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Gemeente Amsterdam
Bestuursdienst

Sector Concern
Afdeling Financiën

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Datum	28 november 2003
Behandeld door	[redacted]
Doorkiesnummer	5522728
Faxnummer	5522945
Bijlage	vaststellingsovereenkomst
Kopie aan	VGA Verzekeringen
Onderwerp	schadeclaim El Al/Boeing

Geachte

Hierbij zend ik u rechtstreeks 3 door de Burgemeester getekende exemplaren van de vaststellingsovereenkomst tussen EL Al, Boeing en de Gemeente Amsterdam inzake de Bijlmerramp.
Ik vertouw erop dat u voor spoedige afhandeling via [redacted] zult zorgdragen.
Voor de verdere afhandeling blijft VGA Verzekeringen het contactadres.

Hoogachtend,
Gemeente Amsterdam
Bestuursdienst

RELEASE OF ALL CLAIMS AND SETTLEMENT AGREEMENT

The undersigned:

The Boeing Company, located at 2711 Centerville Road, Site 400, Wilmington, Delaware 19808, United States of America ("**Boeing**"), legally represented by , attorney-at-law, practising at the law firm Perkins Coie, Seattle, Washington, United States;

and

El Al Israel Airlines Ltd., located Ben Gurion Airport, 70100 Tel Aviv, Israel ("**El Al**"), legally represented by attorney-at-law, practising at the law firm DLA, London, United Kingdom;

and

The Municipality of Amsterdam, seated in Amsterdam, (the "**Municipality**"), legally represented by its Mayor Mr M.J. Cohen;

Whereas:

a. On 4 October, 1992, an accident occurred in Amsterdam Bijlmermeer, involving a Boeing model 747 aircraft operated by El Al (the "**Accident**");

b. the Municipality claims to have suffered damage caused by the Accident and losses arising out of the Accident, including but not limited to (i) costs incurred in cleaning the soil affected by the Accident, (ii) costs incurred by the Building and Housing Inspection (*Bouw- en Woningtoezicht*), (iii) costs incurred by the General Administrative and Legal Affairs Office (*Algemene Dienst Bestuurlijke en Juridische Zaken*), consisting of invoices by *Crisis Onderzoek Team* regarding an evaluation of the disaster plan of the Municipality, salaries, invoices regarding communications equipment, costs of information dissemination, a gift to *Stichting Welzijn Moslims*, catering costs, photograph costs, and legal costs (iv) invoices of the Municipal Printing Office (*Stadsdrukkerij*), regarding printing work made in relation to the Accident, (v) salaries of

personnel of *Stadsdeel Oud-West*, (vi) costs of food incurred by the Markets Office (*Dienst voor het Marktwezen*), (vii) costs incurred with regard to repairs to metro and tram, (viii) costs incurred by *Stadsdeel Oud-West* in connection with the cancellation of the event *Afval- en Milieudag*, (ix) salaries of personnel and costs of equipment incurred by the Municipal Register, (x) costs incurred with regard to the repair of the sewer system and waterworks, (xi) salaries of personnel of the City Management (*Stedelijk Beheer*), (xii) costs of medical treatment provided by the Municipal Health Department (*GG & GD*), (xiii) costs incurred by the Town Hall Information Service (*Afdeling Voorlichting en Externe Betrekkingen*), in particular with regard to the memorial ceremony, (xiv) costs incurred by *Stadsdeel Zuid-Oost*, consisting of salaries of personnel, cost of equipment, costs incurred in cleaning the soil affected by the Accident, costs regarding the restoration of the affected soil, and costs invoiced to the Municipality by several entities, such as *Stichting Buurtwerk Zuid-Oost*, *Stichting Thuiszorg Zuid-Oost*, *Gereformeerde Kerk*, *Sporthal Gaasperdam*, *Stichting Wijkopbouworgaan Bijlmermeer*, and *Bijlmer Sportcentrum*, (xv) costs connected with the activities of the Fire Brigade (*Brandweer*), consisting of costs of equipment, catering costs, and salaries of personnel, (xvi) costs connected with the activities of the Town Hall, consisting of salaries of personnel, costs of meals, travel costs, costs of meetings, printing costs, telephone costs, and costs of flags, (xvii) costs incurred by Housing Corporation Amstel (*Woningbedrijf Amstel*), (xviii) costs connected with the activities of the Police, (xix) costs incurred by Social & Public Health (*Stadhuis MGZ*), consisting of ambulance services, costs of medical services, salaries of personnel, and subsidies to *Stichting Forsa*, *Landelijk Meldpunt Nazorg Vliegramp Zanderij*, *Korrelatie Utrecht*, *BZO*, *Werkgroep Vliegverkeer Bijlmermeer*, *Afro-Surinaamse Bijeenkomst*, *Commissie Beheer Gereformeerde Kerk*, *Onderzoek Steinmetz Advies & Opleiding*, translation costs of *Mental Health Training Manual*, costs related to furnishing of a memorial room of *Werkgroep Bewoners Kruitberg*, compensation for musicians from Equador, and costs related to a memorial service by World Islamic Mission Nederland, (xx) costs incurred by Social Security Services (*Gemeentelijke Sociale Dienst*), regarding Novotel, Park Lane Hotel, *Woningcorporatie Nieuw Amsterdam*, *Woningcorporatie Het Oosten*, *Woningbouwvereniging Ons Huis*, *Woningbouwvereniging Ons Belang*, *Woningbouwvereniging De Dageraad*, *Vereniging HVO*, *Coöperatieve Uitvaartvereniging*, *Uitvaartcentrum Zuid*, allowances in goods, such as cloths and home furnishings, costs of security personnel and salaries of its own personnel, rented material, and allowances to third parties (xxi) costs incurred by the Housing Department (*Herhuisvesting*), consisting, a.o., of salaries of personnel, costs of security personnel, catering costs, advertising costs, telephone costs, travel costs, legal fees, computer costs, and legal dues (*leges*) forgone, (xxii) costs incurred by the Municipal Energy Company (*Gemeentelijk Energiebedrijf*), and (xxiii) costs incurred by the Real Estate Department (*Grondbedrijf*); (xxiv) or any other losses suffered by any other party whom the Municipality has authority to represent.

c. The Municipality has received the following payments, in total NLG 5,355,379, from El Al and Boeing on the dates listed below as advance payments for the alleged damage and losses sustained by the Municipality as a result of the Accident:

date	**amount**		**paid to**	**in connection with**
24.11.1993	NLG	50,000	Municipality	AMS 7 (GVB Metro)
24.11.1993	NLG	100,000	Municipality	AMS 10 (sewer and water supply)
24.11.1993	NLG	200,000	Municipality	AMS 1+14 (soil pollution)
24.11.1993	NLG	1,150,000	Municipality	AMS 1+14 (reconstruction infrastr.)
4.3.1994	NLG	204,400	Municipality	AMS 20 (soc. sec. funerals)
4.3.1994	NLG	95,600	Municipality	AMS 20 (soc. sec. emergency)
7.7.95	NLG	23,134	Municipality	AMS 7 (GVB Metro)
7.7.95	NLG	12,842	Municipality	AMS 7 (interest)
5.9.2000	NLG	216,785	NautaDutilh	AMS 10 (sewer and water supply)
28.12.2000	NLG	93,342	NautaDutilh	AMS 10 (interest)
5.9.2000	NLG	2,305,294	NautaDutilh	AMS 1+14 (soil pollution)
28.12.2000	NLG	87,995	NautaDutilh	AMS 1+14 (interest)
5.9.2000	NLG	479,765	NautaDutilh	AMS 1+14 (reconstruction infrastr.)
5.9.2000	NLG	239,869	NautaDutilh	AMS 22 (Municipal Energy Company)
28.12.2000	NLG	96,353	NautaDutilh	AMS 22 (interest)

d. the parties have extensively negotiated about the alleged claims of the Municipality;

e. the Municipality has instituted legal proceedings against Boeing and El Al before the District Court of Amsterdam in order to obtain full payment of its alleged damage by writ of 5 July 2002 (the "**Proceedings**");

f. the parties now wish to fully and finally compromise and settle all of the claims of the Municipality, irrespective of whether these claims have been alleged by the Municipality in the Proceedings or whether they otherwise arise out of the Accident, including those of any municipal department or other municipal entity as well as any corporation owned or controlled by the Municipality, or whom the Municipality has authority to represent, vis-a-vis Boeing and El Al with respect to the Accident, and wish to cancel the Proceedings;

It is hereby agreed by the parties as follows:

Article 1 Financial settlement

1.1 In addition to the payment of NLG 5,355,379 (EUR 2,430,165) already made (the "**First Payment**"), Boeing and El Al shall pay a sum of NLG 2,189,540 (EUR 993,570), to be increased with interest in the amount of EUR 4,797.69 (provided payment is made on 1 December 2003 at the latest) (collectively the "**Final Payment**"), to the Municipality.

1.2 The First Payment and the Final Payment together constitute the total payment with respect to the settlement of the Municipality's claims vis-a-vis Boeing and El Al with respect to the Accident (the "**Total Settlement Amount**").

1.3 Within two weeks after the signing of this agreement, Boeing and El Al shall transfer the Final Payment to bank account 46.69.93.293 (ABN AMRO) in the name of *Stichting Derdengelden Nauta Dutilh* in Amsterdam, under reference of file number 5000.1375.

1.4 Payment of the Final Payment by either Boeing or El Al shall fully discharge the other party from its obligations under this Article 1.

Article 2 Withdrawal of Proceedings

2.1 After full payment of the Final Payment, the Municipality shall cancel (*doorhalen*) the Proceedings on the first possible docket date after this payment. El Al and Boeing shall co-operate in the cancellation. After the cancellation, the Proceedings shall have finally ended.

2.2 The Municipality represents that no other proceedings than the Proceedings have been instituted by the Municipality or by any municipal department or other municipal entity, including any corporation owned or controlled by the Municipality or any party whom the municipality has authority to represent including but not limited to any entity mentioned in recital b, against El Al or Boeing and that, should nevertheless any proceedings have been instituted, the Municipality will equally withdraw these proceedings or procure that such proceedings shall be withdrawn on the shortest notice possible.

2.3 The Municipality represents and warrants that it has all necessary authority to act on behalf of and to bind through the execution of this agreement all municipal departments and other municipal entities, including but not limited to all corporations owned or controlled by the Municipality, and all entities mentioned in recital b.

2.4 Parties will bear their own costs in connection with the Proceedings.

Article 3 Full settlement

3.1 The Total Settlement Amount constitutes the total payment with respect to the settlement of all of the Municipality's claims vis-a-vis Boeing and El Al in connection with the Accident. In consideration of the payment of the Total Settlement Amount, the Municipality acknowledges full and complete satisfaction and settlement of and hereby releases and forever discharges Boeing and El Al, from any and all claims, demands and causes of action of whatever kind or nature, including but not limited to those arising under the laws of the Netherlands, Washington State, Israel, or any other jurisdiction or state, whether known or unknown, suspected or unsuspected by the Municipality, which the Municipality, including all its municipal departments and authorities, now owns or holds, or has at any time heretofore owned or held, or which may hereafter accrue, on Boeing or El Al, arising out of, resulting from or relating in any manner whatsoever to the Accident, no matter whether these claims, demands and causes of action are based on facts that are currently known to the Municipality, or not, and irrespective of the legal basis of such claim, demand or cause of action. It is the intention of the Municipality that in executing this Agreement that it shall be effective as a bar to each and every claim, demand and cause of action, whether known or unknown and whether suspected or unsuspected. In furtherance of this intention, the Municipality expressly waives any and all rights and benefits conferred upon it by any law, statute or judicial decision which provides that a general release does not extend to claims which a releasor does not know or suspect to exist in its favour at the time of executing a release.

3.2 After receipt of the Total Settlement Amount, the Municipality will indemnify and hold harmless Boeing and El Al from any claim of any third party (including but not limited to the State of the Netherlands and all entities mentioned in recital b.), which is, or alleges to be, subrogated in the claims of the Municipality settled by this Agreement, or which seeks recourse in connection with that third party's contribution to the compensation of the damage suffered by the Municipality.

3.3 The Municipality represents and warrants that no portion of any claim for the loss described in Whereas under b. above has been assigned, conveyed or transferred by the Municipality to any other person or entity in any manner, including by way of subrogation or operation of law, and that there are no liens attached to the Total Settlement Amount or any portion thereof. In the event that any claim is instituted against Boeing or El Al because of any purported assignment, conveyance,

subrogation, transfer or lien, then the Municipality hereby agrees to indemnify and hold harmless Boeing and El Al against such claim as well as against the expenses incurred in defending such claim. This commitment is undertaken by the Municipality under condition that Boeing and El Al will inform the Municipality after becoming aware of any such claim, demand or suit in a timely fashion and that Boeing and El Al will keep the Municipality advised as to all material facts, circumstances and developments known to Boeing and El Al.

3.4 Article 3.1, Article 3.2 and Article 3.3. may also be invoked by all companies and other legal entities which belong to the same group of companies as to which Boeing and El Al respectively belong, as well as by the respective directors, officers, employees, agents, representatives, attorneys, insurers, re-insurers and adjusters, and all other persons, employed by, or otherwise affiliated with, Boeing and El Al respectively. For these companies, legal entities and persons (the "**Releasees**"), this clause will serve as a third party clause (*derdenbeding*). This clause is made irrevocably and for no consideration.

3.5 The aforementioned full settlement will also apply to any claim, demand or cause of action in connection with the Accident the Municipality now owns or holds, or has at any time heretofore owned or held, or which may hereafter accrue, against United Technologies Corporation and their respective subsidiary companies, affiliated entities, partners, joint ventures, contractors, subcontractors, vendors and suppliers, past, present and future , and each of them, as well as the Ministry of Transport and the Civil Aviation Administration of Israel, the Federal Aviation Administration of the United States, the Ministry of Public Housing, Public Works and Environmental Management and the Ministry of Transportation and Water Management of the Netherlands, and each of their agencies and associated organisations, including Schiphol Airport Authority and Netherlands Air Traffic Control. For each party listed above, this Release includes their respective directors, officers, employees, agents, representatives, attorneys, insurers, re-insurers and adjusters, and all other persons. For the aforementioned parties, this clause will serve as a third party clause. This clause is made irrevocably and for no consideration.

3.6 It is understood and agreed between the parties that this agreement is made as part of the compromise and settlement of disputed claims. No statement, whether oral or in writing, or action, by Boeing, El Al, or any of the Releasees, either previously or in connection with said compromise and settlement, shall be deemed or construed to be an admission by any of them of the truth or falsity of any matter pertaining to any claim, demand or cause of action referred to herein, or an acknowledgement by them, or any of them, of any fault or liability whatsoever to the Municipality or to any other person or

entity in connection with any matter or thing.

Article 4 Confidentiality

4.1 The parties may disclose the fact that any potential claims between them have been settled. However, the parties agree to maintain the confidentiality of the First Payment, the Final Payment, the Total Settlement Amount, the terms and provisions of this agreement, and the amount of the offers, counteroffers and negotiations resulting in this agreement. In case any of the parties is asked by any media about the contents of the settlement, the parties will refrain from comments other than that the settlement is considered fair to all parties involved. The preceding sentence shall not apply to disclosure by the parties to their affiliates, brokers, insurers, lawyers, accountants, agents or other representatives or to the extent that disclosure is required (i) pursuant to any statutory provision or a binding decision of a court or another government authority, the Municipal Council (*Gemeenteraad*) of the Municipality included, or (ii) to enforce the terms of this agreement. In case the Municipal Council would request disclosure of this Release of All Claims and Settlement Agreement, or any part thereof, the Municipal Council will make its best efforts to make this disclosure in a closed session, requiring confidentiality by all involved. Where possible, the disclosing party shall consult with the other party prior to disclosure about the form and contents of the disclosure.

Article 5 No dissolution, cancellation or annulment

5.1 All parties waive their rights to demand dissolution, annulment or nullification of this agreement, or to dissolve, annul or cancel this agreement out of court. Should any of the parties have erred in concluding this agreement (*hebben gedwaald bij het aangaan van deze overeenkomst*), the consequences of this error shall be borne by that party.

5.2 Should any part of this agreement prove to be null or non-binding, parties remain bound to the other parts of this agreement. Parties shall replace the annulled or non-binding part by valid and binding clauses of which the consequences, given the contents and purpose of this agreement, correspond, to the greatest extent possible, with the annulled or non-binding part.

Article 6 Applicable law and jurisdiction

6.1 This agreement is governed by Dutch law. This is a *vaststellingsovereenkomst* (settlement agreement) in the sense of article 7:900 Dutch Civil Code.

6.2 All disputes arising in connection with this agreement, including disputes concerning the existence and validity thereof, shall be resolved by the courts in Amsterdam.

This agreement was signed in triplicate in the manner set out below.

The Boeing Company
By:)
Title: Attorney-at-law
Date:

El Al Israel Airlines Ltd.
By:
Title: Attorney-at-law
Date:

The Municipality of Amsterdam
By: Mr M.J. Cohen
Title: Mayor
Date:

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Gemeente Amsterdam
VGA Verzekeringen

Afdeling schade/juridische zaken

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BEZORGEN
Gemeente Amsterdam
T.a.v. de heer mr dr G.D. Dales, wethouder
Stadhuis, kamer 3273
Amstel 1
AMSTERDAM

Datum 24 november 2003
Ons dossiernummer
Uw kenmerk
Behandeld door
Doorkiesnummer
E-mail

Bijlage 3
Onderwerp Vaststellingsovereenkomst Bijlmerramp

Geachte heer Dales,

Tot ons genoegen kunnen wij u meedelen dat tussen de gemeente Amsterdam en Boeing en El Al met betrekking tot de door de gemeente geleden schade als gevolg van de Bijlmerramp, ten langen leste een definitieve schikking is bereikt.

Wij hebben El Al en Boeing in oktober 1992 aansprakelijk gesteld voor de schade die de gemeente heeft geleden als gevolg van het neerstorten van een El Al toestel op de Bijlmermeer op 4 oktober 1992. Deze schade werd later begroot op € 9.225.093,14. Na een lange en moeizame periode van onderhandelingen met El Al en Boeing, werd overeenstemming bereikt over een aantal van de schadeposten en werd door El Al en Boeing een bedrag van € 2.430.165,04 betaald. Over het resterende bedrag werd ondanks nadere onderhandelingen geen overeenstemming bereikt. Omdat het er naar uitzag dat verder overleg geen soelaas zou bieden, is de gemeente Amsterdam overgegaan tot dagvaarding van El Al en Boeing op 5 juli 2002 teneinde deze partijen in rechte tot vergoeding van de resterende schade veroordeeld te krijgen.

Tot een inhoudelijke behandeling bij de rechter is het echter niet gekomen. Tijdens de aanloop naar de procedure zagen El Al en Boeing (en ook de gemeente) toch gronden om alsnog voort te gaan met het overleg teneinde een schikking te bewerkstelligen. Op 6 november 2002 werd door de advocaat van de gemeente een schikkingsvoorstel gedaan van ƒ 3.872.452,-
(€ 1.757.242,11) ter finale kwijting.

El Al en Boeing hebben hiermee niet akkoord willen gaan en formuleerden als tegenbod ƒ 2.189.540,-- (€ 993.570,--), te verhogen met de wettelijke rente ten bedrage van € 4.797,69. Na zorgvuldige afweging van proceskansen en -kosten, adviseerde de gemeenteadvocaat dit voorstel te accepteren aangezien dit als het best mogelijke resultaat beschouwd moet worden.
Het schikkingsvoorstel werd voorgelegd aan het College van B&W, dat vervolgens op 1 april 2003 instemde met dit voorstel.

Het schikkingsresultaat is nu vastgelegd in een vaststellingsovereenkomst, die wij u bijgaand in drievoud toesturen. Met deze vaststellingsovereenkomst wordt vastgelegd welk de gemeente toekomend schadebedrag is overeengekomen met El Al en Boeing, waartegenover staat dat door de gemeente finale kwijting wordt verleend aan El Al en Boeing na betaling van dit overeengekomen bedrag. Overigens bevat de vaststellingsovereenkomst bepalingen over de vertrouwelijkheid van de inhoud van de schikking.

Wij willen u verzoeken alle exemplaren van de vaststellingsovereenkomst aan de Burgemeester ter tekening voor te leggen en deze vervolgens te retourneren.
Na ondertekening door alle partijen, zal de financiële afwikkeling plaatsvinden.

Het dossier wordt nog niet gesloten; nu deze schikking is bereikt, kunnen de besprekingen met het Rampenfonds (Ministerie van Binnenlandse Zaken) worden voortgezet. Wij hebben de Gemeenteadvocaat geïnstrueerd hiermee zo snel mogelijk voort te gaan.

Hoogachtend,

Gemeentelijke Dienst Verzekeringszaken

w/o

mr E.H. Timmer, directie

cc. Concernfinanciën, de heer A.S. de Koning