

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

MINUTES OF SPECIAL BOARD MEETING

Thursday, August 29, 2002

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Newark Marine and Air Terminals – Lease Agreement Between the City of Newark and
The Port Authority of New York and New Jersey - Letter of Intent and Lease Agreements

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MINUTES of a Special Meeting of The Port Authority of New York and New Jersey held Thursday, August 29, 2002, at 2 Broadway, City, County and State of New York.

PRESENT:

NEW JERSEY

Hon. Jack G. Sinagra, Chairman
 Hon. Charles Kushner
 Hon. William J. Martini
 Hon. Alan G. Philibosian
 Hon. Raymond M. Pocino
 Hon. Anthony J. Sartor

Joseph J. Seymour, Executive Director
 Jeffrey S. Green, General Counsel
 Karen E. Eastman, Secretary

Gwendolyn Archie, Administrator, Office of the Secretary
 Kayla M. Bergeron, Director, Public Affairs
 Gregory G. Burnham, Chief Technology Officer
 Janice Chiantese, Special Advisor to the Chairman
 William R. DeCota, Director, Aviation
 Michael R. DeCotiis, Deputy Executive Director
 John C. Denise, Supervisor, Audio Visual/Photography, Operations Services
 Charles D. DeRienzo, Superintendent of Police/Director, Public Safety
 Linda C. Handel, Assistant Secretary
 Howard G. Kadin, Senior Attorney, Law
 Joshua Klevans, Executive Assistant to the Deputy Executive Director
 Joseph Kucich, Professional Assistant, Office of the Secretary
 Louis J. LaCapra, Chief Administrative Officer
 Richard M. Larrabee, Director, Port Commerce
 Stephen Marinko, Attorney, Law
 Charles F. McClafferty, Chief Financial Officer
 Allen M. Morrison, Supervisor, Public Affairs
 Catherine F. Pavelec, Executive Assistant to the Secretary
 Michael A. Petralia, Chief of Public and Government Affairs
 Kenneth P. Philmus, Director, Tunnels, Bridges and Terminals
 Ronald T. Pisapia, Program Director, World Trade Center Site Development, Priority Capital Programs
 John F. Spencer, Deputy Chief Engineer
 Gregory Trevor, Senior Public Information Officer, Public Affairs
 Sean P. Walsh, Deputy Director, Public Affairs

Guests:

Jay Hector, Empire State Development Corporation, New York State

The Secretary reported that the meeting was duly called in accordance with the By-Laws.

The public session was called to order by Chairman Sinagra at 12:02 p.m. and ended at 12:07 p.m. The Board met in executive session prior to the public session.

NEWARK MARINE AND AIR TERMINALS – LEASE AGREEMENT BETWEEN THE CITY OF NEWARK AND THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY - LETTER OF INTENT AND LEASE AGREEMENTS

It was recommended that the Board authorize the Executive Director to enter into a letter of intent and, pursuant thereto, appropriate agreements (the Agreements) with the City of Newark (the City) with respect to the existing Lease Agreement between the City and the Port Authority covering the Newark Marine and Air Terminals, which encompasses Newark International Airport and Port Newark (the City Lease), whereby effective January 1, 2002: the existing City Lease would be amended and supplemented and/or amended and restated to apply separately to the Air Terminal only and to the Marine Terminal only; the term of the letting, in each case, would expire on December 31, 2065; the rental provisions of the City Lease would be amended; the name of the Air Terminal would be changed to Newark Liberty International Airport; the City would be given the benefit of a “most favored nation” clause; the annual payments by the Port Authority for the community development fund would end and the existing balance released to the City; and the City and the Port Authority would specify resolution of certain issues involving the pending litigation and arbitration between the City and the Port Authority involving the City Lease.

The arrangement would be effective as of January 1, 2002.

The term, which presently expires on December 31, 2031, would be extended to expire on December 31, 2065. The Agreements would cover the period from January 1, 2002 through December 31, 2065 (the Term).

The Agreements would provide for the name of the Air Terminal to be changed to Newark Liberty International Airport.

Under the Agreements, the Port Authority would pay rent as follows:

Base Rent: In the first year of the Term (2002), the combined base rent for the Air Terminal and the Marine Terminal will be \$100 million. For each of the remaining four years of the first five-year period, the annual combined base rent (the Base Rent) would be the greater of \$65 million or 8 percent of the annual gross revenue of said year.

Escalator and Extraordinary Rent: Beginning in the sixth year of the Term (2007), and upon each five-year anniversary thereafter, the Base Rent for each of the next five years would become 10 percent of the average annual gross revenue for the preceding five-year period, but in any given year not less than the greater of 8 percent of the annual gross revenue for such year or the base rent for the prior period.

Annual gross revenue would be defined as all revenues arising out of the operation of the Air Terminal and Marine Terminal, excluding federal grants and any monies received as a result of any federal statute, regulation or policy, such as

passenger facility charges (PFCs) and amounts received for airport and seaport security and dredging where such statute, regulation or policy restricts the use of such monies to purposes benefiting the Air Terminal or the Marine Terminal, and excluding any payments received reflecting repayment of principal and interest on Port Authority Special Project Bonds but not excluding any other amounts collected by the Port Authority in connection with such Special Project Bonds, such as fees and charges.

Additional Rent: In connection with the Marine Terminal, the Port Authority will make an annual payment, in addition to the Base Rent, of \$12.5 million for the first 35 years of the Term or, alternatively, the present value of such payments, which would be paid to a governmental agency agreed to by the Port Authority and the City which is authorized to issue bonds to capitalize such payments for projects in Newark.

The Agreements would contain a “most favored nation” clause, which would provide that in the event the Port Authority enters into any new, or amends any existing, agreement with the City of New York relating to LaGuardia and John F. Kennedy International Airports (collectively, the New York Airports), the City would have the right to have the lease provisions relating to the Air Terminal revised to conform to the terms of any such new or amended agreement. In addition, in the event the Port Authority enters into any agreement resolving the arbitration or other dispute between the City of New York and the Port Authority relating to the New York Airports, or the City of New York receives a final binding award in connection with such arbitration, the City would have the right to a proportionate amount as a result thereof; provided that such settlement or award would not result in a double recovery for the City.

With respect to the current, ongoing lawsuit (the Lawsuit) and arbitration (the Arbitration) between the City and the Port Authority involving the City Lease, the Agreements would provide that the City would withdraw, with prejudice, from both the Lawsuit and the Arbitration any claims made for PFCs, except that if in any rental calculation imputed debt service charges were deducted from gross revenue for any portion of capital improvements paid from PFCs which were not included in gross revenues, such rent would be promptly recalculated to exclude such imputed debt service charges, and the difference would be promptly paid to the City. The City would further agree not to amend the existing complaint in the Lawsuit, or raise any additional issues in the Arbitration other than the five accounting issues (the Identified Issues) which were specified, in addition to the issue relating to PFCs, in a letter to the Chairman of the Arbitration Panel jointly submitted on behalf of both the Port Authority and the City on February 13, 2002. The Port Authority would be released from all claims arising out of or relating in any way to the City Lease from the inception of the City Lease to the effective date of the Agreements, except: (i) existing claims specifically identified in the Lawsuit based on the allegations set forth in the Lawsuit, (ii) the five remaining Identified Issues in the Arbitration, and (iii) a claim based upon a final binding determination in the Lawsuit or Arbitration that the Port Authority committed fraud or material misrepresentation. The Port Authority would not be required to pay any amount to the City determined in the Lawsuit or Arbitration to be owed by the Port Authority to the City unless and until the amount(s) so determined exceeded the sum of the Base Rent for the first two years of the Term. In the event that an amount in excess of the

Base Rent for the first two years of the Term is determined to be owed to the City as the result of final and binding determination(s) in the Lawsuit and Arbitration, the Port Authority would only be required to pay the amount of such excess. If a final binding determination is made in the Lawsuit or Arbitration that the Port Authority has committed fraud or material misrepresentation, the City and the Port Authority would, at the request of the City, enter into negotiations in good faith regarding such changes, as the City may request, to the lease provisions relating to the Air Terminal. The City may continue discovery for information respecting the remaining issues in the Arbitration or Lawsuit, and may increase the amount claimed to be owed in connection with such remaining issues.

The Agreements would also provide that the PFCs received by the Port Authority to date from the three major airports operated by the Port Authority, as well as any increased PFCs authorized and imposed in the future, would be invested in the Air Terminal in an amount equal to the proportion which the PFCs originating at the Air Terminal bore to all such PFC's collected by the Port Authority, although it is understood that such proportion may be reached over a period of years and not necessarily in each year. Such proportion would be reached within five years. The Port Authority would submit to the City an initial list of projects eligible for PFC funding approval by the federal government on or about January 1, 2003. The City would submit to the Port Authority any projects it wished the Port Authority to consider for submission to the federal government for PFC funding approval.

The Agreements would provide for the discontinuation of the annual payments made by the Port Authority under the existing City Lease with respect to the community development fund provisions of the City Lease relating to community development projects in the City, the Port Authority would pay the City the sum of \$3 million annually as supplemental rent, and the existing balance in the community development fund in 2002 (approximately \$4.6 million) would be paid to the City as supplemental rent upon execution of the Agreements.

The City would designate an employee of the City as Airport Administrator, who would meet with the Manager of the Air Terminal at least quarterly to be advised of progress in implementing the Capital Plan for Newark Airport and overall operational and financial issues at the Air Terminal.

Pursuant to the foregoing report, the following resolution was adopted with Commissioners Blakeman, Chasanoff, Gargano, Kushner, Mack, Philibosian, Pocino, Sartor and Sinagra voting in favor; Commissioner Martini abstaining; none against:

RESOLVED, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to enter into a letter of intent and, pursuant thereto, appropriate agreements with the City of Newark with respect to the Newark Marine and Air Terminals Lease between the City of Newark and the Port Authority covering Newark International Airport and Port Newark, substantially in accordance with the terms and conditions outlined to the Board; the form of the agreements shall be subject to the approval of General Counsel or his authorized representative.

Whereupon, the meeting was adjourned.

Secretary