

10-R-1406

(Do Not Write Above This Line)

A RESOLUTION  
BY TRANSPORTATION COMMITTEE

A RESOLUTION AUTHORIZING THE  
MAYOR DESIGNEE TO EXECUTE AN  
AGREEMENT TO AMEND AND  
EXTEND THE CENTRAL PASSENGER  
TERMINAL COMPLEX LEASE  
AGREEMENT, AIRPORT USE  
AGREEMENT AND HARTSFIELD-  
JACKSON ATLANTA  
INTERNATIONAL AIRPORT LEASE  
WITH ATLANTIC SOUTHEAST  
AIRLINES, INC.; AND FOR OTHER  
PURPOSES.

ADOPTED BY  
**SUBSTITUTE** AUG 16 2010  
COUNCIL

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1st ADOPT 2nd READ & REFER
- PERSONAL PAPER REFER

Date Referred

Referred To:

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First Reading

Committee \_\_\_\_\_  
Date \_\_\_\_\_  
Chair \_\_\_\_\_  
Referred To \_\_\_\_\_

Committee  
TRANSPORTATION

Date  
7-28-10

Chair  
[Signature]

Action  
Fav, Adv, Hold (see rev. side)

Other  
Substitute

Members

[Signatures]

Refer To

\_\_\_\_\_

Committee

Date

Chair

Action  
Fav, Adv, Hold (see rev. side)

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Date

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Fav, Adv, Hold (see rev. side)

Other

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Date

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Action  
Fav, Adv, Hold (see rev. side)

Other

Members

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FINAL COUNCIL ACTION

- 2nd
- 1st & 2nd
- 3rd
- Readings
- Consent
- V Vote
- RC Vote

CERTIFIED

CERTIFIED  
AUG 16 2010  
ATLANTA CITY COUNCIL PRESIDENT  
[Signature]

CERTIFIED  
AUG 16 2010

[Signature]  
MUNICIPAL CLERK

MAYOR'S ACTION

APPROVED  
AUG 16 2010  
[Signature]  
MAYOR



10-R-1406

**A SUBSTITUTE RESOLUTION  
BY TRANSPORTATION COMMITTEE**

**A SUBSTITUTE RESOLUTION AUTHORIZING THE MAYOR DESIGNEE TO EXECUTE AN AGREEMENT TO AMEND AND EXTEND THE CENTRAL PASSENGER TERMINAL COMPLEX LEASE AGREEMENT, AIRPORT USE AGREEMENT AND HARTSFIELD-JACKSON ATLANTA INTERNATIONAL AIRPORT LEASE WITH ATLANTIC SOUTHEAST AIRLINES, INC.; AND FOR OTHER PURPOSES.**

**WHEREAS**, the City owns and operates the Hartsfield-Jackson Atlanta International Airport ("Airport"), located in the Counties of Fulton and Clayton, Georgia, on which there exists certain terminal buildings and concourse buildings and related facilities for the use of airlines engaged in the transportation of persons and property by scheduled and unscheduled aircraft service, such buildings and facilities are referred to as the Central Passenger Terminal Complex ("CPTC"); and

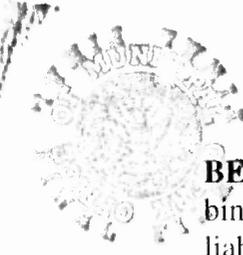
**WHEREAS**, the City of Atlanta ("City") and Atlantic Southeast Airlines, Inc. ("ASA") have entered into an Agreement and Lease of Premises, dated October 1, 1990, covering occupancy and use of facilities in the Terminal Building and Concourses of the Central Passenger Terminal Complex ("CPTC") at Hartsfield-Jackson Atlanta International Airport ("CPTC Lease"), which lease was consolidated as of August 1, 1990 incorporating Amendments 1 through 8; and

**WHEREAS**, the City and ASA are parties to an Airport Use Agreement ("AUA") for the use of the Airport; and

**WHEREAS**, the City and ASA are parties to a Hartsfield-Jackson Atlanta International Airport Lease ("HJAIA Lease"); and

**WHEREAS**, the City and Airline desire to extend the term of the CPTC Lease, the AUA and the HJAIA Lease for seven years through September 20, 2017.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA**, that the Mayor is authorized to execute on behalf of the City of Atlanta an Agreement to Amend and Extend the CPTC Lease, AUA and HJAIA Lease ("Extension Agreement") and other appropriate documents substantially in the form of the attached Exhibit A.



**BE IT FINALLY RESOLVED** that said Extension Agreement shall not become binding upon the City of Atlanta, and the City of Atlanta shall incur no obligation or liability thereunder until same has been signed by the Mayor and delivered to ASA, Inc.

A true copy,

*Rhonda Daughia Johnson*  
Municipal Clerk

ADOPTED by the Atlanta City Council  
APPROVED by Mayor Kasim Reed

AUG 16, 2010  
AUG 24, 2010



## EXHIBIT A

### AGREEMENT TO AMEND AND EXTEND CPTC LEASE, USE AGREEMENT AND CERTAIN OTHER SPACE USE AGREEMENTS

This Agreement (the "Agreement") to Amend and Extend the CPTC Lease (as defined below) and the Airport Use Agreement (as defined below) between Atlantic Southeast Airlines, Inc. ("ASA") and the City of Atlanta, Georgia (the "City") as the other party, and certain related matters, is made by and between ASA and the City as of \_\_\_\_\_, 2010.

**WHEREAS**, the City and ASA entered into an Agreement and Lease, dated August 1, 1990, for the lease of the Central Passenger Terminal Complex at the Hartsfield Atlanta International Airport, and various amendments approved by the City Council and executed by the parties (collectively the "CPTC Lease"); and

**WHEREAS**, the City and ASA entered into an Airport Use Agreement, dated May 1, 1982, and various amendments approved by the City Council and executed by the parties (collectively the "Use Agreement"); and

**WHEREAS**, the CPTC Lease and the Use Agreement expire on September 20, 2010; and

**WHEREAS**, the City and ASA, desire to extend the term of the CPTC Lease and Use Agreement; and

**WHEREAS**, the City and ASA, desire to amend certain terms and conditions of the CPTC Lease and the Use Agreement; and

**NOW THEREFORE**, for and in consideration of the mutual covenants and agreements contained herein and other valuable consideration, the receipt of which is hereby acknowledged, the parties hereby covenant and agree as follows:

#### ARTICLE I

##### GENERAL OBLIGATIONS

Section 1.1. Amendments to CPTC Lease and Use Agreement. The City and ASA hereby agree to amend and extend the CPTC Lease and Use Agreement in accordance with the terms and conditions of this Agreement.

Section 1.2. Prior Majority-in-Interest Approvals; Future Conflicts of Interest.

- (a) All airline Majority-in-Interest approvals previously granted under the CPTC Lease and Use Agreement shall continue to be valid and in full force and effect



during the Extension Period, except to the extent (i) subsequently modified in writing or (ii) inconsistent with the provisions of this Agreement.

- (b) Reference is hereby made to that certain Majority-in-Interest approval received by the City in connection with a Master Plan submitted by the City to the Signatory Airlines in 1999 (the "1999 MII Approval") through a certain voting ballot and attachments (the "1999 Voting Ballot"). The parties recognize that as part of the 1999 MII Approval process, the Signatory Airlines approved an implementation process (the "1999 Implementation Process") set forth in an attachment to the 1999 Voting Ballot titled "Attachment C: Review and Implementation Process for MII Approved Projects" pursuant to which an Executive Committee (consisting of the Aviation General Manager and the Chairman of an Airline Steering Committee) was given the authority to make certain binding decisions on the City and the Signatory Airlines. The parties hereby further recognize that the Executive Committee has met and made numerous decisions pursuant to the 1999 Implementation Process that are binding on the parties. The parties hereby confirm and ratify that the actions taken by the Executive Committee pursuant to the 1999 Implementation Process are binding on the City and the Signatory Airlines to the extent approved in documents executed by the Executive Committee representatives (identified as such in the documents) and have not been modified, superseded or repealed by further Executive Committee action, in documents executed by the Executive Committee representative (identified as such in the documents), or MII approvals or any applicable agreement. The parties hereby represent and warrant to each other that they do not know of any actions by the Executive Committee that are beyond the authority granted to the Executive Committee.
- (c) The 1999 Implementation Process shall continue to be valid and effective during the Extension Period.
- (d) In the event that Majority-in-Interest approval is required of a contract subject to competing bids, and a bid is submitted by an entity in which ASA has a material financial interest, ASA, shall abstain from participation in the Majority-in-Interest approval relating to such contract until all other airlines have had the opportunity to submit their ballots (the "Disinterested Airlines"). Once the Disinterested Airlines have submitted their ballots, ASA shall be deemed to have cast its ballot in the same manner as the majority in number of the Disinterested Airlines. This same requirement shall apply to each airline having a Majority-in-Interest vote with respect to a bid submitted by an entity in which such airline has a material financial interest. This voting restriction shall not apply with respect to any bid or proposal by the Atlanta Airlines Terminal Corporation ("AATC") or any multi-airline consortium or entity where each airline has an equal vote if all airlines entitled to a Majority-in-Interest vote shall each waive in writing their approval rights.

Section 1.3. Atrium Concession Dispute. The City, Delta Air Lines, Inc ("Delta") and Northwest Airlines, Inc. ("Northwest" and collectively with Delta, "DAL") are parties to a



dispute (the "Dispute") between the City and the CPTC Lease Contracting Airlines over whether and to what extent the Contracting Airlines are entitled to a share of concession revenues generated by concessions in the atrium area and obligated for a portion of the costs and expenses for such atrium area, which is located between the North and South Terminal Buildings (the "Atrium Area"). The City and ASA agree to settle and resolve the Dispute as between themselves on the following basis:

- (a) The City and ASA agree for purposes of this settlement that the Contracting Airlines' share of Atrium Area past concession revenues under the CPTC Lease is deemed to be \$5.0 million. The City shall pay ASA its allocable share of such \$5.0 million as determined using ASA's combined average concession revenue credit percentage for the last eight (8) calendar years. Such payment will be made in six (6) equal monthly installments as credits against rent then due and owing and commencing approximately sixty (60) days after Closing. Notwithstanding the forgoing, City reserves the right to accelerate the payment of ASA's allocable share of any Atrium Area past due concessions revenues.
- (b) The City and ASA agree for purposes of this settlement that the City and ASA hereby release and forever discharge each other of and from any and all claims of any kind or nature whatsoever arising under the Dispute, whether known or unknown, suspected or unsuspected, which the City and ASA ever had, now have or may have in the future resulting from, arising out of or in any way connected to the Dispute, including any claims for costs, expenses or attorneys' fees in connection with the Dispute.
- (c) Beginning on the date of Closing of this Agreement certain space in the Atrium Area as shown on Exhibit CC in Attachment 8 will be added to the CPTC Lease as Joint Leased Premises and City Reserved Space. Accordingly, ASA thereafter shall bear their proportionate share of imputed annual debt service requirement of \$1,310,026.65, and its proportionate share of operating and maintenance ("O&M") costs associated with the Joint Leased Premises commencing on the date of payment in full of its allocable share of the \$5 million as provided in 1.3(a) above. On the same date ASA shall also be entitled to its proportionate share of concession credits as provided for elsewhere in the CPTC Lease.
- (d) The above settlement shall not affect the rights or claims of the City and the other Contracting Airlines with respect to such Dispute.

Section 1.4. Submission and Review by FAA; Resolution of FAA Objections. Unless the parties otherwise agree, upon execution of this Agreement, the parties agree to promptly and jointly present the Agreement to the FAA and to seek in good faith the FAA's confirmation in advance of September 20, 2010, that the Agreement complies with applicable legal and regulatory requirements. If the FAA at any time provides the City with written notice that certain provisions of the Agreement violate federal law or regulations or will cause the denial or withdrawal of federal funding, the City and ASA shall immediately meet and negotiate in good faith to attempt to resolve such objections in a manner that minimizes the adverse effect on the parties' rights and obligations under this Agreement and the underlying CPTC Lease and Use



Agreement. In the event the City and ASA cannot agree on modifications of this Agreement which resolve such FAA objections within sixty (60) days after the receipt of written notice of such objections from the FAA, any party shall have the right to petition the United States District Court for the Northern District of Georgia (or if said court does not have or exercise jurisdiction thereover, then any other court of competent jurisdiction) seeking equitable reformation of this Agreement to most nearly achieve the intent of the parties with respect to this Agreement in a manner that resolves such FAA objections in a manner that minimizes the above-referenced adverse effect. Any party may elect to challenge in any administrative or judicial proceeding any such potentially adverse action, ruling or objection of the FAA.

Section 1.5. Other Airlines. Except as provided in this Agreement, the City may enter into other arrangements or agreements with other Signatory and non-Signatory Airlines as are mutually agreed by the City and such airline or airlines. Nothing in this Agreement shall limit ASA's rights under Section 9.35 of the CPTC Lease.

Section 1.6. Dispute Resolution. Except in respect to proceedings in unlawful detainer, in the event of any dispute, claim or controversy arising out of or relating to this Agreement (references in this Section to "Agreement" are deemed to also include the underlying CPTC Lease and Use Agreement) or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this commitment to arbitrate, the parties shall use their best efforts to settle the dispute by negotiation. If they do not reach a resolution within 60 days of written notice by either party of the existence of a dispute, then, upon written notice by either party to the other, all disputes shall be finally settled by arbitration administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures ("JAMS Rules") before a single arbitrator. In addition to any discovery permitted under the JAMS Rules and agreed to by the parties, each party to the arbitration may serve written interrogatories and requests for production on the other parties and each party may take up to five (5) depositions. To the extent the JAMS Rules conflict with anything in this provision, this provision governs. The hearing shall be held within six (6) months of JAMS' receipt of written notice of a dispute arising under this provision. The parties intend that a decision be issued within 30 days after the close of the hearing. The place of arbitration shall be Atlanta, Georgia. This Agreement is governed by and all disputes arising under or in connection with this Agreement shall be resolved in accordance with the laws of the State of Georgia. The parties acknowledge that this agreement evidences a transaction involving interstate commerce. The United States Arbitration Act shall govern the interpretation, enforcement and proceedings pursuant to this agreement to arbitrate. The federal courts of the Northern District of Georgia shall have exclusive jurisdiction over any proceedings relating to the arbitration, including entry of judgment on the Award; provided, however, if said court does not have or exercise jurisdiction thereover, then relief may be sought in any other court of competent jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from the Northern District of Georgia (or from any other court of competent jurisdiction if the Northern District does not have or exercise jurisdiction).

Section 1.7. Bond Offerings. ASA understands and acknowledges that the City has initiated the processes for the issuance, sale and delivery of approximately \$1.390 billion in bonds for the purpose of refinancing existing airport debt (the "Refunding Bonds") and for new funding for the completion of MHJIT. The City shall have the right upon the issuance of the Refunding Bonds, such bonds to have the maximum legally permissible term that does not exceed thirty (30) years



(subject to any limitations (i) on the maximum legally permissible term of such bonds in accordance with the State of Georgia bond laws or the provisions of the Internal Revenue Code and the regulations promulgated thereunder, or (ii) the maximum permissible term of such bonds in accordance with generally accepted accounting principles), to include the annual Refunding Bonds level debt service amortization amount plus a twenty (20) percent coverage in the airlines' rate base.

Section 1.8. RESERVED – INTENTIONALLY LEFT BLANK.

Section 1.9. ASA HJAIA Space. In addition to ASA's CPTC Lease, the City and ASA are parties to a lease dated April 6, 2010, pursuant to which ASA leases certain additional premises at the CPTC (the "HJAIA Lease"). The HJAIA Lease is hereby amended to have a thirty (30) day term that automatically renews through September 20, 2017, unless one party gives the other thirty (30) days written notice of termination. Notwithstanding the foregoing, if the City recaptures any Gates under Attachment 4 subsection 3(b) hereto, the City may recapture a proportionate amount of space under the HJAIA Lease upon thirty (30) days written notice and such recaptured space will be deemed not to form a part of the HJAIA Lease. With respect to the HJAIA Lease, the City shall continue to use the same methodology it does now in establishing rentals and other charges.

Section 1.10 Common Use Aircraft Gates with Priority Scheduling and Related Space. The intent of the parties is that through the end of the Extension Period, ASA shall continue to have the right to occupy and use all the Common Use Aircraft Gates with Priority Scheduling and related space that it is assigned pursuant to this Agreement. ASA will not be discriminated against or be provided lesser rights with respect to Common Use Aircraft Gates with Priority Scheduling than other airlines occupying Common Use Aircraft Gates with Priority Scheduling. If the City allows another airline to occupy premises not currently covered by its CPTC Lease on more favorable terms than apply to Common Use Aircraft Gates with Priority Scheduling, ASA shall have the right to elect to convert its Common Use Aircraft Gates with Priority Scheduling to the same type of leasing arrangement. With respect to any Common Use Aircraft Gates with Priority Scheduling used by ASA, rates and charges shall be determined on the same basis as CPTC Lease Preferential Use Premises.

Section 1.11. ASA CPTC Lease Amendment 10; Concourse D Financing; and GAP Projects.

- (a) The City has entered into a CPTC Lease Amendment 10 with ASA in the form attached hereto as Attachment 1 providing for the City's reimbursement to ASA of approximately \$38 million related to Concourse C improvements and the recovery of such costs through rentals in accordance with and as further provided in Amendment 10.
- (b) The City agrees to finance for DAL and/or ASA the amount reasonably required (but not to exceed \$25 million) for upgrades, renovations and installation of 22 loading bridges on Concourse D North to improve customer service and operational capability and generally improve the overall space as has been completed on Concourse C North. After reimbursement by the City to DAL and/or ASA, title to such 22 loading bridges and all related upgrades and



renovations shall at all times be held by the City and not by DAL and/or ASA. Unless the parties otherwise agree, financing terms and cost recovery shall use the same approach as is being used for the Concourse C North renovations the City is financing, subject to Section 1.11(f) below. DAL and/or ASA and the City shall enter into an amendment to incorporate loading bridges and related improvements and renovations into the applicable CPTC Lease as amended hereby; provided however, that the City's financing obligations are not subject to the execution of such amendment.

- (c) To the extent not vested in the City previously by the terms of this Agreement or law, title to all improvements under Sections 1.11(a) and 1.11(b) above shall vest immediately with City upon the later of DBO or reimbursement.
- (d) ASA recognizes that given the age of the CPTC facility, there are systems, terminal finishes and equipment that must be replaced or repaired during the Extension Period. Accordingly, ASA agrees to cause the Chairman of the Airline Steering Committee to approve on even date herewith the GAP Projects in accordance with the terms hereof and their being implemented in accordance with the 1999 Implementation Process. For the avoidance of doubt, notwithstanding the application of the 1999 MII Implementation Process to the GAP Projects, ASA shall not disapprove any of the GAP Projects. Consistent with the 1999 Implementation Process, ASA retains its rights to oversee each GAP Project's compliance with its respective approved budget plus the Contingency Amount (as defined below) and may raise design or other concerns as provided for in the 1999 Implementation Process. For each GAP Project, the costs that will be included in the airlines' respective rentals shall not exceed the respective amount shown for the GAP Project in Attachment 10 plus a share of a five percent (5%) contingency of the aggregate GAP Projects amounts (the "Contingency Amount") if and to the extent used for such project. In the event such amount is exceeded, the City may proceed with the applicable GAP Project, but may not include any amount in excess of the GAP Project amount in Attachment 10 Contingency Amount in the airlines' rentals. The GAP Projects shall be financed by GARBS issued specifically for the GAP Projects for a term of not less than thirty (30) years (subject to any limitations (i) on the maximum legally permissible term of such bonds in accordance with the State of Georgia bond laws or the provisions of the Internal Revenue Code and the regulations promulgated thereunder, or (ii) the maximum permissible term of such bonds in accordance with generally accepted accounting principles) in the amount not to exceed the amount set forth in Attachment 10, plus the Contingency Amount, capitalized interest and financing costs. Any unused bond amounts shall be used to reduce the amount of such outstanding GARBS. Related rentals for the GAP Projects shall commence as of DBO of the applicable project and will be based on level debt service amortization from DBO through the balance of the maximum scheduled term remaining on related outstanding GARBS plus a coverage factor of twenty percent (20%).



(e) The City shall include the amounts in section (a) and (b) in its proposed 2010 series of general airport revenue bonds to be issued by the City other than the Refunding Bonds and MHJIT Project bonds referenced in Section 1.7 hereof. In the event that market conditions do not permit the City to raise sufficient funds from the issuance of the 2010 series of general airport revenue bonds on commercially reasonable terms to refund all outstanding commercial paper, the funding of Phase 1 GAP Projects and the amounts in 1.11(a) and 1.11(b), notwithstanding the City's reasonable efforts to raise such amounts, then (i) the refunding of outstanding commercial paper and Phase 1 GAP Projects shall have funding priority over refunding of amounts in 1.11(a) and 1.11(b); provided, however, that with respect to the next series of general airport revenue bonds, the refunding of amounts in 1.11(a) and 1.11(b) and for certain reimbursements to Delta under Amendment 18 to Delta's CPTC Lease shall have priority over any other use of proceeds until payment in full of such amounts. The City agrees to use reasonable efforts to issue the general airport revenue bonds described in the immediately preceding sentence. Upon receipt of proceeds for the refunding of amounts in 1.11(a) and 1.11(b), the City shall make the required reimbursement or funding provided in such amendments or as set forth in Section 1.11 (c) within thirty (30) days of receiving the funds as outlined above, and will recover said amounts (excluding the costs of the South Terminal security checkpoint improvements), including amounts previously advanced, based on airline rates and charges that would be produced by bonds with a term of not less than thirty (30) years (subject to any limitations (i) on the maximum legally permissible term of such bonds in accordance with the State of Georgia bond laws or the provisions of the Internal Revenue Code and the regulations promulgated thereunder, or (ii) the maximum permissible term of such bonds in accordance with generally accepted accounting principles) and amortization from reimbursement in the case of Section 1.11 (a) and 1.11 (b), in each case through the maximum remaining scheduled term of such bonds, plus capitalized interest and finance costs related to these bonds, plus a coverage factor of twenty percent (20%). Nothing herein shall require the City issue any bonds unless the same are available on commercially reasonable terms.

Section 1.12. Terms and Provisions of this Agreement Subject to Additional Modification Reference is hereby made to that certain Agreement to Amend and Extend CPTC Leases, Use Agreements and Certain Other Space Use Agreements by and among Delta Air Lines, Inc., Northwest Airlines, Inc. and the City dated as of December 18, 2009 (the "Delta Extension Agreement"). In the event that the City amends the rental and other charges provisions of the Delta Extension Agreement which by their nature apply formulas and cost allocations designed to apply to other Airlines, and to the extent that the Airline is a party to these discussions and supports amendment of the Delta Extension Agreement, the City shall notify ASA of such changes and this Extension Agreement shall be deemed to be automatically amended to reflect such changes.



Section 1.13. Emergency Repairs. Notwithstanding substantial renovations and improvements to the CPTC, airfield and other areas of the Airport during the last thirty years, ASA and City acknowledge that there may on occasion arise emergencies caused by failures of facilities at the CPTC or airfield. For purposes of this Section, emergencies are unplanned, atypical events that must be addressed immediately in order to prevent (i) impairment or failure of a facility or system, (ii) a condition or situation that could halt, hamper, interrupt or prevent Airline or aircraft operations, or (iii) a risk to the public safety; in each case described in clauses (i), (ii) and (iii) above which cannot be prevented or managed on a reasonable basis without making immediate temporary or permanent repairs or improvements. Accordingly, ASA agrees to vote in favor of an MII ballot authorizing an increase in the Airline rate base for charges resulting from expenditures for such emergencies as defined above, subject to the following conditions: (a) the total of all emergency expenditures so authorized shall not exceed \$6 million in any fiscal year; (b) any dispute over whether the expenditure is a reasonably required emergency expenditure shall be subject to the arbitration process of this Agreement; (c) any such emergency expense shall be included in the rate base for all airlines (and the City to the extent it pays costs as if it were a Contracting Airline); and (d) such emergency expenditures up to \$6 million will be financed by the City over a period of ten (10) years at 25 Bond Revenue Index Rate (as published by the Bond Buyer), and will be paid through airline rentals.

## ARTICLE II

### AMENDMENT 11 TO CPTC LEASE

Section 2.1. Amendment of CPTC Lease. The CPTC Lease are amended as follows:

- (a) Additional Definitions. Title I of the CPTC Lease is amended to add the following definitions which shall also apply to this Agreement:

“City Reserved Space” shall mean the premises designated on Exhibits C, D, E and Y in Attachment 3 (until September 20, 2010), on Exhibits C, D, E and Y in Attachment 6 (after September 20, 2010) and also on Exhibit YY in Attachment 9 (replacing Exhibit Y effective upon DBO of the MHJIT) for which City will be obligated only for capital costs and actual heating, air conditioning and lighting expenses until such space is leased as Preferential Use Space to one or more Contracting Airlines, MHJIT Lessee Airlines or other tenants, including but not limited to space designated as Department of Aviation vacant space in such Exhibits/Attachments.

“Common Use” shall mean the use of Common Use Gates or other terminal facilities by an airline for its flights and passengers in common with other airlines in accordance with the provisions of the Common Use Regulations.

“Common Use Aircraft Gates with Priority Scheduling” shall mean during the Extension Period any gate, apron area, holdroom, and the associated loading bridge and equipment which Airline shall have the right in advance of all other airlines to use and to schedule its flights as provided in Attachment 4. Wherever in the CPTC Lease the term “Exclusive Use” established an obligation upon or right of Airline or was used for the purpose of calculating the value of the



right of, credit to or obligation to be borne by Airline during the Extension Period, Common Use Aircraft Gates with Priority Scheduling shall be substituted with respect to such Common Use Aircraft Gates with Priority Scheduling.

“Common Use Regulations” shall mean the Terminal Common Use Regulations adopted by City of Atlanta Ordinance on May 7, 2007, as they may be revised or supplemented from time to time. The provisions of the Common Use Regulations shall apply to Common Use Premises but not to Common Use Aircraft Gates with Priority Scheduling.

“Concourse Buildings” shall mean the buildings so described on Exhibits B, C, D, E, F and Y in Attachment 3 (until September 20, 2010) and on Exhibits B, C, D, E, F and Y in Attachment 6 (after September 20, 2010), and also on Exhibits YY and ZZ in Attachment 9 (replacing Exhibit Y effective upon DBO of the MHJIT).

“Contracting Airline” or “Signatory” Airline shall mean an entity holding a commercial air carrier operating certificate in good standing with the FAA providing service at the Airport and signatory to a current CPTC Lease or Use Agreement, an extension of a CPTC Lease or Use Agreement, a new lease or use agreement with terms and conditions regarding Majority-In-Interest approvals and rates and charges provisions substantially similar to the CPTC Lease and Use Agreement as amended herein and having a term of two (2) years or more or any or all of the foregoing; provided that an airline (i) that is only a signatory to a Use Agreement, extension thereof or new use agreement as set forth in this definition, shall only be considered a “Signatory Airline” for purposes of such use agreement or extension thereof and (ii) that is a signatory to a CPTC Lease, extension thereof or new lease agreement as set forth in this definition, shall only be considered a “Contracting Airline” or “Signatory Airline” for purposes of such lease agreement or extension thereof.

“CPI” shall mean the annual average Consumer Price Index for All Urban Consumers, U.S. City Average, All Items and Major Group Figures (1982-84=100) (“CPI-U”), published by the Bureau of Labor Statistics of the United States Department of Labor (the “Bureau”). If (i) the Bureau ceases to use the 1982-84 average of 100 as the basis of calculation and the Bureau does not recalculate the then applicable CPI-U number for all years including 1982-84, or (ii) the Parties mutually agree in writing that the CPI-U does not accurately reflect the purchasing power of the dollar, or (iii) the CPI-U is discontinued for any reason, then the Parties shall thereafter accept and use such other reasonably comparable consumer price index or other statistics on the cost of living for the United States as shall be computed and published by an agency of the United States or by a responsible financial periodical of recognized authority selected by both Parties.

“GAP Projects” shall mean the airport-wide projects listed in Attachment 10 and in the Element Level Information Package approved by the Executive Committee in the not to exceed project amounts specified therein, a copy of which is attached hereto as Exhibit A to Attachment 10.

“GARBS” or “Airport Revenue Bonds” shall mean the general airport revenue bonds issued by the City, from time to time, having a lien on the general revenues of the Airport in accordance with the Restated and Amended Master Bond Ordinance authorizing the issuance of



City of Atlanta Airport Revenue Bonds adopted by the City Council on March 20, 2000, as subsequently amended and supplemented. Terms defined in the Bond Ordinance shall have those meanings for the purposes of the Agreement.

“Handling Agreement” means a written agreement between ASA and/or any of their service contractors or by any of them with another airline for any air transportation related services to be provided by any of them or their contractors to the other at or in connection with use of any premises, systems and/or equipment of any airline or the City at the airport, or any airline's operations at, to or from the airport. Such services may include but are not limited to providing, managing and/or handling, some or all of ticketing, passenger check-in, documents verification and other passenger services; baggage handling; cargo handling; mail handling; aircraft positioning, deicing, cleaning, load and balance control and other services; ramp handling; fueling; maintenance; janitorial; security services; skycap services; provisioning; and any other air transportation related services. Such services may be provided at any premises leased, used or otherwise occupied by Delta, Northwest, ASA, the handling company, the handled company, any handling contractor or another airline.

“MHJIT” or “the Maynard Holbrook Jackson Jr. International Terminal” shall mean the International Terminal Building, Concourse E and Concourse F, together with the associated Aircraft Parking Area and Ramp Area, all as shown on Exhibits YY and ZZ as shown in Attachment 9.

“MHJIT Lessee Airlines” shall mean the airlines who have signed a CPTC Lease or other type of lease with the City for premises in MHJIT.

“MHJIT Project” shall mean the MHJIT construction project.

“MHJIT City Project Costs” shall mean the allocation of MHJIT Project Costs attributable to the MHJIT FIS Facility, and City Reserved Space.

“MHJIT FIS Facility” shall mean with respect to the MHJIT Project:

- a) International Only Passenger Use Area (IOPUA) so designated on Exhibit YY as shown in Attachment 9, and
- b) International/Domestic Passenger Use (IDPUA) so designated on Exhibit YY as shown in Attachment 9, and
- c) International/Domestic Aircraft Ramp Area (IDARA) so designated on Exhibits YY and ZZ as shown in Attachment 9, and
- d) International/Domestic Check-in Area (IDCA) so designated on Exhibit YY as shown in Attachment 9, and
- e) Pre-cleared/Domestic Only Baggage Claim Area (DOBCA) so designated on Exhibit YY as shown in Attachment 9.

“MHJIT Rentable Space” shall mean the sum of the MHJIT FIS Facility space, the MHJIT Lessee Airlines space, City Reserved Space and the Joint Leased Space all as shown on Exhibit YY in Attachment 9.



“MHJIT Users” shall mean all entities, including but not limited to MHJIT Lessee Airlines, Signatory Airlines, charter operators or itinerant aircraft operators, that may utilize any portion of the MHJIT, as shown on Exhibits YY and ZZ in Attachment 9, in any manner and for any act or thing that may be done which is connected with or incidental to the operation of the transportation system of that airline.

“MHJIT FIS Facility Users” shall mean all airlines, including but not limited to MHJIT Lessee Airlines, Contracting Airlines, charter operators or itinerant aircraft operators, that may utilize any portion of the MHJIT FIS Facility, as shown on Exhibits YY and ZZ in Attachment 9, in any manner and for any act or thing that may be done which is connected with or incidental to the operation of the transportation system of that operator.

“Minimum Gate Utilization Standard” shall mean an average of six hundred (600) total departing seats on outbound domestic flights per gate, per day for the previous twelve (12) calendar months.

“Phase I GAP Projects” means the GAP projects identified as Phase I GAP Projects in Attachment 10.

“Preferential Use Aircraft Gate” shall mean during the Extension Period any gate, apron area, holdroom and the associated loading bridge and equipment as shown on Exhibits B, C and D in Attachment 6, which Airline shall have the right of use as provided in Attachment 4. Wherever in the CPTC Lease the term “Exclusive Use” established an obligation upon or right of Airline or was used for the purpose of calculating the value of the right of, credit to or obligation to be borne by Airline, during the Extension Period, Preferential Use Aircraft Gate shall be substituted with respect to such gates.

“Preferential Use Space” shall mean during the Extension Period space in the CPTC as shown on Exhibits B, C, D, E and Y in Attachment 6 and Exhibit YY in Attachment 9 (replacing Exhibit Y effective upon DBO of the MHJIT), for which the Airline has the right of use as provided in Attachment 4. Such areas may include, but shall not be limited to, ticket counter, queuing, skycap podiums and/or baggage make-up space assignments (excluding airline ticket offices). Wherever in the CPTC Lease the term “Exclusive Use” established an obligation upon or right of Airline or was used for the purpose of calculating the value of the right of, credit to or obligation to be borne by Airline, during the Extension Period Preferential Use Space shall be substituted with respect to such space.

“Priority Scheduling” shall mean the right in advance of all other airlines to use the premises and schedule its flights.

“Terminal Building Area” shall mean the area within the “Terminal Building Area Lease Limits” and as shown in Attachments 3 and 6, as amended by this Amendment 11, in which the Aircraft Parking and Ramp Area, the Concourse Buildings, the Landside Terminal Buildings, the Mechanical Buildings, MHJIT FIS Facility, the pedestrian mall (including the elevators and escalators and associated therewith) and other facilities, including the MHJIT Landside Terminal Building and the associated curb space, are, or will be, situated, but such area shall not include



the AGTS or the facilities designated for "MARTA" as shown on Exhibits B, C and Y in Attachments 3 and 6, and Exhibit YY in Attachment 9.

- (b) Extension Term. The lease term set forth in Section 2.01 of the CPTC Lease is extended from September 20, 2010, to September 20, 2017 (the "Extension Period").
- (c) Leased Premises. The Premises leased by ASA as of Closing under the CPTC Leases only are shown on Exhibits B, C, D, E, F and Y in Attachment 3 hereto. Within sixty (60) days of the Closing referenced in Section 4.15 of this Agreement, the parties will in good faith update Exhibits B, C, D, E, F and Y in Attachments 3 and 6 to the extent necessary to correct any errors and variances in actual dimensions, layout or square footages of space assigned to ASA under the CPTC Lease and then will substitute the updated drawings for Exhibits B, C, D, E, F and Y to the current CPTC Lease. On and after September 20, 2010, the Premises under the CPTC Lease shall be shown on Exhibits B, C, D, E, F and Y in Attachment 6 hereto, which on that date shall replace Exhibits B, C, D, E, F and Y in Attachment 3 hereto.
- (d) A new Section 2.08 is added to the CPTC Lease to read as follows:

Section 2.08 – Assignment of Preferential Use Aircraft Gates.

Preferential Use Aircraft Gates, Preferential Use Space and Common Use Aircraft Gates with Priority Scheduling. For the Extension Period, the parties agree to convert CPTC Lease, permit or other exclusive use ticketing, baggage handling, airline support and passenger holdroom space into Preferential Use Aircraft Gates, Preferential Use Space or Common Use Aircraft Gates with Priority Scheduling based on the requirements outlined in this Agreement and Attachment 4 hereto and as such premises are shown on Exhibits B, C, D and E in Attachment 6 hereto. During the Extension Period, the City is allowed to permit the use of the Preferential Use Aircraft Gates, related Preferential Use Space and Common Use Aircraft Gates with Priority Scheduling and permit the use of such Preferential Use Aircraft Gates or Common Use Aircraft Gates with Priority Scheduling by a Requesting Airline in accordance with the provisions set out in Attachment 4 hereto. In certain circumstances provided for in Attachment 4, the City may also recapture premises and, in addition, provide for accommodation for use by a Requesting Airline, in each case in accordance with the provisions set out in Attachment 4 hereto. ASA shall not be required to provide a Requesting Airline the use of any proprietary systems or information. The City shall not grant any other airline exclusive use rights with respect to any premises without allowing ASA to convert an equivalent proportionate share of its Preferential Use Aircraft Gates and Preferential Use Space or Common Use Aircraft Gates with Priority Scheduling back into exclusive leased premises. References in the CPTC Lease to exclusive leased premises and leased premises shall apply to Preferential Use Aircraft Gates and Preferential Use Space and Common Use Aircraft Gates



with Priority Scheduling, including, without limitation, provisions providing Airline with concession revenue credits.

- (e) A new Section 5.10 is added to the CPTC Lease to read as follows:

Section 5.10 – MHJIT Project. The MHJIT Project and, once built, MHJIT will be provided for and operated in accordance with the following requirements:

- (a) The maximum share of the capital cost of the MHJIT Project that shall be funded with general airport revenue bonds (“GARBS”) and included in the airlines rates and charges is \$324,500,000 plus capitalized interest and finance costs related to these bonds (the “Cap GARB Amount”). Under no circumstances shall any GARBS be included in the airlines’ rate base absent MII consent of the CPTC Contracting Airlines that have elected to extend and modify their respective Airport Use Agreements and CPTC Leases consistent with this Agreement in an amount exceeding the Cap GARB Amount or that would result in level debt-service-amortization-based airline rates and charges exceeding charges that would be produced by bonds with a minimum of thirty (30) years term (subject to any limitations (i) on the maximum legally permissible term of such bonds in accordance with the State of Georgia bond laws or the provisions of the Internal Revenue Code and the regulations promulgated thereunder, or (ii) the maximum permissible term of such bonds in accordance with generally accepted accounting principles) and amortization from DBO through the maximum remaining scheduled term of such bonds, plus capitalized interest and finance costs related to these bonds, at an interest rate not to exceed the lesser of the actual annual interest rate or 7% (the “Maximum Annual Amount”) plus a coverage factor of twenty percent (20%).
- (b) The City shall use reasonable efforts to limit total MHJIT Project costs to \$1,358,000,000. Not included in this amount are General and Administrative Expenses, Airline Master Planning Team expenses and capitalized interest costs, which will be allocated as provided in the 1999 MII approval for the International Terminal.
- (c) The MHJIT Project will include an approximately 1,210,000 square foot International Terminal and Concourse F with twelve (12) gates for loading and unloading passenger aircraft, a Federal Inspection Service facility (including associated baggage handling systems), an AGTS extension between the International Terminal and existing Concourse E and the MHJIT related parking deck, roadways, sitework and miscellaneous supporting projects and improvements.
- (d) Subject to all requirements hereof, the City’s recovery of the airlines’ share of MHJIT Project costs shall be calculated using the following methodology for allocating costs and in accordance with Exhibit U-1 in Attachment 5. The MHJIT will be treated as a single international



cost/revenue center. All costs and revenues related to the use of MHJIT will remain within this international cost/revenue center. Inside Concession credits from Concourse F and the International Terminal Building and revenues received from Domestic Use Charges at MHJIT shall be credited against the rates and charges of all international activity at the MHJIT. The final MHJIT GARB funding will be allocated between the International Terminal Building, Concourse E and Concourse F pursuant to formulae outlined on Exhibit U-1 in Attachment 5. The Concourse E and Concourse F costs allocable to the airlines' rate base will then be equalized across all gates and passenger processing facilities for the purpose of establishing international use rates in the MHJIT. Domestic use rates will be set equivalent to rates set for use of common use domestic gates pursuant to the Common Use Regulations with all revenue generated for the use of domestic operations in the MHJIT to be credited against international use rates and charges. Payment of rates and charges shall commence upon the date of beneficial occupancy of the International Terminal Building and Concourse F if the MHJIT Project is completed.

- (e) Upon completion of the MHJIT, Concourse E shall be accounted for together with the MHJIT and together with MHJIT will form a single international terminal cost/revenue, except that concession credits shall be limited to Inside Concessions, and that Concourse E concession credits will continue to accrue, and be shared with, the Contracting Airlines.
- (f) All of the provisions of this Paragraph (f) apply only to the MHJIT. All MHJIT check-in kiosks, outbound baggage, gate, Concourse E and Concourse F Federal Inspection Service Facilities (the "FIS"), inbound baggage, baggage claim, ramp tower and FIDS/BIDS will be operated on a common use basis in the same manner that Concourse E operated prior to this Agreement. The CUTE technology platform will support state-of-the-art airline system requirements as previously specified by the airlines. Additionally, CPTC Lease Contracting Airlines that qualify for Priority Scheduling for Aircraft Gates at the MHJIT under this Agreement may at their own expense have proprietary systems (including, without limitation, under-wing luggage tracking systems) of their choosing installed at any or all gates designated for use by the City at Concourses E and F and in other areas assigned by the City at the MHJIT; provided that such system(s) do not interfere with the City's CUTE system; provided further that the City shall consult with ASA regarding the installation of systems that the City knows may conflict with the ASA systems and consider in good faith any reasonable alternatives proposed by ASA that seek to reconcile the interests of ASA, the other airlines and the City, provided however, that such consultation shall not prevent the City from installing such systems if the City considers such installation to be justified notwithstanding the potential or actual conflict of systems.



- (g) [INTENTIONALLY DELETED]
- (h) Gate assignment protocols will be on a common use basis consistent with those currently followed on Concourse E, but with the largest international carrier serving HJAIA (as defined by number of daily international seat departures) selecting (within sixty (60) days of the execution of this Agreement) and receiving Scheduling Priority over six (6) of the twelve (12) Concourse F gates. Such preference will be for wide-body flights that are in the top 15% of the airline's international flights ranked by O&D passengers. "Scheduling Priority" shall mean the right to schedule flights on the gates in advance of any other carrier for the duration of the Extended Period. In the event the Scheduling Priority airline has not scheduled in advance that priority gate for a Group V aircraft at a time another airline would like to schedule it for a Group V aircraft international operation, the Scheduling Priority airline shall permit such use and scheduling if another Concourse F Group V gate is not available at the time in question and provided another Concourse E or F gate is available for any displaced operation. Once such reassignment occurs, the Scheduling Priority Airline may not displace the other scheduled flight of the airline, which flight would have precedence under the scheduling protocols for the MHJIT unless such airline ceases to schedule the priority gate for a Group V Aircraft.
- (i) Those CPTC Contracting Airlines that are relocating ticketing, outbound baggage and operations facilities to the MHJIT from the main terminals will be released from their future CPTC Lease obligations for vacated space when and as it is returned to the City. Similarly, airlines operating from Concourse F gates and electing to relocate club rooms and operations facilities from Concourse E will be released from their CPTC Lease obligations for such vacated space when and as returned to the City.
- (j) The City and airlines shall cooperate in good faith to identify and provide funding for MHJIT airline tenant improvements either through MHJIT project costs savings or the issuance of additional GARBS, if available. If such funding is available, the terms thereof shall be incorporated in a further amendment to the respective MHJIT airline's lease.
- (k) The parties agree that, unless the obstructions relating to Runway 27 are removed as described below in this section (k) that the Runway 27R extension is a requirement of the MHJIT Project and it will proceed immediately and be funded first with federal grants and second with PFCs. The goal is to ensure the extension is completed by the opening of MHJIT to facilitate long-range international flying. This Runway extension is also to be made part of the Use Agreement and all runways shall continue to be operated and maintained under the Use Agreement as modified hereby. If the relocation of any obstructions in the Runway 27, FAA Part 77, or ICAO departure and arrival flight planes would accomplish similar



or better results, as determined based on a benefit cost analysis, including the understanding there would be no weight penalty to be taken for similar type aircraft, and conducted in accordance with FAA rules and procedures, and does not result in any weight penalty applied to a commercial aircraft that would not apply to such aircraft under the Runway 27R extension, then the Airport shall have the right to substitute such a project for the extension of Runway 27R provided that the such alternative project is completed on or before the DBO for MHJIT.

- (l) The City's obligations with respect to the MHJIT Project and MHJIT requirements provided for herein shall run concurrently with this Extension Agreement and apply until September 20, 2017.

(f) Replacement of Exhibit U. Exhibit U of the CPTC Lease shall be in effect until DBO of the MHJIT. Upon DBO of the MHJIT, Exhibit U is deleted in its entirety and replaced with Exhibit U-1 attached hereto as Attachment 5.

(g) Deletion of Sections 4.03(C) and 4.06 of the CPTC Lease. These sections are hereby deleted in their entirety.

Section 2.2. Continuation of Rentals and Charges. Notwithstanding anything to the contrary in the CPTC Lease, all rates and charges under the CPTC Lease shall continue to be payable during the Extension Period to the City by ASA according to the CPTC Lease, the applicable rates and charges methodology, relevant MII approvals, relevant amortization periods and historical and current practices with respect to setting and adjusting rates and charges. Without limiting the generality of the foregoing, the following provision of Section 5.08(A) of the CPTC Lease shall have no effect and is hereby deemed deleted from the CPTC Leases: "Accordingly, it is agreed that Facilities Rental payments shall be payable only for a total period of thirty (30) years and such Facilities Rental payments, except for the land rental element provided for in Section 5.04(A)(2) of this Agreement, shall cease after thirty (30) years, notwithstanding the fact that the thirty (30) year lease term will continue for an additional period of time until expiration."

### ARTICLE III

#### AMENDMENT 9 TO USE AGREEMENT

Section 3.1. Amendment of Use Agreement. The Use Agreement are amended as follows: The term of the Use Agreement set forth in Article II of the Use Agreement is extended to September 20, 2017. The extension of Runway 27R as referenced in new Section 2.08(k) above is incorporated herein.

Section 3.2. Continuation of Rentals and Charges and Supplementary Payments. Notwithstanding anything to the contrary in the Use Agreement prior to their amendment by this



Amendment, all landing fees and other charges under the Use Agreement shall continue during the Extension Period according to the Use Agreement, the applicable rates and charges methodology, relevant MII approvals, relevant amortization periods and historical and current practices with respect to setting and adjusting rates and charges. The parties expressly acknowledge and agree that from and after September 20, 2010, the Supplemental Landing Fee provided for in Amendment 8 to the Use Agreement shall no longer apply. Without limiting the foregoing, the monthly payments under subparagraph (b)(2) of Article VIII of the Use Agreement shall continue to be in full force and effect through the applicable amortization period during the Extension Period.

## ARTICLE IV

### MISCELLANEOUS

Section 4.1. Governing Law. This Agreement has been made in and shall be construed in accordance with the laws of the State of Georgia.

Section 4.2. Conflicting Provisions; Effect of this Agreement. The parties intend the provisions of this Agreement to be interpreted as consistent with the CPTC Lease and Use Agreement to the extent possible; provided, however, that the provisions of this Agreement shall supersede and control over all conflicting or inconsistent provisions of the CPTC Lease and Use Agreement. Except as otherwise expressly provided in this Agreement, the provisions of the CPTC Lease and Use Agreement shall continue to be in full force and effect during the Extension Period.

Section 4.3. Complete Agreement; Amendments. This Agreement, together with the CPTC Lease and Use Agreement, as previously amended and supplemented, contains the entire and exclusive agreement of the parties with reference to the matters addressed. This Agreement supersedes all prior commitments, drafts, communications, discussions and understandings, oral or written, with respect hereto. This Agreement may not be modified, amended or otherwise altered except as agreed in writing by the parties.

Section 4.4. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under all applicable laws and regulations. If, however, any provision of this Agreement shall be prohibited by or invalid under any such law or regulation in any jurisdiction, it shall, as to such jurisdiction, be deemed modified to conform to the minimum requirements of such law or regulation, or, if for any reason it is not deemed so modified, it shall be ineffective and invalid only to the extent of such prohibition or invalidity without affecting the remaining provisions of this Agreement, or the validity or effectiveness of such provision in any other jurisdiction.

Section 4.5. Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement.



Section 4.6. Assignment or Transfer. ASA shall not sell, assign or transfer this Agreement, together with the CPTC Lease and Use Agreement, as previously amended and supplemented, without the prior written consent of City; provided, however, this Agreement, together with the CPTC Lease and Use Agreement, as previously amended and supplemented, may be assigned by ASA without such consent to any successors-in-interest of ASA, with or into which ASA may merge or consolidate or which may succeed to the assets of ASA or a major portion thereof related to its air transportation business.

Section 4.7. Waiver. No waiver by any party at any time of any of the terms, conditions, covenants or agreements of this Agreement, or noncompliance therewith, shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by the other. No option, right, power, remedy or privilege of any party shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options or remedies given to each party by this Agreement are cumulative and no one of them shall be exclusive of the other or exclusive of any remedies provided by law except as specifically provided herein, and that the exercise of one right, power, option or remedy by any party shall not impair its right to any other right, power, option or remedy, except as specifically provided herein.

Section 4.8. Force Majeure. Neither City nor ASA shall be deemed to be in breach of this Agreement, by reason of failure to perform any of its obligations hereunder if, while and to the extent that such failure is due to or results from any force majeure event including strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of superior governmental authority, floods, riots, rebellion, sabotage or any other circumstances for which it is not responsible and which are not within its control. This provision shall not apply to failure by ASA to pay the rentals and charges provided for herein except in those cases where provision is made elsewhere in this Agreement for the abatement of such rentals and charges under such circumstances; and this provision shall not prevent any party from exercising its rights of termination under the CPTC Lease or Use Agreement. Force majeure shall also apply to any failure to meet the Minimum Gate Utilization Standard in Attachment 4. Notwithstanding anything to the contrary herein, with respect to the Minimum Gate Utilization Standard in Attachment 4, force majeure with respect to strikes, boycotts and labor disputes related directly to the Delta Group shall not exceed a period of forty-five (45) days following which the Delta Group shall have forty-five (45) days to ramp back up operations for the purpose of the Delta Group meeting the Minimum Gate Utilization Standard ("Ramp-up Period"). In determining Minimum Gate Utilization Standard compliance for any year during which force majeure is applicable under the sentence immediately above, the calculation shall exclude (i) the force majeure period and the Ramp-up Period; and (ii) the seats for those same days. A party claiming force majeure must provide written notice to the other parties of the alleged occurrence of force majeure within ten (10) days of the occurrence of the force majeure event setting forth the alleged date of the event.

Section 4.9. No Personal Liability. No elected official, director, officer or employee of either party shall be charged personally or held contractually liable by or to the other party under any



term or provision of this Agreement or because of any breach thereof or because of its or their execution or attempted execution thereof.

Section 4.10. Relationship Between Parties. City is neither a joint venturer with nor a partner or associate of ASA with respect to any matter provided for in this Agreement. Nothing herein contained shall be construed to create any such relationship between the parties or to subject City to any obligation of ASA whatsoever or to subject ASA to any obligation of City whatsoever except as set forth in this Agreement and the CPTC Lease and Use Agreement as amended.

Section 4.11. Time of Essence. Time is of the essence of this Agreement.

Section 4.12. Commence Negotiations. The parties agree to commence negotiations on another extension or successor agreement at least two years prior to the expiration of this Agreement.

Section 4.13. Headings. The headings contained herein are for convenience in reference and are not intended to define or limit the scope or any provisions of this Agreement.

Section 4.14. Notices. All notices, consents and approvals to be given hereunder shall be in writing and signed by a duly authorized representative of the party by or on whose behalf they are given and shall be deemed given when deposited in the United States mail by addressee, postage pre-paid, certified or registered, addressed as follows (or to such other address as from time to time may be designated by either party by written notice to the other party).

A. City:  
City of Atlanta  
Department of Aviation  
Hartsfield-Jackson Atlanta International Airport  
P. O. Box 20509  
Atlanta, Georgia 30320  
Attention: Aviation General Manager

B. ASA:  
Atlantic Southeast Airlines, Inc.  
990 Toffie Terrance  
Atlanta, Georgia 30354-1356  
Attention: Vice President - Operational Support

Section 4.15. Necessary Approvals; Effectiveness. This Agreement requires legislative approval by the City Council and approval by ASA's Boards of Directors. It will not be effective or legally binding until such approvals are granted. Furthermore, this Agreement will not become binding on the City and the City will incur no liability or obligation under it until it has been executed by the Mayor, attested to by the Municipal Clerk, approved as to form by the City Attorney and delivered to ASA (the "Closing"); provided further that this Agreement will not become binding on ASA, and ASA will incur any liability or obligation under it until it has been executed by the Chief Executive Officer. Except for Sections 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 1.11,



1.12, 2.1(c) and all Sections of Article IV which shall be effective upon Closing, all the provisions of this Agreement shall become effective upon September 20, 2010.

Section 4.16. Cross-references; Incorporation of Attachments. Cross-references in this Agreement are to ASA's CPTC Lease and Use Agreement.. All Attachments to this Agreement are hereby incorporated herein and made a part of this Agreement and the underlying CPTC Lease and Use Agreement as appropriate.



**IN WITNESS WHEREOF**, the parties, acting by and through their duly constituted officers, have caused this instrument to be executed this \_\_\_\_ day of \_\_\_\_\_, 2010.

ATTEST:  
(Seal)

**ATLANTIC SOUTHEAST AIRLINES, INC.**

\_\_\_\_\_  
Title:

by \_\_\_\_\_  
Title:

-----  
ATTEST:

**CITY OF ATLANTA (Seal)**

\_\_\_\_\_  
Municipal Clerk

by \_\_\_\_\_  
Mayor

APPROVED AS TO INTENT:

APPROVED:

\_\_\_\_\_  
Aviation General Manager

\_\_\_\_\_  
Chief Procurement Officer

APPROVED AS TO FORM:

RECOMMENDED:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Chief Operating Officer

RCS# 487  
8/16/10  
3:14 PM

Atlanta City Council

REGULAR SESSION

CONSENT I

EXCEPT 10-O-1338,10-R-1416

ADOPT

YEAS: 13  
NAYS: 0  
ABSTENTIONS: 0  
NOT VOTING: 1  
EXCUSED: 0  
ABSENT 2

Y Smith	Y Archibong	Y Moore	Y Bond
Y Hall	B Wan	Y Martin	Y Watson
Y Young	Y Shook	Y Bottoms	B Willis
Y Winslow	Y Adrean	Y Sheperd	NV Mitchell

CONSENT I

		08-16-10
ITEMS ADOPTED ON CONSENT	ITEMS ADVERSED ON CONSENT	
1. 10-O-1422	38. 10-R-1381	
2. 10-O-0603	39. 10-R-1382	
3. 10-O-1279	40. 10-R-1383	
4. 10-O-1345	41. 10-R-1384	
5. 10-O-1421	42. 10-R-1385	
6. 10-O-1276	43. 10-R-1386	
7. 10-O-1417	44. 10-R-1387	
8. 10-O-1272	45. 10-R-1388	
9. 10-R-1368	46. 10-R-1389	
10. 10-R-1369	47. 10-R-1390	
11. 10-R-1370	48. 10-R-1391	
12. 10-R-1372	49. 10-R-1392	
13. 10-R-1409	50. 10-R-1393	
14. 10-R-1411		
15. 10-R-1412		
16. 10-R-1413		
17. 10-R-1414		
18. 10-R-1415		
19. 10-R-1423		
20. 10-R-1424		
21. 10-R-1425		
22. 10-R-0727		
23. 10-R-1394		
24. 10-R-1401		
25. 10-R-1402		
26. 10-R-1403		
27. 10-R-1404		
28. 10-R-1405		
29. 10-R-1406		
30. 10-R-1426		
31. 10-R-1427		
32. 10-R-1375		
33. 10-R-1376		
34. 10-R-1377		
35. 10-R-1378		
36. 10-R-1379		
37. 10-R-1380		