ramp capacity. The parties recognize, however, that the current manual lottery system and recordkeeping mechanisms rely on outdated systems. The Permittee agrees to cooperate with the County in implementing improved technology for conducting the lottery and in implementing more efficient control and recordkeeping systems so long as the fundamental features of the lottery are preserved substantially in the form set forth in Section 712.462.
8. **Technical Specifications.** The Permittee agrees to abide by and not to challenge the Airport's Technical Specifications and Procedural Requirements (the currently effective version of which is attached and incorporated herein as Exhibit 2) in a court of law or administrative proceeding for the term of this Agreement except as provided in Paragraph 48 herein. Such Terminal Specifications and Procedural Requirements may be amended from time to time by the Airport Manager so long as the Commissioner has afforded Permittee 30 days notice of such amendment and an opportunity to comment prior to its effectiveness. Any such amendment shall comply with applicable federal law and regulations and orders of the Federal Aviation Administration governing airports that are eligible for receipt of federal grant funds.
9. **Permit.** The County hereby grants to the Permittee, and the Permittee hereby accepts from the County, for the term herein stated and subject to

all the terms and conditions herein contained, the following described Permit:

A Permit to conduct scheduled commercial air service at the Airport at the times herein specified in Exhibit 16, annexed hereto and made a part hereof, and in the manner hereinafter specified, and the right to use certain space in the Terminal as specified in this Agreement.

10. **Permitted Uses For Space in the Terminal.** For the performance of operations permitted herein, Permittee is hereby granted a permit to use and occupy certain space located in the Terminal building for the purposes set forth below. Permittee shall have the right to use and occupy said space as provided in this Subparagraph.
- a. **Departure Lounge Facilities.** In common with other Permittees, the Permittee may use the Departure Lounge for departure passenger processing and arriving passenger accommodation. The Departure Lounge counter positions will be allocated for a specific time known as the Allocation Period in the manner described in Exhibit 9, which is annexed hereto and made a part hereof. During this Allocation Period, the Permittee will have use of one position, including the associated flight information display device.
 - b. **Ticket Counter Positions.** Ticket counter positions will be allocated in the manner described in Exhibit 8, which is annexed hereto and made a part hereof. The Permittee's allocated ticket counter position will include use of the luggage conveyor belt and associated flight information display device. The Permittee shall conduct all ticket counter operations in a manner to be approved by the County that does not interfere with ticket counter use by adjoining users.
 - c. **Use of Counter Positions.** The Permittee must use its counter position(s) in a manner that recognizes the proximity of other Permittees and does not interfere with their respective counter operations. All Permittees may have the use of the handicapped counter position on a first come, first served basis.
 - d. **Operations Office.** Operations office positions will be allocated in the manner described in Exhibit 10, which is annexed hereto and made a part hereof.
 - e. **Training Room.** The Permittee shall have the use of Room 271 for training purposes in conjunction with others. Use of this room will

be coordinated by the Commissioner, who shall have sole discretion in determining what is a proper use and in scheduling Permittee's use of this room.

- f. Locker Room. Lockers will be allocated by the Commissioner to employees of the County's ground handling provider and Qualified Airlines that have a demonstrated need for the locker accommodation to complete their tasks. Any of Permittee's employees who are assigned lockers shall have the right in common with other employees to utilize the kitchen, lounge, bath (including showers) and locker facilities. Employees are expected to keep the area clean and tidy. Proper behavior is expected. The County reserves the right to terminate the right of a Permittee's employee to utilize the locker room, if such employee engages in conduct that violates any of the above conditions.
 - g. Office Space. Dedicated airline office space in the Terminal shall be allocated in the manner described in Exhibit 11, which is annexed hereto and made a part hereof.
 - h. Compliance with Rules of Conduct. In consideration of the foregoing permit to use and occupy space within the Terminal area in common with, or in close proximity to others, Permittee hereby acknowledges and agrees to comply with all reasonable rules of conduct from time to time established by County for the creation of a safe, efficient, and professional work environment.
11. **Operations Protocols**. In order to ensure safe and efficient use and allocation of space in the Terminal, the Permittee acknowledges and agrees to the following operations protocols.
- a. Notice of Type of Aircraft. Permittee shall provide to the Commissioner advance written notice, in the form designated by the Commissioner, of type of aircraft to be used for Permittee's flight operations hereunder. Accordingly, Permittee represents that it shall use only such aircraft types for its regularly scheduled flights as authorized hereunder and as specified in Exhibit 16, which is annexed hereto and made a part hereof. In the event that Permittee desires to use a different type of aircraft for backup or any other purpose, Permittee shall provide reasonable advance notice to the Commissioner and to the County's ground handling agent. The use of such backup or substitute aircraft shall be subject to the approval of the Commissioner, which approval shall not be unreasonably withheld, provided that the use of the substitute aircraft is consistent with the Technical Specifications and Procedural Requirements, attached hereto as Exhibit 2.

F. 30

EXHIBIT 11
TERMINAL OFFICE SPACE ALLOCATION

- I. Dedicated Airline office space in the Terminal shall be allocated in the manner set forth in this Exhibit.
- A. All Codes (defined to mean the same as "Affiliate Group") that have an allocation of office space at the time that Section 712.462 of the Laws of Westchester County becomes effective, shall be permitted to retain one office per Code up to a maximum of ten offices. Each Code will name the individual Airline in whose name the office will be assigned.
 - B. Each Code permitted to operate at the Airport at the time that Section 712.462 of the Laws of Westchester County becomes effective may also retain any extra offices (defined as more than one office per Code) that it is allocated at the time Section 712.462 of the Laws of Westchester County becomes effective until and unless there are insufficient offices to accommodate all Airlines and Codes.
 - C. If there are any unused offices after offices are allocated pursuant Paragraphs 1 and 2, above, such offices will be made available to any Qualified Airline on a lottery basis.
 - D. In the event that a new Code initiates service at the Airport and no offices are available at the time for such new Code, then the last Airline to have received an extra office shall forfeit such extra office in favor of the new Code.

EXHIBIT 12
ADMINISTRATIVE COMPLAINT PROCEDURE

- I. The following procedures shall apply to complaints regarding ground handling performance.
- II. Any Qualified Airline with an operational complaint shall submit its complaint in writing to the Commissioner or his designated representative. Unless otherwise specified by the Commissioner, the Airport Manager shall be the designated representative of the Commissioner for purposes of this procedure.
- III. All complaints will be forwarded to the Commissioner, who shall have five business days to acknowledge and five additional business days to present final or preliminary comments/resolutions. Final comments or resolution shall be delivered in no more than four business days. In the event that the Commissioner finds that the complaint is warranted in whole or in part, such final resolution will set forth what action, if any, the County will take in response to the complaint.
- IV. If the Qualified Airline is not satisfied with the Commissioner's final comments or resolution, the Qualified Airline may request reconsideration by submitting such additional documentation to the Commissioner as it believes appropriate. Upon receipt of a request for reconsideration, the Commissioner shall designate a person, other than the person who was originally responsible for the review of the complaint under paragraph III, above, to reconsider the complaint. Such designee shall have five additional business days to acknowledge and five additional business days to present final or preliminary comments. Final comments shall be delivered in no more than five business days. In the event that the Commissioner's designee finds that the complaint is warranted in whole or in part, such final resolution will set forth what action, if any, the County will take in response to the complaint.
- V. Individual fee disputes shall be presented to the Ground Service Manager or Airport Manager as appropriate.
- VI. The procedure set forth in this Exhibit is not a precondition to any Qualified Airline's exercise of any right under the Agreement.

EXHIBIT 13
PROPRIETARY SELF-CHECK TERMINAL LOCATION PROCEDURE

- I. These provisions shall apply to the allocation of proprietary self-check terminal kiosk positions on the second and third floors of the Terminal pursuant to Paragraph 25(c) of the Agreement.

- II. Qualified Airlines may apply to the Commissioner for use of the locations designated by the Commissioner for self-check kiosks under Paragraph 26(c) ("Kiosk Positions"). The Commissioner shall allow use of these Kiosk Positions on a first come, first served basis unless and until there are insufficient Kiosk Positions available to accommodate pending requests for Kiosk Positions.

- III. Qualified Airlines may transfer Kiosk Positions to other Qualified Airlines, so long as they provide at least ten days' notice to the Commissioner.

- IV. In the event that the Commissioner receives an application or applications for Kiosk Positions that exceed available Positions, the Commissioner shall implement the following allocation process:
 - A. Each Qualified Airline that has one or more kiosks on the second and/or third floors installed at the time that this allocation process becomes necessary shall be allowed to retain one of its Kiosk Positions of its choosing on the second or third floor of the Terminal.

 - B. All remaining Kiosk Positions will be subject to a lottery, such lottery to be held concurrently with Quarterly Lotteries of Terminal Capacity pursuant to Section 712.462 of the Laws of Westchester County. The Commissioner will randomly determine the order for Kiosk Position selection at each lottery. Qualified Airlines may, in the randomly determined order, select one kiosk location per turn, until no Kiosk Positions are left for selection or no Qualified Airline chooses remaining Kiosk Positions.

 - C. A lottery for Kiosk Positions shall be conducted each time the Commissioner receives an application or applications for Kiosk Positions that exceed available Positions, but in no event more often than once every six months.

 - D. Kiosk Positions that are not used for 30 consecutive days shall be forfeited and made available for reallocation at the next lottery.

EXHIBIT 14
INSURANCE REQUIREMENTS

The Permittee, at its sole cost and expense, shall obtain and maintain in continuous effect during the term of this Agreement insurance policies issued by an insurance carrier licensed to do business in the State of New York providing for:

- I. Workers compensation – Statutory coverage or self-insured as permitted by New York State law.
- II. Comprehensive General Liability with a minimum single limit of \$1,000,000 per occurrence for bodily injury and property damage with the following coverages:
 - A. broad form contractual liability
 - B. operations
 - C. products liability
- III. Comprehensive Automobile Liability with a minimum single limit of \$1,000,000 per occurrence for bodily injury and property damage with coverage in the following areas:
 - A. owned vehicles
 - B. non-owned vehicles
 - C. hired vehicles
- IV. Comprehensive Airline Liability Insurance, with a combined single limit of \$200,000,000 per occurrence for bodily injury and property damage and passenger liability, owned and non-owned aircraft, operations, products and completed operation.
- V. All-risk hull insurance covering Permittee's aircraft to be serviced hereunder; provided that such policy shall contain a waiver of subrogation clause running to the County with respect to loss or damage resulting from services to be performed by the County hereunder to the extent of the liability assumed by Permittee; and the passenger liability, public liability or property damage insurance policies shall name the County, its officers, employees and agents as additional insured thereunder to the extent of the liability assumed by Permittee, shall contain appropriate cross-liability provisions, and each policy shall contain a 30-day advance written notice of cancellation clause and a "breach of warranty" clause whereby the insurers agree that a breach of the insurance conditions by the Carrier does not invalidate the coverage provided by the insurance as to the interest of the County.
- VI. The Permittee shall provide the County with a Certificate of Insurance indicating proof of the foregoing coverage. Such certificate shall provide that the carrier issuing the certificate shall notify the County thirty (30) days in advance of any cancellation or material change in the terms or coverage of such insurance policies. Any such notice shall be in writing and shall be served by certified mail, return receipt requested, on the Director of Risk Management, County of Westchester, County Office Building, 148

Martine Avenue, White Plains, New York 10601. The failure of the Permittee to obtain or maintain such insurance coverage shall not relieve the Permittee from any liability arising from this permit nor shall any such liability be limited to the liability insurance coverage provided for herein.

F. 33/30

EXHIBIT 15
TERMS FOR USE OF HANDICAPPED BOARDING EQUIPMENT

- I. **PURPOSE:** This exhibit outlines the responsibilities of the County and any Airline operating an aircraft with a capacity of more than 30 seats at Westchester County Airport in regard to boarding assistance for individuals with disabilities as prescribed in 49 CFR Part 382.40 and 14 CFR Part 27. This boarding assistance procedure is not required for aircraft with less than 30 seats, float planes or the Metro, Jetstream 31 and BE 1900 (C&D model) or any other aircraft determined by the DOT to be unsuitable. When boarding assistance is not required as outlined above or for reasons beyond the control of all parties (i.e. mechanical failure), the boarding assistance shall be provided by any means available to which the passenger consents, except hand carrying.
- II. **PERMITTEE RESPONSIBILITIES:** A Permittee's responsibilities include the following:
- A. to disseminate information concerning any limitation to the ability of the aircraft to accommodate qualified individuals with disabilities, including limitations on the availability of boarding assistance to the aircraft, with respect to the departure and destination points and any intermediate stops. The Permittee shall provide this information to any passenger who states that he or she uses a wheelchair for boarding, even if the passenger does not explicitly request the information;
 - B. to advise any passenger wishing to use a lifting device to check in one hour before scheduled departure. If the passenger checks in after this time, the Permittee shall nonetheless make a reasonable effort to request that the County use the boarding lift if it can do so without delaying the flight;
 - C. to request the use of the lifting device, and give the County notification of its need to use a passenger lift device as early as possible;
 - D. if the passenger has checked in after the one hour period, and the lift device is available, but the flight may be delayed to accommodate the passenger, the Permittee shall make the decision to accommodate the passenger or to not accommodate the passenger;
 - E. to provide all seat assignments or denial of seat assignments;
 - F. to notify the County concerning any aircraft which the Permittee uses at HPN, and which has been determined by DOT to be unsuitable for boarding assistance; and

- G. to provide to the County any Airline specific training concerning passenger handling or aircraft handling concerning the operation of a lifting device.

III. **COUNTY RESPONSIBILITIES:** The County's responsibilities include the following:

- A. to provide one lifting device;
- B. to operate the device;
- C. to provide all necessary maintenance for the device;
- D. to post the status of the lifting device in Airline Operations;
- E. to have the lift in position at the normally utilized gate within 30 minutes of notification; and
- F. to be responsible for all lift operation training. However, the County will receive any appropriate Airline-specific training concerning passenger handling or aircraft operation while utilizing the lifting device.

IV. **USE OF ALTERNATIVE LIFT DEVICE.** In lieu of using a County-provided passenger lift device, any Permittee may use an alternative lift device provided that the Permittee (a) owns, or has executed a Passenger Access Lift License Agreement with the owner of, such lift device; (b) that such Passenger Access Lift License Agreement does not purport to transfer any of Permittee's obligations under this exhibit; (c) that such lift device is owned by a Qualified Airline; (d) that use of such alternative passenger lift device does not contravene the purpose of this exhibit as set forth in paragraph I above; and (e) that the Permittee complies with paragraph II above in the use of such alternative passenger lift device.

V. **MUTUAL RESPONSIBILITIES:** The parties agree that they shall cooperate in escorting a passenger to any gate using the doors at Gate 3 or 4 or Door #16 for Gate 1 and #2 operation. Although the platform access at Gate 1B or 2B is available, the parties acknowledge that use of this access will necessitate additional time.

VI. **SEPARATE EXECUTION.** If requested by the Commissioner, Permittee will separately execute this Exhibit by signing below.

Permittee's Authorized Representative

EXHIBIT 16

PERMITTEE/AIRLINE FLIGHT SCHEDULE [EXAMPLE]

ARRIVE				DEPART			
<u>FLIGHT</u>	<u>FROM</u>	<u>HPN</u>	<u>FLIGHT</u>	<u>TO</u>	<u>HPN</u>	<u>FREQUENCY</u>	<u>EQUIPMENT</u>
1234	Anytown	08:29	5678	Anytown	08:55	x 6, 7	D-8
1236	Anytown	12:59	5670	Anytown	13:20	X 6, 7	D-8
1238	Anytown	17:00	5672	Anytown	17:29	Daily	D-8
1232	Anytown	20:59	5674	Anytown	05:59	X 7	D-8

The foregoing schedule is subject to adjustment and modification in accordance with the Airport Rules and Regulations and the Laws of Westchester County. All such adjustments and/or modification are further subject to the approval of the County Commissioner of Transportation.

EXHIBIT 17
PERMITTEE STATUS RECORD [EXAMPLE]

I. AIRLINE

XYZ Airline, Inc.

II. DATE OF RECORD

December 31, 2004

III. SPACE UTILIZATION

A. Main Ticket Counter Position(s):

Assigned position 1 and share 1 with ABC Airlines

B. Office Space:

None Assigned, Utilize ABC Office

C. Operations Office Position Assigned:

Assigned Position A

D. Lockers Assigned:

None

IV. SERVICES REQUESTED

- | | |
|-------------------------------|-----|
| A. Ramp Services – Mandatory: | Yes |
| B. Passenger Service: | Yes |
| C. Operations Coordinator: | Yes |
| D. Fuel Service: | |
| E. Additional Service: | |
| F. Towing: | Yes |
| G. Deicing: | Yes |
| H. Baggage: | Yes |

V. RON, COUNTY PARKING:

None

Andrew J. Spano
County Executive

Department of Transportation

Lawrence C. Salley, AICP
Commissioner

Henry J. Stanton
Deputy Commissioner

March 28, 2007

James A. Smith
118-29 Queens Blvd.
Forest Hills, NY 11375

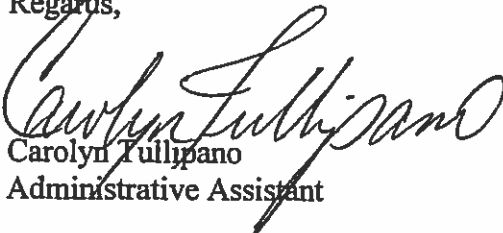
RE: Westchester County Airport
Terminal Use Agreement

Dear Jim,

Enclosed for your files is an executed TUA between jetBlue and Westchester County Airport.

I look forward in seeing you next week at the Lottery meeting.

Regards,


Carolyn Tullipano
Administrative Assistant

Attachment

Operating Agent
MacQuarie Aviation North America Inc.

Westchester County Airport (HPN)
240 Airport Road, Suite 202
White Plains, New York 10604

Telephone: (914) 995-4850 Fax: (914) 995-3980 Website: westchestergov.com



- b. Changes to Exhibit 16. Permittee is required to advise the County of any changes to Exhibit 16, at least 15 days prior to the effective date of such change. All submitted changes to Exhibit 16 must be made in the form designated by the Commissioner.
 - c. Noise Standards. Permittee shall comply with the noise standards established under Part 36 of Title 14 of the Code of Federal Regulations, as amended, and with any future requirements that are imposed by the federal government in accordance with applicable federal law and regulation. The Permittee recognizes the noise sensitivity of the community in the vicinity of the Airport and, although compliance with the County's noise abatement procedures is voluntary, Permittee will make reasonable good faith efforts to adhere to the procedures when practical and safe.
12. **Terminal Space and Service Status.** Recognizing the variability of space allocation and service options in the Terminal, the current space and service status of the Permittee will be as set forth in Exhibit 17, annexed hereto and made a part hereof. This status record will be maintained by the Commissioner, and be subject to all allocation and notification processes contained in this Agreement. To the extent that this Agreement provides for changes to such status during the term of this Agreement, any changes to the status record shall be acknowledged by the Permittee and annexed hereto as a revised Exhibit 17. The most recently dated such exhibit shall be the one currently in effect.
13. **Secure Overnight Parking.** Both the Permittee and the County recognize that there is today insufficient secure parking near the Terminal for remain-overnight ("RON") parking and that there is a need, therefore, for improved RON parking. The County has commenced planning and commits to use its best efforts to develop a secure parking facility for Qualified Airline RON parking as soon as reasonably practical. Such facility will not be adjacent to the Terminal. The County will use its best efforts to secure federal grant funding, TSA funds or permission to use PFC revenue for such facility. The parties agree that any remaining unfunded costs for constructing such parking (amortized over the useful life of the facility) may be allocated to all Permittees pursuant to provisions contained in Exhibit 3, which is annexed hereto and made a part hereof.
14. **Passenger and Baggage Screening Facilities.** The parties acknowledge that the current space requirements for passenger and baggage screening in the Terminal as a result of Transportation Security Administration guidelines have significantly intruded into the already constrained space available for passenger handling. The County agrees to use its best efforts

to modify the existing Terminal to provide permanent baggage screening facilities outside of public-use areas. The County also agrees to use its best efforts to (1) restore the amount of public accommodation space in the departure lounge and ticketing lobby to the amount of space that was available prior to September 11, 2001, and (2) secure federal grant funding for these security improvements. The County will use its best efforts to secure federal grant funding, TSA funds or permission to use PFC revenue for such facility. The parties agree that any remaining unfunded costs for constructing such facilities (amortized over the useful life of the facility) may be allocated to all Permittees pursuant to provisions contained in Exhibit 3, which is annexed hereto and made a part hereof. The parties agree that, because the purposes of these modifications are exclusively (1) to provide sufficient space for security purposes and (2) to return the Terminal to its pre-September 11, 2001, operational characteristics, any modifications undertaken by the County pursuant to this Paragraph shall not support or otherwise lead to any reassessment of the capacity of the Terminal to accommodate passenger operations, as provided in Paragraph 3 of this Agreement.

15. **Ticket Counter and Departure Lounge Counter Rehabilitation.** The County agrees to refurbish the counters in the ticket lobby and departure lounge and related facilities in consultation with the Qualified Airlines. The County agrees to use its best efforts to integrate passenger self-check terminals into the ticket lobby counters to the extent feasible. Provisions for the operation of these passenger self-check terminals are contained in Paragraph 26 of this Agreement.
16. **Jet Bridges.** If requested by Qualified Airlines holding a majority of Terminal Ramp Allocations and if such Qualified Airlines supply the County with supporting design, operational and cost information, the County will consider installing enclosed boarding positions (also known as "jet bridges" or "jet-ways") for those gates without such boarding positions and/or modifying existing boarding positions to accommodate regional jets. If the County receives such a request, the County shall consult with all Qualified Airlines operating at the Terminal and will undertake construction of additional or modified enclosed boarding positions if the County determines that: (1) such enclosed boarding positions would improve the safety, comfort and efficiency of passenger operations; (2) such enclosed boarding positions are technically feasible and will not cause operational problems on the Terminal Ramp or interfere with any Qualified Airline's ability to use its Terminal Ramp Allocations; (3) there will be no potentially significant environmental effects associated with the construction and operation of enclosed boarding positions, as determined under the New York State Environmental Quality Review Act; and (4) the County will recover its costs for construction and operation. If the County constructs additional enclosed boarding positions, the

County will use its best efforts to secure federal grant funding, TSA funds or permission to use PFC revenue for such facilities. The parties agree that any remaining unfunded costs for constructing such facilities (amortized over the useful life of the facility) may be allocated to all Permittees pursuant to provisions contained in Exhibits 3 and 4, which are annexed hereto and made a part hereof.

17. Fees.

a. In consideration for the privilege of conducting operations at the Airport, the Permittee shall pay to the County, to the extent applicable, as set forth in the most recently dated and acknowledged status record (a sample copy of which is attached hereto and incorporated herein as Exhibit 17), the following fees:

i. A monthly fee of Two Hundred Fifty Dollars (\$250.00) payable in advance on the first of each month;

ii. A monthly fee for the use and occupancy of space allocated to Permittee in the Terminal as provided in Exhibit 3, annexed hereto and made a part hereof.

iii. A monthly allocation of costs of operation and maintenance of the Terminal, as provided for in Exhibit 4, which is annexed hereto and made a part hereof. The County reserves the right to review and modify this list of eligible building maintenance and operating costs, upon thirty (30) days prior written notice to the Qualified Airlines.

iv. A monthly fee for Ground Handling Services, as provided in Exhibit 7, annexed hereto and made a part hereof.

v. Applicable published landing and aircraft parking fees;

vi. The fuel flowage fee applicable at the Airport to all Airport users.

b. All fees payable to the County hereunder shall be payable at the office of the Airport Manager of the Westchester County Airport, 240 Airport Road, White Plains, New York, or at such other office as the County may designate upon notice to the Permittee given in accordance with the terms of this Agreement. All fees payable to the County pursuant to this Paragraph shall be payable monthly within 30 days of receipt of the invoice.

- c. Except as provided in this Agreement and the Exhibits hereto or as may be permitted by any government agency (other than the County acting in its proprietary capacity), the County will not assess additional fees, rentals or charges against Permittee, its passengers, shippers and receivers of freight, suppliers of materials, its contractors or furnishers of services for the use of premises or facilities granted to Permittee herein.

18. Suspension and Waiver of Fees.

- a. Suspension. The fees set forth in Paragraph 17(a) above will be suspended for any Permittee who notifies the County, at least 30 days in advance, that it desires to suspend operations at the Airport, but remain a Permittee and a Qualified Airline. Such suspension shall (a) result in forfeiture of any allocations (including but not limited to ticket counter, office, passenger and ramp allocations); (b) be effective upon the date specified by the Permittee; and (c) continue until such Permittee notifies the County that it intends to resume operations at the Airport.
- b. Waiver. The fees set forth in Paragraph 17(a) above will be waived for any Permittee who (a) has executed this Agreement; (b) has not operated at the Airport; (c) has not marketed on a reservation system the availability of service from the Airport (through a code-share alliance or other similar marketing arrangement); and (d) has no allocations (including but not limited to ticket counter, office, passenger and ramp allocations).
- c. Other Obligations. The suspension or waiver of fees pursuant to this Paragraph does not affect any other obligations that Permittee may have under this Agreement.

19. Passenger Handling Functions/Airline Alliances.

- a. Each Qualified Airline shall have the right to provide its own employees or employees of another Qualified Airline that currently holds Ramp Allocations pursuant to Section 712.462 as passenger representatives to perform Passenger Handling Functions. For the purposes of this Agreement, the term "Passenger Handling Functions" shall be construed to mean those customer contact services and limited baggage handling services described in Exhibit 5, which is attached hereto and made a part hereof. Both the airline that provides and the airline that receives, Passenger Handling Functions service must be Qualified Airlines. Further, a Qualified Airline that proposes to provide passenger handling services for another Qualified Airline shall submit such

satisfactory documentation as the Commissioner shall require that demonstrates the existence of a current and valid contractual arrangement, code-share or similar alliance among the Qualified Airlines that governs the provision of Passenger Handling Functions at the Airport.

- b. Any airline for whom tickets are sold for service at the Airport that is not a Qualified Airline must secure an Alliance Airline Operating Permit and is subject to an Alliance Airline Operating Fee. The Alliance Airline Operating Fee shall be identical to the fee set forth in Paragraph 17(a), above, and shall be subject to suspension as provided in Paragraph 18, above. The Qualified Airline that sells the ticket or service on such airline will be responsible for payment of the Alliance Airline Operating Fee.
- c. Nothing herein or in Exhibit 5 shall be interpreted or construed as granting the Qualified Airlines the authority to provide any Ground Handling Services as defined in Exhibit 6 to this Agreement.
- d. Any Qualified Airline that chooses to provide its own employees or employees of another Qualified Airline for the purposes of providing Passenger Handling Functions during calendar year 2005, shall notify the County in writing by no later than January 2, 2005. Thereafter, Qualified Airlines shall have the option to elect once in any 6-month period to change from County-provided Passenger Handling Functions to Airline-provided Passenger Handling Functions or from Airline-provided Passenger Handling Functions to County-provided Passenger Handling Functions. A Qualified Airline that elects to make such a change shall provide written notice to the Commissioner of its intention to do so not less than 45 days prior to the effective date of the intended change (except that such notice requirement shall not apply to any Qualified Airline that is providing its own Passenger Handling Operations as of the effective date of this Agreement).

20. Ground Handling Services.

- a. Ground Handling Services for all operations at the Terminal shall be provided by the County, its employees, contractors or agents. Ground Handling Services are defined in Exhibit 6, which is attached hereto and made a part hereof. The methodology for the determination of charges for such Ground Handling Services is set forth in Exhibit 7, which is attached hereto and made a part hereof. Fees for services not contemplated at this time or otherwise not set forth in Exhibit 7, but required to be performed by the County pursuant to applicable law, regulation, policy or practice or

otherwise offered by the County as an accommodation to Permittee, shall be implemented only after thirty (30) days prior written notice to the Permittee.

b. In the interest of maintaining the quality of Ground Handling Services and to optimize on-time performance, the County shall engage a consultant to conduct an independent external review of the performance of Qualified Airlines and of the Ground Handling Services. The Commissioner will consult with the Qualified Airlines in the selection of such consultant.

i The first such review shall be completed no later than June 30, 2005 and at least every three years thereafter.

ii The external review shall (a) evaluate the quality of the services provided both by and to the Qualified Airlines, (b) determine the extent to which such services meet industry standards for such services at airports that are similar in size, facilities and services to the Airport; (c) assess the effectiveness of cooperation among the County, its ground handling agent, and the Qualified Airlines; (d) recommend whether any charges, discounts or additional fees should apply for substandard performance; and (e) set forth specific recommendations for improvements or enhancements in service and cooperation consistent with industry practices and standards for similar airports.

iii The County will consult with the Qualified Airlines regarding the results of each external review and shall develop a plan for implementation of those recommendations that the Commissioner in his sole discretion determines to be practical to implement.

iv The Commissioner shall report from time to time to the Qualified Airlines on the progress of the implementation plan.

21. Release, Risk of Operation, Compliance with Law.

a. The Permittee agrees that the County, in providing Ground Handling Services hereunder, does not undertake to insure Permittee's aircraft nor to guarantee that Airport conditions will always be such as to enable Permittee to comply with its schedule. Permittee releases the County, its elected officials, officers, employees and/or agents from any and all causes of action and claims, including claims for any special and/or consequential damages (not limited to claims for loss of revenue) arising from any delay of Permittee's aircraft.

b. Permittee assumes all risks associated with its operations under this Agreement and shall comply with all federal, state and local

laws, rules, and regulations affecting Permittee's Airport operations including, but not limited to, the space assigned to the Permittee, especially with respect to matters involving the storage of combustible materials.

- c. Permittee, in connection with its performance pursuant to this Agreement, shall comply with all federal, state and local laws and rules, regulations, court orders and stipulations and agreements with the County which are in any way applicable to Permittee's operation at the Airport.
 - d. In addition to the Permittee's compliance with all applicable federal, state and local laws, rules and regulations, the Permittee shall cooperate with the Airport's Environmental Management System established under the ISO 14001 standard.
22. **Records.** The parties recognize that, pursuant to Section 712.462, all Qualified Airlines operating at the Airport are required to certify to the County actual passenger loads, on a per-flight, per-day, enplaned, deplaned basis. Permittee agrees to comply with all reporting and audit requirements contained in Section 712.462.
23. **Audit Rights.** The County reserves the right at any time to audit passenger ticket lifts or appropriate passenger statistics of Permittee's operations at the Airport to determine actual passenger enplanements and deplanements.
24. **Service Complaints.** Should any party have a complaint about service levels or service quality provided by another party to this Agreement, it shall endeavor to follow the administrative complaint procedure as set forth in Exhibit 12, which is annexed hereto and made a part hereof.
25. **Common Use Computer Systems.** If Permittee wishes to use or install computerized equipment for passenger reservations or operations processing, it shall cooperate with all other Qualified Airlines in the installation and use of a single common use system procured through a single third-party source. Such common use system shall be used at all operating locations within the Terminal. Permittee may not use any other equipment or system within the Terminal, unless expressly authorized by the Commissioner. Notwithstanding the foregoing, Permittee may install its own dedicated proprietary systems at its own cost, but only in its own exclusive use office areas and only for administrative purposes.
26. **Passenger Self-Check Terminals.**

- a. Terminal First Floor. Upon integration of passenger self-check terminals into the ticket lobby counters pursuant to Paragraph 15, any and all passenger self-check computer terminals located on the first floor of the Terminal – including any stand-alone kiosks – shall consist of a single common-use system designated by the Qualified Airlines pursuant to Paragraph 25. The location and configuration of all such passenger self-check terminals on the first floor shall be subject to approval by the Commissioner. All Permittees that agree to pay their share of the cost of the common-use system shall be allowed access to the common-use passenger self-check terminals on an equitable basis. Should a compatible common-use system not be commercially available at the time that renovation of the ticket lobby counters is complete pursuant to Paragraph 15, the County will consult with the Qualified Airlines to develop a suitable interim solution for passenger self-check terminal access until such time as a compatible common-use system is available.

 - b. Interim Installation of Terminals on First Floor. Until such time as the ticket lobby counter renovations pursuant to Paragraph 15 are completed, Permittee may install proprietary stand-alone passenger self-check terminal kiosks. All installation and operational costs are the responsibility of the Permittee. The Commissioner shall publish a list of permissible locations for such kiosks in consideration of passenger safety, convenience, traffic flow and other building constraints. Such locations will be available for use by any Qualified Airline on a first-come-first-served basis, except that Qualified Airlines that have proprietary passenger self-check terminal kiosks installed as of the effective date of this Agreement shall be permitted to retain two such kiosks at their present locations until completion of ticket lobby counter renovations. Space for additional kiosks will be allocated equitably by the Commissioner on either the first or second floor.

 - c. Terminal Second and Third Floors. The Commissioner shall publish a map identifying designated locations for passenger self-check terminal kiosks on the second and third floors of the Terminal (“Kiosk Slots”). Qualified Airlines may install, fund and use proprietary passenger self-check terminal kiosks in these Kiosk Slots with the approval of the Commissioner. The Commissioner shall allocate these Kiosk Slots in accordance with the procedures contained in Exhibit 13, which is annexed hereto and made a part hereof.
27. Use of Terminal. Notwithstanding Permittee’s rights granted under this Agreement, the Permittee recognizes that the County will operate the

Terminal in the best interests of the County and the traveling public. All parties recognize the potential for conflicts during periods of peak use of the Terminal facilities and agree to cooperate to the maximum extent possible in using such facilities. In the event of any disputes among the Qualified Airlines over use of particular Terminal facilities, it is recognized and agreed that the Commissioner shall have the right to impose a settlement to resolve such a dispute so long as reasonable prior notice is provided to the affected Qualified Airlines so as to maintain the safe and efficient operation of the Terminal.

28. **Required Approvals.** The Permittee, at its sole cost and expense, shall obtain and maintain in full force and effect for the term of this Agreement, all other permits, licenses, certificates and approvals from all governmental authorities as are, or may from time to time, be required for the Permittee to lawfully conduct business at the Airport or to carry out its obligations under this Agreement.
29. **Management, Personnel, Uniforms.**
- a. Permittee shall employ an on-site manager, agent or franchisee to supervise and manage its operations hereunder. The County and the Permittee shall employ a sufficient number of trained personnel on duty to provide for the safe, efficient and proper fulfillment of their respective rights and obligations under this Agreement.
 - b. The operations of the Permittee, its employees, agents, invitees and those doing business with it shall be conducted in an orderly, safe and proper manner so as not to endanger the safety, annoy, disturb or be offensive to others at the Airport. Upon request of the Commissioner, the Permittee shall provide, and its employees shall wear or carry, badges or other suitable means of identification particularly as the Commissioner may deem necessary to ensure the security of the Airport facility. Uniforms, if requested, shall be subject to prior written approval of the Commissioner, provided, however, that Permittee's standard system-wide uniform, if any, shall be deemed approved. The Commissioner shall have the right to object to the Permittee regarding the demeanor, conduct and appearance of the employees, agents and invitees of the Permittee and of those doing business with it (except for the appearance of Permittee's customers), whereupon the Permittee shall take all steps necessary to remove the cause of the objection.
30. **Quality and Price.**

- a. Permittee warrants and agrees that all services and/or merchandise made available to the public pursuant to this Agreement shall be offered at competitive rates and/or prices.
 - b. Permittee agrees that it will conduct a first-class operation and will furnish all fixtures, equipment, supplies, materials and other facilities and replacements necessary or proper therefor.
31. **Maintenance.**
- a. Permittee, at its sole cost and expense, shall maintain all areas of the Terminal exclusively assigned to Permittee (e.g., office space) for the conduct of Permittee's Airport operations hereunder, in a clean and neat condition and shall make all required non-structural repairs to such space caused by Permittee's employees and/or equipment. In the event that the Permittee fails to so maintain the space assigned to Permittee hereunder, the County, at its option and in addition to any other remedy available to it, may provide such maintenance services at the sole cost and expense of the Permittee.
 - b. Permittee shall store all garbage, trash and refuse originating from its Airport operations in closed receptacles. Permittee shall cooperate with the County, its employees, agents and contractors, in reasonable requests regarding maintenance of the Terminal building.
32. **No Lease.** It is expressly understood and agreed that no building, structure, equipment or space is leased to the Permittee, and that Permittee's privilege to use, occupy and remain in possession of any space assigned to it for the operation of this Agreement shall continue only so long as Permittee shall faithfully and properly comply with each and every term and condition of this Agreement.
33. **Advertising.** The Permittee shall not erect, install, place or use at the Airport any advertising or promotional device designed to attract attention to the Permittee as a business entity without obtaining the prior express written approval of the Commissioner, which approval shall not be unreasonably withheld. Permittee further agrees that any advertising related to its permitted operations at the Airport in any print or electronic media shall conform to reasonable standards of good taste.
34. **Access and Inspection.** Permittee shall allow the County to enter any space assigned to the Permittee at all reasonable times during normal business hours (except in the case of an emergency, the existence of which shall be determined in the sole discretion of the Commissioner, in which

case the County shall be permitted to enter at any time) for the purpose of observing, monitoring, reviewing and/or inspecting any aspect of Permittee's operations hereunder for the purpose of ensuring compliance with this Agreement, County laws and federal laws and regulations.

35. Airport Rules, Regulations, and Technical Specifications.

- a. Permittee and all of its employees and designees will adhere to all applicable County laws, rules, regulations and the Technical Specifications and Procedural Requirements prescribed by the County for operations at the Airport, including without limitation those which are contained in Section 712.462, as may be in effect during the term of this Agreement, and to any and all amendments thereto as shall from time to time be made by the County. The Permittee acknowledges receipt of copies of all current published rules, regulations and technical specifications.
- b. In the event that the County proposes to change any law, rule, regulation or the Technical Specifications in a manner that could adversely affect Permittee, the County will afford Permittee an opportunity to comment on the proposed change prior to promulgation or adoption. The County shall notify Permittee of any comment period and deadline for comments (i) by posting a copy of the proposed change outside the office of the Airport Manager for a period of at least ten (10) days, and (ii) by providing notice as set forth in Paragraph 38.
- c. The County will furnish copies of such rules, regulations and technical specifications to Permittee following any change therein after the date hereof. However, failure of the County to furnish copies of such rules, regulations and technical specifications to Permittee shall not in any way relieve Permittee from its obligations hereunder, provided that the County has posted a copy of such revised rule, regulation or technical specification outside of the office of the Airport Manager for a period of ten (10) days after adoption of such revision. Violation by Permittee of any of the foregoing shall be deemed a material breach of this Agreement, and without limiting any right or remedy otherwise available to the County, shall entitle the County to seek any remedy set forth in Paragraph 36 below.
- d. Permittee shall comply at its own expense with the provisions of all applicable laws, rules and regulations, including but not limited to those which are applicable to it as an employer of labor or otherwise. Permittee shall further comply with all rules, regulations and licensing requirements pertaining to its

professional status, form of business, and to insure compliance with same by its employees, partners, associates, subcontractors and others employed to render the services which will be delivered on County property pursuant to the terms of this Agreement.

e. Permittee expressly agrees that neither it nor any contractor, subcontractor, employee, or any other person acting on its behalf shall discriminate against or intimidate any employee or other individual on the basis of race, creed, religion, color, gender, age, national origin, ethnicity, alienage or citizenship status, disability, marital status, sexual orientation, familial status, genetic predisposition or carrier status during the term of or in connection with this Agreement, as those terms may be defined in Chapter 700 of the Laws of Westchester County. The Permittee acknowledges and understands that the County maintains a zero tolerance policy prohibiting all forms of harassment or discrimination against its employees by co-workers, supervisors, vendors, contractors, or others.

f. Permittee acknowledges that the whole of the Airport is subject to the rules and regulations promulgated from time to time by the Federal Aviation Administration and to the supervision, inspection and regulations of its representatives. Permittee agrees to abide by and cause its officers, employees, servants, agents and designees to abide by all said rules and regulations and promptly to obey all orders in respect thereof. Without limiting the generality of the foregoing, Permittee and its designees will promptly comply with the following provisions:

i The Permittee, while conducting operations pursuant to this Agreement and otherwise in the use of the Airport, will not unjustly discriminate or permit discrimination against any person or class of persons by reason of race, color, creed, sex, religion, age or national origin in any manner prohibited by Part 15 of the Federal Aviation Regulations or Part 21 of the United States Department of Transportation regulations or any amendments thereto;

ii Permittee shall furnish its accommodations and/or services on a fair, equal and not unlawfully discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; provided that Permittee may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers so long as they are not otherwise prohibited by any law, rule or regulation;

iii Permittee shall make its accommodations and/or services available to the public on fair and reasonable terms without unjust discrimination on the basis of race, creed, sex, religion, age, color or national origin and shall not withhold its accommodations or services from any member of the public without just cause;

iv The Permittee assures that it will undertake an affirmative action program to the extent required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Permittee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Permittee assures that it will require that its covered sub-organizations provide assurances to the Permittee that they similarly will undertake affirmative action programs and that they will require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effect;

v Non-compliance with Subparagraphs (i), (ii), (iii) and (iv) above shall constitute a material breach hereof;

vi Permittee agrees that it shall insert the above five provisions in any subpermit, subconcession or other agreement by which Permittee grants a right or privilege to any designee to render accommodations and/or services to the public pursuant to this Agreement.

g. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of the Federal Aviation Act or any other prohibition of applicable federal or state law.

36. Violations.

a. In the event that Permittee is in material default in the performance of any term, condition or covenant herein contained, the County, at its option and in addition to any other remedy it may have to seek damages, judicial enforcement or any other lawful remedy, may terminate this Agreement upon thirty (30) days' notice to the Permittee; provided, however, that the Permittee may defeat such notice by curing the default complained of within such notice period, or, if such default is not curable within such notice period,

by promptly commencing to cure the default and diligently pursuing all necessary and appropriate action to effect such cure. In the event that a material default occurs while a previous material default remains uncured or in the event of a second material default within any 12-month period regardless of cure, the County, at its option and in addition to any other remedy it may have to seek damages, judicial enforcement or any other lawful remedy, may terminate this Agreement upon written notice to the Permittee, such notice to be effective immediately upon delivery thereof.

b. In the event that this Agreement is terminated pursuant to this Paragraph, the County may hold as security, any property of the Permittee (other than aircraft), which at the time of such termination is located at the Airport, in order to effectuate the purposes of this Agreement until such time as all indebtedness of the Permittee to the County hereunder shall be fully satisfied.

37. **No Agency or Joint Venture.** This Agreement shall not be construed to make either the County or the Permittee an agent of, or joint venturer with, the other. Each of the parties hereto expressly disclaims any intention to enter into such agency or joint venture and agrees that it shall so conduct itself as not to act or purport to act on behalf of the other.

38. **Notices.** All notices hereunder shall be in writing and shall be deemed given when delivered, or mailed, postage prepaid, certified mail, return receipt requested, addressed as follows. Any Permittee may change the address for purposes of this Paragraph by providing notice to the County pursuant to this Paragraph; the County may change the address for purposes of this Paragraph by providing notice to all Permittees pursuant to this Paragraph. Where practical, supplemental notice shall be provided by e-mail at the address or addresses set forth below:

To the County:
Commissioner of Transportation, c/o Airport Manager
240 Airport Road
Westchester County Airport
White Plains, New York 10604

with a copy to:
County Attorney
600 Michaelian Office Building
148 Martine Avenue
White Plains, New York 10601

With an email copy to:

Airport Manager: jfr1@westchestergov.com
Commissioner of Transportation: lcs1@westchestergov.com

To the Permittee: at the addresses indicated on the signature page of this Agreement

39. **Remedies Cumulative.** The failure of the County or the Permittee to insist, in any one or more instances, upon strict performance of any term or condition herein contained shall not be deemed a waiver or relinquishment for the future of such term or condition, but the same shall remain in full force and effect. Acceptance by the County of payment of any fee due hereunder with knowledge of a breach of any term or condition hereof, shall not be deemed a waiver of any such breach and no waiver by the County of any provision hereof shall be implied. Waiver of any rights may be accomplished only in accordance with the procedures set forth in Paragraph 56.

40. **Insurance and Indemnification.**

a. **Insurance.** The Permittee, in its own name and naming the County, its officers, employees and/or agents as an additional insured to the extent of liability assumed by Permittee in this Paragraph, shall obtain and maintain in continuous effect for the term hereof, policies of insurance providing for coverages in the limits set forth in Exhibit 14, attached hereto and made a part hereof. The insurance specified in Exhibit 14 hereof is that to be procured by the Permittee at the commencement of the term and may be reviewed or modified by the County on a semi-annual basis as to amount and type of coverage to be obtained and maintained by the Permittee; provided, however, that such review and modification shall be based upon good faith application of generally accepted risk management principles.

b. **Indemnification.** Permittee agrees to protect, defend, indemnify and hold the County of Westchester, its elected officials, officers, employees and/or agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character in connection with or arising directly or indirectly out of this Agreement and/or the Permittee's performance thereof. Without limiting the generality of the foregoing, any and all claims, etc. relating to bodily injury, death, damage to property, defects in materials or workmanship, actual or alleged infringement of any patent, trademark, copyright (or

application for any thereof), or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder. This indemnification requirement is in addition to any indemnification required for any particular ground handling service, as set forth in this Agreement or in the exhibits hereto.

- c. Indemnification Exceptions. Notwithstanding the foregoing provisions concerning indemnification, the Permittee shall not be required to indemnify the County, its elected officials, officers, employees and/or agents for losses, penalties, damages, settlements, costs, charges, expenses, liabilities, liens, demands or claims arising out of death or bodily injury to persons or damage to aircraft or to property to the extent caused by or resulting from the gross negligence or willful misconduct of the County, its officers, employees or agents.
- d. Notice. The County shall give the Permittee prompt written notice of the institution of any such suit, action or proceeding covered by the above indemnity, permit the Permittee to defend the same and give Permittee all available information, assistance and authority to do so. Permittee shall have full control of and responsibility for the defense of any such suit, action or proceeding, including the right to perfect appeals and to effect compromises or settlements. Permittee shall investigate, respond to and defend any such suit if the same is false, frivolous or fraudulent. The County may retain its own counsel to defend such suits, actions or proceedings and in such event Permittee shall have no obligation to pay the cost of any professional fees or expenses so incurred.
41. **No Brokers.** The County and the Permittee each represent and warrant to the other that no broker or finder has been concerned or involved in the introduction of the parties or the negotiation of this Agreement and Permit, and that no broker or finder is, or may be entitled to any commissions relating to or in connection with this Agreement and Permit.
42. **Bankruptcy.** If at any time during the term of this Agreement, any petition in bankruptcy shall be filed by or against the Permittee or if the Permittee shall be adjudicated a bankrupt; or if a receiver shall be appointed by any Court of competent jurisdiction to take possession of the Permittee's property; or if the Permittee shall make any assignment for the benefit of creditors, this Agreement shall, at the option of the County, immediately cease, terminate and expire; and the County shall have no liability to the Permittee whatsoever but shall not relieve the Permittee

from any liability incurred under this Agreement; and the Permittee covenants and agrees to yield and deliver peaceably to the County possession of any space occupied by the Permittee hereunder promptly and in good condition on the date of the cessation of this Agreement, whether such cessation be by termination, expiration or otherwise. In exercising its rights under this Paragraph, the County shall comply with federal bankruptcy law.

43. **Condemnation.** In the event that the Airport or such a substantial portion thereof as to make the premises untenable, are condemned for any public use, then in such event and upon the vesting of title in the condemnor, this Agreement shall become null and void and neither party shall have any liability to the other on account of such termination.
44. **Destruction of the Premises.**
- a. Should any building or structure upon the Airport premises be damaged by fire, or any other cause whatsoever, so as to prevent the operation of this Agreement to the satisfaction of the County, then the County at its option may on notice in writing to Permittee, cancel and terminate this Agreement and the County shall have no liability to the Permittee hereunder.
 - b. If any building or structure on the Airport premises be damaged in any way whatsoever by reason of any gross negligence or willful misconduct of Permittee or its employees, then this Agreement shall continue in full force and effect and Permittee shall repair, at its own cost and expense, the building or structure so damaged. Upon the failure of the Permittee to make such repairs the County may, as agent of Permittee, repair such damage at the cost and expense of Permittee.
 - c. In the event that the Commissioner determines that any building or structure on the Airport premises is damaged such that Permittee cannot use such premises in a manner consistent with this Agreement or Section 712.462 of the Laws of Westchester County, and in the event that the County does not exercise its right under subparagraph (a) of this Paragraph, then all fees, charges or rents payable for use of such damaged facility shall be abated until such time as the facility is restored to usable condition.
45. **Equipment/Improvements.** Permittee shall supply, repair and replace, at its sole cost and expense, all equipment necessary to provide the services contemplated by this Agreement. All such equipment shall comply with all applicable fire, electrical and safety codes and requirements. Permittee shall not install any fixtures or make any improvements or alterations to

the space assigned to Permittee hereunder without the prior consent of the Commissioner (which consent shall not be unreasonably withheld) and such fixtures, improvements or alterations shall, immediately upon installation, be deemed to be affixed to the realty and shall become the property of the County to the same extent as if installed prior to the commencement of this Agreement, except that this provision shall not apply to free-standing ticket kiosks or proprietary computer equipment.

- 46. **Right to Modify.** The parties hereto covenant and agree that during the term hereof this Agreement may be unilaterally modified by the County upon the advice of the County Attorney in order to conform to judicial decisions or federal agency rulings whether or not such decisions or rulings are issued in proceedings brought by or against the parties hereto or either of them. This Paragraph shall not preclude the County or the Permittee from contesting any such decisions or rulings but the Permittee shall abide by the unilateral modifications imposed by the County pending the outcome of such appeal or objection; provided, however, that if any such modification would have a material adverse effect upon Permittee's operations at the Airport hereunder and if within ninety (90) days following the effective date of such modification, the parties shall not have negotiated an equitable adjustment to the Agreement, then the Permittee shall have the right at any time thereafter upon sixty (60) days prior written notice to the County to terminate this Agreement.

- 47. **Force Majeure.** Neither the County nor Permittee shall be liable or responsible for any damages for non-compliance with the terms of this Agreement (not involving obligations to pay), in whole or in part (including non-performance of the services or flight operations) if such damages or non-compliance result from a failure to perform due to force majeure, which is hereby defined to include acts of God or the public enemy; compliance in good faith with any applicable governmental regulation, law or order whether or not it proves to be invalid; fires; riots; labor disputes; natural disasters; terrorists; war (declared or undeclared); civil disturbances or popular uprising; epidemics; unusually severe weather; or any other cause beyond the reasonable control of the excused party, provided that the excused party promptly notifies the other party of its noncompliance and the cause and estimated duration thereof and at all times uses its diligent efforts to remove or remedy the cause of such failure to perform. Performance under this Agreement in case of force majeure shall be suspended until cessation of the applicable cause, unless the circumstances otherwise permit without undue hazard in the reasonable opinion of the Commissioner.

- 48. **Prohibition on Reduction in Capacity.** The County shall not take any action that reduces the capacity of the Airport in a manner that adversely affects the Permittee

49. **Binding on Successors.** This Agreement shall bind and benefit the County and the Permittee and their respective successors-in-interest. Any change in the legal status of the Permittee must be reported to the County within 30 days.
50. **Assignment.** This Agreement may not be assigned by the Permittee without the consent of the County, which consent shall not be unreasonably withheld in the event of an assignment to a Qualified Airline.
51. **Counterparts.** This Agreement may be executed in counterparts each of which shall be deemed an original and which together shall constitute one and the same Agreement.
52. **Severability.** Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provisions of this Agreement be for any reason unenforceable, the balance shall nonetheless remain in full force and effect provided, however, that if the provisions of Paragraph 3 and/or 4 of this Agreement are held or determined to be unenforceable or invalid by a court of competent jurisdiction or preempted or superceded by federal law or regulation, then, in that event, the County, at its option, shall have the right on thirty (30) days prior written notice to terminate this Agreement.
53. **Governing Law.** This Agreement shall be governed by and construed in accordance with applicable federal law and the laws of the State of New York and the County of Westchester.
54. **Effectiveness.** This Agreement shall become effective as to Permittee upon execution by Permittee and then the County. By execution of this Agreement, Permittee represents that it has the power and authority and is duly authorized to enter into this Agreement and that the person executing this Agreement on behalf of the Permittee is duly authorized to so execute.
55. **Substantially Identical Treatment.** The County shall not enter into an agreement with any airline containing more favorable terms than this Agreement, or grant to any tenant engaged in commercial passenger service any privileges with respect to use of the Airport Terminal or Terminal Ramp that are not accorded Permittee hereunder, unless the same rights, terms, and privileges are concurrently made available to Permittee.
56. **Entire Agreement/Status of Prior Agreements.**

- 7.21
- a. Entire Agreement. This Agreement and the attached exhibits constitute the entire Agreement between the County and the Permittee and supercede all prior and contemporaneous discussions, representations and understandings, if any, with respect to the subject matter hereof, except for the matters which are expressly incorporated herein by reference and made a part hereof. There have been no representations by any party to another and there are no conditions precedent to the effectiveness to this Agreement, unless expressly set forth in this Agreement. This Agreement supercedes any prior operating permits or agreements between the parties.
- b. Prior Agreements. Each Permittee, by executing this Agreement, acknowledges that the County is in compliance with and not in default of, and the County, by authorizing such Permittee to execute this Agreement, acknowledges that such Permittee is in compliance with and not in default of, any of the terms and conditions of the 1994 Westchester County Terminal Capacity Affirmation and Extension Agreement ("1994 TCA"), operating permit, 1995 Stipulation and Order of Partial Settlement and Dismissal ("Stipulation") and the 1988 Terminal Building Westchester County Statement of Facility ("Capacity Statement"), and that the 1994 TCA and operating permit are in full force and effect as of the date hereinabove written. This Agreement will replace the 1994 TCA, operating permit, Stipulation and Capacity Statement upon the effectiveness of this Agreement as provided in Paragraph 1 of this Agreement. Any and all claims for default of the 1994 TCA, the operating permit, the Stipulation or the Capacity Statement are hereby deemed waived, unless the party alleging such default establishes that the facts underlying the claim for the default could not be ascertained by diligent investigation prior to the execution of this Agreement or were intentionally concealed by the party alleged to be in default.
- c. Allocations Under Prior Agreements. The parties recognize that the Permittee may have rights to certain Ramp Allocations and Passenger Allocations under prior agreements including without limitation the 1994 TCA. Within 30 days of the execution of this Agreement, Permittee shall provide the County with a list of those Ramp Allocations and Passenger Allocations to which it asserts rights. Such list shall indicate (a) the time slots and number of passengers to which Permittee asserts a right; (b) whether Permittee asserts rights to any Allocation which is, at the time of the submission, being used by another airline and, if so, the name of the other airline and the terms and conditions under which the Permittee has transferred rights to such Allocation; (c) the


Blue

expiration date, if applicable, for use by another airline of any Allocation to which Permittee asserts a right; and (d) the Allocations which Permittee uses pursuant to rights transferred from another airline. In the event of a dispute among airlines over rights to Allocations, the Commissioner shall resolve such dispute pursuant to the procedures set forth in proposed Section 712.462(5)(m) as set forth in Exhibit 1 to this Agreement.

- 57. **Construction.** This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted. This Agreement may not be modified, changed, supplemented or terminated or any obligation hereunder be waived except by written instrument signed by the party to be charged or by its representative duly authorized in writing or as otherwise expressly permitted herein.
- 58. **Captions.** The captions are inserted herein only as a matter of convenience and for reference and in no way define or limit the terms and provisions of this Agreement nor the intent of any provision thereof.
- 59. **Applicability.** The parties understand and agree that this Agreement pertains solely and exclusively to the Westchester County Airport and shall not be deemed as having any applicability to any other airport or aviation circumstance. This Agreement is intended to reaffirm and define the terms and conditions for the use of the Airport that have been in effect, except as expressly modified herein. The parties acknowledge and agree that the terms of this Agreement do not affect aircraft safety or reduce or limit aircraft operations at the Airport beyond whatever restrictions were in effect as of October 1, 1990. The parties do not intend to confer any benefit hereunder or any person or corporation other than the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this agreement effective on the day and year first above written.

THE COUNTY OF WESTCHESTER

By 
 Lawrence C. Salley
 Commissioner of Transportation

PERMITTEE

By *[Signature]*
(Name and Title)

Mail, Delivery and E-mail Address for Notices:

Authorized by the Board of Acquisition and Contract of the County of Westchester on the 23^d day of Sept., 2004.

Approved as to form and
manner of execution:

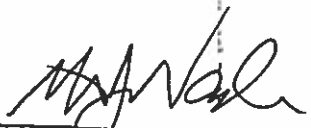
[Signature]
~~Susan P. Barry~~, Senior Assistant County Attorney
County of Westchester

PERMITEE ACKNOWLEDGMENT

Permittee may substitute own substantially similar acknowledgement

STATE OF NEW YORK)
COUNTY OF QUEENS)ss

On the 8th day of February in the year 2007 before me, the undersigned, a Notary Public in and for said State, personally appeared George Saver personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument; and, acknowledged if operating under any trade name, that the certificate required by the New York State General Business Law Section 130 has been filed as required therein.



Signature and Office of individual
taking acknowledgement

MITCHELL J. NADLER
Notary Public, State of New York
No. 02NA6080750
Qualified in New York County
Commission Expires 09/23/20 10

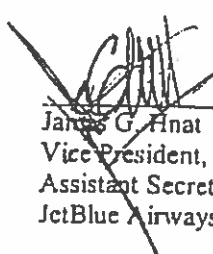
JetBlue Airways Corporation

Certificate of Secretary Regarding Corporate Resolutions

The undersigned, as the duly elected and acting Assistant Secretary of JetBlue Airways Corporation, a Delaware corporation (the "Corporation") hereby certifies that the following resolutions have been duly adopted by the Board of Directors of the Corporation and remain in full force and effect as of the date of this Certificate:

RESOLVED, that the officers of the Corporation be, and they hereby are, authorized to sign and execute in the name of the Corporation all applications, contracts, leases and other deeds and documents or instruments in writing of whatsoever nature that may be required in the ordinary course of the business of the Corporation and that may be necessary to secure for operation of the corporate affairs, governmental permits and licenses for, and incidental to, the lawful operations of the business of the Corporation, and to do such acts and things as such officers deem necessary or advisable to fulfill such legal requirements as are applicable to the corporation and its business.

In witness whereof, the undersigned has executed this Certificate effective as of the 14 day of September, 2005.



James G. Hnat
Vice President, General Counsel and
Assistant Secretary
JetBlue Airways Corporation

SAMPLE CERTIFICATE OF AUTHORITY

[Permittee may substitute own substantially similar certificate]

I, _____
(Officer other than officer signing contract)

certify that I am the _____ of
the _____
(Title)
(the "Corporation")

a corporation duly organized and in good standing under the (Law under which organized, e.g., the New York Business Corporation Law) named in the foregoing agreement; that

(Person executing agreement)

who signed said agreement on behalf of the Corporation was, at the time of execution

(Title of such person)

of the Permittee and that said agreement was duly signed for and on behalf of said Permittee by authority of its Board of Directors, thereunto duly authorized and that such authority is in full force and effect at the date hereof.

(Signature)

STATE OF NEW YORK)
)ss.:
COUNTY OF WESTCHESTER)

On the ___ day of _____ in the year 200__ before me, the undersigned, a Notary Public in and for said State, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument; and, acknowledged if operating under any trade name, that the certificate required by the New York State General Business Law Section 130 has been filed as required therein.

Signature and Office of individual
taking acknowledgement

Terminal Use Agreement Exhibits

- Exhibit 1: Section 712.462, Laws of Westchester County [Draft]**
- Exhibit 2: Technical Specifications and Procedural Requirements [Current Version]**
- Exhibit 3: Terminal Use Fees Methodology**
- Exhibit 4: Terminal Use Operating Costs**
- Exhibit 5: Passenger Handling Functions Definition**
- Exhibit 6: Ground Handling Services Definition**
- Exhibit 7: Ground Handling Services Charges**
- Exhibit 8: Ticket Counter Position Allocation Methodology**
- Exhibit 9: Departure Lounge Counter Position Allocation Procedure**
- Exhibit 10: Operations Room Position Allocation Methodology**
- Exhibit 11: Terminal Office Space Allocation**
- Exhibit 12: Service Complaint Protocol**
- Exhibit 13: Proprietary Self-Check Terminal Location Protocol**
- Exhibit 14: Insurance Requirements**
- Exhibit 15: Terms for Use of Handicapped Boarding Equipment**
- Exhibit 16: Flight Schedule [EXAMPLE]**
- Exhibit 17: Permittee Status Record [EXAMPLE]**

EXHIBITS TO TERMINAL USE AGREEMENT

- EXHIBIT 1 ----- Local Law No. ____-2004 (Section 712.462 of the Laws of Westchester County)
- EXHIBIT 2 ----- Technical Specifications and Procedural Requirements
- EXHIBIT 3 ----- Terminal Use Fees Methodology
- EXHIBIT 4 ----- Terminal Use Operating Costs
- EXHIBIT 5 ----- Passenger Handling Functions Definition
- EXHIBIT 6 ----- Ground Handling Services Definition
- EXHIBIT 7 ----- Ground Handling Services Fees
- EXHIBIT 8 ----- Ticket Counter Position Allocation Methodology
- EXHIBIT 9 ----- Departure Lounge Counter Position Allocation Procedure
- EXHIBIT 10 ----- Operations Room Position Allocation Methodology
- EXHIBIT 11 ----- Terminal Office Space Allocation
- EXHIBIT 12 ----- Administrative Complaint Procedure
- EXHIBIT 13 ----- Proprietary Self-Check Terminal Location Procedure
- EXHIBIT 14 ----- Insurance Requirements
- EXHIBIT 15 ----- Terms for Use of Handicapped Boarding Equipment
- EXHIBIT 16 ----- Permittee/Airline Flight Schedule [Example]
- EXHIBIT 17 ----- Permittee Status Record [Example]

LOCAL LAW NO. XXX-2004

A LOCAL LAW to amend Chapter 712 of the Laws of Westchester County to add a new Section 712.462, in order to codify the Westchester County Terminal Use Procedures applicable to all Airlines providing passenger service at the Westchester County Airport

BE IT ENACTED by the County Board of Legislators of the County of Westchester as follows:

Section 1. Chapter 712 of the Laws of Westchester County is hereby amended to add a new Section 712.462 which shall read as follows:

Section 712.462 Westchester County Airport Terminal Use Procedures

- 1. **Applicability.** This Section shall apply to all use of the Passenger Terminal ("Terminal") and the Terminal Ramp at the Westchester County Airport ("Airport") by Airlines providing scheduled passenger service. The Terminal Ramp shall be for the exclusive use of Airlines providing scheduled passenger service. This Section does not apply to any activities by Airport users not providing passenger service or not using the Terminal building or Terminal Ramp.
- 2. **Definitions.** The following terms as used in this Section shall have the following meanings:
 - a. "Airline" shall mean any person providing scheduled passenger air service, including but not limited to, any air carrier or other operator certificated to provide scheduled passenger service under Parts 119, 121 or 135 of the Federal Aviation Regulations, Title 14, Code of Federal Regulations. For purposes of this Section, "person" shall mean any individual, firm, company, association, society, corporation, partnership, co-partnership, joint-stock company, trust, estate, governmental entity or any other legal entity or legal representatives, agents or assigns thereof. The masculine gender shall include the feminine, and the singular shall include the plural, where indicated by context.
 - b. "Commissioner" shall mean the Commissioner of Transportation of Westchester County or his or her designee, which designee may include the Airport Manager of the Westchester County Airport.
 - c. "Ground Handling Services" shall include, at a minimum, ramp services, aircraft arrival and departure marshalling, aircraft parking

and push-back, external engine starting, gate access coordination, aircraft deicing/anti-icing, Americans with Disability Act compliance on the Terminal Ramp, and any other services needed in the ordinary course by Airlines using the Terminal Ramp.

- d. An "Incumbent Passenger Allocation" shall mean a Passenger Allocation that was in use by a Qualified Airline on November 30, 2004, pursuant to the provisions of Westchester County Board of Legislators Resolutions 59-1985 and 266-1985, and the 1994 Terminal Capacity Affirmation and Extension Agreement.
- e. An "Incumbent Ramp Allocation" shall mean a Ramp Allocation that was in use by a Qualified Airline on November 30, 2004, pursuant to the provisions of Westchester County Board of Legislators Resolutions 59-1985 and 266-1985, and the 1994 Terminal Capacity Affirmation and Extension Agreement.
- f. "Passenger" shall mean any person enplaned or deplaned at the Terminal. Federal employees who are actually on official duty and Airline employees shall not be deemed to be Passengers.
- g. "Passenger Allocation" shall mean the authorization to schedule the enplanement or deplanement of one passenger onto or from an aircraft that has a Ramp Allocation.
- h. A "Qualified Airline" shall mean any Airline that: (1) holds a valid operating certificate from the Federal Aviation Administration for the type of service it provides or seeks to provide at the Airport; (2) has, or has immediate and demonstrable access to, sufficient aircraft and operating personnel to provide the service it provides or seeks to provide; (3) has a valid Terminal Use Agreement with the County in effect; (4) furnishes proof of requisite insurance pursuant to the terms of the then-current Terminal Use Agreement; (5) has designated a representative for purposes of this Section; and (6) is current on its financial obligations with the County.
- i. "Ramp Allocation" shall mean the authorization to schedule an Airline aircraft operation on the Terminal Ramp during a designated half hour each day. An operation shall consist of an arrival and/or a departure.
- j. "Technical Specifications and Procedural Requirements," shall mean any applicable and lawful technical, engineering, and mechanical specifications for the Airport, including but not limited to the Terminal Ramp, that are issued from time to time by the Commissioner, based upon Federal Aviation Administration

guidelines and regulations, and upon the safety, efficiency and physical limitations of the Airport, including the Terminal and Terminal Ramp. The Technical Specifications and Procedural Requirements shall at least address maximum aircraft length, maximum wingspan, and maximum weight for aircraft using the Terminal Ramp.

- k. "Terminal Ramp" shall refer to that portion of the apron at the Airport that is immediately adjacent to the Terminal building and which is available for scheduled Airline operations.
- l. "Terminal Use Agreement" shall mean that agreement that Airlines must execute with the County in order to satisfy in part the requirements of Subsection 2(h) above.

3. **Terminal Ramp Use and Capacity.**

- a. Terminal Ramp Capacity. A maximum of four aircraft may be scheduled to use the Terminal Ramp at any time. It is the responsibility of each Airline to schedule arrivals and departures of its aircraft so as to avoid the need to wait elsewhere on the Airport for access to the Terminal Ramp. Allocation of the Terminal Ramp capacity shall be governed by Subsection 5 below.
- b. Use of Terminal Ramp. An Airline must hold a Ramp Allocation for each aircraft operation scheduled to use the Terminal Ramp. The Commissioner may deny access to the Terminal Ramp to any aircraft without a current Ramp Allocation. Subject to availability and subject to other Ramp Allocations, the County will endeavor to accommodate any aircraft arriving outside of the half-hour slot of its Ramp Allocation for such arrival or departure if caused by weather, airspace delays, mechanical difficulties, or other factors.
- c. Parking on the Terminal Ramp. Subject to the use of the Terminal Ramp by Qualified Airlines that have valid Ramp Allocations, and subject to the efficient management of limited space on the Terminal Ramp and security considerations, the County will attempt to accommodate Qualified Airlines (1) who wish to park aircraft overnight on the Terminal Ramp after the last scheduled Ramp Allocation for the day or (2) when a Qualified Airline has nonsequential arrival and departure Ramp Allocations for the same aircraft. Any actions by the County allowing use of the Terminal Ramp for such parking pursuant to this provision shall not entitle an Airline to any changes in its Ramp Allocations. An Airline is not entitled to occupy a parking position during any half hour for

which it has no Ramp Allocation and must vacate the Terminal Ramp when directed by Airport staff.

- d. Technical Specifications. All Airlines shall comply with the Technical Specifications and Procedural Requirements as issued by the Commissioner from time to time.
 - e. Ground Handling Services. Ground Handling Services for all Airline operations shall be provided by the County or its contractors. An Airline must be a Qualified Airline to receive Ground Handling Services.
4. **Passenger Capacity of the Terminal.** In the interest of passenger safety, security, public health, and comfort, the Terminal was designed for a capacity of 240 passengers per half hour, without consideration of whether such passengers are enplaning or deplaning. Allocation of this capacity shall be governed by the provisions of Subsection 5.
5. **Allocation of Terminal Ramp and Terminal Capacity.** In order reasonably and equitably to allocate the available Terminal building and Terminal Ramp capacity, to ensure competition, and to promote orderly and efficient Airport operations, the County shall allocate available Terminal Ramp and Terminal building capacity by means of a lottery as set forth in this Subsection.
- a. Incumbent Allocations: A Qualified Airline that has Incumbent Ramp Allocations or Incumbent Passenger Allocations may continue to operate pursuant to such Allocations under this Section after November 30, 2004, so long as (1) this Section is in effect; and (2) the Airline complies with applicable County ordinances, laws, rules and regulations governing the Airport, including this Section. After December 31, 2004, Incumbent Ramp Allocations and Incumbent Passenger Allocations shall be treated identically to later-acquired Ramp Allocations and Passenger Allocations for purposes of compliance with this Section, including the provisions of Subsections (5)(d)-(m).
 - b. Future Quarterly Allocations:
 - i. By the last business day of December 2004, the Commissioner shall publish a report ("Terminal Capacity Allocation Report") identifying all Incumbent Ramp Allocations and Incumbent Passenger Allocations as of November 30, 2004. The Terminal Capacity Allocation Report shall list (1) the time slots for, and names of, Qualified Airlines using each Incumbent Ramp Allocation and Incumbent Passenger Allocation; and (2)

available Ramp Allocations and Passenger Allocations, on a half-hourly basis.

ii By the last business day of every third month after November 30, 2004, the Commissioner shall make a preliminary determination of the then-available Terminal and Terminal Ramp capacity by subtracting all Ramp and Passenger Allocations from total Passenger and Ramp capacity and shall make a report of such available capacity ("Quarterly Available Capacity Report") available in a convenient form for Qualified Airlines and all other interested persons.

iii The allocation of available capacity shall be by means of a Quarterly Lottery. The Quarterly Lottery may be conducted through representatives of the County and Qualified Airlines or may be conducted electronically, as the Commissioner shall determine from time to time.

iv No later than December 15, 2004, and by the 15th day of each third month thereafter, any Qualified Airline seeking an Allocation of any available capacity by means of the Quarterly Lottery shall submit a request to the Commissioner in the manner specified by the Commissioner. The request shall, at a minimum, identify the Airline's designated representative for the forthcoming Quarterly Lottery and the aircraft with which the Qualified Airline proposes to provide service for any Ramp Allocation.

v On January 4, 2005, and on the first Tuesday of each third month thereafter, the County shall conduct the Quarterly Lottery to allocate capacity for the half hourly periods for which there is available capacity. The Commissioner may designate alternative dates for the Quarterly Lottery upon 14-days notice to the designated representative of each Qualified Airline.

vi At the commencement of the Quarterly Lottery, the Commissioner will provide a report of then-available Passenger and Ramp Allocations. All Qualified Airlines who submitted a request pursuant to Subsection (5)(b)(iv) shall be randomly assigned numbers to establish their order of selection in the first round of the Quarterly Lottery. Each Qualified Airline, in its order of selection, may draw Ramp Allocations and Passenger Allocations for up to a total of four (4) operations to take place in four half-hourly periods, up to the available Passenger and Ramp capacity identified in Subsections 3 and 4, whichever may first be reached. An operation shall be either an arrival or a departure. Draws may include increases in Passenger Allocations (so long as

the total of Passenger Allocations for all Qualified Airlines during the half-hour period does not exceed 240 passengers) for operations for which the Qualified Airline has a Ramp Allocation.

vii At the conclusion of the first round of the Quarterly Lottery, should any Passenger or Ramp capacity remain, the process shall be repeated, with the same order of selection, for such number of additional rounds as may be necessary until no Qualified Airline that submitted a request pursuant to Subsection (5)(b)(iv) seeks Allocations.

- c. Other Matters. Routes, rates, selection of aircraft and other matters not addressed by this Section, other County law or regulation, the Airport's Technical Specifications and Procedural Requirements, or Terminal Use Agreement shall be determined by the Qualified Airline or the Federal Aviation Administration pursuant to federal law.
- d. Compliance with Applicable Requirements. All Airlines operating at the Airport shall at all times be in compliance with all applicable and lawful Airport rules and regulations, County ordinances and laws, including all Airport Technical Specifications and Procedural Requirements that may be issued from time-to-time. Any Airline violating or causing the violation of such rules, regulations, ordinances, laws, agreements or technical specifications shall cure such violation within fifteen (15) days of being so notified by the County. Failure to so cure shall result in the cancellation by the Commissioner of the Ramp Allocations and Passenger Allocations connected with such violations.
- e. Calculation of Allocation Usage for Purposes of Determining Compliance. For purposes of determining whether an Airline is exceeding its Passenger Allocations for any half-hour period under Subsection (5)(h), the County shall employ a calendar month average. For the purposes of determining whether an Airline should have its Passenger Allocations adjusted for under-use pursuant to Subsection (5)(g), the County shall employ a three-calendar-month average based on the data reported pursuant to Subsection (5)(f). In calculating such averages, the denominator shall be the number of aircraft operations actually flown during the period pursuant to a particular Ramp Allocation and the numerator shall be the number of passengers actually enplaned and deplaned on all such operations. For purposes of using averages: (1) any average that is not a whole number shall be rounded down to the next lowest whole number if the fraction greater than the next lowest whole number is lower than five tenths; and (2) any average

that is not a whole number shall be rounded up to the next highest whole number if the fraction greater than the next lowest whole number is equal to or greater than five tenths. In calculating such averages, the County shall not include, either in the numerator or the denominator, data concerning operations during the following holiday periods:

i Christmas/New Year from December 20 through January 5.

ii The Presidents' Day holiday from three (3) days before Presidents' Day through three (3) days following Presidents' Day.

iii Easter from five (5) days prior to Easter through the fifth day following Easter.

iv Memorial Day from three (3) days before Memorial Day through three (3) days after Memorial Day.

v July 4, from July 1 through July 7.

vi Labor Day, from three (3) days prior to Labor Day through three (3) days after Labor Day.

vii Thanksgiving from five (5) days prior to Thanksgiving through five (5) days after Thanksgiving.

f. Reporting.

i Airlines operating at the Airport shall certify actual passenger loads, on a per flight, per day, enplaned, deplaned, basis to the County twice monthly in the form designated by the Commissioner by no later than five business days from (1) the 15th of each month and (2) the last day of each month.

ii Each Airline shall designate at the time of any application under Subsection (5)(b)(iv), Quarterly Lottery draw under Subsection (5)(b)(vii), or transfer under Subsection (5)(k), the type of aircraft to be used for each Ramp Allocation time slot. Such designation shall be in the form established for this purpose by the Commissioner. Further, any Airline seeking to change the type of aircraft using a Ramp Allocation shall provide notice to the County, in the form designated by the Commissioner, at least seven days prior to such change. Any designation or change in

aircraft type shall comply with the Technical Specifications and Procedural Requirements.

iii The County may, at any time, audit passenger ticket lifts and/or other appropriate passenger statistics of any Airline to determine actual passenger enplanements or deplanements.

iv Failure to comply with any of the reporting or audit requirements contained in this Subsection (5)(f) within five days of an Airline's receipt of notice of noncompliance by the Commissioner shall result in immediate termination of the Ramp Allocation(s) and Passenger Allocations of the Airline. Further, any intentional misstatement of information required in this Section, as determined by the Commissioner, shall result in the immediate termination of the Ramp Allocation(s) or Passenger Allocations of the Airline.

g. Failure to Use Allocations. If for any three-calendar-month period, an Airline's actual average passenger load for any half-hour for which it has Passenger Allocations should be less than 85 percent of the total of its Passenger Allocations, then the Commissioner shall reduce its Passenger Allocation for the subsequent quarter to 115 percent of such reported three calendar-month-average passenger loads for that half-hour period. The review and reduction made pursuant to this Subsection shall be made for successive, and not for overlapping, three-month periods. The County shall waive the application of this Subsection for any period in which the Commissioner has determined that total passenger enplanements at the Airport have been significantly adversely affected by war, national emergency or extraordinary terrorist threat, labor action, or force majeure.

h. Exceedance of Passenger Allocations. If for any calendar month, an Airline's average passenger load during any half-hour period should exceed its Passenger Allocations for that period, then such Airline's Passenger Allocations shall be adjusted to such average load figure or such portion thereof as the available capacity of the Terminal shall accommodate ("Adjusted Passenger Allocations"). If two or more Qualified Airlines' average passenger loads for a calendar month in a particular half-hour time period exceed their Passenger Allocations and there is insufficient Passenger Capacity to accommodate all of these exceedances, the Commissioner shall assign Adjusted Passenger Allocations proportionally to the Qualified Airlines' shares of Passenger Allocations for that half-hour period. If there is insufficient available Terminal capacity to accommodate all of the exceedances of Passenger Allocations by

an Airline, then the Commissioner shall issue a written Notice of Violation to such Airline, and the Airline shall, within fifteen (15) days from such notice, reduce its average passenger load to the Adjusted Passenger Allocations level. For the purposes of determining compliance with such mandated reduction, the average passenger load will be calculated for the period from 15 days prior to the Notice of Violation to 15 days after the Notice of Violation ("Compliance Test Period"). In lieu of such mandated reduction, a Qualified Airline may obtain sufficient Passenger Allocations from another Airline pursuant to Subsection 5(k) to accommodate its average usage during the Compliance Test Period. Should any Airline fail to reduce its average passenger load during the Compliance Test Period then:

i On the sixteenth day following the Notice of Violation, such Airline's Passenger Allocations for the applicable half-hour period shall be reduced by the amount by which that the Airline's average loads exceeded the Airline's Passenger Allocations as set forth in the Notice of Violation. The Airline shall thereupon be required to comply immediately with such reduced Passenger Allocations.

ii The Airline shall lose the privilege of participating in the next subsequent Quarterly Lottery for either Passenger Allocations or Ramp Allocations.

iii Should such Airline's average passenger load during the calendar month following the reduction in its Passenger Allocation under Section 5(h)(i) not comply with such reduced Passenger Allocation, then the Commissioner may terminate, upon twenty days' written notice, such Airline's Ramp Allocation and Passenger Allocations for the subject half-hour period.

i. Use of Ramp Allocations.

i Any Airline, obtaining a Ramp Allocation must initiate service within 60 days from the date it obtains such Allocation and must provide such service on at least a five-day-per-week basis, with aircraft capable of using the Passenger Allocations corresponding to the particular Ramp Allocation. Should any Airline fail to initiate service within such 60-day period, such Airline shall, on the 61st day, lose such Ramp Allocation and Passenger Allocations. Such Airline shall also lose the privilege of participating in the next Quarterly Lottery. Notwithstanding the foregoing, any Airline may, within ten days of any Quarterly Lottery, surrender to the County without penalty any

Passenger Allocations or Ramp Allocation or portions thereof obtained in such Quarterly Lottery. Any surrendered Allocations will become available capacity in the next Quarterly Lottery.

ii Any Airline with a Ramp Allocation must schedule use of such Allocation on at least a five-day-per-week basis, with aircraft capable of using the Passenger Allocations corresponding to the particular Ramp Allocation, or transfer the Allocation to another Airline or Airlines (pursuant to Subsection k) which together would provide service that schedules use of such Passenger Allocations, on at least a five-day-per-week basis.

- (a) Failure to schedule use of a Ramp Allocation on at least a five-day-per-week basis shall result in a notice of violation from the Commissioner. If the Airline fails to schedule use of its Ramp Allocation on at least a five-day-per-week basis within 15 days of the notice of violation from the Commissioner, the Commissioner shall immediately cancel such Airline's Ramp Allocation and associated Passenger Allocations. If an Airline fails to schedule use of its Ramp Allocation on at least a five-day-per-week basis for a second time within a one-year period, the Commissioner shall immediately cancel the Airline's Ramp Allocation and associated Passenger Allocations upon one-day notice. The County shall waive the application of this Subsection for any period in which the Commissioner has determined that total operations at the Airport have been significantly adversely affected by war, national emergency or extraordinary terrorist threat, labor action, or force majeure.
- (b) The Commissioner may also terminate an Airline's Ramp Allocation and associated Passenger Allocations if he or she determines that an Airline's actual use of its Ramp Allocation is inconsistent with its published schedules for use of the Ramp Allocation, indicating an intent to hold a Ramp Allocation without making use of it on a five-day-per-week basis.

iii Before initiating new or changed service, a Qualified Airline must have approval from the Commissioner regarding scheduled arrival and departure times pursuant to Subsection (5)(j).

j. Scheduled Departure and Arrival Times. The Commissioner shall approve changes in and new scheduled arrival or departure times. Any changes not disapproved within 10 days of receipt of notice of such changes shall be deemed approved. Approval or disapproval of any changes shall be based on the following criteria:

i All arrival and departure times must be scheduled within the half hour for which the Qualified Airline holds a Ramp Allocation;

ii The Qualified Airline must have adequate Passenger Allocations;

iii The scheduled arrival and departure times must allow for the aircraft's passengers to be enplaned and/or deplaned within the half hour for which the Qualified Airline holds a Ramp Allocation and Passenger Allocations;

iv Adequate ramp time outside of the half-hour period for which the Qualified Airline holds a Ramp Allocation is available, if necessary, to accommodate the proposed operation;

v Scheduled times shall not interfere with efficient handling of other operations within the same half-hour period or in an adjacent period;

vi Scheduled operations shall minimize the need for any arrival or departure holds on other Airport aprons;

vii Operations shall maintain a reasonable balance of arrival and departure passengers in the Terminal;

viii In no event shall the Commissioner's approval or disapproval of scheduled departure or arrival times deny a Qualified Airline the authority to use its Ramp Allocation and/or Passenger Allocation or affect Airline rates or routes.

k. Transfer of Allocations: Notice.

i Qualified Airlines may, upon two (2) weeks prior written notice to the County, transfer:

(a) Ramp or Passenger Allocations to another Qualified Airline provided that the transferor has operated flight(s) under such Allocations, employing aircraft

capable of using the entire Allocations, for 30 days on at least a five-day-per-week basis, or

- (b) Ramp Allocations and Passenger Allocations from one time period into another time period as long as no such transferred Allocations would result in use of the Terminal or Terminal Ramp in excess of capacity for any half-hour time period.

ii The Commissioner may, in his sole discretion, waive either the notice period or the transferor's required use of the Allocation under this Section for short-term transfers but in no event shall waive the notice requirement.

iii Notice to the County shall be in such electronic and/or other form designated by the Commissioner. Any notice of a transfer shall set forth (a) the names of the transferor and transferee; (b) the duration or any other conditions on the transfer, or whether the transfer is unconditional; and (c) whether the transfer is for all, or a portion (and if so, what portion) of the Allocation.

iv The County's review of notices pursuant to this Subsection shall be limited to a determination that the proposed transaction (a) involves Qualified Airlines and (b) will not result in exceedance of the capacity limits set forth Subsections 3(a) or 4 of this Section.

- l. New Entrants. An Airline not currently providing service at the Airport can become a Qualified Airline and obtain Allocations through the Quarterly Lottery and/or transactions with other Airlines pursuant to Subsection (5)(k) if it demonstrates compliance with the criteria set forth in Subsection (2)(h).
- m. Disputes Regarding Allocations. To the extent that any Qualified Airline disputes the identity of the designated holder of Ramp Allocations and/or Passenger Allocations, such Qualified Airline shall seek to resolve its dispute informally among the affected Airlines. If such efforts should fail, any Qualified Airline may petition the Commissioner for resolution of the dispute. After providing all Qualified Airlines with notice of the dispute, an opportunity to provide supporting information, and an opportunity for a meeting with all affected Airlines, the Commissioner shall make one of three findings: (1) find that the Allocation is properly identified by the County in the reports required in Subsections (5)(b)(i), (5)(b)(ii) and/or (5)(b)(vi); (2) that another Qualified

Airline is properly the holder of the relevant Allocation; or (3) that no Qualified Airline has a clear right to the allocation and that the Allocation is forfeited and available for reallocation pursuant to the provisions of Subsection (5). All determinations of the Commissioner shall be final.

6. Hearings; Enforcement of This Section.

a. Request for Hearing and Reconsideration. Any Airline that disputes a decision by the Commissioner to terminate its Ramp Allocation(s) and/or Passenger Allocations is entitled to seek a hearing and reconsideration of the Commissioner's decision by submitting to the Commissioner a formal request within 10 days of such decision. Upon receipt of such request, the effectiveness of the Commissioner's decision to terminate an allocation shall be suspended until he or she renders a decision under Subsection (6)(c).

b. Process for Hearing.

i Upon request for a hearing and reconsideration, the Commissioner shall cause to be held a hearing before a hearing officer selected by the County on the termination at issue.

ii A formal hearing shall be on due and adequate notice to the party concerned and shall be set down for a day certain no less than 15 days and no more than 30 days from the Airline's request for hearing and reconsideration.

iii A notice of hearing shall set forth:

(a) The time and place of the hearing;

(b) The basis or bases for the Commissioner's decision to terminate Ramp Allocations and/or Passenger Allocations;

(c) The right to present evidence;

(d) The right to examine and cross-examine witnesses;

(e) The right to be represented by counsel; and

(f) That failure to appear shall constitute a default by the respondent, that the hearing may proceed in the respondent's absence and a determination made

based upon evidence submitted by the Westchester County Department of Transportation.

iv The hearing officer may grant adjournments upon request of any party to the proceeding, provided that an adjournment shall not be for an indefinite period of time, but shall be set down for a day certain.

(a) If an adjournment is requested in advance of the hearing date, such request shall be presented to the hearing officer in writing, and shall specify the reason for such request.

(b) In considering an application for adjournment of a hearing, the hearing officer shall consider whether the purpose of the hearing will be affected or defeated by the granting of such adjournment.

v To aid in the administration of this Section, the Commissioner or any hearing officer designated by him or her in a particular proceeding, may issue subpoenas in the Commissioner's name requiring the attendance and giving of testimony by witnesses and the production of books, papers and other evidence for any hearing or proceeding conducted under this Section. Service of such subpoena(s), enforcement of obedience thereto, and punishment for disobedience thereof, shall be had as and in the manner provided by the Civil Practice Law and Rules relating to the enforcement of any subpoena. It shall be the responsibility of the party requesting the issuance of a subpoena to effect service thereof.

vi On the return day of the hearing, the hearing officer shall note the appearances of the persons attending the hearing. Witnesses shall be sworn and testimony shall be recorded either by a certain stenographer or by use of an electronic recording device.

vii Testimony shall be transcribed upon the request of any interested party. The party requesting the transcript shall pay the costs and expenses in connection therewith.

viii The hearing officer shall not be bound by the strict rules of evidence in the conduct of a hearing, but the determination shall be founded upon sufficient legal evidence to sustain it.

ix After the conclusion of a formal hearing, the hearing officer shall prepare and issue findings of fact, conclusions and recommendation(s) to the Commissioner.

c. Decision by Commissioner

i Upon the conclusion of a formal hearing and after receipt of the hearing officer's report and recommendation(s), the Commissioner shall make a decision based on such findings, determinations and recommendations as he or she deems proper, and shall execute an order carrying such decision into effect.

ii The Commissioner may direct a rehearing or require the taking of additional evidence and may rescind or affirm, in whole or in part, a prior determination after such hearing.

iii The Commissioner shall cause to be served upon the Airline, copies of findings of fact, conclusions and recommendations and orders made as a result of a formal hearing.

d. Service by County. Service of findings of fact, conclusions and recommendations, and orders, shall be made by hand or by overnight delivery to the designated representative of the Airline.

e. Hearing Cost. The cost of the hearing process (including but not limited to the fees for the hearing officer, transcription and other clerical costs, and the cost of providing witnesses but excluding any salaries of County employees) shall be borne equally by all Airlines who are parties to the hearing.

f. Injunctions. The County may maintain actions in any court of competent jurisdiction to restrain by injunction any attempted use of the Terminal or Terminal Ramp by any Airline without current, valid Ramp Allocations or Passenger Allocations.

Section 2. This Local Law shall take effect on XXXX, 2004.

RESOLUTION NO. XXX-2004

RESOLVED, that this Board hold a public hearing pursuant to Section 209.141(4) of the Laws of Westchester County on Local Law No. XXX-2004 entitled "A LOCAL LAW to amend Chapter 712 of the Laws of Westchester County to add a new Section 712.462, in order to codify the Westchester County Terminal Use Procedures applicable to all Airlines providing passenger service at the Westchester County Airport."

This public hearing will be held at X.m. on the XXX day of XXX, 2004, in the Chambers of the Board of Legislators, 8th Floor, Michaelian Office Building, White Plains, New York. The Clerk of the Board shall cause notice of the time and date of such hearing to be published at least once in one or more newspapers published in the County of Westchester and selected by the Clerk of the Board for that purpose in the manner and time required by law.

TECHNICAL SPECIFICATIONS AND PROCEDURAL REQUIREMENTS
WESTCHESTER COUNTY AIRPORT

The following Technical Specifications and Procedural Requirements are issued pursuant to Section 712.421 of the Laws of Westchester County and supercede any prior technical specifications on the same subject issued pursuant to such authority.

I. TERMINAL RAMP CAPACITY

A maximum of four aircraft may be scheduled to use the Terminal Ramp at any given time. Two positions may be scheduled for aircraft with a maximum overall length of 107 feet or less and two positions may be scheduled for aircraft with a maximum overall length of 130 feet.

II. MAXIMUM AIRCRAFT LENGTH

The maximum overall length for any aircraft using the Terminal Ramp is 130 feet.

III. MAXIMUM WINGSPAN

The maximum wingspan for any aircraft using the Terminal Ramp is 115 feet.

IV. MAXIMUM TAKE OFF WEIGHT

No aircraft with a certificated maximum gross takeoff weight in excess of 120,000 pounds shall land, take off, or use the Airport without prior permission of the Airport Manager. The Airport Manager shall grant prospective permission for a designated number of daily operations by aircraft in excess of 120,000 pounds maximum gross takeoff weight if he or she finds on the basis of acceptable engineering data that such operations, along with all other permitted or anticipated operations, would not shorten the 20-year design life of any potentially affected airport pavement. Upon request, such prior permission may be granted prospectively to a Qualified Airline so long as its operations are consistent with its Ramp Allocations. In no event shall the Airport Manager grant permission for operation by any aircraft with a certificated maximum gross takeoff weight in excess of 180,000 pounds.

Issued on: April __, 2004

Joel Russell
Airport Manager

EXHIBIT 3
TERMINAL USE FEES METHODOLOGY

L TERMINAL USE FEE AND METHODOLOGY

A. Scope

The Terminal Use Fee represents the cost for use and occupancy of all Terminal space used for Airline functions (including common space allocation), including:

Airline operations/dispatch/crew briefing
Departure lounge
GHE Training Room
Bag Claim
ARFF Building (50%)
Bag Make-up
Bag Display
First floor GHE Building
Offices 265 & 266 GHE Building

B. Formulation Through 2015

The amortization period for construction of the Terminal will end at the end of 2015. The monthly Terminal Use Fee through the year 2015 will be determined using the following formula:

Total Terminal Construction Cost		\$20,458,545
Total Terminal Finance Cost	+	<u>\$13,106,469</u>
Total Terminal Cost		<u>\$33,565,014</u>
Amortization Period		<u>20 years</u>
Total Annual Terminal Cost		<u>\$1,678,251</u>
Percent of Space (including common space) allocation used by Airlines	x	<u>63.6%</u>
Total Annual Airline Terminal Cost		<u>\$1,067,367</u>
Percent of Airline Utilized Space Co-utilized by all other Airlines and not accommodated in other fees	x	<u>(88.2%)</u>
Total Annual Airline Terminal Use Fee		<u>\$941,418</u>
One Year in months	÷	<u>12</u>
Total Monthly Airline Use Fee		<u>\$78,452</u>

Values at the time of the execution of this Agreement are included for illustrative purposes.

The Total Monthly Airline Use Fee shall be proportionally allocated to each Airline, based on share of passengers as follows:

- (1) The denominator for determining the proportional share shall be calculated by adding (1) the total reported passengers for all Airlines per Subsection (5)(f) of Section 712.462 of the Laws of Westchester County for the calendar month period two (2) months prior to date of invoicing; and (2) for new entrants within the first two months of their operations, the product of the Passenger Allocations they hold in the month of invoicing times the number of days in that month.
- (2) The numerator for determining the proportional share for an Airline that has operated at the Airport for more than two months prior to the invoicing shall be the total reported passengers for that Airline for the calendar month two (2) months prior to the date of invoicing.
- (3) The numerator for determining the proportional share for a new entrant within the first two months of its operation shall be the product of the Passenger Allocations that the Airline holds in the month of invoicing and the number of days in the month.

C. Additional Capital Costs

Any costs associated with the development of secure overnight parking pursuant to Paragraph 13 of the Agreement, screening-related facilities pursuant to Paragraph 14 of the Agreement, or other capital repairs or improvements to the Terminal or Terminal Ramp shall be addressed in a separate formulation and shall be allocated to the Airlines in the manner identified in Section I.B. of this Exhibit, except for the amortization period, which will be determined in accordance with Generally Accepted Accounting Principles.

D. Formulation After 2015

After December 31, 2015, the Total Monthly Airline Use Fee (excluding fees covering additional capital costs pursuant to Section I.C. with amortization periods past 2015) will be calculated in the following manner:

Total Terminal prevailing market rental rate	
Percentage of space utilized by airlines	<u>x expected to 63.6%</u>
Total Annual Airline Terminal Cost	
Percentage of Airline space Co-Utilized	<u>x expected to be 88.2%</u>
Total Annual Airline Terminal Use Fee	
One Year in Months	<u>+ 12</u>
Total Monthly Airline Use Fee	<u>_____</u>

II. COUNTER POSITION USE FEE**A. Scope**

This fee represents the cost for using Main Ticket Lobby counter space, including the associated flight information display and back wall.

B. Formulation

Through 2015, the Counter Position Use Fee is a fixed flat fee of \$244.50 per counter position per month.

This fee can be adjusted after 2015.

III. LOCKER CHARGE**A. Scope**

The Locker Charge represents the cost for using a locker on the second floor of the GHE Building.

B. Formulation

Airlines who use lockers, if available, will be assessed a Locker Charge of \$155 per locker, per year.

This fee can be adjusted after 2015.

IV. JET BRIDGE USE**A. Current Jet Bridges**

Jet Bridge use shall be charged at \$12 per use.

This fee can be adjusted after 2015.

For the purposes of this allocation, any time an aircraft disconnects and moves away from the bridge, the use event is completed.

For the purposes of this allocation, an overnight accommodation will be assessed as two jet bridge uses, regardless of aircraft movement, provided that the jet bridge was used for arrival and departure.

B. Additional or Modified Jet Bridges

In the event that the County provides additional or modified jet bridges pursuant to Paragraph 16 of the Agreement, the construction, acquisition, installation and finance costs associated with the additional or modified jet bridges shall be allocated in a manner consistent with Section I.

V. GENERAL PROVISIONS REGARDING FEES

- A. The County will issue a monthly invoice for the fixed monthly fees identified in Sections II, III and IV, which invoice is payable in advance of the month covered by such fees.

EXHIBIT 4
TERMINAL USE OPERATING COSTS

I. TERMINAL OPERATING COST

A. Scope

This cost represents the costs of operating the Terminal for an annual period.

B. Formulation

Total eligible Terminal Operating Costs shall be the sum of the following list:

Annual Terminal Operating Cost	
Heat, Light & Power	
HVAC Maintenance	
Elevator/Escalator Maintenance	
Cleaning/Janitorial	
Trash Removal	
Fire Protection Maintenance	
Generator Maintenance	
Window Cleaning	
Landscaping	
FID Maintenance	
Exterminator	
Insurance	
Security	
Access Controls Maintenance	
Electrical System Repair	
Door Maintenance	
Supplies	
Water	
Water System Repair	
Conveyor Maintenance	
Taxes	
Telephone Maintenance & Repair	
Building Improvements	
UPS Maintenance	
Plumbing Supplies & Repairs	
Sewers	
Painting	

Security Cameras		
Wireless Service		
Signage Repairs & Maintenance		
Building Management		
Airport Management		
Environmental Management		
Maintenance Cost Allocation		
TOTAL TERMINAL OPERATING COST		
Percent of total cost allocated to Airlines		
	x	63.6%
TOTAL AIRLINE ANNUAL TERMINAL OPERATING COST		
One Year	+	12
TOTAL AIRLINE MONTHLY TERMINAL OPERATING COST		

(1) Terminal Use Operating Cost Allocation

Eighty-eight and two tenths percent (88.2%) of the Total Monthly Airline Terminal Operating Cost shall be allocated to Airlines based on their individual proportions of the total passenger count, using the same methodology provided in Exhibit 3, Section I.B.

(2) Counter Position Cost Allocation

Five percent (5%) of the Total Monthly Airline Terminal Operating Cost shall be allocated to Airlines that use counter positions on a flat fee per month.

(3) Airline Office

Four and one-tenth percent (4.1%) of the Total Monthly Airline Terminal Operating Cost shall be allocated to Airport office holders.

C. General

- (1) The Annual Terminal Operating Cost shall be calculated by the County using actual or best estimated costs for the services indicated. The completed Annual Terminal Operating Cost shall be transmitted to all Permittees by November 1 of the year preceding the year in which such costs will be used to set fees. All estimates shall be so noted.

- (2) The County will make an adjustment by May of the following year in which actual costs will be compared to the estimates. Adjustments will be made for each Permittee based on annualized indicators (passengers, locker utilization, counter position use).
- (3) If an Airline leaves the Airport, that County will seek to collect any remaining debits from such Airline. If, after 90 days, the County has not recovered past fees from the departing Airline, the Airline's past year credit or debit shall be proportionally allocated to the Qualified Airlines who are present at the time of the adjustment.

D. New Costs

Any operational or maintenance costs associated with new secure overnight parking provided pursuant to Paragraph 13 of this Agreement or screening-related facility improvements pursuant to Paragraph 14 of this Agreement shall be included in the allocable costs listed in Section I.B. of this Exhibit and the percentage(s) shall change accordingly.

II. JET BRIDGE OPERATING COSTS

A. Scope

This allocated cost represents the annual maintenance and electrical cost for jet bridge operation.

B. Formulation

- (1) The actual or best estimated cost for jet bridge operation shall be determined by the County. This cost shall be divided by 12 and allocated to Permittees based on the prior month's use as set forth in Exhibit 3, Section IV.A.
- (2) Permittees will be notified of the actual or estimated Jet Bridge Operating Cost by November 1 of the year preceding the year in which such costs will be used to set fees.
- (3) The County will make an adjustment by May of the following year in which actual costs will be compared to the estimate, adjustments will be made to each Permittee based on annualized indicators (jet bridge use).
- (4) If an Airline leaves the Airport, that County will seek to collect any remaining debits from such Airline. If, after 90 days, the

County has not recovered past fees from the departing Airline, the Airline's past year credit or debit shall be proportionally allocated to the Qualified Airlines who are present at the time of the adjustment.

C. Additional or Modified Jet Bridges

In the event that the County provides additional or modified jet bridges pursuant to Paragraph 16 of the Agreement, the operational and maintenance costs associated with the additional or modified jet bridges shall be added to the Total Jet Bridge Operation Cost and the use of the additional or modified jet bridges shall constitute use events for purposes of allocating costs in the methodology described above.

EXHIBIT 5
PASSENGER HANDLING FUNCTIONS DEFINITION

I. PASSENGER HANDLING FUNCTIONS DEFINITION: Passenger Handling Functions shall include the following functions.

A. Passenger Service Representation

- (1) Inform Permittee's or its Affiliate Group passengers and/or public about time of arrival and/or departure of Permittee's aircraft and surface transport.
- (2) When advised and requested by Permittee, assist Permittee's or its Affiliate Group passengers requiring attention (including but not limited to disabled passengers and unaccompanied minors), provide or arrange for wheelchairs, special equipment and specially trained personnel for such assistance.
- (3) Take care of Permittee's or its Affiliate Group passengers when flights are interrupted, delayed or cancelled.
- (4) Issue tickets and account for funds.
- (5) On departure, check and ensure that the tickets are valid for the flight for which they are presented; make out excess baggage tickets, collect excess baggage charges and detach applicable excess baggage coupons; carry out seat allocation or selection system.

B. Departure Area Representation Carry out seat allocation or selection system; direct Permittee's or its Affiliate Group passengers through controls to the aircraft; handle denied boarding compensation cases.

C. Gate Arrival/Departure/Close-out Meet/board Permittee's or its Affiliate Group passengers at aircraft door; on arrival, direct Permittee's or its Affiliate Group passengers from aircraft to the Terminal landside area; coordinate cabin preparation with crew and resolve seat allocation conflicts; close-out flight and delivery flight documents to crew; perform limited operations as typically assigned to gate agents.

D. Baggage Service Representation Provide baggage service representation services to receive and process claims for lost, damaged or misplaced baggage.

II. PROCEDURES: Passenger Handling Functions shall be provided consistent with Permittee's written procedures for such functions.

EXHIBIT 6
GROUND HANDLING SERVICES DEFINITION

- I. **GENERAL** As handling agent for the Permittee, the County, through its agent, will act on behalf of the Permittee to perform the services herein. The Ground Handling Services outlined herein must be procured from the County, except for Passenger Handling Functions, as defined in Exhibit 5.
- II. **BASIC SERVICES** For the arrival and subsequent departure of the same aircraft, the following Basic Services will be provided:
- A. **Arrival**
- (1) **Marshalling**
- (a) Receive aircraft, marshalling at arrival.
 - (b) Park aircraft, provide and position wheelchocks and safety cones according to Permittee's instructions.
 - (c) Position landing gear locks, engine blanking covers, pitot-covers, surface control locks, tail stand and/or aircraft tethering as requested.
 - (d) Provide, position and operate suitable ground power unit for supply of necessary electrical power, if required.
 - (e) Walk around the aircraft to identify and report any damage.
- (2) **Baggage Handling**
- (a) Unload, deliver and display baggage in accordance with local procedures.
 - (b) Report to the Permittee any irregularities discovered in baggage handling.
- (3) **Aircraft Servicing**
- (a) **Turn-Around** – Remove trash, newspapers and other waste, if requested
 - (b) **Toilet Service** – Provide, position and operate toilet servicing unit to empty, clean, flush toilets and replenish fluids in accordance with the Permittee's instructions, if requested.

- (c) Water Service — Provide, position and operate water servicing unit; replenish water tanks with drinking water, the standard of which is to meet the Permittee's requirements, if requested.
- (d) Overnight Accommodation on Public Ramps (subject to availability)
- i. Clean and tidy flight deck according to the Permittee's instructions and, if specified, under the control of a person authorized by the Permittee, empty ashtrays, dispose of litter, clear waste from seat back stowage and racks, wipe crew tables, clean and tidy seats, mop floors, clean windshield on inside, if requested.
 - ii. Clean cabin as appropriate by emptying ashtrays, disposing of litter, clearing waste from seats and passenger service units, wiping tables, cleaning and tidying seats and passenger service units, cleaning the floors (carpets and surrounds), wiping surfaces in pantries (sinks and working surfaces) and toilets (wash basin, bowls, seats, mirrors and surrounds), removing, as necessary, any contamination caused by air sickness, spilled food or drink and offensive stains, if requested.
 - iii. Toilet Service — Provide, position and operate toilet servicing unit to empty, clean, flush toilets and replenish fluids in accordance with the Permittee's instructions, if requested.
 - iv. Water Service — Provide, position and operate water servicing unit, replenish water tanks with drinking water, the standard of which is to meet the Permittee's requirements, if requested.
 - v. Position, install and commence operation, in accordance with Permittee's instructions, of such RON devices (e.g. engine covers, cabin heaters, etc.) as may be supplied by Permittee, provided, however, that this paragraph shall not be construed to include any responsibility to monitor the continued operation of such devices after the initial installation or commencement of operation.

- (e) Overnight Accommodation on Non-Public Ramps. If requested by Permittee, County will provide services as specified in II. A.(3)(d) next above to aircraft parked on non-public areas of the Airport. In the event of limited resources or personnel, priority will be given to providing services specified in II. A.(3)(d)(iii) and (iv).

B. Departure

(1) Marshalling

- (a) Dispatch aircraft, marshalling at departure; remove wheelchocks according to Permittee's instructions.
- (b) Remove landing gear locks, engine blanking covers, pitot-covers, surface control locks, tail stand and/or aircraft tethering, if required.
- (c) Provide, position and operate suitable ground power unit for supply of necessary electrical power, if required.
- (d) Walk around the aircraft to identify and report any damage.

(2) Baggage Handling

- (a) Curb-side Baggage Check-In. Provide curb side baggage check-in services according to Permittee's flight schedule in common with other Permittees.
- (b) Baggage Loading.
- i. Sort and document baggage in the sorting area; load baggage in accordance with Permittee's procedures.
- ii. Report to the Permittee any irregularities discovered in baggage handling.
- (c) Starting
- i. Provide, position and operate appropriate unit(s) for normal engine starting at departures, if required.
- ii. Provide headsets and perform ramp to flight deck communication for starting engines and other purposes.

- iii. Remove ground equipment.
- (3) Safety Measures Report immediately to the Permittee's authorized representative and, if available, the aircraft crew all damage notices at or inside the aircraft, irrespective of cause or time of occurrence.
- (4) Airport Coordination
 - (a) Coordinate gate, counter and departure area access and use, including use of FIDS, and phone systems.
 - (b) Coordinate access to/from parking and hangar space arranged by Permittee, if appropriate.

III. OPTIONAL SERVICES

In addition to the Basic Services identified in Paragraph II above, the County, if requested, will perform the following optional services at the Terminal acting on behalf of Permittee, subject to the terms and conditions contained herein.

- A. Full Service Ground Handling If requested by Permittee, County will provide full ground handling representation, including those functions specified in Paragraphs 3(B) through 3(D). Ground handling services will be performed on a per-flight basis for the arrival and subsequent departure of the same aircraft.
- B. Customer Contact Services
 - (1) Passenger Service Representation
 - (a) Inform passengers and/or public about time of arrival and/or departure of Permittee's or its Affiliate Group aircraft and surface transport.
 - (b) When advised and requested by Permittee, assist Permittee's or its Affiliate Group passengers requiring attention (including but not limited to disabled passengers and unaccompanied minors), provide or arrange for wheelchairs, special equipment and specially trained personnel for such assistance.
 - (c) Take care of passengers when flights are interrupted, delayed or cancelled, according to instruction given by the Permittee; if instructions do not exist, deal with such cases according to custom.

- (d) Issue tickets beginning one hour before scheduled departure of flights and account for and remit funds collected to Permittee.
- (e) On departure, check and ensure that the tickets are valid for the flight for which they are presented, but not including fare verification; make out excess baggage tickets, collect excess baggage charges and detach applicable excess baggage coupons; carry out Permittee's seat allocation or selection system, in accordance with Permittee's procedure.
- (f) Direct passengers through controls to the aircraft.

(2) Departure Area Representation

- (a) Carry out Permittee's seat allocation or selection system, as mutually agreed.
- (b) Direct passengers through controls to the aircraft.
- (c) Handle denied boarding compensation cases, as agreed with the Permittee.

(3) Gate Arrival/Departure/Close-out Meet or board passengers at aircraft door; on arrival, direct passengers from aircraft to the Terminal land side area; coordinate cabin preparation with crew and resolve seat allocation conflicts; close-out flight according to Permittee's instructions; deliver flight documents to crew.

(4) Baggage Services Representation Provide Baggage Service representation services according to Permittee's flight schedule in common with other Permittees.

C. Flight Departure Coordination

- (1) Prepare, sign, distribute and file as appropriate, documents, balance charts, Captain's weight and balance manifests, as reasonably required by the Permittee.
- (2) Keep up-to-date all necessary manuals and instructions that the Permittee must provide and ensure that all prescribed forms are available.

- (3) Maintain a trip file collecting all documents specified by the Permittee, all messages received or originated in connection with each flight and dispose of this file as instructed by the Permittee.
 - (4) Distribute flight operation forms as specified by the Permittee and obtain signature of the pilot-in-command, where applicable.
 - (5) Take immediate and appropriate action in case of in-flight irregularity, according to the Permittee's instructions (written or verbal); log and notify as specified by the Permittee, any incident of an operational nature (delays, diversions, engine trouble, etc.)
 - (6) Coordinate fueling and/or defueling with fuel suppliers.
- D. Operations Coordination Receive and distribute as appropriate, documents, loading instructions, load sheets, Captain's load information and manifests, as reasonably required by the Permittee.
- E. Other Additional Services
- (1) Customer Service Agents for the Scheduling and Assignment of Permittee County will provide customer service agents for the scheduling and assignment of Permittee to perform customer service functions as directed by Permittee to include passenger processing, gate/boarding functions directly related to the performance of customer service functions for the Permittee's own flights. Agents will be provided for full or part-time schedules at Permittee's request.
 - (2) Operations Agents for the Scheduling and Assignment of Permittee County will provide operations agents for the scheduling and assignment of Permittee to perform station operations functions as directed by Permittee to include flight following, crew briefing, weight and balance, field condition reporting and crew accommodation coordination and other support functions directly related to the performance of the station operations function for Permittee.
 - (3) Additional Services Upon Agreement If requested, County may provide such additional services as may be agreed between County and Permittee. In the event that such other additional services are provided, additional charges may be imposed.
 - (4) Optional Towing and De-Icing Services. If requested by the Permittee the County will use reasonable efforts to (a) provide manpower, equipment and glycol as necessary to perform aircraft

de-icing; and (b) perform towing to reposition aircraft for the Permittee. The services set forth in this paragraph are provided subject to the following terms and conditions:

- (a) *Performance of services.*
- i. If requested by Permittee and subject to availability of equipment, supplies and personnel, the County will use reasonable efforts to (a) provide manpower, equipment and glycol as necessary to perform aircraft de-icing; and (b) perform towing to reposition aircraft for the Permittee. All services hereunder shall be in accordance with the requirements contained in the Permittee's maintenance manuals. The Permittee shall, at its sole cost and expense, provide the County with pertinent maintenance manuals and work forms, and adequate training necessary for the County to perform the services provided herein.
 - ii. Without limiting the generality of the foregoing, training and qualification of handling personnel and any required certification of personnel or procedures shall be the responsibility of the Permittee.
- (b) *Standards of services.* All services to be rendered by the County through its agents, employees or otherwise hereunder shall conform to the requirements of the Federal Aviation Administration and be reciprocal to Permittee's obligations pursuant to the Agreement to conduct a first-class operation. No provision herein shall be construed to impose upon the County the obligation to add or retain manpower, equipment or supplies at any Airport location beyond that reasonably necessary to provide the services contemplated hereunder. The performance of any service shall be subject to applicable federal, state and local laws, statutes, ordinances, rules and regulations. This provision shall supercede any other provision of the Agreement or exhibits thereto regarding standards of service.
- (c) *Responsibility for airworthiness.* The Permittee shall at all times be responsible for the airworthiness of its aircraft in accordance with Federal Aviation Regulation 121.363.

- (d) *Warranties.* All parts, services or supplies furnished or sold to the Permittee pursuant to the Agreement will be furnished by the County without representation or warranty, express or implied, of any nature whatsoever, including any implied warranty of merchantability or fitness for a particular purpose.
- (e) *Performance excused.* It is understood and agreed that the County shall be excused from performing services hereunder and shall have no liability whatsoever to the Permittee for such non-performance should the County for any reason be unable to secure supplies or personnel adequate, in the County's reasonable judgment, to service Permittee's aircraft.
- (f) *Indemnity and Insurance.* Notwithstanding anything contained in the Agreement, the parties hereto shall be governed by the following liability and indemnity provisions with respect to services to be provided hereunder which provisions are in addition to not in lieu of other indemnity and insurance provisions in the Agreement or the exhibits thereto:
- i. At all times that services are being furnished hereunder, an employee or agent of the Permittee shall be in charge, custody and control of aircraft of the Permittee being serviced by the County and at no time shall the County, its elected officials, officers, employees, agents or contractors be considered a bailee of or as having care, custody or control of such aircraft.
 - ii. The Permittee shall indemnify and hold harmless the County, its elected officials, officers, agents, contractors and employees from and against any and all costs and expenses incurred by the County as a result of any investigation commenced or threatened, or penalties or fines assessed or imposed by the Federal Aviation Administration or other government agency with respect to the airworthiness of the work performed hereunder except to the extent of the County's gross negligence or willful misconduct.
 - iii. The Permittee agrees to and shall indemnify, defend and hold harmless the County, its officers, agents,

contractors and employees from and against any and all losses, costs, damages and expenses, including, but not limited to, court costs and attorney's fees, for death of or injury to any person whomsoever (including County officers, employees or agents) for loss or destruction of or damage to property whatsoever (including County property) arising out of or in any way connected with the performance of services provided herein or the use or operation of Permittee's aircraft.

Notwithstanding the foregoing, the Permittee shall not be required to indemnify the County, its officers, employees or agents for losses, penalties, damages, settlements, costs, charges, expenses, liabilities, liens, demands or claims arising out of bodily injury to persons or damage to property caused by or resulting from the gross negligence of the County, its officers, employees or agents.

- iv. The County agrees to give the Permittee notice as soon as reasonably practicable after the County receives notice of any claim made or suit instituted which affects the Permittee, and the Permittee shall have the right to participate in the defense and settlement of the same to the extent of its own interests.
- v. The County shall not, in any event, be liable for consequential or incidental damages of any kind to the Permittee or any third party and the Permittee agrees to indemnify, defend and hold harmless the County, its officers, agents, contractors and employees from any such damages.
- vi. *Insurance.* Permittee shall also maintain and keep in full force and effect, at its sole cost and expense, policies of aircraft and comprehensive general liability insurance with respect to the Aircraft, its operation and maintenance, in amounts and under terms satisfactory to the County. Such policies shall be endorsed to cover the indemnity and hold harmless obligations of the Permittee to the County hereunder and shall be further endorsed to name the County and its Airport managing and ground handling agents as an additional insured. Such policies shall contain clauses providing thirty (30)

days prior written notice to the County of termination, cancellation or materially adverse modification of such policies. As used in the preceding sentence, the term materially adverse shall be deemed to include (i) any reduction in the monetary amount of the coverage; and (ii) deletion of any coverage provided under the policies maintained by Permittee pursuant to Exhibit 14 to the Agreement.

- vii. The Permittee shall also require its aircraft hull insurers to waive any rights of subrogation such insurers may or could have against the County, its elected officials, officers, agents, contractors or employees by virtue of such insurance contracts for any loss, damage or destruction of such aircraft occurring in connection with the performance of the County's obligations herein, provided, however, that neither said aircraft liability insurance nor said waivers of subrogation so provided by the Permittee shall apply to any injury, death or damage resulting from any independent act of gross negligence or willful misconduct on the part of the County, its elected officials, officers agents, contractors, or employees.
- viii. Prior to the commencement of work and the performance of services herein, the Permittee shall furnish to the County certificates evidencing insurance required hereunder. Prior to the effective date of any modification or replacement of any such insurance the Permittee shall furnish to the County certificates evidencing such modification or replacement.

EXHIBIT 7
GROUND HANDLING SERVICES FEES

L FEE

The fees for Ground Handling Services provided at the Terminal for calendar years 2005 and 2006 shall be as follows:

A. Basic Services

	Factor =>	1,515					
		102.50		Calculated			
	Seats	TOGW	Length	Basic Rate	Fax Svc	Opns Coord	Full
B747-300	189	174200	129.5	603.76	821.68	78.12	1630.6
B737-700	149	154500	110.3	658.25	688.60	66.45	1377.06
B737-500	129	133500	101.8	655.81	682.78	58.10	1462.7
B737-300	149	124500	109.6	609.42	638.44	61.52	1274.90
B737-200	129	105500	100.2	540.98	568.61	54.53	1130.7
B717-200	117	110000	124.0	558.35	584.94	56.37	1169.07
B717-200 HGV	177	121000	124.0	575.85	609.27	58.13	1204.68
A319	134	141100	111.0	614.19	643.44	62.00	1284.88
A320	124	162000	123.3	607.72	648.76	72.18	1398.20
AVRO RJ100	100	101500	101.7	501.36	528.23	50.64	1048.8
AVRO RJ85	100	97000	93.7	462.43	484.45	46.68	967.41
AVRO RJ70	78	83000	93.7	427.43	447.49	43.15	884.19
BAE 146-200	100	92000	93.7	454.48	476.12	45.88	950.77
Dc9-10	90	90700	104.4	453.52	475.12	45.78	948.77
Dc9-30	115	100000	110.3	470.57	493.76	48.29	1175.78
Dc9-40	125	114000	125.6	579.99	607.61	58.55	1213.33
F-100	110	97700	116.8	530.34	555.59	53.54	1100.47
F-28	65	70840	90.0	358.25	376.36	36.27	751.56
CRJ-200	50	47450	87.8	294.69	308.72	29.75	616.48
CRJ-200ER	50	51000	87.8	300.33	314.64	30.32	628.69
CRJ-200LR	50	53000	87.8	303.52	317.97	30.64	634.95
CRJ-701	70	62750	106.7	383.8	415.71	40.06	801.57
CRJ-701ER	70	75000	106.7	400.39	419.48	40.42	837.62
CRJ-705	75	70500	110.3	435.55	458.29	43.97	911.47
CRJ-705ER	75	82500	119.3	440.32	461.29	44.45	921.15

CRJ-900	86	80500	119.3	454.64	476.28	46.90	951.10
CRJ-900ER	86	82500	119.3	457.82	479.62	46.22	957.75
ERJ-900LR	86	84500	119.3	461.00	482.95	46.54	964.41
					0.00	0.00	
ERJ-135				0.00	0.00	0.00	0.00
ERJ-135ER	37	41888	86.5	263.09	275.62	26.56	550.39
ERJ-135LR	37	44092	86.5	266.60	278.26	26.91	557.72
ERJ-140LR	44	48517	93.5	292.73	306.66	29.55	612.38
ERJ-145ER	50	45415	98.0	307.67	322.33	31.06	643.66
ERJ-145LR	50	48502	98.0	312.59	327.47	31.56	653.93
ERJ-145XR	50	53131	98.0	319.95	335.15	32.30	669.33
ERJ-170	78	79344	98.0	406.19	425.53	41.01	849.75
ERJ-170LR	78	82612	98.0	410.43	429.98	41.43	858.62
					0.00	0.00	
ATR-72	52	44902	89.1	295.65	309.07	26.67	616.99
ATR-42	50	41000	74.3	262.95	275.47	26.55	550.09
ATR-72	74	49500	89.0	338.03	354.13	34.19	707.17
					0.00	0.00	
D-8	50	47000	80.5	282.36	295.80	28.50	590.66
D-8	39	36300	73.0	235.91	247.14	23.82	493.52
D-8/400	53	43000	84.3	291.50	305.39	28.43	609.63
D-8/400	78	64500	107.8	398.09	417.04	40.19	832.79
					0.00	0.00	
SD-360	36	27100	70.8	213.00	223.14	21.50	445.60
SF-31A	30	28000	64.8	195.26	204.56	19.71	408.48
SF-34B	34	29000	64.8	203.22	212.90	20.52	425.13
EMB-120	24	26463	65.8	200.73	210.28	20.26	413.92
J-31	19	15212	47.0	129.19	135.34	13.04	270.26
SP-230	30	24000	63.5	186.91	195.61	18.67	391.02
D-38	32	30843	69.9	211.16	221.22	21.32	441.75
B-1900E	19	16600	57.8	146.56	155.65	15.00	310.82
B-1900D	19	17120	57.8	149.40	158.52	15.08	312.55
B-990	12	16200	47.1	119.78	125.49	12.09	250.59
Navajo	9	6500	32.6	76.52	80.16	7.72	160.07
CN-235F	6	7500		21.48	22.50	2.17	
CNA	6	12500		29.43	30.83	2.97	61.57
4026	9	8833	36.4	83.09	87.05	8.36	179.63

calendar year 2005 and further that the County shall not increase rates without 30 days' notice to the Airlines and more than once per year.

II. ADDITIONAL TERMS AND CONDITIONS

The following additional terms and conditions shall apply to the computation of the Ground Handling Fee.

- A. For the purposes of this Exhibit, a single ground handling event shall consist of the arrival and the subsequent departure of the same aircraft.
- B. If a Permittee schedules and operates four or more flight departures per day during five days of each week, the above-stated fees shall be reduced by seven percent (7%). If a Permittee schedules and operates fifteen (15) or more flight departures per day during five days of each week, the above-stated fees shall be reduced by twelve percent (12%).
- C. For services not identified in Exhibit 6 including, but not limited to, special handling, etc., appropriate extra charges may apply.
- D. Fifty percent (50%) of the fee set forth in Section I above shall be rebated by the County for those scheduled flights which are cancelled, provided that the County has received at least forty-eight (48) hours prior notice in writing of such cancellation.
- E. The County shall not charge for scheduled flights which are cancelled provided that the County has been so notified in writing at least fifteen (15) days prior to the scheduled operation.
- F. In the event that a Permittee requests optional services as provided in Section 3.4.a, or 3.4.b of Exhibit 6, the following charges shall apply:
 - (1) Cost of Labor to include direct wages, taxes and benefits;
 - (2) An amount equal to twenty percent (20%) of item (1) next above.
- G. In the event that a Permittee requests aircraft towing and/or de-icing services, such services shall be charged at the following rates:
 - (1) De-icing Aircraft: Minimum charge of fifty and 76/100 dollars (\$50.76) inclusive of equipment (one unit) and labor (two persons) for the first fifteen (15) minutes. Charge for each additional fifteen (15) minute unit is fifty and 76/100 dollars (\$50.76).

- (2) De-icing Fluid: Charged at cost plus two hundred percent (200%) per gallon.
- (3) Towing: Minimum charge of fifty-three and 17/100 dollars (\$53.17) inclusive of equipment and labor (two persons) for the first thirty (30) minutes or fraction thereof. Charge for each additional fifteen (15) minutes is twenty-six and 59/100 dollars (\$26.59).

H. The fees described in A through G above can be adjusted annually by the County upon at least 30 days notice to the Airlines.

EXHIBIT 8
TICKET COUNTER POSITION ALLOCATION METHODOLOGY

The Main Ticket Counter will be allocated to Qualified Airlines under the following protocol:

I. AIRLINE RIGHTS –

All Qualified Airlines holding Ramp Allocations and Passenger Allocations have the right to be accommodated at the Main Passenger Ticket Counter subject to the County's authority to coordinate all counter use. The location of all available ticket counter positions will be determined by the County.

II. ALLOCATIONS –

- A. Allocations will occur on the date of each lottery conducted pursuant to Section 712.462 of the Laws of Westchester County.
- B. An Airline is eligible to receive an Allocation if
- (1) it is a Qualified Airline on the date of the lottery; and
 - (2) it has actively accommodated the public on at least a five-day-per-week basis during the entire month preceding the lottery.
- C. The Allocation will be based on the Passenger Allocation underutilization test averages as set forth in Subsections (5)(e) and (5)(g) of Section 712.462. An Airline's passenger average will be calculated as a percentage of total enplaned Passenger Allocations for the Airport.

The calculated percentages for each Airline will be combined for each Affiliate Group. Each total Affiliate Group percentage will then be multiplied by all available Main Passenger Ticket Counter Positions (currently 16). Unless there is a need and agreement between any two Affiliate Groups, the positions will be allocated in whole numbers.

III. NEW ENTRANTS

- A. Non-incumbent Airlines that are or become a part of an Affiliate Group will use the existing counter allocation for the Affiliate Group of which it is a part.
- B. Non-incumbent Airlines or an Airline that is no longer part of an Affiliate Group operating at HPN will be accommodated through County coordination until the next counter allocation. In this coordination effort, the County may reduce or otherwise alter the existing counter allocation schedule. However, in no event shall be the County allocate more than one full counter position for the new entrant.

IV. NEW ENTRANTS BECAUSE OF RAMP ALLOCATION TRANSFERS

The transferee of a Ramp Allocation shall receive the appropriate counter allocation attributable to the transferor as measured in the last Passenger Allocation underutilization/counter allocation test for the affected flights. Percentages below 1.0 will be rounded up to 1.0. Percentages above 1.0 will be rounded down below .5 and rounded up at or above .5.

V. ADDITIONAL TICKET COUNTER POSITION USE

The County retains the right to allocate positions on a short-term basis for purposes of flexibility and efficiency. Such short-term allocation may include any allocated Main Passenger Ticket Counter Position of any Affiliate Group. The County will make a good faith attempt to minimize disruptions to Airlines. The County will attempt, to the extent possible, to coordinate with all involved parties. The County retains the right to make the final determination. In no event will short-term allocations be made in a manner that will cause any Affiliate Group to have less than one position per active flight (starting one hour before scheduled departure).

Counter Position Fees will not be affected by any additional position allocation action by the County.

VI. OTHER

No counter positions in the Operations/Dispatch Offices or Departure Lounge are included in this allocation system.

Any new Main Passenger Terminal Counter Positions, if any will be allocated by this allocation system.

Pursuant to Paragraph 24 of the Agreement, all computer terminal equipment used by the Airlines at the ticket counters will be a common use terminal system.

EXHIBIT 9
DEPARTURE LOUNGE COUNTER POSITION ALLOCATION PROCEDURE

- I. COUNTER POSITIONS IN THE DEPARTURE LOUNGE WILL BE ALLOCATED IN THE FOLLOWING MANNER:**
 - A. One position will be allowed for each departure operation for which a Qualified Airline holds a Ramp Allocation. This position will be made available beginning 30 minutes before the half-hour period of the Ramp Allocation and ending upon the departure of the aircraft ("Allocation Period").**
 - B. The County will allocate any counter position not allocated by subparagraph (a) to an Airline based on operational needs.**

EXHIBIT 10
OPERATIONS ROOM POSITION ALLOCATION METHODOLOGY

- I. Positions in the Operations Room at the Terminal will be allocated in the following manner:
- A. Under the current configuration of the Operations Room, there are twelve positions. One position shall be available for each Affiliate Group at the Airport at the time that Section 712.462 of the Laws of Westchester County becomes effective.
 - B. For the purposes of this Exhibit only, each Airlinc can be a member of only one Affiliate Group. An Airline's Affiliate Group is limited for the purposes of this Exhibit only to the primary marketing name of the aircraft operator and not other affiliations or marketing names associated with the operator.
 - C. Actual assignment will be made by unanimous agreement among all incumbent Airlines. Should the incumbent Airlines be unable to reach unanimous agreement, the Commissioner shall determine, in his sole judgment, the assignment of positions in the most efficient and equitable manner.
 - D. Should any Operations Room positions be unassigned, any Qualified Airline may use such extra positions by agreement of all of the incumbent Airlines. Should the incumbent Airlines be unable to reach unanimous agreement, the Commissioner shall determine, in his sole judgment, how to allocate such unassigned extra positions in the most efficient and equitable manner.
 - E. Once Operations Room positions have been assigned, actual use of the Operations Room will be determined on a day-to-day basis by unanimous agreement of the incumbent Airlines. Should the incumbent Airlines be unable to reach unanimous agreement, the Commissioner shall determine, in his sole judgment, how to allocate actual usage in the most efficient and equitable manner.
 - F. Any new entrant which is not part of an incumbent Affiliate Group will be assigned one of the unused operations positions upon becoming a Qualified Airline. In the event that all Operations Room positions have been assigned at the time a new entrant becomes a Qualified Airline, then the last Airline or Affiliate Group to have received an extra Operations Room position shall forfeit such extra office in favor of the new Airline or Affiliate Group.

EXHIBIT 11
TERMINAL OFFICE SPACE ALLOCATION

- I. Dedicated Airline office space in the Terminal shall be allocated in the manner set forth in this Exhibit.
 - A. All Codes (defined to mean the same as "Affiliate Group") that have an allocation of office space at the time that Section 712.462 of the Laws of Westchester County becomes effective, shall be permitted to retain one office per Code up to a maximum of ten offices. Each Code will name the individual Airline in whose name the office will be assigned.
 - B. Each Code permitted to operate at the Airport at the time that Section 712.462 of the Laws of Westchester County becomes effective may also retain any extra offices (defined as more than one office per Code) that it is allocated at the time Section 712.462 of the Laws of Westchester County becomes effective until and unless there are insufficient offices to accommodate all Airlines and Codes.
 - C. If there are any unused offices after offices are allocated pursuant Paragraphs 1 and 2, above, such offices will be made available to any Qualified Airline on a lottery basis.
 - D. In the event that a new Code initiates service at the Airport and no offices are available at the time for such new Code, then the last Airline to have received an extra office shall forfeit such extra office in favor of the new Code.

EXHIBIT 12
ADMINISTRATIVE COMPLAINT PROCEDURE

- I. The following procedures shall apply to complaints regarding ground handling performance.
- II. Any Qualified Airline with an operational complaint shall submit its complaint in writing to the Commissioner or his designated representative. Unless otherwise specified by the Commissioner, the Airport Manager shall be the designated representative of the Commissioner for purposes of this procedure.
- III. All complaints will be forwarded to the Commissioner, who shall have five business days to acknowledge and five additional business days to present final or preliminary comments/resolutions. Final comments or resolution shall be delivered in no more than four business days. In the event that the Commissioner finds that the complaint is warranted in whole or in part, such final resolution will set forth what action, if any, the County will take in response to the complaint.
- IV. If the Qualified Airline is not satisfied with the Commissioner's final comments or resolution, the Qualified Airline may request reconsideration by submitting such additional documentation to the Commissioner as it believes appropriate. Upon receipt of a request for reconsideration, the Commissioner shall designate a person, other than the person who was originally responsible for the review of the complaint under paragraph III, above, to reconsider the complaint. Such designee shall have five additional business days to acknowledge and five additional business days to present final or preliminary comments. Final comments shall be delivered in no more than five business days. In the event that the Commissioner's designee finds that the complaint is warranted in whole or in part, such final resolution will set forth what action, if any, the County will take in response to the complaint.
- V. Individual fee disputes shall be presented to the Ground Service Manager or Airport Manager as appropriate.
- VI. The procedure set forth in this Exhibit is not a precondition to any Qualified Airline's exercise of any right under the Agreement.

EXHIBIT 13
PROPRIETARY SELF-CHECK TERMINAL LOCATION PROCEDURE

- I. These provisions shall apply to the allocation of proprietary self-check terminal kiosk positions on the second and third floors of the Terminal pursuant to Paragraph 25(c) of the Agreement.
- II. Qualified Airlines may apply to the Commissioner for use of the locations designated by the Commissioner for self-check kiosks under Paragraph 26(c) ("Kiosk Positions"). The Commissioner shall allow use of these Kiosk Positions on a first come, first served basis unless and until there are insufficient Kiosk Positions available to accommodate pending requests for Kiosk Positions.
- III. Qualified Airlines may transfer Kiosk Positions to other Qualified Airlines, so long as they provide at least ten days' notice to the Commissioner.
- IV. In the event that the Commissioner receives an application or applications for Kiosk Positions that exceed available Positions, the Commissioner shall implement the following allocation process:
 - A. Each Qualified Airline that has one or more kiosks on the second and/or third floors installed at the time that this allocation process becomes necessary shall be allowed to retain one of its Kiosk Positions of its choosing on the second or third floor of the Terminal.
 - B. All remaining Kiosk Positions will be subject to a lottery, such lottery to be held concurrently with Quarterly Lotteries of Terminal Capacity pursuant to Section 712.462 of the Laws of Westchester County. The Commissioner will randomly determine the order for Kiosk Position selection at each lottery. Qualified Airlines may, in the randomly determined order, select one kiosk location per turn, until no Kiosk Positions are left for selection or no Qualified Airline chooses remaining Kiosk Positions.
 - C. A lottery for Kiosk Positions shall be conducted each time the Commissioner receives an application or applications for Kiosk Positions that exceed available Positions, but in no event more often than once every six months.
 - D. Kiosk Positions that are not used for 30 consecutive days shall be forfeited and made available for reallocation at the next lottery.

EXHIBIT 14
INSURANCE REQUIREMENTS

The Permittee, at its sole cost and expense, shall obtain and maintain in continuous effect during the term of this Agreement insurance policies issued by an insurance carrier licensed to do business in the State of New York providing for:

- I. Workers compensation – Statutory coverage or self-insured as permitted by New York State law.
- II. Comprehensive General Liability with a minimum single limit of \$1,000,000 per occurrence for bodily injury and property damage with the following coverages:
 - A. broad form contractual liability
 - B. operations
 - C. products liability
- III. Comprehensive Automobile Liability with a minimum single limit of \$1,000,000 per occurrence for bodily injury and property damage with coverage in the following areas:
 - A. owned vehicles
 - B. non-owned vehicles
 - C. hired vehicles
- IV. Comprehensive Airline Liability Insurance, with a combined single limit of \$200,000,000 per occurrence for bodily injury and property damage and passenger liability, owned and non-owned aircraft, operations, products and completed operation.
- V. All-risk hull insurance covering Permittee's aircraft to be serviced hereunder; provided that such policy shall contain a waiver of subrogation clause running to the County with respect to loss or damage resulting from services to be performed by the County hereunder to the extent of the liability assumed by Permittee; and the passenger liability, public liability or property damage insurance policies shall name the County, its officers, employees and agents as additional insured thereunder to the extent of the liability assumed by Permittee, shall contain appropriate cross-liability provisions, and each policy shall contain a 30-day advance written notice of cancellation clause and a "breach of warranty" clause whereby the insurers agree that a breach of the insurance conditions by the Carrier does not invalidate the coverage provided by the insurance as to the interest of the County.
- VI. The Permittee shall provide the County with a Certificate of Insurance indicating proof of the foregoing coverage. Such certificate shall provide that the carrier issuing the certificate shall notify the County thirty (30) days in advance of any cancellation or material change in the terms or coverage of such insurance policies. Any such notice shall be in writing and shall be served by certified mail, return receipt requested, on the Director of Risk Management, County of Westchester, County Office Building, 148

Martine Avenue, White Plains, New York 10601. The failure of the Permittee to obtain or maintain such insurance coverage shall not relieve the Permittee from any liability arising from this permit nor shall any such liability be limited to the liability insurance coverage provided for herein.

EXHIBIT 15
TERMS FOR USE OF HANDICAPPED BOARDING EQUIPMENT

- I. **PURPOSE:** This exhibit outlines the responsibilities of the County and any Airline operating an aircraft with a capacity of more than 30 seats at Westchester County Airport in regard to boarding assistance for individuals with disabilities as prescribed in 49 CFR Part 382.40 and 14 CFR Part 27. This boarding assistance procedure is not required for aircraft with less than 30 seats, float planes or the Metro, Jetstream 31 and BE 1900 (C&D model) or any other aircraft determined by the DOT to be unsuitable. When boarding assistance is not required as outlined above or for reasons beyond the control of all parties (i.e. mechanical failure), the boarding assistance shall be provided by any means available to which the passenger consents, except hand carrying.
- II. **PERMITTEE RESPONSIBILITIES:** A Permittee's responsibilities include the following:
- A. to disseminate information concerning any limitation to the ability of the aircraft to accommodate qualified individuals with disabilities, including limitations on the availability of boarding assistance to the aircraft, with respect to the departure and destination points and any intermediate stops. The Permittee shall provide this information to any passenger who states that he or she uses a wheelchair for boarding, even if the passenger does not explicitly request the information;
 - B. to advise any passenger wishing to use a lifting device to check in one hour before scheduled departure. If the passenger checks in after this time, the Permittee shall nonetheless make a reasonable effort to request that the County use the boarding lift if it can do so without delaying the flight;
 - C. to request the use of the lifting device, and give the County notification of its need to use a passenger lift device as early as possible;
 - D. if the passenger has checked in after the one hour period, and the lift device is available, but the flight may be delayed to accommodate the passenger, the Permittee shall make the decision to accommodate the passenger or to not accommodate the passenger;
 - E. to provide all seat assignments or denial of seat assignments;
 - F. to notify the County concerning any aircraft which the Permittee uses at HPN, and which has been determined by DOT to be unsuitable for boarding assistance; and

- G. to provide to the County any Airline specific training concerning passenger handling or aircraft handling concerning the operation of a lifting device.

III. COUNTY RESPONSIBILITIES: The County's responsibilities include the following:

- A. to provide one lifting device;
- B. to operate the device;
- C. to provide all necessary maintenance for the device;
- D. to post the status of the lifting device in Airline Operations;
- E. to have the lift in position at the normally utilized gate within 30 minutes of notification; and
- F. to be responsible for all lift operation training. However, the County will receive any appropriate Airline-specific training concerning passenger handling or aircraft operation while utilizing the lifting device.

IV. USE OF ALTERNATIVE LIFT DEVICE. In lieu of using a County-provided passenger lift device, any Permittee may use an alternative lift device provided that the Permittee (a) owns, or has executed a Passenger Access Lift License Agreement with the owner of, such lift device; (b) that such Passenger Access Lift License Agreement does not purport to transfer any of Permittee's obligations under this exhibit; (c) that such lift device is owned by a Qualified Airline; (d) that use of such alternative passenger lift device does not contravene the purpose of this exhibit as set forth in paragraph I above; and (e) that the Permittee complies with paragraph II above in the use of such alternative passenger lift device.

V. MUTUAL RESPONSIBILITIES: The parties agree that they shall cooperate in escorting a passenger to any gate using the doors at Gate 3 or 4 or Door #16 for Gate 1 and #2 operation. Although the platform access at Gate 1B or 2B is available, the parties acknowledge that use of this access will necessitate additional time.

VI. SEPARATE EXECUTION. If requested by the Commissioner, Permittee will separately execute this Exhibit by signing below.

Permittee's Authorized Representative

EXHIBIT 16

PERMITTEE/AIRLINE FLIGHT SCHEDULE [EXAMPLE]

ARRIVE				DEPART			
<u>FLIGHT</u>	<u>FROM</u>	<u>HPN</u>	<u>FLIGHT</u>	<u>TO</u>	<u>HPN</u>	<u>FREQUENCY</u>	<u>EQUIPMENT</u>
1234	Anytown	08:29	5678	Anytown	08:55	x 6, 7	D-8
1236	Anytown	12:59	5670	Anytown	13:20	X 6, 7	D-8
1238	Anytown	17:00	5672	Anytown	17:29	Daily	D-8
1232	Anytown	20:59	5674	Anytown	05:59	X 7	D-8

The foregoing schedule is subject to adjustment and modification in accordance with the Airport Rules and Regulations and the Laws of Westchester County. All such adjustments and/or modification are further subject to the approval of the County Commissioner of Transportation.

EXHIBIT 17
PERMITTEE STATUS RECORD [EXAMPLE]

I. AIRLINE

XYZ Airline, Inc.

II. DATE OF RECORD

December 31, 2004

III. SPACE UTILIZATION

A. Main Ticket Counter Position(s):

Assigned position 1 and share 1 with ABC Airlines

B. Office Space:

None Assigned, Utilize ABC Office

C. Operations Office Position Assigned:

Assigned Position A

D. Lockers Assigned:

None

IV. SERVICES REQUESTED

A. Ramp Services – Mandatory:	Yes
B. Passenger Service:	Yes
C. Operations Coordinator:	Yes
D. Fuel Service:	
E. Additional Service:	
F. Towing:	Yes
G. Deicing:	Yes
H. Baggage:	Yes

V. RON, COUNTY PARKING:

None