

Torres Rojas, Genara

FOJ#13678

From: susan.scott@us.bbaaviation.com
Sent: Monday, January 07, 2013 9:14 AM
To: Duffy, Daniel
Cc: Torres Rojas, Genara; Van Duyne, Sheree
Subject: Freedom of Information Online Request Form

Information:

First Name: Susan
Last Name: Scott
Company: BBA Aviation USA Inc.
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Mailing Address 2: Suite 1290
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State: FL
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Email Address: susan.scott@us.bbaaviation.com
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Required copies of the records: Yes

List of specific record(s):

A copy of the current lease and operating agreement including all exhibits, attachments, amendments, etc for operation of an FBO fixed base operation between The Port Authority of New York and New Jersey and Sheltair for at John F. Kennedy International Airport

THE PORT AUTHORITY OF NY & NJ

FOI Administrator

April 12, 2013

Ms. Susan Scott
BBA Aviation USA Inc.
201 South Orange Avenue, Suite 1290
Orlando, FL 32801

Re: Freedom of Information Reference No. 13678

Dear Ms. Scott:

This is a response to your January 7, 2013 request, which has been processed under the Port Authority's Freedom of Information Code (the "Code") for a copy of the current lease and operating agreement including all exhibits, attachments, amendmnets for operation of an FBO fixed base operation between the Port Authority and Sheltair for JFK.

Material responsive to your request and available under the Code can be found on the Port Authority's website at <http://www.panynj.gov/corporate-information/foi/13678-LPA.pdf>. Paper copies of the available records are available upon request.

Certain material responsive to your request is exempt from disclosure pursuant to exemptions (1), (2.a.) and (4) of the Code.

Please refer to the above FOI reference number in any future correspondence relating to your request.

Very truly yours,



Daniel D. Duffy
FOI Administrator

*225 Park Avenue South, 17th Floor
New York, NY 10003
T: 212 435 3642
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THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY
FIXED BASE OPERATOR LEASE

AGREEMENT OF LEASE

Between

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

And

SHELTAIR AVIATION JFK, LLC

Date: As of July 1, 2011

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Exhibit A	Premises – Area A (Enclosed area)
Exhibit B	Premises- Area B (Enclosed area)
Exhibit C	Premises- Area C (Ramp/Apron)
Exhibit D	Premises- Area D (Parking)
Exhibit E	Environmental Baseline Report dated April 2011
Schedule E	Affirmative Action – Equal Opportunity – Minority Business Enterprises - Women-Owned Business Enterprises Requirements
Schedule F	Local Business Enterprises Commitment

Agreement No. AYE-083

LEASE AGREEMENT

THIS AGREEMENT, dated and effective as of July 1, 2011, by and between the PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called the "Port Authority"), a body corporate and politic established by Compact between the States of New Jersey and New York with the consent of the Congress of the United States of America, and having an office at 225 Park Avenue South, in the Borough of Manhattan, in the City, County and State of New York 10003, and SheltAir Aviation, JFK, LLC, a limited liability company organized and existing under the laws of the State of Florida, with its principal executive offices at 90 Arrival Avenue, Suite 18, Ronkonkoma, New York 11779 (hereinafter called the "Operator"), whose representative is John Schmatz, President.

WITNESSETH, That:

The Port Authority and the Operator for and in consideration of the rents, covenants and mutual agreements hereinafter contained, hereby agree as follows:

Section 1. Definitions.

The following terms, when used in this Agreement, shall, unless the context shall require otherwise, have the respective meanings given below.

"Adjustment Period" shall have the meaning set forth in paragraph (b) of the Section hereof entitled "*Rentals and Payments*".

"Affiliate" shall mean any Person that directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Operator, and any Person in which the Operator or a shareholder of the Operator has an ownership, licensor/licensee or franchiser/franchisee interest or relationship, but if the Operator shall be a corporation whose voting securities shall be registered with the Securities and Exchange Commission and publicly traded on a regular basis then only such shareholder of the Operator having an ownership interest greater than five percent (5%). As used in this definition, the term "control" (including the terms controlling, controlled by and under common control with) shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the Person, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" shall mean this Agreement of Lease.

“Aircraft Operator” shall mean (a) a Person owning one or more aircraft which are not leased or chartered to any other Person for operation; or (b) a Person to whom one or more aircraft are leased or chartered for operation whether the aircraft so owned, leased or chartered are military or non-military, or are used for private business, pleasure or governmental business, or for carrier or non-carrier operations, or for scheduled or non-scheduled operations or otherwise. Said phrase shall not mean the pilot of an aircraft unless he or she is also the owner or lessee thereof or a Person to whom it is chartered.

“Airport” shall mean John F. Kennedy International Airport in the County of Queens, City and State of New York.

“Anniversary Date” shall have the meaning set forth in paragraph (b) of the Section hereof entitled “*Rentals and Payments*”.

“Annual Index Increase” shall have the meaning set forth in paragraph (b) of the Section hereof entitled “*Rentals and Payments*”.

“Annual Period” shall have the meaning set forth in paragraph (e) of the Section hereof entitled “*Rentals and Payments*”.

“Assignment” shall have the meaning set forth in paragraph (a) of the Section hereof entitled “*Assignment and Subletting*”.

“Basic Lease” shall mean the Amended and Restated Agreement of Lease between The City of New York, as landlord, and the Port Authority, as tenant, dated as of November 24, 2004, as the same from time to time may be supplemented or amended and/or restated. Said agreement dated as of November 24, 2004, has been recorded in the Office of the Register of The City of New York, County of Queens, on December 3, 2004 with a City Register File Number of 2004000748687.

“Chargeable Aircraft” shall have the meaning set forth in the Section hereof entitled “*Collection of Port Authority Fees and Charges*”.

“City” and “City of New York” shall mean the municipal corporation of the State of New York known as The City of New York.

“Civil Aircraft Operator” shall mean a Person engaged in civil transportation by aircraft or otherwise operating aircraft for civilian purposes, whether governmental or private. If any such Person is also engaged in the operation of aircraft for military, naval or air force purposes, such Person shall be deemed to be a Civil Aircraft Operator only to the extent that such Person engages in the operation of aircraft for civilian purposes.

“Claim” and “Claims” shall have the meaning set forth in the Section of this Agreement entitled “*Storage Tanks*”.

“Commencement Date” shall mean the earlier to occur of the following: (a) the date gross receipts (as herein defined) are first generated in or from the Premises by the Operator or (b) ~~September~~ 1, 2011. *JJ 8*
~~October~~

“Contractor” shall have the meaning set forth in Schedule E.

“Customer’s Aircraft” shall have the meaning set forth in the Section of this Agreement entitled “*Services by the Operator*”.

“Discharge” shall have the meaning set forth in the Section of this Agreement entitled “*Storage Tanks*”.

“EEO” shall have the meaning set forth in Schedule E.

“Effective Date” shall mean the date of this Agreement.

“Environmental Damages” shall mean any one or more of the following: (i) the presence in, on, or under the Premises of any Hazardous Substance whether such presence occurred prior to or during the term of the letting under this Agreement or resulted from any act or omission of the Operator or others, and/or (ii) the disposal, discharge, release or threatened release of any Hazardous Substance from the Premises or of any Hazardous Substance from under the Premises and/or (iii) the presence of any Hazardous Substance in, on or under other property at the Airport as a result of (x) the Operator’s use and occupancy of the Premises or the performance of the construction work or any other work or activities at the Premises or (y) a migration of a Hazardous Substance from the Premises or from under the Premises or (z) the Operator’s operations at the Airport, and/or (iv) any personal injury, including wrongful death, or property damage, arising out of or related to any Hazardous Substance described in (i), (ii) or (iii) above, and/or (v) the violation of any Environmental Requirement pertaining to any Hazardous Substance described in (i), (ii) or (iii) above, the Premises and/or the activities thereon.

“Environmental Requirements” shall mean all common law and all past, present and future laws, statutes, enactments, resolutions, regulations, rules, directives, ordinances, codes, licenses, permits, orders, memoranda of understanding and memoranda of agreement, guidances, approvals, plans, authorizations, concessions, franchises, requirements and similar items of all governmental agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof, all pollution prevention programs, “best management practices plans”, and other programs adopted and agreements made by the Port Authority with any governmental agencies (whether adopted or made with or without consideration or with or without compulsion), with any government agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof, and all judicial, administrative, voluntary and regulatory decrees, judgments, orders and agreements relating to the protection of human health or the environment, and in the event that there shall be more than one compliance standard, the standard for any of the foregoing to be that which requires the lowest level of a Hazardous Substance, the foregoing to include without limitation:

- (i) All requirements pertaining to reporting, licensing, permitting, investigation and remediation of emissions, discharges, releases or threatened releases of Hazardous Substances into the air, surface water, groundwater or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances, or the transfer of property on which Hazardous Substances exist;
- (ii) All requirements pertaining to the protection from Hazardous Substances of the health and safety of employees or the public; and
- (iii) The Atomic Energy Act of 1954, 42 U.S.C. Section 2011 et seq.; the Clean Water Act also known as the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq.; the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Section 2701 et seq.; the Emergency Planning and Community Right to Know Act, 42 U.S.C. Section 11001 et seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Safe Drinking Water Act of 1974, 42 U.S.C. Sections 300f-300h-11 et seq.; the New York State Environmental Conservation Law; the New York State Navigation Law; together, in each case, with any amendment thereto, and the regulations adopted, guidances, memoranda and publications promulgated thereunder and all substitutions thereof.

"Equal Employment Opportunity" or "EEO" shall have the meaning set forth in Schedule E.

"Expiration Date" shall have the meaning set forth in the Section of this Agreement entitled "Term".

"FAA" shall mean the Federal Aviation Administration of the United States and any successor thereto.

"Fixed Base Operation" shall have the meaning set forth in the Section hereof entitled "*Rights of User*".

"Fixed Rental" shall have the meaning set forth in the Section hereof entitled "*Rentals and Payments*".

"Fueling Service" shall have the meaning set forth in paragraph (e) of the Section hereof entitled "*Services by the Operator*".

"Fuel Storage Operator Agreement" shall have the meaning set forth in paragraph (e) of the Section hereof entitled "*Services by the Operator*".

“Fuel Storage Permit” shall have the meaning set forth in paragraph (e) of the Section hereof entitled “*Services by the Operator*”.

“General Aviation Aircraft Operators” shall mean non-scheduled commuter aircraft operators, air taxi, general aviation, and itinerant aircraft operators, and charter aircraft operators operating general aviation aircraft certificated by the Federal Aviation Administration. The terms “general Aviation”, “air taxi”, “itinerant”, and “non-scheduled commuter” as used to describe aircraft or aircraft operations shall have the meaning ascribed by the Federal Aviation Regulations or, if there be none, common usage in the aviation industry.

“General Aviation Terminal” or “Terminal” or “Building” shall mean Building No. 145 at the Airport.

“General Manager of the Airport” shall mean the person or persons from time to time designated by the Port Authority to exercise the powers and functions vested in the said General Manager by this Agreement; but until further notice from the Port Authority to the Operator it shall mean the General Manager (or the temporary or acting General Manager) of the Airport for the time being, or his duly designated representative or representatives.

“Governmental Authority”, “Governmental Board” and “Governmental Agency” shall mean federal, state, municipal and other governmental authorities, boards and agencies of any state, nation or government, except that it shall not be construed to include the Port Authority of New York and New Jersey, the lessor under this Agreement.

“Gross receipts” as used in this Agreement shall include all monies paid or payable to the Operator for sales made and for services rendered at or from the Airport, regardless of the time or place of receipt of the order therefor, and for sales made and for services rendered outside the Airport, if the order therefor is received at the Airport, and shall include, by way of example, any other revenues of any type arising out of or in connection with the activities of the Operator at the Airport including, but not limited to, each and every sale made or service rendered, allowances of every kind (including but not limited to trade-ins made by the Operator to its customers), and including all fees and commissions paid to the Operator on sales of aircraft, and the “Operator’s profits on sales of aircraft” by the Operator (as hereinafter defined), and including all monies paid or payable to the Operator for any charter and leasing of aircraft permitted hereunder, and shall also include any other revenues of any type arising out of or in connection with the activities of the Operator the Airport; provided, however, that the following shall be excluded from gross receipts: (i) charges collected by the Operator on behalf of the Port Authority as set forth in the Section of this Agreement entitled “*Collection of Port Authority Fees and Charges*” hereof; and (ii) and any taxes imposed by law which are separately stated to and paid by customers of the Operator and directly remitted by the Operator to the taxing or to a tax collecting authority. Without limiting the requirement for Port Authority approval, if the Operator conducts any service, operation or any other permitted use under this Agreement through the use of a contractor, and (i) the payments for any of the foregoing are made to the contractor; and (ii) said contractor does not pay fees to the Port Authority based on the receipt of such payments pursuant to an executed agreement between said contractor and the Port

Authority, then said payments received by the contractor shall be deemed a part of gross receipts as if made to the Operator. Where, however, Operator provides services to its customers and charges only an administrative fee with respect thereto, said administrative fee being the only income to Operator with respect to said service, said Gross Receipts attributable to the provision by Operator of said services shall be limited solely to the administrative fee charged therefor. As used herein, the term "Operator's profits on sales of aircraft" shall mean the profits earned by the Operator on sales of aircraft determined in accordance with generally accepted accounting principles consistently applied by the Operator.

"Hazardous Substance" shall mean any pollutant, contaminant, toxic or hazardous waste, dangerous substance, noxious substance, toxic substance, flammable, explosive or radioactive material, urea formaldehyde foam insulation, asbestos, polychlorinated biphenyls ("PCBs"), chemicals known to cause cancer, endocrine disruption or reproductive toxicity, petroleum and petroleum products and other substances which have been or in the future shall be declared to be hazardous or toxic, or the removal, containment or restriction of which have been or in the future shall be required, or the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling or ownership of which have or in the future shall be restricted, prohibited, regulated or penalized by any federal, state, county, or municipal or other local statute or law now or at any time hereafter in effect as amended or supplemented and by the regulations adopted and publications promulgated pursuant thereto.

"Index" shall have the meaning set forth in paragraph (b) of the Section hereof entitled "*Rentals and Payments*".

"Letting" shall mean the letting under this Agreement for the original term stated herein, and shall include any extension hereof.

"Local Business Enterprise" or "LBE" shall have the meaning set forth in Schedule F attached hereto.

"Meaningful Participation" shall have the meaning set forth in Schedule E hereof.

"Minority" shall have the meaning set forth in Schedule E hereof.

"Minority Business Enterprise" or "MBE" shall have the meaning set forth in Schedule E.

"Operator" shall have the meaning set forth in the preamble to this Agreement.

"Percentage Increase" shall have the meaning set forth in paragraph (b) of the Section hereof entitled "*Rentals and Payments*".

"Person" shall mean not only a natural person, corporation or other legal entity, but also two or more natural persons, corporations or other legal entities acting jointly as a firm, partnership, unincorporated association, consortium, joint venturers or otherwise.

“Port Authority” shall mean The Port Authority of New York and New Jersey, a body corporate and politic, established by Compact between the States of New Jersey and New York with the consent of the Congress of the United States of America (“Compact”).

“Port of New York District” shall have the meaning set forth in Article II of the Compact.

“Premises” shall have the meaning set forth in the Section hereof entitled “*Letting*”.

“Public Aircraft Facilities” or “PAF” shall mean the following facilities, as they may from time to time be provided and maintained by the Port Authority at the Airport for public and common use, including use by Civil Aircraft Operators, for the following purposes and which (except by reason of any of the things mentioned in the Section hereof entitled “Force Majeure”) are usable for such purposes, regardless of whether or not they are actually used or usable in whole or in part by the Operator:

(a) Public Aircraft Parking and Storage Space-by which is meant space for the purpose of parking and storing Aircraft, for the purpose of servicing of aircraft with fuel and lubricants and other supplies for use thereon, and for the purpose of making minor or emergency repairs to aircraft.

(b) Public Ramp and Apron Space-by which is meant space for the purpose of loading and unloading of passengers, baggage, cargo, mail and supplies to or from aircraft, for the purpose of servicing aircraft with fuel and lubricants, for the purpose of performing the operations commonly known as “ramp service,” and for the purpose of performing inspection, minor maintenance and other services upon or in connection with aircraft incidental to performing “ramp service,” and for the purpose of parking of mobile equipment actively used in connection with such operations.

(c) Runways-by which is meant runways (including aerial approaches) at the Airport for the purpose of the landing and taking-off of aircraft.

(d) Taxiways-by which is meant taxiways at the Airport for the purpose of the ground movement of Aircraft to, from and between the Runways, the Public Ramp and Apron Space, the Public Aircraft Parking and Storage Space and other portions of the Airport (not including, however, any taxilanes, the exclusive use of which is granted to the Operator or any other Person by lease, permit or otherwise).

(e) Facilities Incidental to the Runways, Public Ramp and Apron Space, Public Aircraft Parking and Storage Space and Taxiways-by which is meant facilities for the purpose of controlling or assisting arrivals, departures and operation of aircraft using the Airport, such as control towers, signals, beacons, wind indicators, flood lights, landing lights, boundary lights, obstruction lights, navigation lights, radio and electronic aids, or other aids to operation, navigation or ground control of aircraft, whether or not of a type hereinbefore enumerated, and even though located at sites away from the other Public Aircraft Facilities or outside the Airport.

The designation by the Port Authority, by its Rules and Regulations (as published in the "Air Terminal Rules and Regulations" issued or dated March 2002, and such reasonable future Rules and Regulations of the Port Authority, including amendments and supplements thereto), of particular portions of the Public Aircraft Parking and Storage Space or the Public Ramp and Apron Space for use by aircraft of particular Aircraft Operators or for use by particular types of aircraft or for use for particular operations shall not affect the status of such space as Public Aircraft Facilities. Space or facilities especially provided for or reserved for the landing and taking off of helicopters or dirigibles or other lighter-than-air aircraft shall be deemed to be a part of the Public Aircraft Facilities.

"Schedule of Charges" shall mean the Schedule of Charges for Air Terminals published by the Port Authority from time to time.

"Scheduled Aircraft Operator" shall mean a Civil Aircraft Operator engaged in transportation by aircraft operated wholly or in part on regular flights to and from the Airport in accordance with published schedules; but so long as the Federal Aviation Act of 1958, or any similar federal statute providing for the issuance of Foreign Air Carrier Permits or Certificates of Public Convenience and Necessity or substantially similar permits or certificates, is in effect, no person shall be deemed to be a Scheduled Aircraft Operator within the meaning of this Agreement unless he also holds such a permit or certificate.

"Sublease" shall have the meaning set forth in paragraph (a) of the Section hereof entitled "*Assignment and Subletting*".

"Sublease Payments" shall have the meaning set forth in paragraph (f) of the Section hereof entitled "*Rentals and Payments*".

"Subletting Rental" shall have the meaning set forth in paragraph (f) of the Section hereof entitled "*Rentals and Payments*".

"Tank" or "Tanks" shall have the meaning set forth in the Section of this Agreement entitled "*Storage Tanks*".

"Term" shall have the meaning set forth in the Section of this Agreement entitled "*Term*".

"Transfer" shall have the meaning set forth in paragraph (a) of the Section hereof entitled "*Assignment and Subletting*".

"Unscheduled operations" or "non-scheduled operations" shall mean any common carriage passenger-carrying operation for compensation or hire, using aircraft designed for at least 31 passenger seats, conducted by an air carrier for which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative. It includes any passenger-carrying supplemental operation conducted under 14 CFR part 121 and any passenger-carrying public charter operation conducted under 14 CFR part 380.

“User’s Charges” shall have the meaning set forth in the Section hereof entitled “*Collection of Port Authority Fees and Charges*”.

“Women-Owned Business Enterprise” or “WBE” shall have the meaning set forth in Schedule E.

Section 2. Letting

(a) Subject to the fulfillment of the condition precedent to the letting hereunder set forth in paragraph (b) of Section 3, below, and the commencement of the Term as provided in paragraph (a) of Section 3, below, the Port Authority hereby lets to the Operator and the Operator hereby hires and takes from the Port Authority, at the Airport, the following described premises:

(1) The space on the first floor of the Terminal (Building No. 145) as shown in hatching on the sketch attached hereto, hereby made a part hereof and marked “Exhibit A” (hereinafter called “Area A”); and

(2) The space on the first floor of the Terminal (Building No. 145) as shown in hatching on the sketch attached hereto, hereby made a part hereof and marked “Exhibit B” (hereinafter called “Area B”); and

(3) The outside ground area shown in broken-line hatching on the sketch attached hereto, hereby made a part hereof and marked “Exhibit C” (hereinafter called “Area C”), and

(4) The outside, paved ground area shown in broken-line hatching on the sketch attached hereto, hereby made a part hereof and marked “Exhibit D” (hereinafter called “Area D”),

together with all buildings, structures, fixtures, improvements and other property of the Port Authority located therein, thereon or thereunder, and all structures, improvements, additions, buildings, installations and facilities located, constructed or installed, or which may be located, constructed or installed therein, thereon or thereunder, and the equipment permanently affixed or permanently located therein, such as electrical, plumbing, sprinkler, fire protection and fire alarm, heating, steam, sewage, drainage, refrigerating, communications, gas and other systems, and their pipes, wires, mains, lines, tubes, conduits, equipment and fixtures, and all paving, drains, culverts, ditches and catch-basins constructed therein, thereon or thereunder as of the Effective Date (all of the foregoing, collectively, the “Premises”).

(b) The Operator hereby acknowledges that the Premises let hereunder constitutes non-residential real property.

(c) Except to the extent required for the performance of any of the obligations of the Operator hereunder, nothing contained in this Agreement shall grant to the Operator any rights

whatsoever in the air space above the Premises above the heights of the structures thereon as of the Effective Date.

Section 3. Term

(a) Subject to the provisions of paragraph (b), below, the term of the letting under this Agreement (the "Term") shall commence on the Commencement Date and shall expire on the last day of the sixtieth (60th) calendar month thereafter (as such date of expiration may be extended pursuant to the following paragraph 3(b), the "Expiration Date"), unless sooner terminated in accordance with the terms and provisions of this Agreement.

(b) The Port Authority shall have the right and option, but not the obligation, to extend the Term for one period of five years, upon the same terms as are in effect immediately preceding the period for which such option is exercised; provided, however, the annual Fixed Rental shall be increased as set forth in the Section hereof entitled "*Rentals and Payments*" and said annual Fixed Rental shall be payable in equal, monthly installments each and every month. There shall be no right and option to extend the Term beyond the expiration of the said five-year period for which such option is exercisable. Upon the exercise of any such option, which exercise shall be by notice in writing to the Operator prior to the period for which the option is exercised, the Term shall be deemed extended without the further execution of any further agreement or other instrument.

Section 4. Rentals and Payments

(a) The Operator shall pay a fixed rental ("Fixed Rental") during the Term in the following amounts:

(i) Area A:

An annual office space rental at the rate of (Ex. 2.a.)
which rental shall be paid in advance in equal monthly installments of
on the Commencement Date and on the first day of each and every month thereafter during the balance of the Term, subject to annual escalation as herein provided in this paragraph; provided, however, that if the Commencement Date shall be, or this Agreement shall expire or be terminated on other than, the first day or the last day of the month, respectively, the Fixed Rental for the portion of the month in which this Agreement is effective shall be the monthly installment pro-rated on a daily basis using the actual number of days in the month. The Fixed Rental set forth in this paragraph shall be increased by (Ex. 2.a.) on the first anniversary of the Commencement Date and on each anniversary of the Commencement Date thereafter during the balance of the Term.

(ii) Area B:

An annual office space rental at the rate of (Ex. 2.a.)
which rental shall be paid in advance in equal monthly installments of
on the Commencement Date and on the first day of each

and every month thereafter during the balance of the Term, subject to annual escalation as herein provided in this paragraph; provided, however, that if the Commencement Date shall be, or this Agreement shall expire or be terminated on other than, the first day or the last day of the month, respectively, the fixed rental for the portion of the month in which this Agreement is effective shall be the monthly installment pro-rated on a daily basis using the actual number of days in the month. The Fixed Rental set forth in this paragraph shall be increased by two percent (2%) on the first anniversary of the Commencement Date and on each anniversary of the Commencement Date thereafter during the balance of the Term.

(iii) Areas C and D:

(A) During the period from the Commencement Date through the day preceding the first anniversary of the Commencement Date, the Operator shall pay Fixed Rentals for Areas C and D as follows:

An annual ground rental at the rate of (Ex. 2.a.)
which rental shall be paid in advance in
equal monthly installments of
on the Commencement Date and on the first day of each
and every month thereafter during said period.

(B) Commencing on the first anniversary of the Commencement Date, and on each anniversary of the Commencement Date thereafter throughout the Term, the Fixed Rentals for Areas C and D shall be escalated at annual rates in accordance with the provisions of the following paragraphs (b) and (c), below, payable in equal monthly installments on the first day of each calendar month.

(b) Rental Escalation Definitions. As used in this Section:

(i) "Adjustment Period" shall mean, as the context requires, the calendar month constituting the Base Period and the same calendar month in each calendar year thereafter during the Term.

(ii) "Anniversary Date" shall mean, as the context requires, the first anniversary of the Commencement Date (the "First Anniversary Date") and each anniversary of such date occurring during the Term.

(iii) "Annual Index Increase" shall mean the percentage of increase in the Index on each Anniversary Date equal to: (x) with respect to the First Anniversary Date, a fraction of which the numerator shall be the Index for the Adjustment Period immediately preceding such Anniversary Date less the Index for the Base Period, and the denominator shall be the Index for the Base Period; and (y) with respect to each Anniversary Date thereafter, a fraction of which the numerator shall be the Index for the Adjustment Period immediately preceding such Anniversary Date less the Index for the next preceding Adjustment Period, and the denominator shall be the Index for such next preceding Adjustment Period.

(iv) "Base Period" shall mean June 2011.

(v) "Index" shall mean the Consumer Price Index for All Urban Consumers - New York-Northern New Jersey-Long Island, NY-NJ-CT (All Items, unadjusted 1982-84=100) published by the Bureau of Labor Statistics of the United States Department of Labor.

(vi) "Percentage Increase" shall mean, with respect to each Anniversary Date, a percentage equal to fifty percent (50%) of Annual Index Increase for that Anniversary Date, unless such Annual Index Increase is less than four percent (4%) percent, in which case the Percentage Increase shall be four percent (4%).

(c) Annual Increases. Commencing on the First Anniversary Date and for the period commencing with such Anniversary Date and continuing through to the day preceding the next Anniversary Date, or the Expiration Date, as the case may be, the Operator shall pay a Fixed Rentals for each of Areas C and D at a rate per annum equal to the sum of the following: (x) the Fixed Rental theretofore payable; and (y) the product obtained by multiplying such theretofore payable Fixed Rental by one hundred percent (100%) of the Percentage Increase for such Anniversary Date.

(d) Adjustments.

(i) In the event the Index to be used in computing any increase referred to in paragraph (c) of this Section is not available on the effective date of such increase, the Operator shall continue to pay the Fixed Rental at the annual rate then in effect, subject to retroactive increase at such time as the specified Index becomes available; provided, however, that the Port Authority may at its option substitute for such Index the Index for the latest preceding month then published to constitute the specified Index. In the event the United States Consumer Price Index for All Urban Consumers - New York-Northern New Jersey-Long Island, NY-NJ-CT (All Items, unadjusted 1982-84=100) shall hereafter be converted to a different standard reference base or otherwise revised, or the United States Department of Labor shall cease to publish the United States Consumer Price Index for All Urban Consumers - New York-Northern New Jersey-Long Island, NY-NJ-CT (All Items, unadjusted 1982-84=100), then for the purposes hereof there shall be substituted for the Index such other appropriate index or indices properly reflecting changes in the value of current United States money in a manner similar to that established in the Index used in the latest increase as the Port Authority may in its discretion determine.

(ii) If, after an increase in Fixed Rental shall have been fixed for any period, the Index used for computing such increase is changed or adjusted, then the rental increase for that period shall be recomputed, and from and after notification of the change or adjustment, the Operator shall make payments based upon the recomputed rental and upon demand shall pay any excess in the Fixed Rental due for such period, as recomputed, over amounts theretofore actually paid on account of the Fixed Rental for such period. If such change or adjustment results in a reduction in the Fixed Rental due for any period prior to notification, the Port Authority will credit the Operator with the difference between the Fixed Rental as recomputed for that period and amounts of Fixed Rental actually paid.

(iii) If any increase in Fixed Rental referred to in paragraph (c) of this Section is effective on a day other than the first day of a calendar month, there shall be payable in advance on the effective date of such rental increase an installment of Fixed Rental equal to 1/12th of the increment of annual Fixed Rental as increased, multiplied by a fraction of which the numerator shall be the number of days from the effective date of the rental increase to the end of the calendar month in which the rental increase became effective and the denominator shall be the number of days in that calendar month.

(e) Percentage Rental.

(i) The Operator shall pay to the Port Authority an annual percentage rental during the Term equivalent to the sum of the percentage rent due during each of the twelve monthly periods comprising each annual period, with the percentage rent that is to be calculated each monthly period being a function of the number of gallons of aviation fuel sold by the Operator during each of such twelve monthly periods, as follows:

<u>Percentage of gross receipts</u>	<u># Gallons Aviation Fuel Sold During Monthly Period</u>
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(Ex. 2.a.)

The percentage rental shall be a percentage of the Operator's gross receipts arising during each monthly period of each annual period during the Term; provided, however, that the annual percentage rental relating specifically to the

(Ex. 2.a.)

The computation of percentage rental for each annual period, or a portion of an annual period, as hereinafter provided, shall be individual to such annual period, or such portion of an annual period, and without relation to any other annual period, or any other portion of any annual period.

(ii) "Annual period" for purposes of this Section 3(e) shall mean, as the context requires, the twelve-month period commencing with the Commencement Date established pursuant to the provisions of this Agreement and each of the twelve-month periods thereafter occurring during the term of the letting; provided, however, that if the Commencement Date occurs on other than the first day of a calendar month, the first annual period shall include the portion of the month in which the Commencement Date falls following such date plus the succeeding twelve (12) calendar months and each subsequent annual period shall commence on

the anniversaries of the first day of the first full calendar month following the month in which the Commencement Date occurs.

(f) Time of Payment of Percentage Payment, Computations of Amounts and Accounting.

(i) The Operator shall pay the percentage payment as follows: on the 20th day of the first month following the commencement of each annual period, and on the 20th day of each and every month thereafter, including the month following the end of each annual period, the Operator shall render to the Port Authority a sworn statement from a responsible fiscal officer of the Operator showing: (x) the Operator's gross receipts for the preceding month with respect to each type of good and service provided by the Operator at the Airport, including the applicable percentage fee relating thereto and the calculation of the percentage rent due on such gross receipts; and (y) the cumulative amount of the Operator's gross receipts with respect to each type of good and service provided by the Operator at the Airport from the commencement of the annual period for which the report is made through the last day of the preceding month, including the applicable percentage rent relating thereto and the calculation of the percentage fee due on such gross receipts, from the commencement of the annual period for which the report is made through the last day of the preceding month. The Operator's statement following the close of each annual period shall be certified at the Operator's expense, and shall report total gross receipts for such annual period and the total percentage rental due therefor, designating same by each good/service and in the aggregate. In the event the report shows that the Operator has underpaid the Port Authority, the amount payable to the Port Authority shall be rendered by the Operator at the time such report is made. In the event the report shows that the Operator has overpaid the Port Authority, the Port Authority shall credit the Operator in that amount.

(ii) Upon any termination of this Agreement (even if stated to have the same effect as expiration), the Operator shall, within twenty (20) days after the effective date of such termination, make a percentage rent payment and render to the Port Authority monthly and annual statements consistent with the requirements of subparagraph (i), above.

(g) Abatement.

In the event that the Operator shall become entitled to an abatement of the annual Fixed Rental by the provisions of this Agreement or otherwise, the abatement of rental shall be made on an equitable basis giving effect to the amount and character of the space, the use of which is denied the Operator as compared with the entire Premises (it being understood that there shall be no abatement of rentals under this Agreement for any portion of the Premises or for any portion of the term except as specifically provided herein).

(h) (i) In the event any Person other than the Operator uses or occupies any portion of the Premises other than in the capacity as customers of the Operator as contemplated hereunder, then the Operator shall pay to the Port Authority, in addition to all other rental payable hereunder, a rental (the "Subletting Rental") as described in subparagraph (iii), below. The Operator shall pay to the Port Authority the Subletting Rental with respect to each and every Person who occupies or uses any portion of Premises, notwithstanding any failure of any party to

execute a written consent agreement covering the Port Authority's consent to such occupancy or use, as required pursuant to the Section hereof entitled "*Assignment and Sublease*".

(ii) It is hereby expressly understood and agreed that neither this paragraph (h) nor anything contained herein, nor any payment(s) made or required to be made hereunder shall be deemed to grant any right or rights to the Operator to sublet the Premises or any portion thereof or to permit any Person other than the Operator to use or occupy the Premises or to impose or create any obligation on the Port Authority or to alter, expand or waive the terms and provisions of the Section hereof entitled "*Assignment and Sublease*", including the requirements for the prior written consent of the Port Authority and the execution of a consent agreement, or to release or relieve the Operator from any of the obligations and liabilities under this Agreement with respect to any such sublessee, user or occupant.

(iii) (1) "Sublease Payments" shall include all amounts, monies, revenues, receipts and income of every kind paid or payable to the Operator by the sublessee, and if and to the extent that the full fair market rental value is not charged to or payable by the sublessee, then the fair market rental value as determined by the Port Authority, arising out of or in connection with the sublessee's use and/or occupancy of the subleased space; and if the Sublease Payments are not separately stated from other charges paid or payable by the sublessee to the Operator, then the fair market rental value, as determined by the Port Authority, of the subleased space used and/or occupied by the sublessee shall be deemed to have been paid or payable to the Operator by the sublessee and shall constitute Sublease Payments hereunder.

(2) Effective as of the Commencement Date, the Operator and the sublessee as a joint and several obligation shall pay to the Port Authority a Subletting Rental as follows: on the 20th day of each and every calendar month during the time the subtenancy shall remain in effect and including the calendar month following the expiration or earlier termination of such subtenancy, the Operator or the sublessee shall render to the Port Authority a statement sworn to by a responsible fiscal or executive officer of the Operator or the sublessee showing all the Sublease Payments paid or payable for the preceding month and the Operator or the sublessee shall pay to the Port Authority at the time of rendering such statement an amount equal to ten percent (10%) of the Sublease Payments paid or payable for such preceding month; provided, however, if the subtenancy shall expire or be terminated effective on a day other than the last day of a calendar month, the final payment of the Subletting Rental shall be due and payable within five (5) days after the effective date of such expiration or termination. Payments made hereunder shall be made to the Port Authority in accordance with the Section hereof entitled "*Place of Payments*".

(3) The obligation of the sublessee to pay the Subletting Rental shall be and be deemed a promise to pay a sum of money by the sublessee to the Port Authority and shall be recoverable by the Port Authority from the sublessee in the same manner and with like remedies as a sum of money owed to the Port Authority; provided, however, nothing herein shall preclude the Port Authority from joining the sublessee in a summary proceeding against the Operator.

(4) In connection with the payment of the Subletting Rental hereunder, the Operator and the sublessee shall each, from and after the effective date of the relevant sublease and through the remainder of the time the Port Authority's consent thereto remains in effect, maintain in accordance with accepted accounting practice, for one (1) year after expiration or earlier termination thereof, and for a further period extending until the Operator shall receive written permission from the Port Authority to do otherwise, records and books of account recording all transactions in any wise connected with the sublease and the sublessee's use and occupancy of the subleased space, which records and books of account shall be kept at all times within the Port of New York District. Further the Operator and the sublessee shall each permit in ordinary business hours during the time the sublease shall remain in effect, and for one year thereafter, the examination and audit by the officers, employees and representatives of the Port Authority of such records and books of account.

Section 5. Obligations in Connection with the Conduct of the Operator's Business

The Operator shall:

- (a) use its best efforts in every proper manner to maintain, develop and increase the business conducted by it hereunder;
- (b) not divert or cause or consent to be diverted, any business from the Airport;
- (c) maintain in accordance with accepted accounting practice during the term of this Agreement and for one (1) year thereafter and for such further period until the Operator shall receive written permission from the Port Authority to do otherwise, records and books of account recording all transactions at, through or in anywise connected with the Airport, which records and books of account shall be kept at all times within the Port of New York District;
- (d) permit in ordinary business hours during the Term and for one (1) year thereafter and during such further period as is mentioned in the preceding subdivision, the examination and audit by the officers, employees and representatives of the Port Authority of such records and books of account and also any records and books of account of any company which owns or controls, is controlled by, or is under common control with, the Operator, if said company performs services, similar to those performed by the Operator, anywhere in the Port of New York District;
- (e) permit the inspection by the officers, employees, and representatives of the Port Authority of any equipment used by the Operator, including but not limited to cash registers;
- (f) furnish on or before the twentieth day of each calendar month following the month in which the Commencement Date falls a sworn statement of gross receipts arising hereunder during the preceding month, and furnish within twenty (20) days after the expiration or termination of the letting a statement of all the gross receipts arising hereunder during the period from the last preceding anniversary date of this Agreement up to the date of expiration or

termination, said statement to be certified, at the Operator's expense, by a certified public accountant;

(g) install and use such cash registers, sales slips, invoicing machines and any other equipment or devices for recording orders taken or services rendered as may be appropriate to the Operator's business and necessary or desirable to keep accurate records of gross receipts; and

(h) provide to the Port Authority from time to time such information, data and reports concerning the Operator's operations under this Agreement as the Port Authority may request and on such forms as may be supplied by the Port Authority.

Section 6. Rights of User

The Operator hereby agrees to and shall use the Premises in connection with a fixed base operation ("Fixed Base Operation") for the following purposes only, and including for the ground handling-related services at the Airport described in the Section hereof entitled "*Services by the Operator*", and for no other purpose whatsoever:

(a) Exclusive Areas

Area A

(i) For business and administrative offices in connection with the operations of the Operator hereunder;

(ii) For office space for flight crews, maintenance personnel, inspectors and other supervisory personnel employed by General Aviation Aircraft Operators;

(iii) For waiting rooms, conference facilities and lounges for the crew, passengers and guests of General Aviation Aircraft Operators using the Premises;

(iv) For the sale of aircraft, aircraft assemblies, aircraft accessories and component parts thereof;

(v) For the storage of aircraft parts and supplies (1) owned by the Operator or (2) owned by General Aviation Aircraft Operators;

(vi) For the sale, maintenance, repair and servicing of avionics equipment; and

(vi) For the charter and leasing of aircraft owned or operated by the Operator and for business and operations offices in connection with such charter and leasing of aircraft by the Operator. It is understood and agreed that the foregoing shall not grant or be deemed to grant a right or privilege in the Operator to use the Airport for the purpose of the landing and taking off of aircraft.

Except as expressly authorized in clause (vi), above, relating to the charter and leasing of aircraft owned or operated by the Operator, no portion of the Premises shall be used for Scheduled Aircraft Operators of any kind or for air transportation operations for compensation or hire, provided, however, that the Operator, upon the prior written and continuing approval of the Port Authority and subject to the terms and conditions therein provided, may perform specified services in the Premises for a designated Scheduled Aircraft Operator.

Area C

- (i) For the parking and storage of aircraft owned or operated by General Aviation Aircraft Operators (as defined herein);
- (ii) For the fueling and servicing of aircraft owned or operated by General Aviation Aircraft Operators and ramp equipment operated by the Operator;
- (iii) For the maintenance, repair, servicing and cleaning of aircraft (and component parts thereof) owned or operated by General Aviation Aircraft Operators, and of mobile equipment operated by the Operator in connection with the servicing and loading of such aircraft;
- (iv) For the rental of certain ground equipment including forklifts, tugs, baggage carts and ground power units, used in the servicing of aircraft of General Aviation Aircraft Operators;
- (v) For the loading and unloading of cargo from aircraft operated by General Aviation Aircraft Operators and for the temporary storage of such cargo for 24 hours;
- (vi) For the providing the ground transportation service specifically described in and pursuant to subparagraph (xii), below, of this Section;
- (vii) For the parking and storage of aircraft owned or operated by General Aviation Aircraft Operators and for the parking and storage of ramp equipment operated by the Operator and for non-routine maintenance of such aircraft and equipment;
- (viii) (1) For the fueling, servicing, welding, repair and maintenance of automotive vehicles and ground handling equipment used by the Operator in performing the operations authorized hereunder; and for the servicing, welding, repair and maintenance of automotive vehicles and ground handling equipment used by General Aviation Aircraft Operators operating at the Airport;
- (2) For the storage of such automotive fuel and lubricants as may be approved by the Port Authority; and

(3) For the storage, sale and dispensing of automotive fuel and lubricants for automotive vehicles and ground handling equipment only used by General Aviation Aircraft Operators operating at the Airport.

The purposes set forth in this clause (viii) shall be performed by the Operator solely for General Aviation Aircraft Operators; it being expressly understood and agreed that the Operator shall not perform any of said purposes for others unless the Operator has been issued a separate permit therefor by the Port Authority; provided, however, that the Operator may perform fueling of automotive vehicles of cargo aircraft operators operating at the Airport on an occasional basis but only if the General Manager gives prior authorization therefor.

(ix) For the vehicular and pedestrian ingress and egress to and from the Premises and for vehicular and pedestrian movement inside the Premises by the furnishers of services and business guests, by customers of the Operator and other authorized users of the Premises, by members of the general public, and by the Port Authority;

(x) For the taxiing of aircraft owned or operated by the Operator or customers of the Operator within the Premises;

(xi) For any other purposes or activity for which the Port Authority, expressly in writing, authorizes said portion of the Premises to be used; and

(xii) Ground Transportation Service

(a) In addition to the rights of user by the Operator as set forth in the foregoing paragraphs of this Section, the Operator may use the Premises to operate a chauffeured vehicle transportation service (sometimes hereinafter in this Section referred to as the "Service") utilizing appropriate vehicles and drivers at the request of a General Aviation Aircraft Operator for the transportation to, at and from the Airport of the General Aviation Aircraft Operator, its employees, customers and guests and their baggage arriving at or departing from the Premises by aircraft. For the purposes of this Agreement, chauffeured vehicle transportation service shall mean the service of the Operator of providing an entire vehicle and its driver to one customer, where the charge to said customer is not made on a per head basis.

(b) The Operator shall have no right hereunder to carry on or conduct any ground transportation service other than the Service as set forth in subclause (a), above. The Operator, in connection with the Service, shall not solicit business on the public areas of the Airport or on any other areas of the Airport occupied exclusively by any third party. The use, at any time, either on the Premises or elsewhere on the Airport, of any advertising or signs in connection with the chauffeured vehicle transportation service shall be subject to the continuing approval of the Port Authority.

(c) The conveyances operated by the Operator in providing the chauffeured vehicle transportation service shall all be of a type of motor vehicle

especially adapted therefor. The Operator shall maintain all such conveyances in good repair, order and appearance and shall keep them clean at all times.

(d) Without limiting the provisions of the Section of this Agreement entitled "*Compliance with Governmental Requirements*", the Operator shall procure all license, certificates, permits, franchises or other authorization from all governmental authorities, if any, having jurisdiction over the operation by the Operator of the chauffeured vehicle transportation service which may be necessary for the conduct of the Service. Neither this Agreement nor anything contained herein shall be or be construed to be a grant of any franchise, consent, license, permit, right or privilege of any nature or kind whatsoever to operate omnibuses, taxicabs or any other vehicles or conveyances carrying passengers or property whether for hire or otherwise outside the Airport or over the public streets or roads of, or located in, any municipality or county in the States of New York or New Jersey.

(e) The routes, roads and ways within the Airport over which the Operator may operate its vehicles in providing the Service shall be those from time to time designated by the Port Authority. The Port Authority makes no representations as to the condition of any route road or way and does not agree to keep the same unobstructed or fit for use. No closing by the Port Authority of any route, road or way whether temporary or permanent, whether or not such closing involves a route, road or way previously used by the Operator hereunder, and no such closing by any governmental authority, and whether or not at the request or with the consent of the Port Authority, shall constitute or be deemed a diminution of the right of user granted under this subparagraph (xii) or shall relieve the Operator of any of its obligations hereunder. The Operator shall pick up and discharge passengers only at the point or points within the Airport which may be from time to time designated by the Port Authority.

(f) Without limiting the generality of any other term or provision hereof, if the Operator elects to use the Premises to operate a chauffeured vehicle transportation service, there shall be included in the Operator's gross receipts all money received or receivable by the Operator for or in connection with said chauffeured vehicle transportation service including full charge for any trips, any part of which trip is on the Airport, and all advertising and any other revenues of any type arising out of or in connection with the Operator's operation of the chauffeured vehicle transportation service at the Airport hereunder; provided, however, that gross receipts with respect to the Operator's chauffeured vehicle transportation service shall not include the following:

(I) any taxes imposed by law and directly payable to a taxing or tax collection authority by the Operator; and

(II) any highway, bridge or tunnel tolls, advanced by the Operator on behalf of its customers, which are separately stated and paid by the Operator's customers.

(g) The Operator may engage a contractor to provide the Service paying the contractor an amount therefor but said contractor shall not contract with the Operator's customers for the said Service. The Service shall be operated by the Operator in its own name and all amounts payable therefor by the Operator's customers shall be payable to it. If the Operator engages a contractor to provide the Service, all acts and omissions of the contractor shall be deemed to be the acts and omissions of the Operator hereunder.

(h) In the event that Operator provides the limited service of coordinating ground transportation for Operator's customers at Operator's customers' request in exchange for an administrative fee only, Operator's gross receipts therefor shall be limited to said administrative fee charged to Operator's customers.

(i) In the further event that Operator's customers arrange their own ground transportation, no costs or fees associated therewith shall be included in Operator's gross receipts hereunder.

Area D

For the parking of automobiles owned or operated by customers, employees, patrons and invitees of the Operator, and other authorized users of the Premises (including automobiles for the purpose of discharging or picking up passengers, and only for a reasonable period of time to accomplish same). The foregoing shall include the temporary parking of unoccupied ground vehicles then being used by the Operator for courtesy ground transportation of passengers, crew and their baggage in the performance of such obligations hereunder. Except as set forth in the preceding sentence, the Operator shall prevent all persons from parking automobiles on the Premises.

For appropriate landscaping purposes.

(b) Non-Exclusive Area

Area B shall be used for purposes incidental to the Operator's use of Areas A, C and D and shall be used in common with other lessees and occupants of Building 145.

The Premises shall not be used for any illegal purpose.

Section 7. Services by the Operator

(a) The Operator shall perform on a seven-days-a-week, 24 hours-a-day basis the work and furnish the services at the Premises (and off-Premises as permitted by paragraph (b)(4) of this Section), as required in connection with the ground handling of aircraft operated by General Aviation Aircraft Operators including, for purposes of this Section, civilian and military operators (hereinafter sometimes collectively referred to as the "Customer's Aircraft"), subject to such limitations, prohibitions and requirements from time to time established by the General Manager of the Airport.

(b) Without limiting the generality of the foregoing obligations, the Operator shall furnish, at its own expense and without additional charge to the owner/operator of any Customer's Aircraft, the following services and equipment in connection with the arrival, stay and departure of the Customer's Aircraft at and from the Airport:

(1) In connection with providing the services of aircraft ground handling, the Operator shall ensure that its employees are properly and fully trained and qualified to provide said services and, in connection with such services, shall meet the standards of the National Air Transport Association (NATA) Safety 1st Professional Line Service Training. The Operator's employees shall be trained initially, and on an ongoing basis, as required by the NATA Safety 1st program. Documentation evidencing such training shall be delivered to the Port Authority upon request. Such trained staff shall at all times during the Term be available at the Airport to perform the services of aircraft ground handling for Operator's customers in strict accordance with this paragraph and as required under 14 CFR Part 139 – Certification of Airports. Without limiting the generality of the Sections of this Agreement entitled "*Indemnity and Liability Insurance*", "*Termination by the Port Authority*", "*Compliance with Governmental Requirements*", or otherwise, the Operator shall be responsible, and shall reimburse the Port Authority on demand, for any and all fines and penalties incurred by the Port Authority based upon, relating to, or arising out of Operator's failure to strictly comply with the provisions of this paragraph.

(2) In connection with the arrival or departure of the Customer's Aircraft at or from the Airport for the purpose of providing the service described herein, the Operator shall monitor for the purpose of determining at what time or times the Customer's Aircraft may be expected to land at or take off from the Airport at the following radio frequencies: 121.9 megacycles (Ground Control), 119.1 megacycles (Tower Control) and such other appropriate radio frequencies as may be directed by the Port Authority from time to time. Further the Operator shall operate, man and monitor the Airport UNICOM radio frequency for the purpose of receiving requests and for transmitting operations advisories to aircraft requesting the same.

(3) Upon the landing of any Customer's Aircraft at the Airport, the Operator shall direct the aircraft to an assigned parking space within Area C and shall assist in the parking of the aircraft and, upon request therefor, shall assist in tying down the aircraft, in chocking its wheels and in the removal of luggage therefrom. With regard to the occupants of the Customer's Aircraft and their luggage, the Operator shall provide prompt appropriate transportation for such occupants and their luggage, to and from the parking space to which the aircraft has been assigned and, as desired by such occupants, the Operator's operations office in Areas A and/or B, and any other non-aeronautical location on the Airport.

(4) In the event the Operator can no longer assign a parking space to its Customer's Aircraft within Area C because it does not have sufficient space for same, the Operator shall contract, and coordinate with, airport operations personnel at the Airport to obtain an aircraft parking assignment for such aircraft. Fees relating to the foregoing shall be paid by the Operator to the Port Authority in accordance with the Schedule of Charges.

(5) During the period that the Customer's Aircraft is parked in the space to which it is assigned by the Operator, the Operator shall make appropriate inspections of the aircraft and of the parking area – and additional inspections on an as-needed basis - to confirm that no unauthorized person or persons are loitering in or about the parking area. If at any time, based on forecasts issued by the U.S. National Oceanic and Atmospheric Administration's National Weather Service, adverse weather conditions involving high velocity winds can be reasonably anticipated, the Operator shall inspect all such Customer's Aircraft with a view to determine if the same are adequately chocked, tied down, controls locked, doors and windows closed. If, as a result of such inspection, the aircraft should not appear to be adequately secured after the Operator has exercised every reasonable effort to protect the same, the pilot or owner shall be immediately notified and advised of the situation by the Operator.

(6) The Operator at all times shall give the pilots of Customer's Aircraft such reasonable assistance, in connection with the preparation and filing of flight plans and the fulfillment of other pre-flight requirements, as may be requested by same.

(7) In connection with the departure of Customer's Aircraft from the Airport, the Operator shall assist with the removal of wheel chocks, control locks, and tie-down ropes, and at any time that an engine or engines of such aircraft are started on the Premises, the Operator shall provide adequate fire protection measures, by including and maintaining a standard hand fire extinguisher nearby that is acceptable under the National Fire Protection Association Standards.

(c) The Operator shall provide a dispatch office in Area A in connection with the performance of its obligations hereunder. The Operator shall furnish and install in said office the radio equipment necessary to monitor the frequencies set forth in paragraph (b)(1) of this Section. The Operator shall also maintain therein a lounge and a radio room where the passengers and crews of the Customer's Aircraft may obtain shelter prior to or after flight. Such lounge shall be equipped with comfortable chairs and shall contain, without limitation, televisions, telephones and internet access and other amenities, as well as facilities for the preparation of flight plans by pilots. The Operator shall maintain in the lounge direct telephone services to the Air Traffic Control Tower, the Aircraft Traffic Control Center, and the Flight Service Station, and shall provide a bulletin board whereon all current Notice(s) to Airmen (NOTAMS) and airfield information are prominently displayed and a suitable computer terminal or other state of the art equipment over which NOTAMS and weather information may be received. The provision of the foregoing shall be at the expense of the Operator and without additional or separate charge to the owner/operator of any Customer's Aircraft.

(d) (1) The Operator, upon request, shall cause to be rendered to the owner/operator of Customer's Aircraft non-routine aircraft repair and maintenance services by properly qualified mechanics and other personnel and, if on the Airport, only at such location as is expressly authorized in such other permit or agreement with or issued by the Port Authority. The Operator shall bill such owner/operator only for administrative fees and costs with respect to the same and any gross receipts attributable to Operator for the same shall be limited to said administrative fees and costs; provided, however, that in connection with this Agreement, the Operator shall only be entitled to use the services of such third persons to provide such non-

routine services to its customers and for Customer's Aircraft (including for repair and maintenance services and chauffeured limousine services) who or which have previously entered into written agreements with the Port Authority entitling them to provide services at the Airport. The Operator shall provide all ramp handling services for Customer's Aircraft as requested and do so only on the Public Aircraft Parking and Storage Areas subject to limitations and requirements as may be imposed by the General Manager of the Airport from time to time.

(2) The Operator shall, upon the request of a customer or by the Port Authority, remove and relocate from the PAF or other area at the Airport to another location on the Airport any Customer's Aircraft which shall become disabled and shall have available at the Airport an adequate staff of qualified personnel and equipment to perform the same, including, but not limited to, tractors, dollies, and jacks.

(e) (1) The Operator shall conduct the business of selling aviation fuel and aircraft lubricants and dispensing the same into-plane for aircraft operated by General Aviation Aircraft Operators (inclusive of civilian and/or military operators, as aforesaid in subparagraph (a), above, of this Section) adequate to meet all demands therefor at the Airport upon request therefor by the operators of such aircraft (hereinafter called the "Fueling Service"). The Operator shall have no right to sell aviation fuel or to dispense the same into-plane at the Airport to any other persons other than those specifically identified in this subparagraph.

(2) The Operator shall have available and shall sell in the Fueling Service the types of aviation fuel used by the Customer's Aircraft including, but not limited to, Jet A type fuel and 100 LL octane aviation gasoline and shall conduct the Fueling Service in accordance with the highest standards for safety and security in the aircraft fueling industry and in accordance with the procedures contained in the Port Authority's Rules and Regulations, as they may be supplemented and amended from time to time.

(3) The Operator acknowledges that prior to entering into this Agreement it has reviewed both (i) the form of fuel storage permit, between the Port Authority and third persons who or which seek the right to store aviation fuel at the Airport's fuel storage facilities ("Fuel Storage Permit") and (ii) the form of agreement, between the operator of the fuel storage facilities at the Airport (currently Allied New York Services, Inc.), an independent contractor designated by the Port Authority, and fuel storage permittees ("Fuel Storage Operator Agreement") providing for the receipt, handling and distribution of aviation fuel at the Airport.

(4) It is understood that the Operator intends to be a fuel storage permittee at the Airport, but that it is likely that the Fuel Storage Permit, as modified to be applicable to the Operator, will not be finalized or executed prior to the Commencement Date. Therefore, Operator shall contract with another fuel storage permittee at the Airport until such Fuel Storage Permit and related Fuel Storage Operator Agreement are duly executed by the relevant parties. Operator agrees that in order to become a fuel storage permittee at the Airport, it shall be required to enter into both (i) a Fuel Storage Permit, between the Port Authority and the Operator; and (ii) a Fuel Storage Operator Agreement, between the above-named fuel storage operator (or its successor, if any) and the Operator. The Port Authority shall apply established standards in processing the Operator's request for a Fuel Storage Permit. In the event the

Operator does not seek to be a fuel storage permittee at the Airport, the Operator understands and agrees that it shall purchase aviation fuel only from a Person authorized by the Port Authority to sell same at the Airport. The Operator shall conduct the Fueling Service in accordance with this Agreement and, if applicable, the Fuel Storage Permit and Fuel Storage Operator Agreement. The Operator further covenants that, inasmuch as it acknowledges that the form of either or both of the aforesaid permits (or the structuring of arrangements for the storage, handling and distribution of fuel at the Airport) may change from time to time during the Term, in the event of such a change, immediately upon request the Operator shall enter into whatever substitute form of Fuel Storage Permit or Fuel Storage Operator Agreement, as applicable, may be utilized at the Airport, in lieu of the said forms that are in use as of the Effective Date.

(5) If the Operator intends to store bulk aviation fuel at the Airport, the Operator shall not be entitled to commence operations at the Airport pursuant to this Agreement unless and until it has (i) duly executed and delivered to the Port Authority the Fuel Storage Permit; and (ii) duly executed and delivered to the Port Authority's fuel storage operator, with a copy to the Port Authority, the Fuel Storage Operator Agreement; thereafter, the Operator may not perform the Fueling Service hereunder without a fully executed Fuel Storage Permit and fully executed Fuel Storage Operator Agreement in effect at all times.

(6) The Operator shall be required to obtain and operate fuel trucks in accordance with the Airport Rules and Regulations, independent of those fuel trucks existing at the Airport as of the Effective Date, in order to transport aviation fuel from the Airport storage tanks to Area C. The storage of such trucks, and the repair and maintenance thereof, shall be the sole responsibility, and at the sole cost and expense, of the Operator, as more specifically set forth in the Section of this Agreement entitled "*Maintenance of Fueling Trucks and Other Automotive Equipment*".

(f) Without additional compensation to the Operator, the Operator, at its own expense, shall provide appropriate transportation between any arrival/departure location on the Airport of any Port Authority helicopter and Building No. 145 for those persons enplaning or deplaning from such helicopter.

Section 8. Ingress and Egress

(a) The Operator, and its officers, employees, invitees, contractors, suppliers of material, and furnishers of services shall have the right of ingress and egress between the Premises and the city streets or public ways outside the Airport by means of such pedestrian or vehicular roadways as shall be existing as of the Effective Date or such other roadways as may exist in the future, to be used in common with others having rights of passage within the Airport, as may from time to time be designated by the Port Authority for the use of the public.

(b) The Operator shall have the right of ingress and egress between the Premises and the PAF at the Airport, by means of connecting service roadways, to be used in common with others having rights of passage thereon.

(c) The use of any such roadway shall be subject to the rules and regulations of the Port Authority, which are now in effect or which hereafter may be promulgated for the safe and efficient operation of the Airport. The Port Authority may, at any time, temporarily or permanently close or consent to or request the closing of, any such roadway and any other area at the Airport presently or hereafter used as such, so long as a reasonable means of ingress and egress as provided above remains available to the Operator. The Operator hereby releases and discharges the Port Authority, and all municipalities and other Governmental Authorities, and their respective successors and assigns, of and from any and all claims, demands, or causes of action which the Operator may now or at any time hereafter have against any of the foregoing, arising or alleged to arise out of the closing of any street, roadway, or other area, whether within or outside the Airport. The Operator shall not do or permit anything to be done which will interfere with the free access and passage of others to space adjacent to the Premises or in any streets, ways and walks near the Premises.

(d) The Port Authority shall have the right of ingress and egress to and from the Premises for airport purposes including, but not limited to, the performance of routine maintenance and inspection, as set forth herein, and emergency services; provided that the Port Authority, except in emergencies, gives reasonable prior notice of the exercise thereof to the Operator and takes reasonable steps to minimize or avoid interference with the Operator's operations hereunder.

Section 9. Compliance with Governmental Requirements

(a) Subject to the exceptions set forth in paragraph (b)(2) of the Section hereof entitled "*Environmental Obligations*", the Operator shall promptly comply with, observe and execute all laws and ordinances and governmental rules, regulations, orders, requirements and similar items including, without limitation, all Environmental Requirements now or at any time during the Term which as a matter of law are applicable to or which affect: (i) the Premises or the ground water thereunder; (ii) the operations of the Operator at the Premises or the Airport; and/or (iii) any Hazardous Substance which has migrated from or from under the Premises. Subject to the exceptions set forth in said paragraph (b)(2) of the Section hereof entitled "*Environmental Obligations*", the Operator shall, in accordance with and subject to the provisions of the Section hereof entitled "*Construction by the Operator*", make any and all structural and non-structural improvements, alterations or repairs of the Premises and perform all remediation, containment and clean-up of Hazardous Substance required in order to fully satisfy the compliance obligations set forth herein.

(b) The Operator shall procure from all Governmental Authorities having jurisdiction over the operations of the Operator hereunder, and shall maintain in full force and effect throughout the Term, all licenses, certificates, permits or other authorization necessary for the conduct of such operations. "Governmental Authority" shall not be construed as intending to include the Port Authority, the lessor under this Agreement.

(c) The obligation of the Operator to comply with governmental requirements is provided herein for the purpose of assuring proper safeguards for the protection of persons and property on the Premises and the Airport and proper operations by the Operator. Such provision

is not to be construed as a submission by the Port Authority to the application to itself of such requirements or any of them.

(d) The Operator shall comply with the enactments, ordinances, resolutions and regulations of local governmental authority in regard to the construction and maintenance of buildings and structures and in regard to health and fire protection which would be applicable if the Port Authority were a private corporation to the extent that the Port Authority finds it practicable so to do, except in cases where the Port Authority either notifies the Operator that it need not comply with or directs it not to comply with any such enactments, ordinances, resolutions or regulations. The Operator shall, for the Port Authority's information, deliver to the Port Authority within three (3) days (Saturdays, Sundays and legal holidays excluded) after receipt of any notice, warning, summons, or other legal process for the enforcement of any such enactment, ordinance, resolution or regulation a true copy of the same. Any direction by the Port Authority to the Operator not to comply with any such enactment, ordinance, resolution or regulation shall be given only pursuant to a resolution duly adopted by the Board of Commissioners of the Port Authority or by an authorized Committee of its Board and if any such direction is given by the Port Authority to the Operator, the Port Authority, to the extent that it may lawfully do so, shall indemnify and hold the Operator harmless from and against all claims, actions, damages, liabilities, fines, penalties, costs and expenses suffered or incurred by the Operator as a result of non-compliance with such enactment, ordinance, resolution or regulation.

In the event of compliance with any such enactment, ordinance, resolution or regulation on the part of the Operator, acting in good faith, commenced after such delivery to the Port Authority, but prior to the receipt by the Operator of a written direction from the Port Authority not to comply (and thereafter discontinued), such compliance shall not constitute a breach of this Agreement, although the Port Authority thereafter directs the Operator not to comply. Nothing herein contained shall release or discharge the Operator from compliance with any other provision hereof respecting governmental requirements.

(e) The Operator shall have such time within which to comply with the aforesaid laws, ordinances, rules, and regulations as the authorities enforcing the same shall allow.

Section 10. Rules and Regulations

(a) The Operator covenants and agrees to observe and obey (and to require its officers, employees, guests, invitees, and those doing business with it to observe and obey) the existing Rules and Regulations of the Port Authority, the Airport Standards Manual of the Port Authority, and such reasonable future rules and regulations and airport standards of the Port Authority (including amendments and supplements thereto) for the government of the conduct and operations of the Operator and others on the Premises as may from time to time during the letting be promulgated by the Port Authority for reasons of safety, health, noise, sanitation, good order and the economic and efficient operation of the Airport. The obligation of the Operator to require such observance and obedience on the part of its guests, invitees, and business visitors shall obtain only while such Persons are on the Premises. The Port Authority agrees that except in cases of emergency, it will give notice to the Operator of every such future rule or regulation adopted by it at least ten (10) days before the Operator shall be required to comply therewith.

(b) The use by the Operator and its officers, employees, guests, invitees, sublessees, and those doing business with it, of any and all other portions of the Airport which it may be entitled to use under this Agreement (other than the Premises) shall be subject to the Rules and Regulations and Airport Standards Manual of the Port Authority in effect as of the Effective Date, and such reasonable future rules and regulations and airport standards (including amendments and supplements to existing Rules and Regulations and the Airport Standards Manual) as the Port Authority may from time to time promulgate in the public interest and in the interest of health, safety, noise, sanitation, good order and the economic and efficient operation of the Airport.

(c) If a copy of the Rules and Regulations or the Airport Standards Manual is not attached hereto, then the Port Authority will notify the Operator thereof either by delivery of a copy or by making a copy available at the office of the Secretary of the Port Authority.

(d) No statement or provision in the said Rules and Regulations or the Airport Standards Manual shall be deemed a representation or promise by the Port Authority that the services or privileges described shall be or remain available, or that the charges, prices, rates or fees stated therein shall be or remain in effect throughout the letting, all of the same being subject to change by the Port Authority from time to time whenever it deems a change advisable.

Section 11. Various Obligations of the Operator

(a) The Operator shall conduct or cause to be conducted the operations hereunder in an orderly and proper manner, considering the nature of such operations so as not to annoy, disturb, or be offensive to others at or off the Airport. The Operator shall take or cause to be taken all reasonable measures (i) to eliminate or reduce as low as possible vibrations tending to damage any equipment, structure, building or portion of a building which is on the Premises, or is a part thereof, or is located elsewhere on or off the Airport; and (ii) to keep the sound level of its operations as low as possible.

(b) The Operator shall use its best efforts to conduct or cause to be conducted all its operations at the Premises or elsewhere on the Airport as provided for hereunder in a safe and careful manner, following in all respects the best practices of the Operator's industry in the United States.

(c) The Port Authority shall have the right to object to the Operator regarding the conduct and demeanor of the employees of the Operator whereupon the Operator will take all steps reasonably necessary to remove the cause of the objection. The Operator shall supply and shall require its employees to wear or carry badges or other suitable means of identification, which shall be subject to the prior and continuing approval of the General Manager of the Airport.

(d) The Operator shall take all precautions reasonably necessary to promote the safety of all persons and vehicles arriving at, on or leaving from the Premises.

(e) The Operator shall remove from the Airport or otherwise dispose of in a manner approved by the General Manager of the Airport all garbage, debris, and other waste materials (whether solid or liquid) arising out of its occupancy of the Premises or out of its operations elsewhere at the Airport. Any such which may be temporarily stored in the open shall be kept in suitable garbage and waste receptacles, the same to be made of metal or other suitable material, and equipped with tight-fitting covers, and to be of a design safely and properly to contain whatever material may be placed therein. The Operator shall use extreme care when effecting removal of all such waste materials, and shall effect such removal at such times and by such means as first approved by the Port Authority. No such garbage, debris, or other waste materials shall be or be permitted to be thrown, discharged, or deposited into or upon the waters at or bounding the Airport. Without limiting the generality of the Section hereof entitled "*Compliance with Governmental Requirements*", the Operator shall comply with all federal, state, and local laws, rules, and regulations governing the storage and disposal of garbage, debris, waste materials, quarantined materials, and other substances, if any, on general aviation, itinerant, air taxi and scheduled commuter aircraft, if any, arriving at the Airport.

(f) It is the intention of the parties hereto that noise caused by aircraft engine operations shall be held to a minimum considering the nature of the Operator's operations on the Airport. To this end, the Operator will conduct its operations on the Airport in such a manner as to keep the noise produced by aircraft engines to a minimum and where appropriate shall employ noise arresting and noise reducing devices that are suitable.

(g) In its operations, the Operator shall use its best efforts to minimize jet or prop blast interference to aircraft operating on or to buildings and structures now located on or which in the future may be located on areas adjacent to the Premises or elsewhere on the Airport. In the event the Port Authority determines that at any time and from time to time that the Operator has not so minimized the jet or prop blast interference, it may serve a notice to the Operator to such effect and if the condition is not corrected to the satisfaction of the Port Authority within thirty (30) days after the service of said notice, the Operator hereby covenants and agrees to erect and maintain at its own expense such structure or structures as may be necessary to minimize the said jet or prop blast interference, subject, however, to the prior written approval of the Port Authority as to the type, manner, method, and cost of construction. The obligations assumed by the Operator under this paragraph shall not diminish, limit, modify, or affect all other obligations of the Operator with respect to interference under this Agreement.

(h) The Operator agrees that it will not erect, construct, or maintain or otherwise create or continue any obstacle or so park or store any aircraft or other object on the Premises or elsewhere on the Airport if otherwise permitted by this Agreement so as to create any obstacle that will hamper or interfere with the free, orderly, unobstructed and uninterrupted passage of vehicles, aircraft, or of the wings or other integral part of aircraft of any type, nature, or description, while such vehicle is operating or aircraft is taxiing or being transported or towed along any runways, taxiways, and roads outside of the Premises.

(i) (1) In addition to compliance by the Operator with all laws, ordinances, governmental rules, regulations, and orders now or at any time in effect during the Term, which as a matter of law are applicable to the operation, use, or maintenance by the Operator of the

Premises or the operations of the Operator under this Agreement (the foregoing not to be construed as a submission by the Port Authority to the application to itself of such requirements or any of them), the Operator agrees that it shall exercise the highest degree of safety and care and shall conduct all its operations under this Agreement and shall operate, use and maintain the Premises in accordance with the highest standards and in such manner that there will be at all times a minimum of air pollution, water pollution, or any other type of pollution and a minimum of noise emanating, arising out of, or resulting from the operation, use or maintenance of the Premises by the Operator and from the operations of the Operator under this Agreement. The Port Authority hereby reserves the right from time to time and at any time during the Term to require the Operator to construct, and the Operator agrees to design and construct at its sole cost and expense, such reasonable structures, fences, equipment, devices, and other facilities as may be necessary or appropriate to accomplish the objectives as set forth in the first sentence of this paragraph. All locations, the manner, type, and method of construction and the size of any of the foregoing shall be determined by the Port Authority in a non-arbitrary and non-capricious manner. The Operator shall submit for Port Authority approval its plans and specifications covering the required work and upon receiving such approval, shall proceed diligently to construct the same.

(2) The obligations assumed by the Operator under this paragraph (i) shall continue throughout the Term and shall not be limited, affected, impaired, or in any manner modified by the fact that the Port Authority shall have approved any construction application and supporting plans, specifications and contracts covering construction work and notwithstanding the incorporation therein of the Port Authority's recommendations or requirements and notwithstanding that the Port Authority may have at any time consented to or approved any particular procedure or method of operation which the Operator may have proposed or the Port Authority may have itself prescribed the use of any procedure or method. The agreement of the Operator to assume the obligations under this paragraph (i) is a special inducement and consideration to the Port Authority in entering into this Agreement with the Operator.

Section 12. Federal Airport Aid

The Port Authority has applied for and received a grant or grants of money from the Administrator of the FAA pursuant to the Airport and Airways Development Act of 1970, as the same has been amended and supplemented, and under prior federal statutes which said Act superseded and the Port Authority may in the future apply for and receive further such grants. In connection therewith, the Port Authority has undertaken and may in the future undertake certain obligations respecting its operation of the Airport and the activities of its contractors, operators, and permittees thereon. The performance by the Operator of the promises and obligations contained in this Agreement is, therefore, a special consideration and inducement to the execution of this Agreement by the Port Authority, and the Operator further agrees that if the Administrator of the FAA or any other governmental officer or body having jurisdiction over the enforcement of the obligations of the Port Authority in connection with Federal Airport Aid, shall make any orders, recommendations, or suggestions respecting the performance by the Operator if its obligations under this Agreement, the Operator will promptly comply therewith at the time or times, when and to the extent that the Port Authority may direct.

Section 13. Sales and Services

(a) A principal purpose of the Port Authority in the making of this Agreement is to make available at the Airport the items and services which the Operator is permitted to sell and render hereunder, and the Operator hereby warrants and agrees that it will conduct a first class operation and will furnish all necessary or proper fixtures, equipment, personnel (including licensed personnel as necessary), supplies, materials and facilities, that it will furnish such services promptly, efficiently and adequately to meet all demands therefor, on a fair, equal, and non-discriminatory basis to all users thereof, and at charges which are fair, reasonable, and non-discriminatory, provided that reasonable and non-discriminatory discounts, rebates, or other similar types of price reductions may be made to volume purchasers.

(b) The Operator, prior to furnishing any services hereunder, shall prepare a schedule of rates and charges for the services it will perform. Such schedule shall be furnished to the Port Authority. All subsequent changes therein shall be submitted to the Port Authority prior to the effective date or dates thereof. The entire schedule, including all changes, amendments, and supplements, shall be made available to the public by the Operator at its office on the Premises and at the office of the General Manager of the Airport. That part of the schedule covering rates, charges and services ordinarily made to customers of the Operator not having continuing contracts with the Operator shall be posted prominently at the office of the Operator on the Premises. The Operator covenants and agrees to adhere to the charges shown on the schedule, and to refund promptly to the customer, upon demand of the Port Authority, any charge or charges made in excess of those shown on the schedule.

(c) The Operator covenants and agrees that it will not enter into continuing contracts or arrangements with third parties for the furnishing of services by the Operator if any such contract or arrangement will have the effect of utilizing to an unreasonable extent the capacity of the Operator for furnishing such services generally. At all times the Operator will reserve a reasonable capacity to furnish services hereunder to customers not parties to continuing contracts with the Operator.

(d) The Operator shall be open for and shall conduct business and furnish services hereunder 24 hours a day, seven days a week.

(e) The Operator covenants and agrees that it will not enter into any agreement or understanding, whether or not binding, with any person, firm, association, corporation, or other entity, which will have the effect of fixing rates, of lessening or preventing competition, or of creating or tending to create a monopoly at the Airport relating to the service, products, or articles furnished or sold by the Operator.

Section 14. Prohibited Acts

(a) Unless otherwise expressly permitted so to do, the Operator shall not install, maintain, or operate, or permit the installation, maintenance, or operation on the Premises of any vending machine or device designed to dispense or sell food, beverages, tobacco, tobacco products, or merchandise of any kind, whether or not included in the above categories, or of any

restaurant, cafeteria, kitchen, stand, or other establishment of any type for the preparation, dispensing, or sale of food, beverages, tobacco, tobacco products, or merchandise of any kind, whether or not included in the above categories or of any equipment or device for the furnishing to the public of service of any kind, including therein, without limitation thereto, telephone pay-stations. Without limiting the generality of the foregoing provisions of this paragraph (a), the Port Authority acknowledges that the Operator intends, and shall be permitted, to provide, in an area inside the Premises and solely for consumption by its own employees, complementary non-alcoholic beverages and snacks, including for example a coffee machine, which shall not involve the services of a third party vendor.

(b) The Port Authority, by itself or by contractors, Operators, or permittees, shall have the exclusive right to install, maintain, receive, and retain the revenues from all coin-operated or other machines or devices for the sale of merchandise of all types or for the rendering of services which may be operated on the Premises; provided, however, that no such machine or device shall be installed, except upon the request of the Operator. This provision shall not be construed to confer upon the Operator any right to have such machines installed, except at the sole discretion of the Port Authority.

(c) The Operator shall commit no nuisance, waste, or injury on the Premises or at the Airport and shall not do or permit to be done anything that may result in the creation or commission or maintenance of such nuisance, waste, or injury on the Premises or at the Airport.

(d) The Operator shall not create nor permit to be caused or created upon the Premises or elsewhere on the Airport any obnoxious odors or smokes, or noxious gases or vapors. The creation of exhaust fumes by the operation of the Operator's internal combustion engines or by the operation of aircraft engines, so long as such engines are maintained and are being operated in a proper manner, shall not be a violation of this paragraph (d).

(e) The Operator shall not do or permit to be done anything which may interfere with the effectiveness or accessibility of the drainage and sewerage system, water system, communications system, underground fuel system, electrical system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, and other systems, if any, installed or located or to be installed or located on, under, or in the Premises or elsewhere on the Airport.

(f) The Operator shall not overload nor permit the overloading of any floor on the Premises and shall repair, replace, or rebuild any floor, including supporting members, and any paved area, damaged by overloading. Nothing in this paragraph or elsewhere in this Agreement shall be or be construed to be a representation by the Port Authority of the weight any floor will bear.

(g) The Operator shall not use or permit the use of any structural supporting member of the building or roof, or any part thereof for the storage of any material or equipment, or hoist, lift, move, or support any material or equipment or other weight or load, by means of said trusses or structural supporting members.

(h) The Operator shall not dispose of nor permit any one to dispose of any waste material taken from aircraft (whether liquids or solids) by means of the toilets, manholes, sanitary sewers, or storm sewers in the Premises or elsewhere on the Airport except after treatment in installations or equipment included in plans and specifications submitted to and approved by the Port Authority.

(i) The Operator shall not do or permit to be done any act or thing upon the Premises or elsewhere on the Airport that (1) will invalidate or conflict with any fire insurance, extended coverage, or rental insurance policies covering the Premises or any part thereof, or the Airport, or any part thereof; or (2) in the opinion of the Port Authority, may constitute an extra hazardous condition, so as to increase the risks normally attendant upon the operations contemplated by the Section hereof entitled "*Rights of User*" or otherwise hereunder. The Operator shall promptly observe, comply with and execute the provisions of any and all present and future rules and regulations, requirements, orders, and directions of the National Board of Fire Underwriters and the Insurance Services Office of New York, or of any other board or organization exercising or which may exercise similar functions, which may pertain or apply to the operations of the Operator on the Premises or elsewhere on the Airport hereunder, and the Operator shall, subject to and in accordance with all of the provisions of this Agreement (including the Section hereof entitled "*Construction by the Operator*"), make any and all non-structural improvements, alterations, or repairs of the Premises that may be required at any time hereafter by any such present or future rule, regulation, requirement, order or direction. If by any reason of any failure on the part of the Operator to comply with the provisions of this paragraph any fire insurance, extended coverage or rental insurance rate on the Premises or any part thereof, or on the Airport or any part thereof, shall at any time be higher than not would be if the Premises or any other part of the Airport were properly used for the purpose permitted by the Section hereof entitled "*Rights of User*" or as otherwise permitted hereunder, then the Operator shall pay to the Port Authority, as an item of additional rental, that part of all insurance premiums paid by the Port Authority which shall have been charged because of such violation or failure by the Operator.

(j) The Operator shall not keep or store, nor permit anyone to keep or store, during any 24-hour period flammable liquids within the enclosed portion of the Premises (other than in rooms or areas expressly constructed for the storage of such liquids) in excess of the Operator's working requirements during the said 24-hour period. Any such liquids having a flash point of less than 110 degrees Fahrenheit shall be kept and stored in safety containers of a type approved by the Underwriters Laboratories or the Factory Mutual Insurance Association.

(k) The Operator shall not fuel or defuel automotive or other equipment in the enclosed portion of the Premises without prior approval of the General Manager of the Airport. The Operator shall not start or operate any engine of any item of automotive equipment in the enclosed portion of the Premises unless such space is adequately ventilated and unless such engine is equipped with a proper spark-arresting device which has been approved by the General Manager of the Airport.

(l) The Operator hereby assumes full responsibility for and control over persons disembarking from or bound for Customer's Aircraft while on the aeronautical areas of the Airport and shall take all proper measures to insure that the highest standards of safety are

maintained. The Operator shall prevent access by persons or vehicles (unless duly authorized by the Port Authority) to the PAF from the Premises, except for aircraft, which aircraft shall be equipped with radio receivers tuned to control tower frequencies and adequately manned. Such aircraft may be towed to a motor vehicle also so equipped and manned or equipped with such other means as may be approved by the Port Authority. The Operator shall prevent such access by such means as the Port Authority shall approve. Such prevention shall be accomplished on a 24-hour, seven day-a-week basis. The Operator shall indemnify and save the Port Authority harmless from all damages, liability and penalties that may arise out of any breach of its obligations under this paragraph (1) or which may result from unauthorized entry or activity upon the aeronautical areas of the Airport attributable in whole or in part to the acts or other compromise or aeronautical area security by the Operator, its employees, guests, or invitees.

(m) The Operator shall not operate or cause to be operated aircraft engines in any portions of the Premises other than for the purpose of taxiing aircraft to and from the Premises or in connection with authorized aircraft maintenance on the Premises.

(n) The Operator shall not keep or store aviation fuel on the Premises, except that aviation fueling equipment may be operated on the Premises where permitted hereunder and in accordance with all of the terms and provisions hereof (including, without limitation, the Port Authority Rules and Regulations pertaining thereto).

(o) Except as expressly authorized in clauses (vi) and (xii) under the heading "Area C" of paragraph (a) of the Section hereof entitled "*Rights of User*", the Operator shall not engage in the business of furnishing transportation for hire for persons or property, whether by aircraft or otherwise, to, from or on the Airport.

(p) Except for repairs and maintenance to itinerant Customer's Aircraft necessary to allow such aircraft to fly out of the airport in an airworthy condition, no aircraft maintenance or repairs may be performed on the Airport by the Operator or by or for the benefit of the Operator's customers (the enforcement of which shall be the Operator's responsibility), except if and as expressly authorized hereunder or by the General Manager of the Airport from time to time. Nothing in this Agreement, however, shall require express authorization by the General Manager of the Airport for, nor preclude the Operator's customers from performing, preventative maintenance as defined in 14 CFR Section 1.1 and Part 43, Appendix A, subpart (c).

(q) The Operator shall not use nor permit the use of any cleaning materials having a harmful or corrosive effect on any part of the Premises or the Airport except as permitted by and in accordance with the Sections of this Agreement entitled "*Compliance with Governmental Requirements*" and "*Rules and Regulations*".

(r) The Operator shall not do or permit anything to be done that will interfere with the free access and passage of others to space adjacent to the Premises or in any street, ways and walks adjacent or near the Premises.

(s) The Operator shall not dispose of, release or discharge, or consent to anyone disposing, releasing or discharging, any Hazardous Substance on the Premises or at the Airport.

Section 15. Maintenance, Repair, and Property Insurance

(a) The Operator shall at all times keep in clean and orderly condition and appearance the Premises and all of the Operator's fixtures, equipment, and personal property which are located in any parts of the Premises which are open to or visible by the general public.

(b) The Operator shall repair, replace, rebuild or paint all or any part of the Premises which may be damaged or destroyed by the acts or omissions of the Operator or by those of its officers, employees, members (if it is a limited liability entity), managers (if it is a limited liability entity) or agents or of other persons on or at the Premises with the Operator's consent and shall pay to the Port Authority the costs and expenses of the Port Authority to repair, replace, rebuild and paint all or any part of the Premises which may be damaged or destroyed by the acts or omissions of the Operator or by those of its officers, employees or agents or of other persons on or at the Premises with the Operator's consent but as to areas outside of the Premises only by the acts or omissions of the Operator and its officers, employees, members (if it is a limited liability entity), managers (if it is a limited liability entity) or agents.

(c) With respect to the Premises within Building No. 145, except for damage or destruction occurring under circumstances set forth in paragraphs (b) and (i) of this Section and except for reasonable wear and tear, the Port Authority shall, as necessary for the preservation of the building, maintain and make all repairs and replacements to the structural supporting frame and roof of the building, the exterior of the exterior walls (excluding doors, screens, and glass), and damage to the building caused by the sinking or settling of the ground (not including minor damage to other than the structural supporting frame and roof of the building). With respect to all parts of Areas A, B, and C, other than as provided in the preceding sentence, including, without limitation thereto as to such areas, fences, the building walls, partitions, floors, ceilings, doors, tail gates, screens, interior of sash, glass, and other transparencies and surfaces of every kind, incinerators, the mechanical, electrical, plumbing, heating, steam, sewerage, drainage, communications, fire protection, gas, and other systems and their pipes, wires, mains, lines, tubes, conduits, equipment, motors, cables, and fixtures, the Operator shall take the same good care of the Premises that would be taken by a reasonably prudent owner who desired to keep and maintain the same so that at the expiration or termination of the terms hereof and at all times during the term hereof, the same will be in as good condition as at the commencement thereof or in the event the Port Authority shall perform repairs and replacements on the Premises after the Effective Date, then, as to such repairs and replacements, in as good condition as on the completion thereof, except under circumstances as set forth in paragraph (i) of this Section and except for reasonable wear which does not adversely affect the efficient or proper utilization thereof. To that end and regardless of the cause of the condition requiring the same, the Operator shall carry on periodic inspections, perform all necessary preventive maintenance, including, but not limited to, painting, make all necessary repairs and replacements, and do all necessary rebuilding with respect to the same, all of which shall be in quality equal to the original in material and workmanship.

(d) In the event the Operator fails to commence so to maintain, clean, repair, replace, rebuild, or paint within a period of twenty (20) days after notice from the Port Authority so to do, or fails diligently to continue to completion the repair, replacement, rebuilding or painting of all

of the Premises or portions of the Airport required to be repaired, replaced, rebuilt, or painted by the Operator under the terms of this Agreement, the Port Authority may, at its option, and in addition to any other remedies which may be available to it, repair, replace, rebuild, or paint all or any part of the Premises or the Airport included in the said notice, and the cost thereof shall be payable by the Operator upon demand.

(e) The Operator shall promptly wipe up all oil, gasoline, grease, lubricants, and other flammable liquids and substances and all liquids or substances having a corrosive or detrimental effect on the paving or other surfaces of the Premises which may leak or be spilled thereon by the Operator or its customers. The Operator shall repair any damage to the pavement caused by such oil, gasoline, grease, lubricants, or other liquids or substances arising from the operations of the Operator or its customers on the Airport.

(f) The obligation of the Operator as set forth in paragraph (b) of this Section (in the event that damage or destruction caused by the acts or omissions of the Operator or by those of its employees, customers, guests, or invitees, or of other persons doing business with the Operator, is covered by any contract of insurance under which the Port Authority is the insured) is hereby released to the extent that the loss and all costs and expenses of the Port Authority, including legal fees in recovering insurance proceeds, are recouped by actual payment to the Port Authority of the proceeds of such insurance; provided, however, that if this release shall invalidate any such policy of insurance or limit or void the Port Authority's rights thereunder, then this release shall be void and of no effect and provided, further, that this waiver shall be void and of no effect if and to the extent that such damages or loss are covered under the Port Authority's self-insurance plan as hereinafter provided.

(g) (1) In the event that, as a result of the sinking or settling of the ground, or as the result of casualty, the Premises are damaged (without fault of the Operator, its employees, customers, guests, invitees, or persons doing business with it) so as to render it untenable in whole or a substantial part, then

(i) if, in the opinion of the Port Authority, the necessary repairs or rebuilding can be completed within ninety (90) days after the occurrence of the damage, the Port Authority shall repair or rebuild with due diligence the damaged Area of the Premises, and the basic rental hereunder shall be abated separately as to each of said affected Areas as provided in this Agreement for the period from the occurrence of the damage to the completion of the repairs or rebuilding as to said Area, whether or not the work of repair or rebuilding is actually completed within the said ninety (90) days; or

(ii) if, in the opinion of the Port Authority, such repairs or rebuilding cannot be completed within ninety (90) days after the occurrence of the damage, or if the building where the damage has occurred requires rebuilding, then the Port Authority shall have the option: (1) to proceed with due diligence to repair or to rebuild the damaged Area(s) as necessary; or (2) to terminate the letting as to the damaged portion of the Premises, allowing an abatement of basic rental therefor and if such option is exercised by the Port Authority and the same affects a substantial part of the Premises, the Operator shall have the right within thirty (30) days thereafter, on sixty (60) days' written notice, to terminate this Agreement as to the balance

of the Premises; or (3) to cancel this Agreement and terminate the letting as to the entire Premises; and the basic rentals payable under this Agreement shall be abated as hereinafter provided, either as the case may require, for the period from the occurrence of the damage to the completion of repairs and rebuilding, or for the period from the occurrence of the damage to the effective date of termination by the Port Authority for the portion of the Premises involved.

(2) "Substantial part" shall mean, for the purpose of this paragraph (g), at least twenty-five percent (25%) of the total usable interior floor space of either Areas A and B in the aggregate or Area C.

(h) The Operator shall be the insurer of the Port Authority against the risk of loss or theft of or damage to any of the Port Authority's fixtures, equipment and personal property which are a part of or are located in or on the Premises and shall promptly replace or repair the same within five (5) days of such loss, theft or damage.

(i) Nothing herein contained shall relieve the Operator of its obligations under the Section of this Agreement entitled "*Construction by the Operator*" to secure the Port Authority's written approval before installing any fixtures in or upon or making any alterations, decoration, additions or improvements in the Premises.

(j) (1) The Operator shall provide and maintain all obstruction lights and similar devices on the Premises and provide and maintain all fire protection and safety equipment and all other equipment of every kind and nature required by any law, rule, ordinance, resolution or regulation of the type and nature described in the Sections of this Agreement entitled "*Compliance with Governmental Requirements*" and "*Rules and Regulations*".

(2) With respect to obstruction lights, the Operator shall install, maintain and operate at its own expense such obstruction lights on the Premises as the FAA may direct or as the General Manager of the Airport may reasonably direct, and shall energize such lights daily for a period commencing thirty (30) minutes before sunset and ending thirty (30) minutes after sunrise (as sunset and sunrise may vary from day to day throughout the year) and for such other period as may be directed or requested by the Control Tower of the Airport.

(k) The Operator shall be responsible for appropriate lighting of all ramp and apron areas and for the maintenance and repair of all access roadways, taxilanes and ramp and apron areas located upon the Premises.

(l) The Operator shall remove all snow and ice and perform all other activities and functions necessary or property to make the Premises available for use by the Operator.

(m) The parties hereby stipulate that neither the provisions of Section 227 of the Real Property Law of New York nor those of any other similar statute shall extend or apply to this Agreement.

Section 16. Indemnity and Liability Insurance

(a) The Operator shall indemnify and hold harmless the Port Authority, its Commissioners, officers, employees, agents and representatives from and against (and shall reimburse the Port Authority for the Port Authority's costs and expenses, including reasonable legal expenses incurred in connection with the defense of) all claims and demands of third Persons, including, but not limited to, claims and demands for death or personal injuries, or for property damages arising out of a breach or default of any term or provision of this Agreement by the Operator or out of the use or occupancy of the Premises by the Operator, or by others with its consent, or out of any other acts or omissions of the Operator, its officers and employees, guests, invitees, and business visitors on the Premises or arising out of the acts or omissions of the Operator, its officers, and employees elsewhere at or off the Airport, including claims and demands of the City of New York, from which the Port Authority derives its rights in the Airport, for indemnification, arising by operation of law or through agreement of the Port Authority with the said City; provided, however, that the Operator's indemnification obligations in this paragraph (a) shall except only claims and demands arising from the sole negligence or willful misconduct of the Port Authority.

(b) If so directed, the Operator shall at its own expense defend any suit based upon any such claim or demand described in paragraph (a), above (even if such claim or demand is groundless, false, or fraudulent), and in handling such, it shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents, or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority.

(c) In addition to the obligations set forth in paragraph (a) of this Section, the Operator throughout the period of the letting under this Agreement, in its own name as insured and including the Port Authority as an additional insured, shall maintain and pay the premiums on a policy or policies of Commercial Automobile Liability Insurance covering owned, non-owned, and hired vehicles, including automatic coverage for newly acquired vehicles, and Comprehensive Airport Liability, including premises and operation, broad form contractual, products and completed operations, hanger keepers, and independent contractor's liability, covering bodily injury, including death and property damage liability, the policies to be broadened to include or equivalent separate policies to be obtained covering airport operator's liability under an airport liability policy with all policies under this Section providing for coverage in the limits set forth below at a minimum. The said policy or policies of insurance shall also provide or contain an endorsement providing that the protections afforded the Operator thereunder with respect to any claim or action against the Operator by a third Person shall pertain and apply with like effect with respect to any claim or action against the Operator by the Port Authority and any claim or action against the Port Authority by the Operator as though the Port Authority were a named insured, but such provision or endorsement shall not limit, vary, change, or affect the protections afforded the Port Authority thereunder as an additional insured. The said policy or policies of insurance shall also provide or contain a contractual liability endorsement covering the obligations assumed by the Operator under paragraph (a) of this Section.

<u>Type of Coverage</u>	<u>Minimum Limits</u>
Comprehensive Airport Liability	
Single blanket limit per occurrence for Bodily Injury, Personal Injury and Property Damage including, but not limited to coverages in the following areas: Premises and Operation Broad Form Contractual Products and Completed Operations Hanger Keepers Independent Contractor's Liability	\$100,000,000
Automobile Liability Insurance Combined single limit per accident for bodily injury and property damage liability	\$ 25,000,000
Pollution Liability Insurance Annual combined single for bodily injury, property damage, and environmental damage resulting from sudden and accidental releases of pollution, and covering related or resultant clean-up and/or remediation costs arising out of the occupancy and use of the Premises.	\$ 2,000,000
Worker's Compensation In accordance with the requirements of law in the state(s) where work will take place, and Employer's Liability Insurance with limits of not less than \$1,000,000 each accident.	

(d) Without limiting the provisions hereof, in the event the Operator maintains the foregoing insurance in limits greater than aforesaid, the Port Authority shall be included therein as an additional insured, with the exception of the Workers Compensation policy, to the full extent of all such insurance in accordance with the terms and provisions hereof.

(e) Notwithstanding the foregoing, it is specifically understood and agreed that the Port Authority shall have the right upon notice to the Operator given from time to time and at any time to require the Operator to increase any or all of the foregoing limits to reasonable commercial amounts and the Operator shall promptly comply therewith and shall promptly submit to the Port Authority a certificate or certificates evidencing the same.

(f) As to the insurance required by the provisions of this Section, the policies or a certificate or certificates evidencing the existence thereof, shall be delivered by the Operator to the Port Authority prior to the Effective Date. Each policy or certificate delivered as aforesaid

shall bear the endorsement of or be accompanied by evidence of payment of the premium thereon. Each such policy or certificate shall contain a valid, unqualified provision or endorsement that the policy may not be cancelled, terminated, changed, or modified without giving thirty (30) days' written advance notice thereof to the Port Authority. Each such policy or certificate shall contain an additional endorsement providing that the insurance carrier shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents, or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority. Any renewal policy shall be delivered to the Port Authority at least thirty (30) days prior to the expiration of each expiring policy, except for any policy expiring after the date of expiration of the letting hereunder. The aforesaid insurance shall be written by a company or companies approved by the Port Authority, the Port Authority agreeing not to withhold its approval unreasonably. If at any time any of the insurance policies shall be or become unsatisfactory to the Port Authority as to form or substance, including the minimum limits thereof, or if any of the carriers issuing such policies shall be or become unsatisfactory to the Port Authority, the Operator shall promptly obtain and deliver to the Port Authority a new and satisfactory policy in replacement or a certificate from the issuing company evidencing the same to the satisfaction of the Port Authority, the Port Authority agreeing not to act unreasonably hereunder. If the Port Authority at any time so requests or approves, the Operator shall deliver to the Port Authority a certified copy of each of the said policies and shall, upon request, deliver to the Port Authority a certified copy of such portions of said policies pertaining to the coverage hereunder as the Port Authority shall request. The person making any certification hereunder to the Port Authority shall be one acceptable thereto.

Section 17. Environmental Obligations

(a) Definitions. The following terms shall have the respective meanings provided below:

“Analyzed Items” shall mean, with respect to the ground water and soil, respectively, the constituents for which the ground water samples and the soil samples described in the Environmental Report were tested.

“Disposal” shall have the meaning set forth in subparagraph (k)(1) of this Section.

“Environmental Report” shall mean the Initial Environmental Report and all Remediation Completion Reports, if any.

“Existing Condition” shall mean the levels of Analyzed Items in the soil and ground water for all portions of the Premises as derived by applying the methodology set forth in paragraph (j), below, to the test results in the Initial Environmental Survey, as such test results may be superseded and supplemented by the test results in each Remediation Completion Report in accordance with the provisions of subparagraph (m) of this Section.

“Exit Baseline” shall have the meaning set forth in subparagraph (u) of this Section.

“Initial Environmental Report” shall mean the report, dated April 2011, entitled “John F. Kennedy International Airport Building 145 – Environmental Subsurface Baseline Investigation-Final Report”, attached hereto as “Exhibit E” and made a part hereof.

“Matter” shall have the meaning set forth in subparagraph (k)(1) of this Section.

“Operator’s Act” shall mean any act or omission of the Operator or of any Affiliate of the Operator or of any of their employees, agents, contractors, sublessees, representatives, or others on the Premises or the Airport with the consent of the Operator or any Affiliate of the Operator.

“Remediate” or “Remediation” shall mean the investigation (including any feasibility studies or reports), cleanup, removal, abatement, transportation, disposal, treatment (including in-situ treatment), management, stabilization, neutralization, collection, or containment of a Hazardous Substance or contamination, that may be required to satisfy Environmental Laws, in each case including, without limitation, any closure, restoration or monitoring, operations and maintenance activities that may be required by any Government Agency after the completion of such investigation, cleanup, removal, transportation, disposal, treatment, neutralization, collection, or containment activities as well as the performance of any and all obligations imposed by any Governmental Agency in connection with such investigation, cleanup, removal, transportation, disposal, treatment (including in situ treatment), management, stabilization, neutralization, collection, or containment (including any such obligation that may be imposed pursuant to a environmental permit or a consent order).

“Remediation Completion Report” shall have the meaning set forth in paragraph (m) of this Section.

The terms Environmental Damage and Environmental Damages, Hazardous Substance and Hazardous Substances, and Governmental Authority and Governmental Authorities shall have the same meanings given to each of them in the Section of this Agreement entitled “Definitions”.

(b) Operator’s Assumption of Environmental Liability.

(1) Without limiting the generality of any of the other terms and provisions of this Agreement, but subject to the provisions of paragraph (b)(2), below, the Operator hereby expressly agrees to assume all responsibility for, relieve the Port Authority from, and reimburse the Port Authority for, any and all risks, claims, penalties, costs and expenses of any kind whatsoever caused by, arising out of or in connection with, the condition of the Premises including, without limitation, all Environmental Requirements and all Environmental Damages, and to indemnify and hold harmless the Port Authority, its Commissioners, officers, agents and employees from and against all such risks and responsibilities and all Environmental Damages and Environmental Requirements (including, without limitation, all fines, penalties, payments in lieu of penalties, and legal expenses incurred by the Port Authority and such other indemnified persons in connection therewith).

(2) Notwithstanding subparagraph (b)(1), above, it is hereby agreed and understood that except as set forth in paragraphs (k), (q) and (r) of this Section, the Operator shall not be responsible for the following:

(i) Environmental Damages resulting from or the Remediation of the Existing Condition;

(ii) Environmental Damages resulting from or the Remediation of Hazardous Substances in the soil or ground water in, on or under the Premises caused by the sole negligence of the Port Authority on or after the Commencement Date;

(iii) fines and penalties arising out of the Existing Condition if the fines and penalties are imposed due to the failure to have the Existing Condition Remediated, but only so long as the Operator shall not in any manner have obstructed or interfered with the performance of the Remediation or removal of the Existing Condition; and

(iv) any Hazardous Substance that has migrated onto the Premises from outside the Premises; provided, however, Operator shall be responsible for any Hazardous Substance that has migrated onto the Premises from any area off-Premises at which Operator is conducting operations at the Airport either (x) pursuant to another written agreement between the Operator and the Port Authority, if any, and (1) Operator has exclusive use or occupancy of such off-Premises area under such other written agreement or (2) the migration is based on, arises out of or relates to an act or omission of Operator (including an act or omission of any of its officers, members, managers, employees, agents, designees, contractors, invitees, or guests), or (y) pursuant to this Agreement and arising out of an act or omission of the Operator, its employees, agents, contractors or representatives, or an act or omission of persons other than the Operator which use or occupy such off-Premises area with the consent of the Operator.

(3) The Operator agrees that in any legal action or proceeding in which the Port Authority and the Operator are opposing parties, the Operator shall have the burden of proof, as hereinafter defined, as to any and all issues of fact with respect to: (1) whether the presence of any Hazardous Substance on, about or under the Premises occurred prior or subsequent to the Effective Date and whether the same is the result of any Operator's Act; (2) whether any Hazardous Substance disposed of or released from the Premises or which migrated from the Premises came to be present on, about or under the Premises prior or subsequent to the Effective Date and whether the same is the result of any Operator's Act; and (3) whether the Operator exacerbated any pre-existing environmental condition so as to cause a Hazardous Substance to first become regulated during the Term. If the Operator prevails in such legal action or proceeding to meet the above-described burden of proof then the reasonable direct costs actually incurred by the Operator to delineate the disputed source of the increase in the relevant Analyzed Item in order to meet such burden of proof shall be reimbursed to the Operator by the Port Authority to the extent that the Operator has delivered to the Port Authority true and accurate copies of documentation that substantiate such costs actually incurred by the Operator. The direct costs contemplated by the parties in the preceding sentence shall be those charged to Operator by the laboratory or entity performing any testing on the Premises and surrounding premises (if any), directed to the above issues, including costs and fees for drilling, lab analysis,

personnel, lab reports, and the like, and shall not include legal fees, expert witness fees, and other costs and expenses associated with the legal action or proceeding. "Burden of proof" shall mean both the legal burden of going forward with the evidence and the legal burden of establishing the truth of any fact by a preponderance of the evidence.

(c) Compliance with Environmental Requirements. Without limiting the Operator's obligations elsewhere under this Agreement to comply with all laws, ordinances, governmental rules, regulations and orders which at any time are in effect during the Term, Operator understands and agrees that, except as provided in paragraph (b)(2) of this Section, it shall be obligated, at its cost and expense, to comply with, and relieve the Port Authority from compliance with, all Environmental Requirements which are applicable to or which affect (w) the Premises, (x) the operations of, or work performed by, Operator or others with the consent of Operator at the Premises or Operator's operations at the Airport, (y) the occupancy and use of the Premises by Operator or by others with its consent or (z) any Hazardous Substance which has migrated from the Premises. Nothing in the foregoing shall be construed as a submission by the Port Authority to the application to itself of any Environmental Requirements; provided, however, that no immunity or exemption of the Port Authority from any Environmental Requirements shall excuse compliance or be grounds for noncompliance on the part of Operator. Without limiting the generality of the foregoing and as part of Operator's fulfillment of the foregoing obligations, Operator shall be responsible, at its sole cost and expense and subject to the direction of the Port Authority, for:

- (1) the preparation of and submission to all applicable Governmental Authorities of any notice, negative declaration, remedial action workplan, no further action letter, remediation agreement, response action outcomes, or any other documentation or information;
- (2) the obtaining of any surety bond or the giving of any other financial assurances;
- (3) the obtaining from any Governmental Authority, if applicable, of any approval of a negative declaration or no further action letter, response action outcome or other form of release or mitigation; and
- (4) complying with the provisions of all Environmental Requirements becoming effective on or relating to the termination, expiration or surrender of the letting of the Premises or of any portion thereof under this Agreement, or on the closure or transfer of Operator's operations at the Premises.

(d) Obligation to Remediate. In addition to and without limiting the generality of the obligations of Operator set forth above and elsewhere in this Agreement, Operator shall, at its sole cost and expense and in accordance with and subject to the provisions of the Section of this Agreement entitled "Construction by the Operator", upon notice from the Port Authority, promptly take all actions to:

- (1) completely Remediate all Hazardous Substances in, on and under the Premises and at the Airport (i) resulting from or in connection with the use and occupancy of the

Premises by Operator or any affiliated company of Operator during the term hereof, (ii) resulting from or in connection with any Operator's Act during the term hereof, or (iii) which have been or are permitted to be disposed of, released, discharged or otherwise placed in, on or under the Airport by the Operator or any affiliated company of the Operator or which have been disposed of, released, discharged or otherwise placed in, on or under the Premises during the term of the letting hereunder;

(2) except as provided in paragraph (b)(2) of this Section, Remediate all Hazardous Substances in, on or under the Premises or which have migrated from the Premises to any other property which any Governmental Authority or any Environmental Requirement or any violation thereof require to be Remediated; and

(3) except as provided in paragraph (b)(2) of this Section, Remediate all Hazardous Substances in, on or under the Premises or which have migrated from or from under the Premises necessary to mitigate any Environmental Damages.

(e) Particular Obligations Included. The obligations set forth in paragraphs (c) and (d) of this Section shall include, but not be limited to, the investigation of the Environmental Condition of the area to be Remediated, the preparation of feasibility studies, reports and remedial plans and the performance of any removal, remediation, containment, operation, maintenance, monitoring or restoration work and shall be performed in a good, safe and workmanlike manner and shall minimize any impact on activities off the Premises. Operator shall promptly provide the Port Authority with copies of all test results and reports generated in connection with such obligations. Promptly upon completion of such investigation and Remediation, Operator shall seal or cap all monitoring wells and test holes, remove all associated equipment and restore the Remediated property.

(f) Port Authority Remedies. Without limiting the Port Authority's other remedies under this Agreement or, generally, at law or equity, the Port Authority shall have the right, during and after the Agreement term, to such equitable relief, including restraining injunctions and declaratory judgments, to enforce compliance by the Operator of its environmental obligations under this Agreement. In the event that Operator fails to comply with or perform any of such obligations, the Port Authority at any time during, and/or subsequent to, the termination, expiration or surrender of the letting of the Premises or any portion thereof may elect (but shall not be required) to perform such obligations, and upon demand the Operator shall pay to the Port Authority as additional rent its reasonable costs thereof, including all overhead costs as determined by the Port Authority. For the purposes of this paragraph, the term "cost" shall be as defined in the Section of this Agreement entitled "Additional Rent and Charges; Late Charges".

(g) Information and Reports. Without limiting any other of Operator's obligations under this Agreement and except as provided in paragraph (b)(2) of this Section, Operator, at its sole cost and expense, shall provide the General Manager of the Airport with such information, documentation, records, correspondence, notices, reports, tests, results, and certifications and any other information as the Port Authority shall request in connection with any Environmental Requirements or Environmental Damages, and Operator shall promptly acknowledge, swear to, sign or otherwise fully execute the same. Operator agrees that any of the foregoing may be filed

by the Port Authority with the appropriate Governmental Authority on behalf of the Operator at the Operator's cost and expense. Further, Operator agrees, unless directed otherwise by the Port Authority, to provide the General Manager of the Airport with copies of all information, documentation, records, correspondence, notices, certifications, reports, test results and all other submissions with respect to any Environmental Requirements or Environmental Damages that are (i) provided by Operator to a Governmental Authority, at the same time such are so provided and (ii) provided to Operator from a Governmental Authority, upon receipt by Operator from a Governmental Authority.

(h) Indemnification. Without limiting the generality of any other provision of this Agreement, and except as provided in paragraph (b)(2) of this Section, Operator shall indemnify, hold harmless and reimburse the Port Authority, its Commissioners, officers, agents, employees and representatives from all claims, demands, penalties, fines, liabilities (including strict liability), settlements, reasonable attorney and consultant fees, investigation and laboratory fees, removal and remediation costs, court costs and litigation expenses, damages, judgments, losses, costs and expenses of whatsoever kind or nature and whether known or unknown, contingent or otherwise, just or unjust, groundless, unforeseeable or otherwise, arising or alleged to arise out of or in any way related to any Environmental Damages resulting from or in connection with the use or occupancy of the Premises by Operator of any Affiliate thereof, or any Environmental Requirement which Operator is obligated to comply with pursuant to this Agreement, or the risks and responsibilities assumed hereunder by Operator for the condition of the Premises, or a breach or default of the Operator's obligations hereunder. If so directed, Operator shall at its own expense defend any suit based upon the foregoing, and in handling such it shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority.

(i) Compliance Standard.

(1) Without limiting the generality of any provision of this Agreement, in the event that any Environmental Requirement sets forth more than one compliance standard, the Operator agrees that the standard or standards to be applied in connection with any obligation it may have under this Agreement with respect to said Environmental Requirement shall be that which requires or permits the lowest level of a Hazardous Substance; provided, however, that in the event such lowest level of a Hazardous Substance requires or allows the imposition of any restriction of any nature whatsoever upon the use or occupancy of the Premises or any other portion of the Airport or upon any operations or activities conducted or to be conducted on the Premises or the Airport or upon the transfer of the Premises or the Airport, then Operator shall Remediate to such a level so that there is no such restriction placed upon the use and occupancy of the Premises or the Airport or upon any operations or activities conducted or to be conducted on the Premises or the Airport. Nothing in this subparagraph shall modify the exclusion from Operator's responsibility for the Remediation of the Existing Condition as set forth in subparagraph (b)(2), above of this Section which are nevertheless subject to subparagraph (q) of this Section.

(2) Operator further agrees that, notwithstanding the terms and conditions of subparagraph (i)(1), above, the Port Authority shall have the right at any time and from time to time, acting in its sole discretion and without any obligation whatsoever to Operator or otherwise to do so, to designate any level or levels or standard or standards of Remediation permitted or required under any Environmental Requirement, and such designation shall be binding upon Operator with respect to its obligations under this Agreement with respect to Environmental Requirements. Nothing in the foregoing sentence is intended to modify the exceptions from responsibility to which the Operator is entitled pursuant to subparagraph (b)(2), above, of this Section.

(3) Nothing in this paragraph (i) shall be construed to require Operator to Remediate any Analyzed Item below the Existing Condition except as otherwise required by or as set forth in this Agreement including, without limitation, as required by or as set forth in paragraphs (k), (q) and (r) of this Section

(j) Methodology. The methodology to be used for the purpose of this Section to determine for any Existing Condition the level of an Analyzed Item at any location in, on or under the Premises shall be, for ground water, straight line interpolation methodology utilizing principles of hydrogeologic interpretation, and for soil, the EPA geostatistical software system applicable at any particular time and, notwithstanding any other evidence to the contrary including, without limitation, anything contained in the reports constituting a part of the Environmental Report, the Existing Condition as so determined shall constitute, for all purposes as between Operator and the Port Authority, the levels of the Analyzed Items in the soil and ground water in, on and under the Premises; provided, however, that with respect to each location from which soil and/or water samples have been taken and the tests results thereof form a part of the Existing Condition, the level of each Analyzed Item that was found at such location shall constitute the test result of such Analyzed Item at such location.

(k) Disposal of Matter.

(1) It is expressly understood and agreed that the proper handling, delivery, treatment, storage, transportation, disposal and depositing (collectively, "Disposal"), whether on or off the Airport, of any soil, dirt, sand, silt, water, asbestos, lead, PCB's, demolition or construction debris or other matter excavated, disturbed or removed by Operator or its contractors at, from or under the Premises or any other area of the Airport (all such soil, etc. or other matter, collectively, the "Matter") at any time or times, and regardless of the nature or composition of such Matter including, without limitation, any and all Disposal of any Matter in connection with the performance of the repair, replacement, rebuilding of the Premises, or any other construction work performed by or on behalf of the Lessee. Any and all Remediation and Disposal of any Matter and any and all other Remediation and Disposal (whether soil, upper aquifer or otherwise) necessary, required or appropriate as a result of, caused by, incidental to or triggered by such excavation, disturbance or removal of the Matter or arising therefrom, and the taking or doing of any and all other action or actions necessary, required or appropriate in connection therewith, shall be the sole and complete responsibility of Operator including, without limitation, all costs and expenses thereof and any and all Environmental Damages,

Environmental Requirements, claims, penalties and other expenses relating thereto. The foregoing obligations of Operator shall obtain and apply with full force and effect irrespective of the nature or source of any contaminant, pollutant, chemical, waste or other substance or whether any of the same is a Hazardous Substance or whether any of the same is at a level or levels above or below the level or levels of any of the Analyzed Items constituting the Existing Condition or whether there has or has not been any decrease or increase in such level or levels. Operator shall perform all of the foregoing in accordance with and subject to all the terms, provisions, covenants and conditions of this Agreement.

(2) Without limiting the generality of any other term or condition of this Agreement, title to any Matter excavated or removed by Operator and not used at the Premises shall vest in Operator upon the excavation or removal thereof and all such Matter shall be delivered and deposited by Operator at the Operator's sole cost and expense to a location off the Airport in accordance with the terms and conditions of this Agreement and all Environmental Requirements. The entire proceeds, if any, of the sale or other disposition of the Matter shall belong to Operator.

(3) In the event Operator discovers any Hazardous Substance in, on or under the Premises, Operator in reporting such Hazardous Substance shall direct such report to the attention of such individual at the subject Governmental Authority as the General Manager of the Airport shall require in order to assure consistency in the environmental management of the Airport; provided, however, that notwithstanding the foregoing, in no event shall Operator be required by this subparagraph (k)(3) to violate any Environmental Requirement.

(4) Promptly upon final disposition of any Hazardous Substance from the Premises or the Airport, Operator shall submit to the Port Authority a "Certification of Final Disposal" stating the type and amount of material disposed, the method of disposal and the owner and location of the disposal Airport. The format of such certification shall follow the requirements, if any, of Governmental Agencies having jurisdiction, as if the Port Authority were a private organization but the name of the Port Authority shall not appear on any certificate or other document as a generator or owner of such material.

(l) Port Authority Right to Enter for Investigations. Without limiting the foregoing and without limiting the generality of the provisions of the Section of the Agreement entitled "Rights of Entry Reserved", and subject to and in accordance with the provisions of such Section, the Port Authority and its designees shall have the right but not the obligation to enter upon the Premises upon forty-eight (48) hours' notice to Operator to conduct testing and related activities from existing wells, if any, to make additional wells and borings and to conduct testing and related activities therefrom and to perform such activities as shall be necessary to Remediate the Existing Condition including, but not limited to, conducting pumping operations from any such wells. In the exercise of the foregoing rights, the Port Authority and its designees shall not interfere in any material respect with Operator's use and occupancy of the Premises.

(m) Remediation Completion Reports. After any person performs any Remediation on the Premises, such person may, but shall not be obligated to, sample and test the soil and/or aquifer of the Premises or portions thereof and set forth the results of such samplings and tests in

a report (any such report and test results, a "Remediation Completion Report"). Upon delivery of a Remediation Completion Report to the Operator and the Port Authority, such Remediation Completion Report shall (x) supersede and replace the existing Environmental Report or the applicable portions thereof, to the extent such test results and report are of samples of Analyzed Items taken from the same well or boring or a new well or boring immediately adjacent to such well or boring; and (y) supplement the existing Environmental Report or the applicable portions thereof to the extent the test results and report would not supersede (pursuant to the foregoing clause (x)) any test results and reports in the existing Environmental Report; provided, however, that said sampling and testing shall produce a fair and representative sampling of the Premises, shall be analyzed by a New York approved independent laboratory, and shall have been performed in accordance with a methodology approved by the Port Authority.

(n) Protection and Maintenance of Wells. Without limiting the generality of the provisions of the Section of this Agreement entitled "Maintenance, Repair and Property Insurance", the Operator agrees to protect and maintain the wells referred to the Environmental Report and paragraph (m) of this Section and shall repair any damage thereto not caused by the activities of the Port Authority, its employees, agents or designee(s), or any occupant of the Premises prior to the Effective Date.

(o) Survival of Obligations. Without limiting the generality of any other term or provision of this Agreement, all of the obligations of Operator under this Section shall survive the expiration or earlier termination of the letting of the Premises or any portion thereof.

(p) No Waiver of Rights against Third Parties. The terms and conditions of this Section are intended to allocate the obligations and responsibilities between Operator and the Port Authority, and nothing in this Section or elsewhere in this Agreement shall be deemed to limit, modify waive or otherwise alter the rights, claims and remedies which the Port Authority or Operator may have against third parties at law, equity or otherwise.

(q) Operator Responsibility for Existing Condition.

(1) Notwithstanding any other term or provision of this Agreement, the Existing Condition shall in no event include any Hazardous Substance whose presence in, on or under the Premises was caused by or resulted from the use and occupancy of the Premises by the Operator or by any Affiliate of Operator, or the performance of any work by any of them, or the acts or omissions of the Operator, its officers, agents or employees, or the acts or omissions of any Affiliate of Operator or of any sublessees or others who occupied the Premises with the permission of Operator or an Affiliate of Operator or their officers, agents or employees.

(2) Notwithstanding any other term or provision of this Agreement, and for the avoidance of doubt, the Existing Condition shall in no event include the exacerbation or increase of any Hazardous Substance pre-existing in, on or under the Premises if such exacerbation or increase results in the need for Remediation and is caused by or resulting from (i) the use and occupancy of the Premises by the Operator or by any Affiliate of the Operator or the performance of any work by any of them, or (ii) any Operator's Act.

(3) Operator shall be responsible for the Remediation of the Existing Condition and for fines and penalties arising, in whole or in part, out of the inaccessibility at any time of the Premises for Remediation by any prior occupant of the Premises or by the Port Authority or its designees or others due to any act or omission, interruption, obstruction or hindrance by Operator or any of its agents, contractors or representatives, sublessees or subusers, including but not limited to, any refusal or failure by the Operator or any of its agents, contractors or representatives, sublessees or subusers to grant or allow full and complete access to the Premises, or any portion thereof to any prior occupant of the Premises, the Port Authority or its designees. Neither said access nor any such work by any prior occupant of the Premises, the Port Authority or its designees, nor any approval or consent granted to any prior occupant of the Premises or any designee of the Port Authority to perform such work, shall result in or entitle Operator to any abatement, reduction, diminution or suspension of any of the rentals or charges under this Agreement except if abatement is provided for pursuant to Section 4(g) hereof entitled "Abatement".

(r) Incidental Remediation of Existing Condition. Notwithstanding any other term or condition of this Agreement, it is hereby understood and agreed that the Operator's obligations under this Agreement shall not be diminished or relieved in any way in the event that the Existing Condition, or any portion thereof, is or will be wholly or partially Remediated in consequence of or incidental to the Operator's performance of any of its obligations under this Agreement, whether due to the fact that the Operator cannot Remediate one or more Hazardous Substances for which it is responsible to Remediate without also Remediating one or more Analyzed Items for which it is not responsible, or due to cost or expedience or for any other reason; and in no event shall the Port Authority have any responsibility to participate in, or share in the cost of, any such Remediation.

(s) Similarly Situated Persons. The Port Authority has advised Operator that it is the intention of the Port Authority with respect to the application of pollution prevention programs, "best management practices plans" and other voluntary programs adopted and agreements made by the Port Authority with any governmental agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof constituting Environmental Requirements that the Port Authority will treat Operator in a similar manner as similarly situated persons at the Airport.

(t) Remediation to Existing Condition at End of Term. Operator hereby covenants and agrees that it shall, on or before the cessation of the letting hereunder or any portion thereof (whether such cessation be by termination, expiration or otherwise), Remediate each Analyzed Item, as necessary, to a level not exceeding the level of such Analyzed Item constituting a part of the Existing Condition (subject in all events, however, to the exceptions set forth in paragraph (b)(2) of this Section and the provisions of paragraph (q) of this Section).

(u) Exit Baseline.

(1) Without limiting any other term or provision hereof, all the obligations of Operator under this Section shall survive the expiration or termination of the letting of the Premises or any portion thereof, provided, however, the Operator shall not be responsible for any

Hazardous Substances in, on, under or about the Premises which occurred after the date that Operator shall have surrendered the Premises to the Port Authority and were not due to the acts or omissions of Operator, or others acting by, through or under Operator, or others on the Premises with Operator's consent.

(2) Between the fifteenth (15th) and twelfth (12th) months immediately preceding the Expiration Date or within three months after the effective date of the termination the letting hereunder, as the case may be, Operator shall at its sole cost and expense and subject to the terms and provisions of the Section of the Agreement entitled "Construction by Operator", sample and test the soil and ground water in, on and under the Premises in accordance with such standards, methods, protocol and procedures employed by the Port Authority to prepare the Initial Environmental Report, and as shall be further required by the Port Authority in its sole discretion (with the Port Authority not acting in an arbitrary or capricious manner in the exercise of its discretion), and after consultation with the Operator, in such locations specified by the Port Authority and as based upon: (i) joint inspection of the Premises by the Port Authority and Operator; (ii) spill history with respect to the Premises during Operator's tenancy; and (iii) the use and occupancy of the Premises by the Operator, by any Affiliate of Operator, and/or by any of their respective officers, agents, employees, members, managers, or by any sublessees or others on the Premises with the permission of the Operator (such sampling and testing of the soil and groundwater, the "Exit Baseline"). All such sampling, testing and the preparation of any associated report shall be performed by a New York approved independent consultant and laboratory, said sampling and testing shall produce a fair and representative sampling of the Premises and said sampling and testing shall be performed in accordance with the methodology described in paragraph (j) of this Section.

(3) The Exit Baseline and the test results therefrom may be used by the Operator to evidence that a Hazardous Substance in, on or under the Premises occurred after the date that the Operator shall have surrendered the Premises to the Port Authority.

Section 18. Construction by the Operator

(a) Except as otherwise expressly provided in the Agreement, the Operator shall not erect any structures, make any improvements or do any construction on the Premises or alter, modify, or make additions, improvements, repairs to or replacements of any structure now existing or built at any time during the letting, or install any fixture (other than trade fixtures, removable without material damage to the freehold, any such damage to be immediately repaired by the Operator) without the prior written approval of the Port Authority and in the event any construction, improvement, alteration, modification, repair or replacement or addition is made without such approval, then upon reasonable written notice so to do, the Operator will remove the same, or at the option of the Port Authority cause the same to be changed to the satisfaction of the Port Authority. In case of any failure on the part of the Operator to comply with such notice, the Port Authority may effect the removal or change and the Operator shall pay the cost thereof to the Port Authority. No provision hereof or elsewhere in this Agreement shall be deemed to grant any right whatsoever to any party other than the Operator to erect any structures, make any improvements or do any construction on the Premises or alter, modify, or make

additions, improvements, repairs to or replacements of any structure now existing or built at any time during the letting, or install any fixture (other than trade fixtures removable without material damage to the Premises, any damage to the Premises caused by such removal to be immediately repaired by the Operator) without the prior written approval by the Port Authority of a tenant alteration application to be submitted by the Operator to the Port Authority.

(b) Without limiting the generality of the foregoing paragraph, the Operator acknowledges and agrees that any Notes and associated reference lines set forth on the Exhibits identifying the Premises shall not constitute or be deemed to constitute or imply that approval of the Port Authority will be granted to any proposed construction by the Operator nor shall the same grant or be deemed to grant any right or permission to the Operator now or in the future to erect any structures, make any improvements or do any other construction work in the Premises, including, but not limited to, repairs to or replacements of any structure now existing or built at any time during the letting or install any fixtures on the Premises, including, but not limited to, paving, and that the provisions of the foregoing paragraph of this Section shall be read and construed as if there were no Notes and associated reference lines on the aforesaid Exhibits and that any which were placed on such Exhibits are solely and exclusively for the benefit of the Port Authority.

(c) Subject to the provisions of this Section, the Operator has advised that, in connection with initial occupancy of the Premises, it intends to undertake construction at the Premises to renovate Building 145 and install signage outside Building 145 in the amount of approximately Two Hundred Thousand Dollars (\$200,000) and to purchase ground service equipment with an approximate value of Seven Hundred Thousand Dollars (\$700,000).

Section 19. Signs

(a) Except with the prior written approval of the Port Authority, the Operator shall not erect, maintain, or display any signs or any advertising at or on the exterior parts of the Premises or in the Premises so as to be visible from outside the Premises or at any other place on the Airport outside the Premises. Interior signs affecting public safety and security shall be in accordance with established Port Authority standards.

(b) Upon the expiration or termination of the letting, the Operator shall remove, obliterate, or paint out, as the Port Authority may direct, any and all of its signs and advertising on the Premises or elsewhere on the Airport and in connection therewith shall restore the portion of the Premises or the Airport affected by such signs or advertising to the same condition as existing prior to the installation of such signs and advertising. In the event of a failure on the part of the Operator so to remove, obliterate, or paint out each and every sign or advertising and so to restore the Premises and the Airport, the Port Authority may perform the necessary work and the Operator shall pay the costs thereof to the Port Authority on demand.

Section 20. Additional Rent and Charges; Late Charges

(a) Additional Rent and Charges.

(1) If the Port Authority is required or elects to pay any sum or sums or incurs any obligation or expense by reason of the failure, neglect, or refusal of the Operator to perform or fulfill any one or more of the conditions, covenants, or agreements contained in this Agreement or as a result of any act or omission of the Operator contrary to the said conditions, covenants, and agreements, the Operator agrees to pay the sum or sums so paid or the expense so incurred, including all interest, costs, damages, and penalties, and the same may be added to any installment of rent thereafter due hereunder, and each and every part of the same shall be and become additional rent, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the rental as set forth in Section 3 hereof.

(2) For all purposes under this Section and in any suit, action or proceeding of any kind between the parties hereto, any receipt showing any payment of a sum or sums by the Port Authority for any work done or material furnished shall be prima facie evidence against the Operator that the amount of such payment was necessary and reasonable. Should the Port Authority elect to use its operating and maintenance staff in performing any work and to charge the Operator with the cost of same, any time report of any employee of the Port Authority showing hours of labor or work allocated to such work, or any stock requisition of the Port Authority showing the issuance of materials actually used in the performance thereof, shall likewise be prima facie evidence against the Operator that the amount of such charge was necessary and reasonable.

(b) Late Charges.

If the Operator should fail to pay, after all applicable notice and grace periods, any amount required under this Agreement when due to the Port Authority, including but not limited to, any payment of basic, percentage or other rental or any payment of utility or other charges, or if any such amount is found to be due as the result of an audit, then, in such event, the Port Authority may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount for each late charge period hereinbelow described) during the entirety of which such amount remains unpaid, each such late charge not to exceed an amount equal to eight-tenths of one percent of such unpaid amount for each late charge period. There shall be twenty-four (24) late charge periods during each calendar year; each late charge period shall be for a period of at least fifteen (15) calendar days except one late charge period each calendar year may be for a period of less than fifteen (15) (but not less than thirteen (13)) calendar days. Without limiting the generality of the foregoing, late charge periods in the case of amounts found to have been owing to the Port Authority as the result of Port Authority audit findings shall consist of each late charge period following the date the unpaid amount should have been paid under this Agreement. Each late charge shall be payable immediately upon demand made at any time therefor by the Port Authority. No acceptance by the Port Authority of payment of any unpaid amount or of any unpaid late charge amount shall be deemed a waiver of the right of the Port Authority to payment of any late charge or late charges payable under the provisions of this Section, with respect to such unpaid amount. Each late charge shall be and become additional rent, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the rental as set forth in the Section of this Agreement entitled "Rentals and Abatement." Nothing in this Section is intended to, or shall be deemed to, affect, alter, modify or

diminish. in any way (i) any rights of the Port Authority under this Agreement, including but not limited to, the Port Authority's rights set forth in Section 23 of this Agreement; or (ii) any obligations of the Operator under this Agreement. In the event that any late charge imposed pursuant to this Section shall exceed a legal maximum applicable to such late charges then., in such event, each such late charge payable under this Agreement shall be payable instead at such legal maximum.

(c) **Service Charge.** In the event that upon conducting an examination and audit the Port Authority determines that unpaid amounts are due to the Port Authority by the Operator, the Operator shall be obligated, and hereby agrees to pay to the Port Authority a service charge in the amount of five percent (5%) of each amount determined by the Port Authority audit findings to be unpaid. Each such service charge shall be payable immediately upon demand (by notice, bill or otherwise) made at any time therefor by the Port Authority. Such service charge(s) shall be exclusive of, and in addition to, any and all other moneys or amounts due to the Port Authority by the Operator under this Agreement or otherwise. No acceptance by the Port Authority of payment of any unpaid amount or of any unpaid service charge shall be deemed a waiver of the right of the Port Authority of payment of any late charge or late charges or other service charges payable under the provisions of this Section with respect to such unpaid amount. Each such service charge shall be and become additional rent, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the rental. Nothing in this subparagraph is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) any rights of the Port Authority under this Agreement, including, without limitation, the Port Authority's rights to terminate set forth in the Section hereof entitled "*Termination by the Port Authority*"; or (ii) any obligations of the Operator under this Agreement.

Section 21. Rights of Entry Reserved

(a) The Port Authority, by its officers, employees, agents, representatives, and contractors, shall have the right at all reasonable times to enter upon the Premises for the purpose of inspecting the same, for observing the performance by the Operator of its obligations under this Agreement, and for the doing of any act or thing which the Port Authority may be obligated or have the right to do under this Agreement or otherwise.

(b) Without limiting the generality of the foregoing, the Port Authority, by its officers employees, agents, representatives, contractors, and furnishers of utilities and other services shall have the right, for its own benefit, for the benefit of the Operator, or for the benefit of those at the Airport other than the Operator, to enter the Premises to maintain existing and future utility, mechanical, electrical, and other systems, to make such repairs, replacements, or alterations as, in the opinion of the Port Authority, may be deemed necessary or advisable, to construct or install over, in, or under the Premises new systems or parts thereof, and to use the Premises for access to other parts of the Airport otherwise not conveniently accessible; provided, however, that in the exercise of such rights of access, repair, alteration, or new construction the Port Authority shall not unreasonably interfere with the use and occupancy of the Premises by the Operator.

(c) In the event that any property of the Operator shall obstruct the access of the Port Authority, its employees, agents, or contractors, to any of the existing or future utility, mechanical, electrical, and other systems or to the area of any proposed alteration or new construction and thus shall interfere with or impede the inspection, maintenance, repair, or replacement of any such system or interfere with or impede any alteration or new construction, the Operator shall move such property, as directed by the Port Authority, in order that access may be had to the system or part thereof or such area of any alteration or new construction for its inspection, maintenance, repair, replacement, alteration, or new construction, and if the Operator shall fail to so remove such property after direction from the Port Authority to do so, the Port Authority may move it and the Operator hereby agrees to pay the cost of such moving upon demand.

(d) Nothing in this Section shall or shall be construed to impose upon the Port Authority any obligation so to construct or inspect or maintain or to make repairs, replacements, alterations, or additions, or shall create any liability for any failure so to do. The Operator is and shall be in exclusive control and possession of the Premises during the letting, and the Port Authority shall in no event be liable for any injury or damage to any property or to any person happening on or about the Premises nor for any injury or damage to the Premises nor to any property of the Operator or of any other person located in or thereon (other than those occasioned by the affirmative acts of the Port Authority, its employees, agents, and representatives).

(e) At any time and from time to time during ordinary business hours within the six (6) months next preceding the expiration of the letting, the Port Authority, by its agents and employees, whether or not accompanied by prospective operators, occupiers, or users of the Premises, shall have the right to enter thereon for the purpose of exhibiting and viewing all parts of the same and during such six-month period the Port Authority may place and maintain on the Premises the usual "To Let" signs, which signs the Operator shall permit to remain without molestation.

(f) If, during the last month of the letting, the Operator shall have removed all or substantially all of its property from the Premises or a part thereof, the Port Authority may immediately enter and alter, renovate, and redecorate the Premises or the part thereof from which the same shall have been removed, whichever is the case.

(g) The exercise of any or all of the foregoing rights by the Port Authority or others shall not be or be construed to be an eviction of the Operator nor be made the grounds for any abatement of rental nor any claim or demand for damages, consequential or otherwise.

Section 22. Condemnation

(a) Definitions.

The following terms, when used in this Section, shall, unless the context shall require otherwise, have the respective meanings given below:

“Date of Taking” shall mean the date on which title to all or any portion of the Premises, as the case may be, has vested in any lawful power or authority pursuant to a Taking.

“Material Part” with reference to the Premises shall mean such portion of the Premises as when so taken would leave remaining a balance of the Premises, due either to the area so taken or the location of the part so taken in relation to the part not so taken, that would not under economic conditions and after performance by the Operator of all covenants, agreements, terms and provisions contained herein or required by law to be observed or performed by the Operator, permit the restoration of the Premises so as to enable the Operator to operate, maintain and develop the Premises in accordance with the requirements of this Agreement, including without limitation the Section hereof entitled “*Rights of User*”, and to continue to carry on its normal operations at the Airport without using such part taken.

“Taking” shall mean the acquisition of a real property interest, through condemnation or the exercise of the power of eminent domain, by any body having a superior power of eminent domain.

(b) Permanent Taking of All or a Portion of the Premises.

(1) If a Taking is permanent and covers the entire Premises, then this Agreement shall, as of the Date of Taking, cease and determine in the same manner and with the same effect as if such date were the original date of expiration hereof.

(2) If a Taking is permanent but covers less than all of the Premises, this Agreement and the term hereof shall continue as to the portion of the Premises not so taken, and the letting as to the part of the Premises so taken shall, as of the Date of Taking, cease and determine in the same manner and with the same effect as if the term of the letting had on that date expired, and the rentals shall be abated as provided in the Section hereof entitled “*Rental*”.

(3) If a Taking is permanent and covers a Material Part of the Premises, then the Operator and the Port Authority shall each have an option exercisable by notice given within ten (10) days after the Date of Taking to terminate the letting hereunder with respect to the Premises not taken, as of the Date of Taking, and such termination shall be effective as if the Date of Taking were the original date of expiration hereof. If the letting of the entire Premises is not terminated, the rentals shall be abated in accordance with the Section hereof entitled “*Rentals and Payments*” after the date of surrender of possession of the portion of the Premises taken.

(4) If a Taking is permanent but covers less than the entire Premises and the letting of the portion of the Premises not taken is not terminated pursuant to paragraph (b)(3) of this Section, the Operator shall proceed diligently to restore the remaining part of the Premises not so taken so that the Premises shall be a complete, operable, self-contained architectural unit in good condition and repair and the proceeds of that portion of any award paid in trust to the Port Authority pursuant to Section 23.3 of the Basic Lease attributable to the improvements on the Premises not so taken shall be made available by the Port Authority to be

used by the Operator for that purpose. The Port Authority shall retain any excess of such award over the costs of the restoration.

(c) Temporary Taking of All or Any Part of the Premises.

(1) If the temporary use of the whole or any part of the Premises shall be taken for any public or quasi-public purpose by any lawful power or authority pursuant to a Taking or by agreement between the Port Authority and such lawful power or authority, (w) the Operator shall give prompt notice thereof to the Port Authority, (x) the Term shall not be reduced or affected in any way and (y) the Operator shall continue to pay in full all rentals payable by the Operator hereunder without reduction or abatement except as set forth in paragraph (c)(2) below.

(2) If a temporary Taking covers all or a Material Part of the Premises, then the Operator and the Port Authority shall each have an option, exercisable by notice given within ten (10) days after the Date of Taking, to suspend the term of the letting of such of the Premises as are not so taken during the period of the Taking, and, in that event, the rentals for such portion of the Premises not so taken shall abate for the period of the suspension in accordance with the paragraph (c) of the Section hereof entitled "*Rentals and Payments*".

(d) Operator's Cooperation.

The Operator shall execute any and all documents that may be reasonably required in order to facilitate collection by the appropriate party of awards or payments covered by this Section.

(e) Condemnation Claims by the Operator.

To the extent a condemnation claim by the Operator shall not diminish any claim, award, compensation or damages of or to the City or of or to the Port Authority on account of any condemnation and such condemnation claim is permitted by Section 23 of the Basic Lease, the Operator may file a claim in a condemnation proceeding.

Section 23. Assignment and Sublease

(a) Definitions.

The following terms shall have the respective meanings set forth below.

"Assignment" shall mean any sale, conveyance, transfer, exchange, mortgage, assignment or other disposition of all or any portion of the Operator's interest in this Agreement or the leasehold estate created hereby, directly or indirectly, whether by operation of law or otherwise.

“Sublease” shall mean any sublease (including a sub-sublease or any further level of subletting) and any occupancy, license, franchise or concession agreement applicable to the Premises or any portion thereof.

“Transfer” shall mean the transfer, sale, assignment, pledge, hypothecation or other disposition of any interest in the Operator or in any direct or indirect constituent entity of the Operator, where such disposition (whether by itself or cumulatively with other transactions) directly or indirectly produces any change in the direct or indirect Control (as defined in the definition of Affiliate) of the Operator, and shall include but not be limited to (1) the sale, assignment, redemption or transfer of outstanding stock of or membership interest in, respectively, any corporation or any limited liability company that is the Operator or that is the general partner of any partnership that is the Operator, (2) the issuance of additional stock or membership interest in, respectively, any corporation or limited liability company that is the Operator or that is the general partner of any partnership that is the Operator, and (3) the sale, assignment, redemption or transfer of any general or limited partner’s interest in, or the admission of a new partner to, a partnership that is the Operator or that is a general or limited partner of any partnership that is the Operator.

(b) No Assignment, Transfer or Sublease without Consent.

The Operator shall not effect or permit any Assignment, Transfer or Sublease without the prior written consent of the Port Authority.

(c) Unauthorized Transactions Null and Void.

Any Sublease, Assignment or Transfer including, without limitation, any sale, assignment, transfer, mortgage, pledge, hypothecation, encumbrance or disposition of the Premises or of the rents, revenues or any other income from the Premises, or this Agreement or any part hereof, or any license or other interest of the Operator herein not made in accordance with the provisions of this Agreement shall be null and void *ab initio* and of no force or effect.

(d) Port Authority’s Right to Collect Rent.

If without the prior written consent of the Port Authority, the Operator effects any Assignment, Transfer or Sublease, or if the Premises are occupied by anybody other than the Operator, the Port Authority may collect rent from any assignee, sublessee or anyone who claims a right under this Agreement or letting or who occupies the Premises, and the Port Authority shall apply the net amount collected to the rental herein reserved; but no such collection shall be deemed a waiver by the Port Authority of the covenants contained in paragraphs (a) and (b) of this Section or an acceptance by the Port Authority of any such assignee, sublessee, claimant or occupant as Operator, nor a release of the Operator by the Port Authority from the further performance by the Operator of the covenants contained herein.

(e) Continuing Application of Consent Requirement.

Any consent granted by the Port Authority to any Assignment, Transfer or Sublease pursuant to the provisions hereof shall not be construed or deemed to release, relieve or discharge the Operator or any other Person claiming any right, title or interest in this Agreement from the requirement of obtaining the prior written consent of the Port Authority with respect to any other Assignment, Transfer or Sublease.

(f) Use of Premises.

The Operator shall not use or permit any Person to use the Premises or any portion thereof for any purpose other than the purposes stated in the Section hereof entitled "*Rights of User*". Except as provided in this Agreement or otherwise permitted in writing by the Port Authority, the Operator shall not permit the Premises to be used or occupied by any Person other than its own officers, employees, passengers, contractors and representatives.

Section 24. Termination by the Port Authority

(a) If any one or more of the following events shall occur, that is to say:

(1) The Operator shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any state thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property; or

(2) By order or decree of a court the Operator shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of the stockholders of its creditors or by any of the stockholders of the Operator, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any state thereof, provided that if any such judgment or order is stayed or vacated within sixty (60) days after the entry thereof, any notice of termination shall be and become null, void and of no effect; or

(3) A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Operator and shall not be dismissed within thirty (30) days after the filing thereof; or

(4) The letting hereunder or the interest or estate of the Operator under this Agreement shall be transferred to, pass to or devolve upon, by operation of law or otherwise, any other person, firm or corporation; or

(5) The Operator, if a corporation, shall without the prior written approval of the Port Authority (which approval shall not be arbitrarily or capriciously withheld) become a successor or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or

(6) By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of the Operator, and such possession or control shall continue in effect for a period of thirty (30) days; or

(7) The Operator shall voluntarily abandon, desert or vacate the Premises or discontinue its operations hereunder at the Airport, or, after exhausting or abandoning any right of further appeal, the Operator because of an act or omission of the Operator shall be prevented for a period of thirty (30) days by action of any governmental agency other than the Port Authority having jurisdiction thereof, from conducting its operations hereunder at the Airport, regardless of the fault of the Operator; or

(8) Any lien is filed against the Premises because of any act or omission of the Operator and is not removed within ten (10) days after the Operator has received notice thereof; or

(9) The Operator shall fail duly and punctually to pay the rentals or fees or to make any other payment required hereunder when due to the Port Authority; or

(10) The Operator shall fail to keep, perform and observe each and every other promise, covenant and agreement set forth in this Agreement on its part to be kept, performed, or observed, within twenty (20) days after receipt of notice of default thereunder from the Port Authority (except where fulfillment of its obligation requires activity over a period of time, and the Operator shall have commenced to perform whatever may be required for fulfillment within twenty (20) days after receipt of notice and continues such performance without interruption except for causes beyond its control);

then upon the occurrence of any such event or at any time thereafter during the continuance thereof, the Port Authority may by fifteen (15) days' notice terminate the rights of the Operator hereunder and the letting, such termination to be effective upon the date specified in such notice. Such right of termination and the exercise thereof shall be and operate as a conditional limitation.

(b) If any of the events enumerated in paragraph (a) of this Section shall occur prior to the Effective Date, the Operator shall not be entitled to enter into possession of the Premises and the Port Authority, upon the occurrence of any such event or at any time thereafter during the continuance thereof, by twenty-four (24) hours' notice may terminate the interest of the Operator under this Agreement, such termination to be effective upon the date specified in such notice.

(c) No acceptance by the Port Authority of rentals, fees, charges or other payments in whole or in part of any period or periods after a default in any of the terms, covenants and conditions hereof to be performed, kept or observed by the Operator shall be deemed a waiver of any right on the part of the Port Authority to terminate the letting.

(d) No waiver by the Port Authority of any default on the part of the Operator in performance of any of the terms, covenants or conditions hereof to be performed, kept or observed by the Operator shall be or be construed to be a waiver by the Port Authority of any other or subsequent default in performance of any of the said terms, covenants and conditions.

(e) The rights of termination described above shall be in addition to any other rights of termination provided in this Agreement and in addition to any rights and remedies that the Port Authority would have at law or in equity consequent upon any breach of this Agreement by the Operator, and the exercise by the Port Authority of any right of termination shall be without prejudice to any other such rights and remedies.

Section 25. Right of Re-entry

The Port Authority, as an additional remedy upon the giving of a notice of termination as provided in Section hereof entitled "*Termination by the Port Authority*", shall have the right to reenter the Premises and every part thereof upon the effective date of termination without further notice of any kind, and may regain and resume possession either with or without the institution of summary or any other legal proceedings or otherwise. Such re-entry, or regaining or resumption of possession, however, shall not in any manner affect, alter or diminish any of the obligations of the Operator under this Agreement, and shall in no event constitute an acceptance of surrender.

Section 26. Waiver of Redemption

The Operator hereby waives any and all rights to recover or regain possession of the Premises and all rights of redemption, granted by or under any present or future law in the event it is evicted or dispossessed for any cause, or in the event the Port Authority obtained possession of the Premises in any lawful manner.

Section 27. Survival of the Obligations of the Operator

(a) In the event that this Agreement shall have been terminated in accordance with a notice of termination as provided in Section hereof entitled "*Termination by the Port Authority*", or the interest of the Operator terminated pursuant thereto, or in the event that the Port Authority has re-entered, regained or resumed possession of the Premises in accordance with the provisions of Section hereof entitled "*Right of Re-entry*", all obligations of the Operator under this Agreement shall survive such termination, re-entry, regaining or resumption of possession and shall remain in full force and effect for the full Term, and the amount or amounts of damages or deficiency shall become due and payable to the Port Authority to the same extent, at the same time or times and in the same manner as if no termination, re-entry, regaining or resumption of possession had taken place. The Port Authority may maintain separate actions each month to recover the damage or deficiency then due or at its option and at any time may sue to recover the full deficiency less the proper discount, for the entire unexpired term.

(b) The amount of damages for the period subsequent to termination (or re-entry, regaining or resumption of possession) on account of the Operator's rental and fee obligations, shall be the sum of the following:

(1) The amount of the total of all annual basic rentals, less the installments thereof payable prior to the effective date of termination except that the credit to be allowed for the installment payable on the first day of the month in which the termination is effective shall be prorated for the part of the month the letting remains in effect on the basis of the actual number of days in said month; and

(2) An amount equal to the sum of the percentage stated in paragraph (b) of the Section hereof entitled "*Rentals and Payments*" applied to the gross receipts of the Operator during the balance of the term if there had been no termination (or re-entry, regaining, or resumption or possession); and for the purpose of calculation hereunder (i) the said amount of gross receipts shall be derived by multiplying the number of days in the balance of the term originally fixed by the daily average of the Operator's gross receipts; and (ii) the daily average of the Operator's gross receipts shall be the Operator's total actual gross receipts during which the Premises were open and in operation and in which no abatement was in effect divided by the number of days included in such part of the effective period.

(3) An amount equal to all expenses incurred by the Port Authority in connection with regaining possession and restoring and reletting the demised Premises for legal expenses, insurance premiums, putting the Premises in order including without limitation, cleaning, decorating and restoring (on failure of the Operator to restore), maintenance and brokerage fees.

(4) It is understood and agreed that the statement of damages under the preceding sub-paragraph (2) shall not affect or be construed to affect the Port Authority's right to damages in the event of termination (or re-entry, regaining or resumption of possession) where the Operator has not received any actual gross receipts or fees under this Agreement.

Section 28. Reletting by the Port Authority

The Port Authority, upon termination or cancellation pursuant to the Section hereof entitled "*Termination by the Port Authority*", or upon any re-entry, regaining or resumption of possession pursuant to the Section hereof entitled "*Right of Re-entry*", may occupy the Premises or may relet the Premises, and shall have the right to permit any Person, firm or corporation to enter upon the Premises and use the same. Such reletting may be of part only of the Premises or a part thereof together with other space, and for a period of time the same as or different from the balance of the term hereunder remaining, and on the terms and conditions the same as or different from those set forth in this Agreement. The Port Authority shall also, upon termination or cancellation, or upon its re-entry, regaining or resumption of possession pursuant to the said Sections, have the right to repair or to make structural or other changes in the Premises, including changes which alter the character of the Premises and the suitability thereof for the purpose of the Operator under this Agreement, without affecting, altering or diminishing the obligations of the Operator hereunder. In the event either of any reletting or of any actual use and

occupancy by the Port Authority (the mere right of the Port Authority to use and occupy not being sufficient however) there shall be credited to the account of the Operator against its survived obligations hereunder any net amount remaining after deducting from the amount actually received from any Operator, licensee, permittee or other occupier in connection with the use of the Premises or portion thereof during the balance of the letting as the same is originally stated in this Agreement, or from the market value of the occupancy of such portion of the Premises as the Port Authority may during such period actually use and occupy, all expenses, costs and disbursements incurred or paid by the Port Authority in connection therewith. No such reletting shall be or be construed to be an acceptance of a surrender.

Section 29. Remedies to be Non-exclusive

All remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of or exclusive of each other or any other remedy available to the Port Authority at law or in equity, and the exercise of any remedy, or the existence herein of other remedies or indemnities shall not prevent the exercise of any other remedy.

Section 30. Surrender

The Operator covenants and agrees to yield and deliver peaceably to the Port Authority possession of the Premises on the date of cessation of the letting, whether such cessation be by termination, expiration or otherwise, promptly and in the same condition as on the Effective Date, reasonable wear arising from use of the Premises to the extent permitted elsewhere in this Agreement excepted, and excepting for matters which are the obligation of the Port Authority under this Agreement.

Section 31. Acceptance of Surrender of Agreement

No agreement of surrender or to accept a surrender shall be valid unless and until the same shall have been reduced to writing and signed by the duly authorized representatives of the Port Authority and of the Operator. Except as expressly provided in this Section, neither the doing of, nor any omission to do, any act or thing, by any of the officers, agents or employees of the Port Authority, shall be deemed an acceptance of a surrender of the letting or of this Agreement.

Section 32. Effect of Basic Lease

(a) **No Greater Rights.** The letting shall, in any event, terminate with the termination or expiration of the Basic Lease, such termination to be effective on such date and to have the same effect as if the Term had expired on that date. The rights of the Port Authority in the Premises are those granted to it by the Basic Lease, and no greater rights are granted to the Operator than the Port Authority has power thereunder to grant.

(b) **Specific Basic Lease Requirements.** In accordance with the provisions of the Basic Lease, the Port Authority and the Operator hereby agree as follows:

- (1) This Agreement is subject and subordinate to the Basic Lease and to any interest superior to that of the Port Authority;
- (2) The Operator shall not pay rent or other sums under this Agreement for more than one (1) month in advance (excluding security and other deposits required under this Agreement);
- (3) With respect to this Agreement, the Operator on the termination of the Basic Lease will, at the City's option, attorn to, or enter into a direct lease on identical terms with, the City;
- (4) The Operator shall indemnify the City, as a third party beneficiary, with respect to all matters described in Section 31 of the Basic Lease;
- (5) The Operator shall not use the Premises or any other portion of the Airport for any use other than as permitted under the Basic Lease;
- (6) The Operator shall use, operate and maintain the Premises in a manner consistent with the Port Authority's obligations under Section 28 of the Basic Lease;
- (7) The failure of the Operator to comply with the foregoing provisions shall be an event of default under this Agreement, which, after the giving of reasonable notice, shall provide the Port Authority with the right to terminate this Agreement and exercise any other rights that the Port Authority may have as the landlord hereunder; and
- (8) The City shall be named as an additional insured or loss payee, as applicable, under each policy of insurance procured by the Operator pursuant to this Agreement.

Section 33. Removal of Property

The Operator, subject to the obligation set forth in this Agreement to supply all equipment and material necessary to the Fixed Base Operation, shall have the right at any time during the Term to remove its equipment, inventories, removable fixtures and other personal property from the Premises. If the Operator shall fail to remove its property on or before the termination or expiration of this Agreement, the Port Authority may remove such property to a public warehouse for deposit or retain the same in its own possession, and sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage and sale, second to any sums owed by the Operator to the Port Authority, with any balance remaining to be paid to the Operator; if the expenses of such removal, storage and sale shall exceed the proceeds of sale, the Operator shall pay such excess to the Port Authority upon demand.

Section 34. Brokerage

The Operator represents and warrants that no broker has been concerned on its behalf in connection with this Agreement and that there is no broker who is or may be entitled to be paid a

commission in connection therewith. The Operator shall indemnify and save harmless the Port Authority of and from any claim for commission or brokerage made by any and all persons, firms or corporations whatsoever for services rendered to the Operator in connection with this Agreement.

Section 35. Limitation of Rights and Privileges Granted

(a) No greater rights or privileges with respect to the use of the Premises or any part thereof or the Airport are granted or intended to be granted to the Operator by this Agreement, or by any provision thereof, than the rights and privileges expressly and specifically granted hereby.

(b) The Premises is let to the Operator and the Operator takes the same subject to all the following: (i) easements, restrictions, reservations, covenants and agreements, if any, to which the Premises may be subject, and rights of the public in and to any public street; (ii) rights, if any, of any enterprise, public or private which is engaged in furnishing heating, lighting, power, telegraph, telephone, steam, transportation services and of the City and State of New York; and (iii) permits, licenses, regulations and restrictions, if any, of the United States, the City or State of New York, or other governmental authority.

Section 36. Notices

Except where expressly required or permitted herein to be oral, all notices, requests, consents and approvals required to be given to or by either party shall be in writing, and all such notices and requests shall be personally delivered to the duly designated officer or representative of such party or delivered to the offices of such officer or representative during regular business hours, or forwarded to such person or to the party at such address by certified or registered mail. The Operator shall from time to time designate in writing an office within the Port of New York District and an officer or representative whose regular place of business is at such office upon whom notices and requests may be served. Until further notice, the Port Authority hereby designates its Executive Director, and the Operator designates its President as their respective officers upon whom notices and requests may be served, and the Port Authority designates its office at 225 Park Avenue South, New York, New York 10003 and the Operator designates its office at Building 145, John F. Kennedy International Airport, Jamaica, NY 11430, as their respective offices where notices and requests may be served. Each notice shall be deemed given and effective upon receipt, or, in the event of a refusal by the addressee, on the first tender of such notice to the addressee at the designated address.

Section 37. Security Deposit

(a) Letter of Credit Required. Upon the Operator's execution and delivery of this Agreement to the Port Authority, the Operator shall deliver to the Port Authority, and shall maintain throughout the Term as security for the Operator's full, faithful and prompt performance of and compliance with all of its obligations under this Agreement and as security

for the payment of all rentals, fees, charges and obligations of the Operator owed or which may become due and owing to the Port Authority, a clean irrevocable letter of credit in favor of the Port Authority in the amount of [REDACTED] ([REDACTED]), issued by a banking institution acceptable to the Port Authority and having its main office within the Port of New York District.

(b) Form Subject to Prior Approval. The form and terms of each letter of credit delivered under this Section, as well as the institution issuing it (which shall be an investment-grade rated bank), shall be subject to the prior and continuing approval of the Port Authority; the form of any proposed letter of credit shall be submitted to the Port Authority in advance for review and approval by its Credit, Collection and Accounts Receivable unit. Such letter of credit shall provide that it shall continue throughout the Term and for a period of not less than six (6) months thereafter; such continuance may be by provision for automatic renewal or by substitution of a subsequent satisfactory letter of credit.

(c) Replacements. Upon notice of cancellation of a letter of credit, the Operator agrees that unless, by a date twenty (20) days prior to the effective date of cancellation, the letter of credit is replaced by another letter of credit satisfactory to the Port Authority, the Port Authority may draw down the full amount thereof and thereafter the Port Authority will hold the same as cash security as set forth in paragraph (g) of this Section. If at any time any bank shall fail to make any payment to the Port Authority in accordance with a letter of credit issued by such bank, the Operator shall cause to be delivered to the Port Authority on demand a replacement letter of credit issued by a different bank satisfactory to the Port Authority, so that at all times the Port Authority shall have one or more letters of credit in the amount set forth in paragraph (a) of this Section.

(d) Right to Draw Down. In addition to any and all other remedies available to it, the Port Authority shall have the right, at its option at any time and from time to time, with or without notice, to draw upon each letter of credit or any part thereof in whole or partial satisfaction of any of its claims or demands against the Operator. There shall be no obligation on the Port Authority to exercise such right and neither the existence of such right nor the holding of a letter of credit or any cash security shall cure any default or breach of this Agreement on the part of the Operator. No action by the Port Authority pursuant to the terms of any letter of credit, or receipt by the Port Authority of funds from any bank issuing any letter of credit, shall constitute a waiver of any breach or default by the Operator of its obligations under this Agreement; and the existence of or recourse to any such letter of credit shall not limit the Port Authority's rights and remedies otherwise available under this Agreement upon any such breach or default.

(e) Material Breach. Any failure of the Operator at any time during the Term to provide such letter of credit valid and available to the Port Authority, and any failure of any banking institution issuing any such letter of credit to make one or more payments as provided in such letter of credit, shall constitute a material breach on the part of the Operator of this Agreement.

(f) Replenishment. If the Port Authority shall make any drawing under a letter of credit held by the Port Authority hereunder, the Operator, within two (2) days after demand of the Port Authority therefor, shall bring the letter of credit back up to its full amount.

(g) Use of Proceeds. In the event that the Port Authority shall have drawn down the letter of credit referred to in paragraph (a) of this Section, the Port Authority shall have the right, at its option, at any time and from time to time, with or without notice, to use the amount held, or any part thereof, as cash security in whole or partial satisfaction of any of its claims or demands against the Operator. There shall be no obligation on the Port Authority to exercise such right and neither the existence of such right nor the holding of such cash security itself shall cure any default or breach, on the part of the Operator, of this Agreement. The Operator agrees that it will not assign, mortgage or encumber such cash security. The Port Authority shall not pay or allow interest thereon; but the Operator may collect or receive annually any interest paid on cash deposited in interest-bearing bank accounts less any part thereof or amount which the Port Authority is or may hereafter be entitled or authorized by law to retain or to charge in connection therewith, whether as or in lieu of administrative expense or custodial charge, or otherwise; provided, however, that the Port Authority shall not be obligated by this provision to place or to keep cash deposited hereunder in interest-bearing bank accounts. Upon the Port Authority's acceptance of a substitute letter of credit, and upon request by the Operator made thereafter, the Port Authority will return any cash security deposit resulting from the drawing down of the original letter of credit. The Operator shall have the same rights to receive any such deposit during the existence of a valid letter of credit as it would have to receive such sum upon expiration of the letting and fulfillment of the obligations of the Operator under this Agreement.

(g) After Expiration or Termination. After the expiration of the letting and upon written request therefor by the Operator, the Port Authority will return to the Operator any valid letters of credit and any cash security delivered to the Port Authority by the Operator hereunder, less the amount of any and all unpaid claims and damages of the Port Authority under this Agreement. Upon a termination of the letting, the Port Authority may, at its option, retain the letter of credit and any cash security until the date set forth in paragraph (b) of this Section (as such date may be extended in connection with any extended term of the letting hereunder) and shall thereafter upon demand of the Operator return the same to the Operator less the amount of any and all unpaid claims and damages, including but not limited to estimated damages of the Port Authority under this Agreement.

(h) Employer Identification Number. For purposes of the foregoing, the Operator hereby certifies that its I.R.S. Employer Identification Number is [REDACTED]

(i) Adjustment of Security Amount. At any time and from time to time hereafter, should the Port Authority feel insecure with respect to the amount of the security required under paragraph (a), above, or pursuant to this paragraph (i), the Port Authority shall have the right, in its sole and absolute discretion, to increase such amount upon notice by the Port Authority to the Operator to such effect and within two days thereafter the Operator shall deposit with the Port Authority such additional cash or bonds or such letter of credit to bring the security under this Section up to the full amount stated by the Port Authority in said notice.

(j) Other Agreements with the Port Authority. If the Operator is obligated by any other agreement to maintain a security deposit with the Port Authority to insure payment and performance by the Operator of all fees, rentals, charges and obligations which may become due and owing to the Port Authority arising from the Operator's operations at the Airport pursuant to any such other agreement or otherwise, then all such obligations under such other agreement and any deposit pursuant thereto also shall be deemed obligations of the Operator under this Agreement and as security hereunder as well as under any such other agreement and all provisions of such other agreement with respect to such obligations and any obligations thereunder of the Port Authority as to the security deposit are hereby incorporated herein by this reference as though fully set forth herein and hereby made a part hereof. The termination, revocation, cancellation or expiration of any other agreement to which such security shall apply or any permitted assignment of such other agreement shall not affect such obligations as to such security which shall continue in full force and effect hereunder.

Section 38. Place of Payments

All payments required of the Operator by this Agreement shall be sent to the following address:

The Port Authority of New York and New Jersey
P.O. Box 95000-1517
Philadelphia, PA 19195-0001

or made via the following wire transfer instructions:

CREDIT BANK NAME:	TD BANK
CREDIT BANK ADDRESS:	6000 Atrium Way, Mount Laurel, NJ 08054
CREDIT BANK ABA #:	031201360
BENEFICIARY ACCOUNT/ID #:	5950011618
BENEFICIARY NAME:	THE PORT AUTHORITY OF NY & NJ

or sent to such other address, or pursuant to such other wire transfer instructions, as may be substituted therefor by the Port Authority from time to time. All payments should reference this Agreement number, AYD-083.

Section 39. Construction and Application of Terms

(a) The section and paragraph headings, if any, in this Agreement are inserted only as a matter of convenience and for reference and in no way define limit or describe the scope or intent of any provision hereof.

(b) The terms, provisions and obligations contained in the Exhibits and Schedules attached hereto, whether there set out in full or as amendments of, or supplements to provisions elsewhere in this Agreement stated, shall have the same force and effect as if herein set forth in full.

(c) The parties have participated jointly in the negotiation and drafting of this Agreement. Consequently, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement. The deletion of language from this Agreement prior to its mutual execution shall not be construed to have any particular meaning or to raise any presumption, canon of construction or implication, including, without limitation, any implication that the parties intended thereby to state the converse or opposite of the deleted language.

(d) Notwithstanding the fact that certain references elsewhere in this Agreement to acts required to be performed by the Operator hereunder, or to breaches or defaults of this Agreement by the Operator, omit to state that such acts shall be performed at the Operator's sole cost and expense, or omit to state that such breaches or defaults by the Operator are material, unless the context clearly implies to the contrary, each and every act to be performed or obligation to be fulfilled by the Operator pursuant hereto shall be performed or fulfilled at the Operator's sole cost and expense, and all breaches or defaults by the Operator shall be deemed material.

(e) If any clause, provision or section of this Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause provision or section shall not affect any of the remaining provisions hereof.

(f) This Agreement and any claim, dispute or controversy arising out of, under or related to this Agreement shall be governed by, interpreted and construed in accordance with the laws of the State of New York, without regard to choice of law principles.

Section 40. Non-liability of Individuals

No Commissioner, director, officer, agent or employee of the Port Authority shall be charged personally or held contractually liable by or to the Operator under any term or provision of this Agreement or of any supplement, or amendment to this Agreement or because of any breach or alleged breach thereof, or because of its or their execution or attempted execution or otherwise.

Section 41. Condition of Premises

(a) The Operator acknowledges that it has not relied upon any representation or statement of the Port Authority or its Commissioners, officers, employees or agents as to the condition of the Premises or the suitability thereof for the operations permitted on the Premises by this Agreement. Without limiting any obligation of the Operator to commence operations hereunder at the time and in the manner stated elsewhere in this Agreement, the Operator agrees that no portion of the Premises will be used initially or at any time during the letting which is in a condition unsafe or improper for the conduct of the Operator's operations hereunder so that there is material risk of injury or damage to life or property. The Operator shall take possession of the Premises in the condition they are in as of the commencement of the Term. It is hereby

understood and agreed that whenever reference is made in this Agreement to the condition of the Premises as of the commencement of the Term thereof, the same shall be deemed to mean the condition of the Premises as of the Effective Date, and as to the improvements made and the Construction Work and any alteration work performed during the Term, in the condition existing after completion of the same.

(b) The Operator, prior to the execution of this Agreement, has thoroughly examined the Premises and determined them to be suitable for the Operator's operations hereunder. Except as otherwise provided herein, and specifically subject to the Section of this Agreement entitled "*Environmental Obligations*" (including, without limitation, the exceptions set forth in paragraph (b)(2) therein), the Operator hereby agrees to assume all responsibility for any and all risks, costs and expenses of any kind whatsoever caused by, arising out of or in connection with the condition of the Premises including, without limitation, all Environmental Requirements, Environmental Damages and Remediation.

Section 42. Storage Tanks

(a) All aboveground storage tanks and underground storage tanks installed in the Premises during the term of the letting subsequent to the Effective Date and its or their appurtenances, pipes, lines, fixtures and other related equipment are hereinafter collectively called the "Tanks" and singularly called a "Tank". The Operator hereby agrees that title and ownership of the Tanks shall be and remain in the Operator and that all registrations shall be in the name of the Operator as both owner and operator, notwithstanding anything to the contrary in any construction or alteration application. The Port Authority has made no representations or warranties with respect to the Tanks or their location and shall assume no responsibility for the Tanks. All Tanks installed subsequent to the Effective Date shall be installed pursuant to the terms and conditions of this Agreement including, without limitation, the Section hereof entitled "Other Construction by the Operator" and nothing in this Section shall or shall be deemed to be permission or authorization to install any Tanks.

(b) Without limiting the generality of any of the provisions of this Agreement, the Operator agrees that it shall be solely responsible for maintaining, testing and repairing the Tanks. The Operator shall not perform any servicing, repairs or non-routine maintenance to the Tanks without the prior written approval of the Port Authority.

(c) It is hereby agreed that title to and ownership of the Tanks shall remain in the Operator until the earlier to occur of (1) receipt by the Operator of notice from the Port Authority that title to the Tanks shall vest in the Port Authority or in the City of New York; or (2) receipt by the Operator of notice from the Port Authority that the Port Authority waives its right to require the Operator to remove the Tanks from the Premises as set forth in paragraph (i) below. The vesting of title to the Tanks in the Port Authority or in the City of New York, if at all, in accordance with the foregoing item (1) shall in no event relieve the Operator from the obligation to remove the Tanks from and restore the Premises in accordance with paragraph (i) below.

(d) Without limiting the generality of any other term or provision of this Agreement, the Operator shall at its cost and expense comply with all Environmental Requirements

pertaining to the Tanks and any presence, pumping, pouring, venting, emitting, emptying, leakage, deposit, spill, discharge or other release of Hazardous Substances from the Tanks or in connection with their use, operation, maintenance, testing or repair (any such presence, pumping, pouring, venting, emitting, emptying, leakage, deposit, spill, discharge or other release during the period the Operator shall use or occupy the Premises or use the Tanks being hereinafter called a "Discharge") including, without limitation, registering and testing the Tanks, submitting all required clean-up plans, bonds and other financial assurances, performing all required clean-up and remediation of a Discharge and filing all reports, making all submissions to, providing all information required by, and complying with all requirements of, all governmental authorities pursuant to the Environmental Requirements and delivering to the Port Authority a copy of such documentation within seven (7) days of submittal or receipt of such documentation by Operator, including copies of current Tank registrations.

Nothing in the foregoing shall be construed as a submission by the Port Authority to the application to itself of the Environmental Requirements; provided, however, no immunity or exemption of the Port Authority from the Environmental Requirements shall excuse the compliance therewith by the Operator or shall be grounds for non-compliance therewith by the Operator.

(e) Without limiting the terms and provisions of the Section hereof entitled "*Indemnity and Liability Insurance*", the Operator hereby assumes all risks arising out of or in connection with the Tanks and all Discharges whether or not foreseen or unforeseen and shall indemnify and hold harmless the Port Authority, its Commissioners, officers, agents and employees from and against (and shall reimburse the Port Authority for their costs and expenses including, without limitation, penalties, fines, liabilities, settlements, damages, attorney and consultant fees, investigation and laboratory fees, clean-up and remediation costs, court costs and litigation expenses), all claims and demands, just or unjust, of third persons (such claims and demands being hereinafter in this Section referred to as "Claims" and singularly referred to as a "Claim") including but not limited to those for personal injuries (including death), property damages, or environmental impairment, arising or alleged to arise out of or in any way related to, the failure of the Operator to comply with each and every term and provision of this Agreement, or the Tanks, or any Discharge, or any lawsuit brought or threatened, settlement reached or any governmental order relating to the Tanks or a Discharge, or any violation of any Environmental Requirements or demands of any governmental authority based upon or in any way related to the Tanks or a Discharge, and whether such arise out of the acts or omissions of the Operator or of customers or contractors of the Operator or of third persons or out of the acts of God or the public enemy or otherwise including claims by the City of New York against the Port Authority pursuant to the provisions of the Basic Lease whereby the Port Authority has agreed to indemnify the City against claims, excepting only claims and demands arising from the sole negligence or willful misconduct of the Port Authority. It is understood the foregoing indemnity shall cover all claims, demands, assessments, penalties, settlements, damages, fines, costs and expenses of or imposed by any governmental authority under the Environmental Requirements.

If so directed the Operator shall at its expense defend any suit based upon any such Claim (even if such Claim is groundless, false or fraudulent) and in handling such it shall not without first having express advance permission from the General Counsel of the Port Authority raise

any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority.

(f) The Operator's obligations under this Section shall survive the expiration or earlier termination of this Agreement.

(g) In addition to the requirements of the Section hereof entitled "*Compliance with Governmental Requirements*" and paragraph (d) hereof, the Port Authority shall have the right upon notice to the Operator to direct the Operator, at the Operator's sole cost and expense: (i) to perform such reasonable testing of the Tanks as the Port Authority shall direct and to perform such testing of the soil, subsoil and ground water of the Premises and of such surrounding area as the Port Authority shall direct; and (ii) to clean-up and remediate any Discharge, regardless of whether any Environmental Requirement or governmental authority shall require such testing, clean-up or remediation, which testing, clean-up and remediation shall be performed pursuant to an alteration application prepared by the Operator and submitted to the Port Authority for the Port Authority's approval.

(h) In the Operator's use and operation of the Tanks, the Operator shall not permit any Hazardous Substance from entering the ground including, without limitation, subject to the Section hereof entitled "*Construction by the Operator*", installing appropriate spill and overfill devices and placing an impervious material, such as asphalt or concrete, over the ground area above and in the vicinity of the Tanks.

(i) (1) The Operator shall remove the Tanks from the Premises on or before the expiration of this Agreement and dispose of the Tanks off the Airport in accordance with all Environmental Requirements and shall within seven (7) days of such disposal deliver a copy of all closure documentation to the Port Authority.

(2) Without limiting the foregoing or any other term or provision of this Agreement, any removal of the Tanks shall be performed pursuant to an alteration application prepared by the Operator and submitted to the Port Authority for the Port Authority's approval and, in connection with such removal, the Operator shall restore the Premises to the same condition existing prior to the installation of the Tanks, shall perform such testing of the Tanks and of the soil, sub-soil and ground water in the vicinity of the Tanks as shall be required by the Port Authority and shall clean-up and remediate contamination disclosed by said testing. In the event the Operator does not remove the Tanks as required by subparagraph (1) above, the Port Authority may enter upon the Premises and effect the removal and disposal of the Tanks, restoration of the Premises and such remediation and the Operator hereby agrees to pay all costs and expenses of the Port Authority arising out of such removal, disposal, restoration and remediation.

Section 43. Services to the Operator

(a) Other than utilities referenced below in this Section, the Port Authority shall not be obligated to provide any services to the Operator or Premises whatsoever, including ground transportation services, with respect to the Premises nor to police the same or keep the same free from snow, ice or otherwise unobstructed and available for use by the Operator.

(b) (1) The Port Authority shall furnish and supply, without additional charge, to the Operator in reasonable quantities for use on the Premises and the Operator agrees to take from the Port Authority electricity of the same voltage, phase and cycle as supplied to the Premises by the public utility company in the vicinity.

(2) With respect to Areas A and B specifically, the electricity to be furnished to the Operator shall be in reasonable quantities of the same voltage, phase and cycle as supplied to the Premises by the public utility company in the vicinity, through existing wires, conduits and outlets, if any, for illumination by which is meant the energizing of incandescent and fluorescent bulbs (to be supplied by the Operator) and for the operation of the following items only: office fans, clocks, time stamps, calculators, computers and facsimile in a number and of a type for ordinary office use, one television and water coolers.

(c) The Port Authority shall, without additional charge, furnish and supply to the Operator for use on the Premises cold water (of the character furnished by the City of New York) in reasonable quantities through existing pipes, mains and fittings and the Operator agrees to take such water from the Port Authority

(d) The Port Authority shall, without additional charge, furnish to the Operator for heating purposes in the enclosed portions of Areas A and B hot water, in such quantities as are required to maintain a reasonably even and comfortable working temperature therein during the months of November, December, January, February, March and April with the present heating equipment installed on the Premises in good repair and working condition and limited to the safe and efficient operating capacity of the present heating equipment. The hot water shall be delivered to the Operator through existing pipes, mains and conduits connecting the boiler room with heaters and radiators (if any) located in said Areas. The Port Authority shall have the right to discontinue operation of the boiler room and the heating equipment therein for such periods as are reasonably necessary for maintenance, repairs, and replacements.

(e) The Operator shall pay to the Port Authority such of the existing and future charges for sewerage services furnished by the City of New York as are presently or may hereafter be imposed or assessed against the Port Authority in respect of the Premises or its use and occupancy thereof. In the event that the City or the State of New York is now furnishing services with or without charge therefor, which are beneficial to the Operator in its use of the Premises, and shall hereafter impose charges or increase existing charges for such services, the Operator agrees to pay to the Port Authority such of the charges or the increase in charges as may be imposed or assessed against the Port Authority in respect of the Premises or its use and occupancy thereof.

(f) In the event the Port Authority shall provide extermination service for the enclosed portions of the Premises, the Operator agrees to utilize the same and to pay its pro rata

share of the reasonable cost thereof, upon demand. This paragraph does not impose any obligation on the Port Authority to furnish such service.

(g) The Port Authority shall not be obligated to perform or furnish any other services whatsoever in connection with the Premises or any services at any time while the Operator shall be in default hereunder after the period, if any, herein granted to cure such default shall have expired.

(h) The Port Authority shall be under no obligation to supply services if and to the extent and during any period that the supplying of any such service or the use of any component necessary therefor shall be prohibited or rationed by any federal, state or municipal law, rule, regulation, requirement, order or direction and if the Port Authority deems it in the public interest to comply therewith, even though such law, rule, regulation, requirement, order or direction may not be mandatory on the Port Authority as a public agency.

(i) No failure, delay or interruption in supplying agreed services (whether or not a separate charge is made therefor) shall be or be construed to be an eviction of the Operator or grounds for any diminution or abatement of rental, or (unless resulting from the gross negligence or willful failure of the Port Authority) shall be grounds for any claim by the Operator for damages, consequential or otherwise.

Section 44. Collection of Port Authority Fees and Charges

(a) The Port Authority hereby designates the Operator as the Port Authority's special agent for the purpose of collecting the public landing area charges as set forth from time to time in the Port Authority Schedule of Charges (such charges being hereinafter called the "user's charges") from the operators of Chargeable Aircraft (as hereinafter defined) using the Airport.

(b) For the purposes hereof the term "Chargeable Aircraft" shall mean all aircraft using the PAF other than (i) aircraft of aircraft operators which are parties to, or are covered by, a separate agreement entered into with Port Authority providing for the payment of a flight fee associated with use of the PAF at the Airport; and (ii) aircraft of aircraft operators which are exempted by the Port Authority from the imposition of a flight fee associated with use of the PAF at the Airport in accordance with the Port Authority Schedule of Charges (in accordance with subparagraph(g) of this Section, or otherwise), e.g., military, governmental, humanitarian, or charitable medical flights of such aircraft. It is understood that Chargeable Aircraft shall include, among other things, aircraft of General Aviation Aircraft Operators which are not excluded under (i) and (ii), above.

(c) The Operator as special agent for the Port Authority hereby agrees to collect, from the operators of Chargeable Aircraft using the PAF at the Airport, user's charges and other fees that are in effect from time to time.

(d) The Schedule of Charges showing the current user's charges for the use of the PAF at the Airport can be accessed at the following website:
<http://www.panynj.gov/airports/general-information.html>.

The Port Authority hereby reserves the sole and unrestricted right, from time to time and as often as it considers it necessary or advisable, to amend or rescind any item contained in such Schedule of Charges, to make increases or decreases therein, and to add additional items thereto. The said Schedule of Charges and changes therein or amendments thereof shall be binding upon the Operator and shall be and become the charges hereunder.

(e) In rendering bills or statements of charges to the operators of Chargeable Aircraft the Operator, if required by the Port Authority, shall use the form of invoice prescribed by the Port Authority from time to time which invoice, among other things, shall separately set forth under appropriate headings, the user's charges for the use of the PAF at the Airport.

(f) The user's charges to operators of Chargeable Aircraft shall be strictly in accordance with the applicable provision of the Schedule of Charges of the Port Authority in effect at the time of the use of the Airport. The Operator shall post prominently and thereafter maintain in legible condition copies of the Schedule of Charges, with any and all amendments made thereto, in or immediately outside of Area A and such other location or locations at the Airport as may be specified by the General Manager of the Airport from time to time.

(g) Notwithstanding the provisions of the Schedule of Charges and anything contained herein the Port Authority, in its sole discretion, may waive the user's charges for use of the PAF at the Airport for particular aircraft or particular aircraft operators and in any such instance upon written notice from the Port Authority to such effect the Operator shall not be responsible for and shall not enforce collection of the user's charges set forth in the Schedule of Charges which have been so waived, nor shall the Operator's compensation set forth in paragraph (j) of this Section be applicable to such waived user's charges.

(h) For and during all such time that the Operator continues as special agent of the Port Authority for the collection of the user's charges as aforesaid and for one year after the termination of such special agency and for a further period extending until the Operator shall receive written permission from the Port Authority to do otherwise, the Operator shall, in addition to the books, records and accounts which the Operator is required to keep and maintain under the Section of this Agreement entitled "*Obligations in Connection with the Conduct of the Operator's Business*", maintain books, records and accounts so as to adequately and accurately record all arrivals and departures of Chargeable Aircraft at the Airport and such other aircraft as the Port Authority may designate, and the times and dates of said arrivals and departures, type of aircraft (in sufficient detail to determine the maximum gross weight for take-off thereof including but not limited to the aircraft nomenclature as set forth in the periodical, "Aviation Week and Space Technology") and the user's charges incurred by all operators of Chargeable Aircraft during their stay at the Airport and such additional information as the Port Authority may from time to time designate. All such books, records and accounts shall be subject to examination, inspection and audit by the officers, employees and representatives of the Port Authority in such manner and at such time as provided in paragraph (d) of the Section of this Agreement entitled "*Obligations in Connection with the Conduct of the Operator's Business*".

(i) On the 20th day of the month following the month in which the Commencement Date falls and on the 20th day of each and every succeeding month thereafter during the Term

and the month following the month in which the date of expiration or termination of this Agreement falls, the Operator shall furnish to the Port Authority a statement by a responsible fiscal officer of the Operator covering its operations under this Section for the preceding calendar month, which statement shall set forth such information as the Port Authority may require with respect to the use of the PAF at the Airport. The Operator shall furnish such information as the Port Authority may request on the form or forms as may be supplied by the Port Authority from time to time. The statement required to be provided by the Operator hereunder shall be submitted by the Operator together with the report required pursuant to paragraph (f) of the Section of this Agreement entitled "*Obligations in Connection with the Conduct of the Operator's Business*".

(j) The Operator, for performing its obligations under this Section and otherwise under this Agreement, shall be entitled to the following compensation: [REDACTED] for each charge or portion thereof the Operator actually collects hereunder for the period from the Commencement Date through the day preceding the second anniversary of the Commencement Date; and at the rate of [REDACTED] for each charge or portion thereof the Operator actually collects hereunder for the period from the second anniversary of the Commencement Date through the balance of the Term.

(k) On or before the 20th day of each month the Operator shall pay to the Port Authority a full remittance of all user's charges for the preceding calendar month less deduction of the compensation to which the Operator is entitled pursuant to paragraph (j), above, of this Section.

(l) For the purposes hereof, all user's charges provided for in paragraph (a) of this Section shall be deemed to have been collected by the Operator when the same have been incurred by the operators of Chargeable Aircraft using the Airport whether or not the same have been collected by the Operator. Under no circumstances (except where specifically requested in writing by the Port Authority as hereinbefore set forth) shall the Operator waive any of the user's charges the collection of which are provided for in paragraph (c) hereof. The Operator shall be solely responsible for all uncollected user's charges.

(m) The Port Authority shall have the right at any time and from time to time during the Term to suspend the right of the Operator under this Section to collect user's charges and during the period of the suspension the Operator shall not perform the collection of user's charges hereunder and the Port Authority shall have the right during said period to itself, or by any third person or persons designated by it to, perform the obligation of the Operator hereunder using such equipment which is used by the Operator in its operations hereunder as the Port Authority deems necessary, and without cost to the Port Authority. The right of the Operator to receive the compensation set forth in paragraph (j) of this Section shall be abated with respect to the charges collected by the Port Authority or its designee during any aforesaid period of suspension. Prior to the exercise of such right by the Port Authority, it shall give the Operator notice thereof, which notice may be oral. No exercise by the Port Authority of the rights reserved to it by this paragraph (m) shall be or deemed to constitute a waiver of termination rights contained in this Agreement or a waiver of any other rights or remedies which may be available to the Port Authority under this Agreement or otherwise.

(n) The Operator shall use all means reasonably available to it for the determination of what Chargeable Aircraft use the PAF at the Airport. Without limiting the Operator's obligation and responsibility for the collection of the charges hereunder, the Operator shall monitor for the purpose of determining at what time or times Chargeable Aircraft use the aforesaid facilities and the duration of such use, the following radio frequencies: 121.9 megacycles (Ground Control), 119.1 megacycles (Tower Control) and such other radio frequencies as directed by the Port Authority from time to time and shall comply with the procedures as may be established from time to time by the General Manager of the Airport in connection with monitoring and determining such times. The determination of the user's charges for Chargeable Aircraft shall be based upon all available data including, but not limited to, the FAA control tower activity logs and information derived therefrom.

Section 45. OFAC Compliance

(a) Operator hereby represents and warrants to the Port Authority that Operator is not, and shall not become, a person or entity with whom the Port Authority is restricted from doing business under the regulations of the Office of Foreign Asset Control ("OFAC") of the United States Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including, but not limited to, the September 24, 2001 Executive Order on Terrorist Financing Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit or Support Terrorism), or other governmental action and is not engaging, and shall not engage, in any dealings or transactions or be otherwise associated with such persons or entities. Operator acknowledges that the Port Authority is entering into this Agreement in reliance on the foregoing representations and warranties and that such representations and warranties are a material element of the consideration inducing the Port Authority to enter into and execute this Agreement. In the event of any breach of any of the foregoing representations and warranties by Operator, the Port Authority shall have the right, in addition to any and all other remedies provided under this Agreement or at law or in equity, to immediately terminate this Agreement upon written notice to Operator. Operator further acknowledges that there shall be no cure for such a breach. In the event of any such termination by the Port Authority, Operator shall, immediately on receipt of the Port Authority's termination notice, cease all use of and operations permitted under this Agreement and surrender possession of the Premises to the Port Authority without the Port Authority being required to resort to any other legal process. Termination on the afore-described basis shall be deemed a termination for cause.

(b) The Operator shall indemnify and hold harmless the Port Authority and its Commissioners, officers, employees, agents and representatives from and against any and all claims, damages, losses, risks, liabilities and expenses (including, without limitation, attorney's fees and disbursements) arising out of, relating to, or in connection with the Operator's breach of any of its representations and warranties made under this paragraph. Upon the request of the Port Authority, the Operator shall at its own expense defend any suit based upon any such claim or demand (even if such suit, claim or demand is groundless, false or fraudulent) and in handling such it shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the

person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provision of any statutes respecting suits against the Port Authority.

(c) The provisions of this Section shall survive the expiration or earlier termination of the Term.

Section 46. Application of Payments; Accord and Satisfaction

All payments received by the Port Authority shall be credited and be deemed to be on account of the rentals and other charges then first due. No statements or endorsements on any check or any letter accompanying any check or payment of rentals or other charges shall be deemed an accord and satisfaction of any debt or obligation of the Operator hereunder. The Port Authority reserves the right to accept any check or payment without prejudicing in any way the Port Authority's right to recover the balance of any and all rentals and other charges due from the Operator after receipt of any such check or payment or to pursue any other remedy provided herein or by law.

Section 47. Personnel

(a) The Operator shall furnish sufficient trained personnel (consistent with the requirements of the Section of this Agreement entitled "*Services by the Operator*") to perform the services required of the Operator under this Agreement. If any of such personnel do not perform the services to be furnished hereunder in a manner satisfactory to the Port Authority, the Operator shall remove any such personnel and replace them with personnel who can and shall perform satisfactorily. Nothing in the foregoing sentence shall limit the Port Authority's rights and remedies in the event of the failure of the Operator to perform its responsibilities hereunder.

(b) The Operator shall not employ any persons or use any labor, or use or have any equipment, or permit any condition to exist which shall or may cause or be conducive to any labor complaints, troubles, disputes or controversies at the Airport which interfere or are likely to interfere with the operation of the Airport by the Port Authority or with the operations of lessees, permittees, licensees or other users of the Airport or with operations of the Operator under this Agreement.

(c) The Operator shall immediately give oral notice to the Port Authority (to be followed by written notices and reports) of any and all impending or existing labor complaints, troubles, disputes or controversies and the progress thereof. The Operator shall use its best efforts to resolve any such complaint, trouble, dispute or controversy.

(d) If any type of strike, boycott, picketing, work stoppage, slowdown or other labor activity is directed against the Operator at the Airport or against any operations of the Operator under this Agreement, whether or not the same is due to the fault of the Operator and whether or not caused by the employees of the Operator, and if any of the foregoing, in the opinion of the Port Authority, results or is likely to result in any curtailment or diminution of the services to be performed hereunder or to interfere with or affect the operations of Operators, permittees,

licensees or other users of the Airport, or if as a result of any other cessation or stoppage of operations by the Operator hereunder for any reason whatsoever, the Port Authority shall have the right at any time during the continuance thereof to suspend the operations of the Operator under this Agreement, and during the period of the suspension the Operator shall not perform the Fixed Base Operation or any other operations hereunder and the Port Authority shall have the right during said period to itself or by any third person or persons selected by it to perform the Fixed Base Operation and all other operations hereunder. The period of suspension shall end not more than twenty-four (24) hours after the cause thereof has ceased or been cured. The Operator shall notify the Port Authority of such cessation or cure.

Prior to the exercise of such right by the Port Authority, it shall give the Operator notice thereof, which notice may be oral. No exercise by the Port Authority of the rights granted to it in this Section shall be or be deemed to be a waiver of any rights of termination contained in this Agreement or a waiver of any rights or remedies which may be available to the Port Authority under this Agreement or otherwise.

(e) From time to time upon request therefor the Operator shall furnish to the Port Authority information showing the number of persons employed by the Operator at the Airport, the scheduling of such employees and such other information as the Port Authority may require.

Section 48. Accident Reports

The Operator shall promptly report in writing to the General Manager of the Airport, and to the Claims Attorney of the Port Authority, and shall make all other reports as may be required by law, rule or regulation in connection with all accidents whatsoever arising out of or in connection with its operations hereunder. In addition to the foregoing, accidents which result in death, personal injury or serious damage shall be immediately reported by telephone to the aforesaid representatives of the Port Authority.

In the event any claim is made by any person against the Operator arising out of any accident on the Premises or the PAF as a result of the Operator's operations hereunder, the Operator shall promptly report such claim in writing to the aforementioned representatives of the Port Authority. In addition, the Operator shall promptly furnish to the Port Authority copies of all reports given to the Operator's insurance carrier.

Section 49. Operator's Representations

The Operator represents and warrants that: it is financially solvent and experienced in and competent to conduct the operations and perform the services required of it hereunder; the facts stated or shown in the documentation accompanying its Proposal to the Port Authority were true and accurate on the date of the Proposal submission to the Port Authority and are true and accurate as of the Effective Date, it is a limited liability company validly existing and in good standing under the laws of its state of organization with all requisite power and authority to conduct the operations and perform the services required of it hereunder; if the Operator is a non-New York corporation, it is qualified to do business in the State of New York; it is familiar with

all applicable federal, state, municipal and local laws, ordinances and regulations, if any, which may in any way affect the operations to be conducted and services to be rendered by the Operator hereunder; it has carefully examined and studied the exhibits and schedules attached hereto and all terms and provisions of this Agreement; it is familiar with the Airport and the nature of the work, the general and local conditions prevailing including, without limitation thereto, the labor conditions, and with all other pertinent matters and circumstances which may in any way affect its operations and services at the Airport and use of the Premises; no Commissioner, officer, agent or employee of the Port Authority is personally interested, directly or indirectly, in this Agreement or the compensation to be paid hereunder; and no representation, statement, or promise, oral or in writing of the Port Authority, its Commissioners, officers, agents or employees, has induced it to enter into this Agreement except only those that may be expressly contained herein.

Section 50. Facilities Non-Discrimination

(a) Without limiting the generality of any of the provisions of this Agreement, the Operator, for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby agree that (1) no person on the grounds of race, creed, color, age, national origin or sex shall be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination in the use of any space and the exercise of any privileges under this Agreement; (2) that in the construction of any improvements on, over, or under any space under this Agreement and the furnishing of services thereon by it, no person on the grounds of race, creed, color, age, national origin or sex shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; and (3) that the Operator shall use any space and exercise any privileges under this Agreement in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended, and any other present or future laws, rules, regulations, orders or directions of the United States of America with respect thereto which from time to time may be applicable to the Operator's operations thereat, whether by reason of agreement between the Port Authority and the United States Government or otherwise.

(b) The Operator shall include the provisions of paragraph (a) of this Section in every agreement or concession it may make pursuant to which any person or persons other than the Operator, operates any facility at the Airport providing services to the public and shall also include therein a provision granting the Port Authority a right to take such action as the United States may direct to enforce such provisions.

(c) The Operator's noncompliance with the provisions of this Section shall constitute a material breach of this Agreement. In the event of the breach by the Operator of any of the above non-discrimination provisions, the Port Authority may take any appropriate action to enforce compliance or by giving twenty-four (24) hours' notice, may terminate this Agreement; or may pursue such other remedies as may be provided by law; and as to any or all of the foregoing, the Port Authority may take such action as the United States may direct.

(d) The Operator shall indemnify and hold harmless the Port Authority from any claims and demands of third persons including the United States of America resulting from the Operator's noncompliance with any of the provisions of this Section and the Operator shall reimburse the Port Authority for any loss or expense incurred by reason of such noncompliance.

(e) Nothing contained in this Section shall grant or shall be deemed to grant to the Operator the right to transfer or assign this Agreement, to make any agreement or concession of the type mentioned in paragraph (b) hereof, or any right to perform any construction on any space under this Agreement.

Section 51. Affirmative Action; DBE Requirements; Labor Force Utilization

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

(b) Without limiting any other provision of this Agreement, the Operator shall conform to the requirements set forth in Schedule E attached hereto and hereby made a part of and make a good faith effort to meet the goal indicated therein.

(c) The Operator will be expected to make good faith efforts to achieve a supervisory and non-supervisory work force in connection with its operations at the Airport under this Agreement that is representative of the local community labor force with respect to minority and female participation and to work with the Port Authority's Office of Business and Job Opportunity and the General Manager of the Airport to identify referral sources when needed. The Operator also will be expected to fully utilize apprentices or other training positions as appropriate.

The Operator in connection with any construction work on the Premises, or any portion thereof, shall throughout the Term commit itself to and use good faith efforts to implement an extensive program to utilize Local Business Enterprises in accordance with and as set forth in Schedule F.

Section 52. Non-Discrimination

During the performance of this Agreement, the Operator agrees as follows:

(a) The Operator will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. The Operator will take

affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The Operator agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(b) The Operator will, in all solicitations or advertisements for employees placed by or on behalf of the Operator, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, or national origin.

(c) The Operator will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or worker's representative of the Operator's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Operator will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Operator will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor pursuant thereto, and will permit access to such official's books, records and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(f) In the event of the Operator's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or orders, this Agreement may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Operator will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Operator will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Operator becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Operator may request the United States to enter into such litigation to protect the interests of the United States.

The foregoing shall not be deemed to constitute Port Authority consent to any such subcontract.

Section 53. Maintenance of Fueling Trucks and Other Automotive Equipment

(a) Without limiting the generality of any other term or provision hereof, the Operator understands and acknowledges that the Operator's fueling trucks and other automotive equipment used by the Operator in providing the Fixed Base Operation and each and every part thereof shall at all times be kept by the Operator in first-class condition, in accordance with the highest standard of maintenance, repair, and cleanliness and fully compliant with specifications of applicable Government Authorities.

(b) The Operator understands and agrees that notwithstanding anything to the contrary stated or implied in the Section of this Agreement entitled "*Rights of User*" or elsewhere in this Agreement, no washing, maintenance or repair of vehicles, equipment or other personal property shall take place within the Premises, except within Area C.

Section 54. Trucks

Without limiting the generality of any other term or provision hereof, the Operator understands and agrees that the Operator shall supply, furnish and maintain, throughout the Term, such equipment, furnishings and supplies including, but not limited to, a sufficient number of fueling trucks meeting the specifications contained in the Port Authority Air Terminal Rules and Regulations including, but not limited to, Appendix B thereof entitled "Ground Vehicle Specifications" (Introduction and Chapters I and IV), as the same may be supplemented and amended from time to time, as are necessary for the operation of the Fueling Service as set forth in paragraph (e) of the Section of this Agreement entitled "Services by the Operator". Nothing in said Appendix B shall exempt vehicles, operators, or equipment from complying with the Federal Motor Vehicle Safety Standards, the Federal Motor Carrier Safety Regulations, the Motor Vehicle Laws of the State where the vehicle is registered or licensed, or other ordinances, rules or regulations which may govern the design, maintenance, or operation of such vehicles or equipment.

Section 55. Radio Communications – UNICOM

(a) Without limiting the generality of any other term of provision hereof and in addition to the obligations of the Operator to monitor airport air traffic control frequencies and the provisions of the Airport Rules and Regulations concerning the operation of ground vehicles on aeronautical areas of the Airport, the Operator agrees that all the ramp service vehicles the Operator shall operate on the PAF (1) shall be equipped with a functioning two-way radio tuned to appropriate Airport ground control frequencies and (2) shall be equipped with a functioning two-way radio tuned to the Operator's Airport UNICOM radio service or Operator's discreet company radio frequency, if any, and that all such vehicles when operating in said areas shall continuously monitor such frequencies for the purpose of receiving information and responding to requests and directions.

(b) In order to receive requests from and for transmitting advisories to aircraft operators requesting the same, the Operator shall at its sole cost and expense, man, operate and provide Airport UNICOM radio services for the Airport. The Operator shall apply for and shall secure from the FAA and/or Federal Communications Commission and shall maintain throughout the Term all appropriate licenses and authority for the operation of the Airport UNICOM radio service hereunder and shall provide all radio equipment necessary or desirable in connection with the operation thereof.

(c) From time to time, and at any time, upon request therefor by the Port Authority, the Operator shall turn over operation of the Airport Unicom radio service (including the Operator's radio equipment used in providing the same if so requested) to the Port Authority and the Port Authority shall operate the Airport UNICOM radio services hereunder during such periods.

Section 56. Ethical Standards; Operator Conduct; Automatic Termination of Agreement

(a) Ethical Standards.

(1) The Operator for itself and on behalf of any Affiliate of the Operator and as to each member of the Board of Directors and each officer of the Operator and/or of such Affiliate hereby certifies under the penalties applicable to perjury, represents, warrants and covenants with full knowledge that the Port Authority will rely hereon in entering into this Agreement that at no time hereafter including the Term shall the Operator or any Affiliate thereof (a) take any action with respect to any employee or former employee of the Port Authority or immediate family member of either (*i.e.*, spouse, child, parent or brother or sister) which would constitute a breach of ethical standards under the Code of Ethics and Financial Disclosure dated as of July 18, 1994 promulgated by the Port Authority, a copy of which is available upon request to the Secretary of the Port Authority; (b) offer, give or agree to give anything of value either to a Port Authority employee, agent, job shopper, consultant, construction manager or other person or firm representing the Port Authority, or to a member of the immediate family (*i.e.*, a spouse, child, parent, brother or sister) of any of the foregoing, in connection with the performance by such employee, agent, job shopper, consultant, construction manager or other person or firm representing the Port Authority of duties involving transactions with the Operator on behalf of the Port Authority, whether or not such duties are related to this Agreement or any other Port Authority contract or matter; or (c) make an offer of employment or use confidential information in a manner prescribed by the said Code of Ethics and Financial Disclosure. Any such conduct shall be deemed a material breach of this Agreement. As used herein "anything of value" shall include but not be limited to any (i) favors, such as meals, entertainment, transportation (other than that contemplated by this Agreement or any other Port Authority contract), etc., which might tend to obligate the Port Authority employee to the Operator or any parent or Affiliate thereof and (ii) gift, gratuity, money, goods, equipment, services, lodging, discounts not available to the general public, offers or promises of employment, loans or the cancellation thereof, preferential treatment or business opportunity. Such term shall not include compensation contemplated by this Agreement or any other Port Authority contract; and (d) that neither the Operator nor any Affiliate thereof knows of any action the part of any employee or former employee of the Port Authority which constitutes a

breach of said Code of Ethics and Financial Disclosure and that if it or any parent or other Affiliate of the Operator comes into such knowledge at any time hereafter, including during the Term, it shall immediately report the same to the Port Authority in writing, any failure to do so being deemed a material breach of this Agreement.

(2) The term "Affiliate" for purposes specifically of this Section shall have the meaning set forth in the "Definitions" Section of this Agreement but shall also include any individual who is a member of the immediate family (whether by birth or marriage) of an individual, which includes for purposes of this definition a spouse, a brother or sister of the whole or half blood of such individual or his spouse, a lineal descendant or ancestor (including an individual related by or through legal adoption) of any of the foregoing or a trust for the benefit of any of the foregoing.

(b) Conduct of Operator. Operator, and the individual signing this Agreement on behalf of Operator, each affirm under penalty of perjury that neither Operator nor any of its Affiliates (as herein defined):

(i) shall have been charged with, indicted for, or convicted of a crime in any jurisdiction, or be then the subject of a grand jury investigation therefor, or had a civil judgment rendered against such person in any matter involving fraud or official misconduct,

(ii) shall have been suspended or otherwise disqualified from entering into contracts with any governmental agency,

(iii) shall be the subject of any pending action or proceeding to enforce rights of New York State or New Jersey or any subdivision thereof, or any agency, department, public authority or public benefit corporation thereof, which action or proceeding is based on allegations of fraud or misrepresentation, or

(iv) shall have received any notice of a default which remains uncured by New York State or New Jersey or any subdivision thereof; or any agency, department, public authority or any public benefit corporation thereof.

(c) In the event of a breach of any of the representations, warranties or covenants stated in subparagraph (a), above, or upon the occurrence during the Term of any event described in subparagraph (b), above, the same shall constitute a material default under this Agreement and shall serve as the ground for termination of this Agreement by the Port Authority in its sole and absolute discretion. Upon written notice from the Port Authority so terminating this Agreement, this Agreement shall be, and be deemed to be, automatically terminated on the date stated in the Port Authority's written notice, and the parties acknowledge that such a breach or occurrence is neither curable nor shall the Operator be afforded any opportunity to cure same. The grounds for termination stated in this Section are in addition to those set forth in the Section of this Agreement entitled "*Termination by the Port Authority*".

Section 57. Operator Integrity Provisions

The Operator acknowledges that this Agreement resulted from its submission of a proposal in a request-for-proposal process. At such time, the Operator agreed to certain integrity-related provisions and certified to their accuracy. Set forth below is a recitation of such integrity-related provisions. The Operator re-confirms its agreement to same and the accuracy thereof, it being understood that the term Bidder and Proposer shall mean the Operator, and that reference to the Operator's bid "on this Agreement" refers to its proposal in the request-for-proposal process relating to this Agreement.

(a) Certification of No Investigation (criminal or civil anti trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure of Other Information. By bidding on this Agreement, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, that the Bidder and each parent and/or affiliate of the Bidder has not

- (1) been indicted or convicted in any jurisdiction;
- (2) been suspended, debarred, found not responsible or otherwise disqualified from entering into any contract or lease with any governmental agency or been denied a government contract or lease for failure to meet standards related to the integrity of the Bidder;
- (3) had a contract or lease terminated by any governmental agency for breach or for any cause based in whole or in part on an indictment or conviction;
- (4) ever used a name, trade name or abbreviated name, or an Employer Identification Number different from those inserted in the Bid;
- (5) had any business or professional license suspended or revoked or, within the five years prior to bid opening, had any sanction imposed in excess of Fifty Thousand Dollars (\$50,000) as a result of any judicial or administrative proceeding with respect to any license held or with respect to any violation of a federal, state or local environmental law, rule or regulation;
- (6) had any sanction imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti trust regardless of the dollar amount of the sanctions or the date of their imposition; and
- (7) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or a civil antitrust investigation by any federal, state or local prosecuting or investigative agency.

(b) Non Collusive Bidding, and Code of Ethics Certification, Certification of No Solicitation Based On Commission, Percentage, Brokerage, Contingent or Other Fees. By bidding on this Agreement, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, that

(1) the prices in its bid have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

(2) the prices quoted in its bid have not been and will not be knowingly disclosed directly or indirectly by the Bidder prior to the official opening of such bid to any other bidder or to any competitor;

(3) no attempt has been made and none will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition;

(4) this organization has not made any offers or agreements or taken any other action with respect to any Authority employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics dated April 11, 1996 (a copy of which is available upon request to the individual identified in the clause hereof entitled "Communications Regarding this RFP") nor does this organization have any knowledge of any act on the part of a Port Authority employee or former Port Authority employee relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code;

(5) no person or selling agency other than a bona fide employee or bona fide established commercial or selling agency maintained by the Bidder for the purpose of securing business, has been employed or retained by the Bidder to solicit or secure this Agreement on the understanding that a commission, percentage, brokerage, contingent, or other fee would be paid to such person or selling agency; and

(6) the bidder has not offered, promised or given, demanded or accepted, any undue advantage, directly or indirectly, to or from a public official or employee, political candidate, party or party official, or any private sector employee (including a person who directs or works for a private sector enterprise in any capacity), in order to obtain, retain, or direct business or to secure any other improper advantage in connection with this Agreement.

(7) no person or organization has been retained, employed or designated on behalf of the Bidder to impact any Port Authority determination with respect to (i) the solicitation, evaluation or award of this Agreement; or (ii) the preparation of the bid or the terms and conditions in connection with this Agreement.

The foregoing certifications shall be deemed made by the Bidder as follows:

(i) if the Bidder is a corporation, such certification shall be deemed to have been made not only with respect to the Bidder itself, but also with respect to each parent, affiliate, director, and officer of the Bidder, as well as, to the best of the certifier's knowledge and belief, each stockholder of the Bidder with an ownership interest in excess of ten percent (10%);

(ii) if the Bidder is a partnership, such certification shall be deemed to have been made not only with respect to the Bidder itself, but also with respect to each partner.

Moreover, the foregoing certifications, if made by a corporate Bidder, shall be deemed to have been authorized by the Board of Directors of the Bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the Bidder cannot make the foregoing certifications, the Bidder shall so state and shall furnish with the signed bid a signed statement that sets forth in detail the reasons therefor. If the Bidder is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its bid, setting forth in such statement the reasons for its uncertainty. With respect to the foregoing certification in paragraph (b)(7), if the Bidder cannot make the certification, it shall provide, in writing, with the signed bid: (i) a list of the name(s), address(es), telephone number(s), and place(s) of principal employment of each such individual or organization; and (ii) a statement as to whether such individual or organization has a "financial interest" in this Agreement, as described in the Procurement Disclosure Policy of the Port Authority (a copy of which is available upon request to the Director of the Procurement Department of the Port Authority). Such disclosure is to be updated, as necessary, up to the time of award of this Agreement. As a result of such disclosure, the Port Authority will take appropriate action that could include a finding of non-responsibility.

Failure to make the required disclosures may lead to administrative action that could include a finding of non-responsibility.

Notwithstanding that the Bidder may be able to make the foregoing certifications at the time the bid is submitted, the Bidder shall immediately notify the Port Authority in writing during the period of irrevocability of bids on this Agreement of any change of circumstances which might under this clause make it unable to make the foregoing certifications or require disclosure.

The foregoing certifications or signed statement shall be deemed to have been made by the Bidder with full knowledge that they would become a part of the records of the Port Authority and that the Port Authority will rely on their truth and accuracy in awarding this Agreement. In the event that the Port Authority should determine at any time prior or subsequent to the award of this Agreement that the Bidder has falsely certified as to any material item in the foregoing certifications or has willfully or fraudulently furnished a signed statement which is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the foregoing certifications required to be disclosed, the Port Authority may determine that the Bidder is not a responsible bidder with respect to its bid on the Agreement or with respect to future bids on Port Authority contracts or leases and may exercise such other remedies as are provided to it by the Agreement with respect to these matters. In addition, Bidders are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see e.g., New York Penal Law, Section 175.30 et seq.). Bidders are also advised that the inability to make such certification will not in and of itself disqualify a Bidder, and that in each instance the Port Authority will evaluate the reasons therefor provided by the Bidder. Under certain circumstances the Bidder may be

required as a condition of lease award to enter into a Monitoring Agreement under which it will be required to take certain specified actions, including compensating an independent monitor to be selected by the Port Authority, said monitor to be charged with, among other things, auditing the actions of the Bidder to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to continue business with the Port Authority.

(c) Bidder Eligibility for Award of Contracts Determination by an Agency of the State of New York or New Jersey Concerning Eligibility to Receive Public Contracts. Bidders are advised that the Port Authority has adopted a policy to the effect that in awarding its contracts it will honor any determination by an agency of the State of New York or New Jersey that a Bidder is not eligible to bid on or be awarded public contracts because the Bidder has been determined to have engaged in illegal or dishonest conduct or to have violated prevailing rate of wage legislation.

The policy permits a Bidder whose ineligibility has been so determined by an agency of the State of New York or New Jersey to submit a bid on a Port Authority contract and then to establish that it is eligible to be awarded a contract on which it has bid because (i) the state agency determination relied upon does not apply to the Bidder, or (ii) the state agency determination relied upon was made without affording the Bidder the notice and hearing to which the Bidder was entitled by the requirements of due process of law, or (iii) the state agency determination was clearly erroneous or (iv) the state determination relied upon was not based on a finding of conduct demonstrating a lack of integrity or violation of a prevailing rate of wage law.

The full text of the resolution adopting the policy may be found in the Minutes of the Port Authority's Board of Commissioners meeting of September 9, 1993.

(d) No Gifts, Gratuities, Offers of Employment, Etc. During the Term, the Operator shall not offer, give, or agree to give, anything of value either to a Port Authority employee, agent, job shopper, consultant, construction manager or other person or firm representing the Port Authority, or to a member of the immediate family (i.e., a spouse, child, parent, brother or sister) of any of the foregoing, in connection with the performance by such employee, agent, job shopper, consultant, construction manager or other person or firm representing the Port Authority of duties involving transactions with the Operator on behalf of the Port Authority, whether or not such duties are related to this Agreement or any other Port Authority contract, lease or matter. Any such conduct shall be deemed a material breach of this Agreement.

As used herein "anything of value" shall include but not be limited to any (a) favors, such as meals, entertainment, transportation (other than that contemplated by the Agreement or any other Port Authority lease or contract), etc. which might tend to obligate the Port Authority employee to the Operator, and (b) gift, gratuity, money, goods, equipment, services, lodging, discounts not available to the general public, offers or promises of employment, loans or the cancellation thereof, preferential treatment or business opportunity. Such term shall not include payments contemplated by the Agreement or payments under any other Port Authority lease or contract. Where used herein, the term "Port Authority" shall be deemed to include all subsidiaries of the Port Authority.

The Operator shall insure that no gratuities of any kind or nature whatsoever shall be solicited or accepted by it and by its personnel for any reason whatsoever from the passengers, tenants, customers or other persons using the Operator's facility and shall so instruct its personnel.

In addition, during the Term, the Operator shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated April 11, 1996 (a copy of which is available upon request to the Office of the Secretary of the Port Authority).

The Operator shall include the provisions of this clause in each contract or sublease entered into under this Agreement.

(e) Conflict of Interest. During the Term, the Operator shall not, at any time, take any action which might be viewed as or give the appearance of conflict of interest on its part. If the Operator has reason to believe that any situation exists which might be viewed as or give the appearance of a conflict of interest, the Operator shall immediately inform the Port Authority's Director of Aviation ("Director") in writing of such situation giving the full details thereof. Unless the Operator receives the specific written approval of the Director, the Operator shall not take the contemplated action which might be viewed as or give the appearance of a conflict of interest. The Contractor's execution of this document shall constitute a representation by the Operator that at the time of such execution the Operator knows of no circumstances, present or anticipated, which come within the provisions of this paragraph or which might otherwise be viewed as or give the appearance of a conflict of interest on the Operator's part.

(f) Definitions. As used in this Section, the following terms shall mean:

"Affiliate" The term "Affiliate" in this Section shall have the same meaning as set forth in the Section of this Agreement entitled "*Definitions*".

"Agency" or "Governmental Agency" Any federal, state, city or other local agency, including departments, offices, public authorities and corporations, boards of education and higher education, public development corporations, local development corporations and others.

"Bid" shall mean Proposal;

"Bidder" shall mean Proposer;

"Bidding" shall mean submitting a Proposal.

"Investigation" shall mean any inquiries made by any federal, state or local criminal prosecuting agency and any inquiries concerning civil antitrust investigations made by any federal, state or local governmental agency. Except for inquiries concerning civil antitrust investigations, the term does not include inquiries made by any civil government agency concerning compliance with any regulation, the nature of which does not carry criminal

penalties, nor does it include any background investigations for employment, or Federal, State, and local inquiries into tax returns.

“Officer” Any individual who serves as chief executive officer, chief financial officer, or chief operating officer of the Bidder by whatever titles known.

“Parent” An individual, partnership, joint venture or corporation which owns more than 50% of the voting stock of the Bidder.

Section 58. High Security Areas and Additional Security Requirements

(a) Should the Operator be performing services required under this Agreement in any area of the Airport that is outside the Premises that has been designated by the Port Authority as a high security area, the Port Authority may require the observance of certain security procedures with respect to those areas, such as, but not limited to, the escort of personnel employed by the Operator or its contractors to, at, and/or from said high security areas by security personnel retained by the Port Authority.

(b) Twenty four (24) hours prior to the proposed performance of any work in a high security area, the Operator shall notify the Port Authority. The Operator shall conform to such procedures as may be established by the Port Authority from time to time and at any time for access to high security areas including the escorting of personnel hereunder. Prior to the start of work, the Operator shall request a description from the Port Authority of the high security areas that will be in effect on the Effective Date. The Port Authority may modify such description of high security areas from time to time and at any time during the term of the Port Agreement.

(c) The Port Authority reserves the right to impose additional security requirements with respect to performance of the services required under the Agreement, including requirements applicable to the Operator, its contractors and the personnel of each, as determined by the Port Authority. The Operator shall cooperate with and shall instruct its personnel and contractors to cooperate with Port Authority staff in implementing such security requirements. Likewise, such contractors shall direct their personnel to so cooperate. These security requirements may include but may not be limited to the following:

(1) Identity Checks and Background Screening: Operator/contractor identity checks and background screening of employees shall include but shall not be limited to: (1) inspection of not less than two forms of valid/current government issued identification (at least one having an official photograph) to verify employee’s name and residence; (2) screening of Federal, state, and/or local criminal justice databases and files; (3) screening of terrorist identification files; (4) multi-year check of personal, employment and /or credit history; and (5) identity confirmation prior to staff access which may include, but is not necessarily limited to, biometric security methodology such as fingerprint, facial or iris scanning.

The Operator may be required to have its staff, and its contractor’s staff, authorize the Port Authority or its designee to perform background checks. Such authorization shall be in a form

acceptable to the Port Authority. If the Port Authority directs the Operator to have identity checks and background screening performed by a particular firm designated by the Port Authority, the Port Authority will compensate the Operator for the cost of such screening.

(2) Personnel Photo Identification Cards: If the Port Authority requires facility-specific identification cards for staff of the Operator and/or its contractors, the Port Authority will supply such identification cards at no cost to the Operator.

(3) Access Control, Inspection, and Monitoring by Security Guards: The Port Authority shall have the right to implement facility access control, inspection and monitoring by Port Authority retained security guards. The Port Authority may require the Operator to hire security guards for the purpose of facility access control, inspection and monitoring in lieu of or in addition to Port Authority retained security guards. In such event, the Operator will be reimbursed for the cost of such security guards. However, this provision shall not relieve the Operator of its responsibility to secure its equipment and work at the facility at its own expense.

The Port Authority may implement such other security requirements as it deems necessary or desirable or as may be required by law or regulation and the Operator shall comply and shall direct its personnel and contractors to comply with all such security requirements. Likewise, such contractors shall direct their employees to so comply.

Section 59. Force Majeure

(a) If the performance by the Port Authority or the Operator of any of its obligations hereunder is delayed or prevented in whole or in part by any law, rule, regulation, order or other action adopted or taken by any superior governmental authority or by any Acts of God, floods, storms, war, civil disorder, terrorist act, strike, labor dispute, shortages of materials, fuel, power, or by any other cause not reasonably within the control of the Port Authority or the Operator, as the case may be, to remedy, the Port Authority or the Operator, as the case may be, shall not be deemed to be in violation of this Agreement, unless the delay or prevention of performance shall result from failure on the part of the Port Authority or the Operator, as the case may be, to use reasonable care to prevent or reasonable efforts to cure such delay or prevention of performance; provided, however, that this provision shall not apply to failures by the Operator to pay the rentals specified hereunder and shall not apply to any other charges or money payments.

(b) No abatement, diminution or reduction of the rental, fees or other charges payable by the Operator shall be claimed by or allowed to the Operator for any inconvenience, interruption, cessation or loss of business or other loss caused, directly or indirectly, by any present or future laws, rules, requirements, orders, directions, ordinances or regulations of the United States of America, or of the state, county or city governments, or of any other municipal, governmental or lawful authority whatsoever, or by priorities, rationing or curtailment of labor or materials, or by war or by any matter or thing resulting therefrom, or by any other cause or condition beyond the control of the Port Authority, nor shall this Agreement be affected by any such causes or conditions.

Section 60. Quiet Enjoyment

The Port Authority covenants and agrees that as long as it remains the Operator of the Airport, the Operator, upon paying all rentals hereunder and performing all the covenants, conditions and provisions of this Agreement on its part to be performed, shall and may peacefully and quietly have and enjoy the Premises free of any act or acts of the Port Authority except as expressly agreed upon in this Agreement.

Section 61. Waiver of Trial by Jury

The Operator waives its right to trial by jury in any summary proceeding or action that may hereafter be instituted by the Port Authority against the Operator in respect of the Premises and/or in any action that may be brought by the Port Authority to recover fees, damages, or other sums due and owing under this Agreement. The Operator specifically agrees that it shall not interpose any claims as counterclaims in any summary proceeding or action for non-payment of rents, fees or other amounts which may be brought by the Port Authority unless such claims would be deemed waived if not so interposed.

Section 62. Effect of Use and Occupancy of Premises after Expiration or Termination.

Without in any way limiting the provisions set forth in the Sections of this Agreement entitled "*Termination*", "*Rights of Re-entry*" and "*Survival of the Obligations of the Operator*", unless otherwise notified by the Port Authority in writing, in the event the Operator remains in possession of the Premises after the expiration or termination of the Term, as it may be extended from time to time, in addition to any damages to which the Port Authority may be entitled under this Agreement or other remedies the Port Authority may have by law or otherwise, the Operator shall pay to the Port Authority a rental for the period commencing on the day immediately following the Expiration Date or the effective date of such termination and ending on the date that the Operator shall surrender and completely vacate the Premises at an annual rate equal to twice the sum of (x) the annual rate of Fixed Rental in effect on the date of such expiration or termination, plus (y) Subletting Rental computed as provided above at the respective rates in effect on the date of such expiration or termination, plus (z) all items of additional rent and other periodic charges, if any, payable with respect to the Premises by the Operator at the annual rate in effect during the three-hundred-sixty-five (365) day period immediately preceding such date. Nothing herein contained shall be deemed to give the Operator any right to remain in possession of the Premises after the expiration or termination of the letting under this Agreement. The Operator acknowledges that the failure of the Operator to surrender, vacate and yield up the Premises to the Port Authority on the effective date of such expiration or termination will or may cause the Port Authority injury, damage or loss. The Operator hereby assumes the risk of such injury, damage or loss and hereby agrees that it shall be responsible for the same and shall pay the Port Authority for the same whether such are foreseen or unforeseen, special, direct, consequential or otherwise and the Operator hereby expressly agrees to indemnify and hold the Port Authority harmless against any such injury, damage or loss.

Section 63. Entire Agreement

This Agreement consists of the following: Sections 1 through 63 inclusive, and Exhibits A, B, and C, and Schedules A, A-1, A-2, E and F. It constitutes the entire agreement of the parties on the subject matter hereof and may not be changed, modified, discharged or extended except by written instrument duly executed by the Port Authority and the Operator. The Operator agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed these presents as of
the First day of July, 2011.

ATTEST:

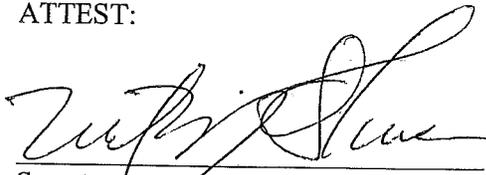
THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY

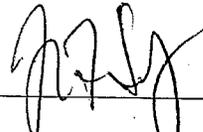

Secretary

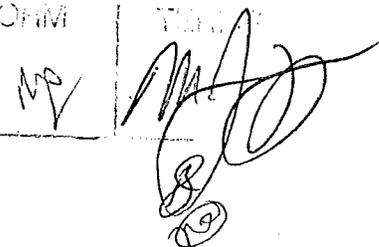
By: 
David Kagan
(Title) Assistant Director
~~Business Properties & Airport Development~~
(Seal)

ATTEST:

SHELTAIR AVIATION JFK, LLC


Secretary

By: 
(Title) ~~Member~~ (Member)(Manager)
(Seal)

APPROVE
FORM


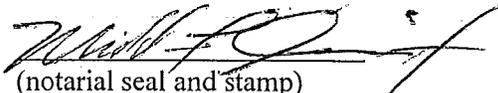
EX. 4 –DRAWINGS OF NON-PUBLIC AREAS

ACKNOWLEDGEMENTS

For the Port Authority

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

On the 16th day of September, 2011, before me personally came David Kagan to me known, who, being by me duly sworn, did depose and say that he resides at (EX. 1) the Assistant Director Business Properties + Airport Development of the Port Authority of New York & New Jersey, (one of) the corporations described in and which executed the foregoing instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Commissioners of the said corporation; and that he signed his name thereto by like order.

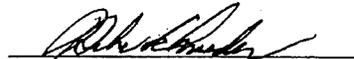

(notarial seal and stamp)

MICHAEL F. SCHMIDT
Notary Public, State of New York
No. 01SC6118149
Qualified in New York County
Commission Expires November 1, 2012

For the Operator

STATE OF New York)
)ss:
COUNTY OF QUEENS)

On the 1st day of AUGUST, 2011, before me personally came JOHN F. SCHMOTZ to me known, who, being by me duly sworn, did depose and say that he resides at MANAGINLE that he is the MEMBER President of SHELTAR AVIATION JFK, LLC one of the corporations described in and which executed the foregoing instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of the said corporation; and that he signed his name hereto by like order.


(notarial seal and stamp)

HELENE SCHNEIDER
Notary Public, State of New York
No. 01SC4620865
Qualified in Nassau County
Commission Expires May 31, 2014

