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Sent: Wednesday, March 06, 2013 10:48 AM
To: Duffy, Daniel
Cc: Torres Rojas, Genara; Van Duyne, Sheree
Subject: Freedom of Information Online Request Form

Information:

First Name: JOSEPH
Last Name: VITULLI
Company: PLISKIN, RUBANO ET AL
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Mailing Address 2:
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Required copies of the records: Yes

List of specific record(s):

All lease agreements and any amendments or extensions thereto between the Port Authority of New York and New Jersey, as landlord, in connection with the building 73 located at JFK Airport, Jamaica, NY 11430 for the last 5 years

THE PORT AUTHORITY OF NY & NJ

FOI Administrator

April 15, 2013

Mr. Joseph Vitulli
Pliskin, Rubano Et Al
137-11 Northern Blvd.
Flushing, NY 11354

Re: Freedom of Information Reference No. 13814

Dear Mr. Vitulli:

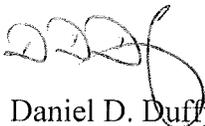
This is a response to your April 6, 2013 request, which has been processed under the Port Authority's Freedom of Information Code (the "Code") for copies of all lease agreements and any amendments or extension thereto between the Port Authority, as landlord, in connection with the building 73 located at John F. Kennedy International Airport, Jamaica, NY 11430 for the last 5 years.

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/13814-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
F: 212 435 7555*

Lease No. AYD-720

AGREEMENT OF LEASE

Between

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

And

CARGO AIRPORT SERVICES USA LLC

Dated: November 1, 2007

CARGO AIRPORT SERVICES USA LLC
Lease No. AYD-720

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Exhibit B Initial Environmental Report

Schedule E Affirmative Action - Equal Opportunity - Minority Business Enterprises - Women-owned Business Enterprises Requirements

Schedule F Local Business Enterprises Commitment

THIS AGREEMENT SHALL NOT BE BINDING UPON
THE PORT AUTHORITY UNTIL DULY EXECUTED BY
AN EXECUTIVE OFFICER THEREOF AND DELIVERED
TO THE LESSEE BY AN AUTHORIZED
REPRESENTATIVE OF THE PORT AUTHORITY

Port Authority Lease No. AYD-720

AGREEMENT OF LEASE

THIS AGREEMENT OF LEASE, made as of November 1, 2007 by and between 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, and having an office at 225 Park Avenue South, in the Borough of Manhattan, City, County and State of New York (the "Port Authority"), and CARGO AIRPORT SERVICES USA LLC, a limited liability company of the State of Delaware with an office and place of business at Building 261 John F. Kennedy International Airport, Jamaica, NY 11430 (the "Lessee"), whose representative is Carl A Smitelli, CEO,

WITNESSETH, That:

The Port Authority and the Lessee, for and in consideration of the rents, covenants and mutual agreements hereinafter contained, hereby covenant and 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:

"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 Lessee and any Person in which the Lessee or a shareholder of the Lessee has an ownership, licensor/licensee or franchiser/franchisee interest or relationship, but if the Lessee 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 Lessee 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.

"Air Cargo" shall mean cargo transported to or to be transported from the Airport by aircraft owned or operated by an Aircraft Operator.

"Air Cargo Facility" shall have the meaning set forth in Section 6 hereof, entitled "Use of Premises".

"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.

"Area B Roadway Easement" shall have the meaning set forth in Section 2.

"Area C Roadway Easement" shall have the meaning set forth in Section 2.

"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.

"Building" shall have the meaning set forth in Section 2(a).

"Building 71 Occupant" shall have the meaning set forth in Section 2(b).

"Building 74 Occupant" shall have the meaning set forth in Section 2(c).

"Building Subletting Rental" shall have the meaning set forth in Section 8(a).

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

"Contractor" shall have the meaning set forth in Schedule E.

"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 Lessee 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 Lessee'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 Lessee'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 Section 3(a).

"Extension Option" shall have the meaning set forth in Section 3(a).

"Extension Term" shall have the meaning set forth in Section 3(a).

"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 Lessee 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 each mean federal, state, municipal and other governmental authorities, boards and agencies of any state, nation or government, except that they shall not be construed to include the Port Authority.

"Ground Rental" shall have the meaning set forth in Section 8 hereof entitled "Rental".

"Ground Rental Commencement Date" shall mean the first day of the calendar month following the calendar month in which the Effective Date occurs.

"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.

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

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

"MAG Rental" shall have the meaning provided in Section 8(b).

"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.

"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 adventurers 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.

"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 Section 2.

"Public Landing Area" shall mean the area of land at the Airport including Runways, Taxiways and adjacent areas, designated and made available from time to time by the Port Authority for the landing and taking off of aircraft.

"Resident Engineer" shall mean the person designated as the Resident Engineer at the Airport by the Chief Engineer of the Port Authority.

"Runways" shall mean the areas of the Airport (including approaches to such areas) used for the purpose of the landing and taking-off of aircraft.

"Tank" shall have the meaning set forth in Section 44 entitled "Storage Tanks".

"Taxilane Easement" shall have the meaning set forth in Section 2(b).

"Taxiways" shall mean the portion of the Airport used for the purpose of the ground movement of aircraft between the Runways and other areas at the Airport for public and common use, including without limitation areas for loading and unloading aircraft, for parking and storing aircraft, for servicing aircraft and for making minor or emergency repairs to aircraft. The term "Taxiways" shall not include any taxiways with respect to which the exclusive use is granted to the Lessee or any other Person by lease, permit or otherwise, and shall not include the Taxilane Easement.

"Term" shall have the meaning set forth in Section 3(a).

"Throughput Rental" shall have the meaning set forth in Section 8(c).

"Women-owned Business Enterprise" or "WBE" shall have the meaning set forth in Schedule E.

Section 2. Letting

(a) *Premises.* Subject to and in accordance with the terms and conditions of this Agreement, the Port Authority hereby lets to the Lessee and the Lessee hereby hires and takes from the Port Authority at the Airport the premises, as shown on Exhibit A hereto, consisting of (x) the area designated "Area A", outlined by a heavy broken line and further consisting of the open areas shaded in stipple and the existing building shaded in diagonal cross-hatching and labeled "Building 73" (the "Building"), (y) the area designated "Area B", shaded in diagonal hatching and (z) the area designated "Area D", shaded in honeycomb hatching; the aforesaid Areas A, B and 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"). The parties acknowledge that the Premises constitute non-residential real property.

(b) **Area D Taxilane Easement.** The Lessee acknowledges and agrees that Area D shall be subject to an easement for use as a taxilane (the "Taxilane Easement") in favor of the tenant or permittee occupying Building 71 (the "Building 71 Occupant") for the purposes of ingress to and egress from its leasehold premises, and may be used jointly by the Lessee and the Building 71 Occupant, the successors in interest of either of the foregoing, the Port Authority and any other entity to whom the Port Authority may grant the right to use the Taxilane Easement. The Lessee acknowledges and agrees that, without limitation as to the Lessee's obligations as otherwise provided in this Agreement, the Lessee shall have the sole responsibility for the maintenance and repair (including without limitation snow and ice removal) of the Taxilane Easement area; provided, however, that the Building 71 Occupant shall share equally with the Lessee in the cost of such maintenance and repair, and is required pursuant to its lease for the Building 71 premises, to enter into an agreement with the Lessee so providing, such agreement to be subject to the Port Authority's consent; provided, further, that notwithstanding the foregoing, so long as there is no tenant or permittee of the Port Authority occupying Building 71, the Lessee shall be responsible, at its own cost and expense, for the maintenance and repair of the Taxilane Easement area.

(c) **Area B Roadway Easement.** The Lessee acknowledges and agrees that Area B shall be subject to an easement (the "Area B Roadway Easement") in favor of the tenant or permittee occupying Building 74 (the "Building 74 Occupant") for the purposes of ingress to and egress from its premises, and may be used jointly by the Lessee, the Building 74 Occupant, the successors in interest of either of the foregoing, the Port Authority and any other entity to whom the Port Authority may grant the right to use the Area B Roadway Easement. In granting to others such

right to use the Area B Roadway Easement, the Port Authority shall, except in emergencies, give reasonable prior notice thereof to the Lessee and take reasonable steps to minimize or avoid interference with the Lessee's operations hereunder. The Lessee acknowledges and agrees that, without limitation as to the Lessee's obligations as otherwise provided in this Agreement, the Lessee shall have the sole responsibility for the maintenance and repair (including without limitation snow and ice removal) of the Area B Roadway Easement area; provided, however, that the Building 74 Occupant shall share equally with the Lessee in the cost of such maintenance and repair, and is required pursuant to its lease for the Building 74 premises, to enter into an agreement with the Lessee so providing, such agreement to be subject to the Port Authority's consent; provided, further, that notwithstanding the foregoing, so long as there is no tenant or permittee of the Port Authority occupying Building 74, the Lessee shall be responsible, at its own cost and expense, for the maintenance and repair of the Area B Roadway Easement area.

(d) **Area C Roadway Easement.** The Port Authority hereby grants to the Lessee a non-exclusive right to use the strip of land designated "Area C" and shaded in stepped hatching on Exhibit A for ingress and egress for automotive vehicles between the Premises and Old Rockaway Boulevard located to the north of Area C (the "Area C Roadway Easement"). The Lessee shall enter into an agreement with the Building 71 Occupant, providing, *inter alia*, that the Lessee shall share on an equitable basis the Building 71 Occupant's cost to maintain and repair Area C (the understanding being that such cost shall be shared 50% by the Building 71 Occupant and 25% each by the Lessee and the Building 74 Occupant, respectively), that the Lessee shall indemnify and hold the Building 71 Occupant harmless and that the Lessee shall agree not to block or otherwise interfere with the ability of the Building 71 Occupant or others in their use of Area C. Such agreement shall be submitted to the Port Authority for its consent. The Lessee acknowledges that the Port Authority shall have no obligation to maintain or repair Area C.

(e) **No Rights in Air Space.** Except to the extent required for the performance of any of the obligations of the Lessee hereunder, nothing contained in this Agreement shall grant to the Lessee 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) *Initial Term.* The term of the letting under this Agreement (as it may be extended pursuant to the provisions of the following paragraph (b) or as it may be terminated pursuant to the provisions of this Agreement, the "Term") shall commence on the Effective Date and shall expire on the last day of the sixty-first (61st) 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, including without limitation the provisions of paragraph (c) below of this Section.

(b) *Extension Option.* The Lessee shall have one (1) option to extend the Term (the "Extension Option") for one (1) additional period of five (5) years commencing upon the day following the Expiration Date (such additional five-year period, the "Extension Term"); the Extension Term shall be upon the same terms and conditions and at the rentals pursuant to and as provided for in the Section hereof entitled "Rental" as adjusted for the Extension Term, and the Extension Option shall be further subject to and conditioned upon the following:

(1) The Lessee shall give the Port Authority written notice of the Lessee's intention to exercise the Extension Option (the "Extension Option Notice") not less than six (6) months prior to the Expiration Date;

(2) At both the date of the Port Authority's receipt of the Extension Option Notice and the commencement date of the Extension Term:

(i) The Lessee shall be in possession of the Premises under this Agreement;

(ii) This Agreement shall be in full force and effect, and the Lessee shall not be under notice of termination from the Port Authority, including without limitation any notice of termination pursuant to paragraph (c) below of this Section;

(iii) The Lessee shall not be in default in the performance of any of the terms, covenants, conditions and

agreements contained herein to be observed, performed or fulfilled by the Lessee;

(iv) The Lessee shall satisfy all financial criteria of the Port Authority with respect to the credit worthiness of the Lessee, including without limitation the submission by the Lessee to the Port Authority of new or additional security; and

(v) The Lessee shall not be in breach of its representations given under the Section hereof entitled "Brokerage" that no agent or broker has represented or is alleged to represent the Lessee in connection with the Extension Option.

(c) **Special Termination.** Notwithstanding the foregoing paragraphs (a) and (b) of this Section, the Port Authority shall have the right, at any time after the fourth (4th) anniversary of the Effective Date, to terminate the letting hereunder by notice to the Lessee, such termination to be effective upon the date set forth in such notice, which shall be at least twelve (12) months after the effective date of such notice; provided, however, that in no event shall any such notice be given during the period (x) commencing one hundred thirty (130) days prior to the expiration of the initial term of the letting hereunder (as set forth in paragraph (a)(3) of this Section) and (y) ending on the last day of such initial term.

Section 4. Condition of the Premises

The Lessee accepts the Premises in their "as is" condition and the Port Authority shall not have any responsibility for any work or installation to the Premises to make the same usable by the Lessee, to place them in any particular condition or to reimburse the Lessee for any work or installation as may be made by or on behalf of the Lessee, the Lessee having exclusive responsibility therefore. The Lessee hereby 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. The Lessee, prior to any portion of the Premises becoming a part of the Premises hereunder, thoroughly examined or shall examine, as the case shall be, such portion of the Premises and determined it to be suitable for the Lessee's operations under this Agreement.

Section 5. Limitation of Rights and Privileges Granted

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

(b) *Subject to Easements, etc.* The Premises are let to the Lessee and the Lessee takes the same subject to all the following: (x) easements, restrictions, reservations, covenants and agreements, if any, to which the Premises are subject, rights of the public in and to any public street, (y) rights, if any, of any enterprise, public or private which is engaged in furnishing heating, lighting, power, telegraph, telephone, steam, or transportation services and of the City and State of New York and (z) permits, licenses, regulations and restrictions, if any, of the United States, the City of New York or State of New York or other Governmental Authority.

Section 6. Use of Premises.

(a) *Permitted Use.* The Lessee hereby agrees to and shall use the Premises or cause the Premises to be used for the following purposes and for activities reasonably required for such purposes and for such purposes and activities only:

(1) As a facility for the reception, sorting, temporary storage and distribution and appropriate federal inspection services by federal agencies (if the United States government makes the same available to the Lessee) of Air Cargo transported or to be transported on aircraft operated by the Lessee (such facility, an "Air Cargo Facility") and for purposes reasonably incidental thereto and for administrative and business offices in connection therewith;

(2) For loading and unloading operations in connection with the Lessee's operations hereunder;

(3) For the parking, storage, routine maintenance, minor repair, cleaning and servicing of aircraft operated by and mobile equipment used by the Lessee, in connection therewith, and for the maintenance and repair of personal property operated by the Lessee, in connection with its or their operations hereunder;

- (4) For the storage of aircraft parts and supplies;
- (5) For business and administrative offices and storerooms and employees' locker rooms in connection with the Lessee's operations hereunder;
- (6) For the parking of passenger automobiles used by the officers, employees, invitees and business visitors of the Lessee;
- (7) For the parking and storage of aircraft and ramp equipment;
- (8) For the performance of transit or turn-around aircraft maintenance only which is incidental to the Lessee's air cargo operations;
- (9) For the fueling and serving of aircraft and ramp equipment operated by the Lessees and used by it in connection with its operations; and
- (10) For any other purpose or activity which the Port Authority may, from time to time, expressly authorize in advance in writing.

(b) **Safe Use.** Without limiting any obligation of the Lessee to commence operations hereunder at the time and in the manner stated elsewhere in this Agreement, the Lessee 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 Lessee's operations hereunder so that there is possibility of injury or damage to life or property.

Section 7. Ingress and Egress

(a) **City Streets.** The Lessee, its officers, employees, customers, patrons, invitees, contractors, suppliers of material and furnishers of service, shall have the right of ingress and egress between the Premises and a city street or public way outside the Airport by means of existing roadways used in common with others having rights of passage within the Airport, provided, however, that the Port Authority may from time to time substitute other reasonably equivalent means of ingress and egress.

(b) **Public Landing Area.** The Lessee shall have the right of ingress and egress between the Premises and the Public

Landing Area at the Airport by means of existing Taxiways to be used in common with others having rights of passage thereon, provided, however, that the Port Authority may from time to time substitute other reasonably equivalent means of ingress and egress.

(c) **Use Subject to Rules and Regulations.** The use of all roadways and Taxiways shall be subject to the Rules and Regulations of the Port Authority which are now in effect or which may hereafter be promulgated for the safe and efficient operation of the Airport.

(d) **Closure of Roadways and Taxiways.** The Port Authority may, at any time, temporarily or permanently close, or consent to or request the closing of, any roadway, Taxiway or any other area at the Airport presently or hereafter used as such, so long as a reasonably equivalent means of ingress and egress remains available to the Lessee. The Lessee 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 Lessee may now or at any time hereafter have against any of the foregoing, arising or alleged to arise out of the closing of any roadway, Taxiway or other area, whether within or outside the Airport, provided a reasonably equivalent means of access is available.

(e) **No Interference with Access of Others.** The Lessee 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 streets, ways and walks near the Premises.

Section 8. Rental

(a) **Ground Rental.**

(1) For the period from the Ground Rental Commencement Date through the day preceding the first anniversary of the Ground Rental Commencement Date, the Lessee shall pay to the Port Authority a rental (the "Ground Rental") at the rate of (Ex. 2.a) per annum, payable in monthly installments of each on the first day of each calendar month.

(2) Effective on each anniversary of the Ground Rental Commencement Date, the Ground Rental shall be increased by four percent (4%) or one-half (1/2) of the CPI Percentage Increase, whichever is greater.

(3) In the event that the Lessee shall at any time by the provisions of this Agreement expressly be entitled to abatement of the Ground Rental (the "**Ground Rental Abatement**"), then the Ground Rental Abatement shall be computed as follows (it being understood that there shall be no Ground Rental Abatement for any portion of the Premises or any portion of the Term except as specifically provided in this Section 8(a)(3)):

(i) For each acre of land in "Area A" of the Premises (including the footprint of the Building) the use of which is denied to the Lessee: from the Ground Rental Commencement Date through the day preceding the first anniversary of the Ground Rental Commencement Date, at the daily rate of (Ex.2.a) per square foot; thereafter, on each anniversary of the Ground Rental Commencement Date the daily rate of the Ground Rental Abatement shall be increased by (Ex.2.a) or (Ex.2.a) of the CPI Percentage Increase (as defined below in this Section), whichever is greater.

(ii) For each acre of land in "Area B" or "Area D" of the Premises the use of which is denied to the Lessee, the daily rate shall be at one-half (1/2) of the rate per square foot set forth in clause (i) above; and for each acre of land in "Area C" of the Premises the use of which is denied to the Lessee, the daily rate per square foot shall be at one-quarter (1/4) of the rate set forth in clause (i) above.

(iii) For the purposes of this Section, all of the interior space shall be measured and the same shall be ascertained by measuring between the interior plaster surfaces of the exterior building walls, and no deductions will be made therefrom for columns, pilasters, projections, partitions, toilets, vertical shafts, elevator shafts, stairs, fire towers, vents, pipe shafts, meter closets, flues, stacks, structures or facilities of any kind or anything else located therein.

(b) **MAG Rental.**

(1) Effective as of the Ground Rental Commencement Date, the Lessee shall pay to the Port Authority a rental (the "MAG Rental") at the rate of (Ex.2.a)

per annum, payable in equal monthly installments of

each on the first day of each calendar month; provided, however, that notwithstanding the foregoing, in the event that the Lessee commences operations at the Premises prior to the Ground Rental Commencement Date, the Lessee shall pay MAG Rental, on a prorated basis, with respect to the period commencing on the date of such commencement of operations and ending on the day preceding the Ground Rental Commencement Date.

(2) In the event the Lessee exercises the Extension Option, MAG Rental for the first year of the Extension Term shall be at the rate of (Ex.2.a)

per annum, payable in equal monthly installments of

each on the first day of each calendar month; MAG Rental for each of the second through fifth years of the Extension Term shall be increased by the full CPI Percentage Increase.

(c) **Throughput Rental.**

(1) The following terms shall have the respective meanings set forth below:

"Monthly Base Cargo Throughput" shall mean, for each calendar month, of Monthly Cargo Throughput; it being understood and agreed that a separate determination of such amount shall be made for each calendar month independently, without any carryover or accumulation from a preceding month.

"Monthly Cargo Throughput" shall mean the total weight, measured in kilos, of all Air Cargo received, stored, distributed, consolidated or otherwise handled at the Premises during a calendar month, including without limitation Air Cargo transported or to be transported on aircraft of the Lessee, and Air Cargo transported or to be transported on aircraft of any other Aircraft Operator at the Premises or for which the Lessee provides services in connection with Air Cargo.

"Loose Cargo" shall mean cargo that is shipped as individual pieces or boxes and is required to be handled as individual

pieces when received for outbound flights, or broken down into individual pieces from a larger pallet or container when received from inbound flights.

"**Containerized Cargo**" shall mean cargo that is consolidated onto airline Unit Load Devices (ULD), such as pallets or structural containers, to form a single unit and may be handled together as one ULD.

(2) In addition to all other rentals, fees and charges and payments to be made by the Lessee hereunder, the Lessee shall pay to the Port Authority a rental (the "**Throughput Rental**") for each and every kilo of Monthly Cargo Throughput in excess of the Monthly Base Cargo Throughput, at the rate of

Cargo, plus (Ex. 2.a.) per kilo of Loose
Containerized Cargo. per kilo of

(3) Throughput Rental shall be calculated based upon the greater of (x) the actual contract rate breakdown between the Lessee and its handled carriers at the Premises (80% Loose Cargo and 20% Containerized Cargo) and (y) the actual throughput breakdown of Loose Cargo and Containerized Cargo in the Monthly Cargo Throughput; for example, if in a particular month the contract rate breakdown were 80% Loose Cargo and 20% Containerized Cargo and the actual throughput breakdown were 87% Loose Cargo and 13% Containerized Cargo, then, for purposes of calculating Throughput Rental for that month, the excess of the Monthly Cargo Throughput over the Monthly Base Cargo Throughput would be deemed to be 87% Loose Cargo and 13% Containerized Cargo; if, on the other hand, in that particular month the contract rate breakdown were 80% Loose Cargo and 20% Containerized Cargo and the actual throughput breakdown were 68% Loose Cargo and 32% Containerized Cargo, then, for purposes of calculating Throughput Rental for that month, the excess of the Monthly Cargo Throughput over the Monthly Base Cargo Throughput would be deemed to be 80% Loose Cargo and 20% Containerized Cargo.

(4) In the event the Lessee exercises the Extension Option, Throughput Rental for the first year of the Extension Term shall be, for each and every kilo of Monthly Cargo Throughput in excess of the Monthly Base Cargo Throughput, at the rate of (Ex. 2.a.) per kilo of Loose Cargo, plus per kilo for each and every kilo of Containerized Cargo; the rate of

Throughput Rental for each of the second through fifth years of the Extension Term shall be increased by the CPI Percentage Increase.

(5) The Lessee shall pay the Throughput Rental as follows:

(i) On the first 20th day of a calendar month to occur after the Effective Date, and on the 20th day of each and every calendar month thereafter and within twenty (20) days after the last day of the Term, the Lessee shall submit to the Port Authority a statement sworn to and signed by a responsible executive or fiscal officer of the Lessee, setting forth in sufficient itemized detail and description all of the Monthly Cargo Throughput at the Premises for the preceding calendar month, with specificity as to the number of kilos received, number of kilos stored, number of kilos consolidated, number of kilos distributed, number of kilos handled, number of Containerized Cargo kilos and the number of Loose Cargo kilos, and separately listing and identifying the parties on whose account each kilo of Monthly Cargo Throughput was received, stored, distributed, consolidated or handled during such month. Each such statement shall have attached thereto and as part thereof true and complete copies of all manifests, airway bills, reports, invoices and other documentation prepared by or for the Lessee or prepared by or for any sublessee, licensee or contractor of the Lessee or an Aircraft Operator operating or being handled at the Premises, including without limitation such manifests, airway bills, reports, invoices and other documentation prepared for purposes of meeting the requirements of any governmental agency, office or authority (including without limitation the United States Customs Service), or to meet any other term or provision of this Agreement. Each such statement shall also contain information in detail as to date and time, and aircraft (manufacturer's model and capacity), relating to the Monthly Cargo Throughput for the month covered by the statement. Each statement shall also show on a cumulative basis all Monthly Cargo Throughput from the Effective Date through the month to which the statement relates.

(ii) At the same time it renders each such statement, the Lessee shall pay to the Port Authority the

Throughput Rental due with respect to the month to which the statement relates.

(iii) In addition to the foregoing, on the 20th day of the first month following each anniversary of the Effective Date, the Lessee shall submit to the Port Authority a sworn statement certified by a responsible fiscal or executive officer of the Lessee setting forth the cumulative totals of such Monthly Cargo Throughput for each and every month of the entire preceding twelve-month period, with the specificity and itemization required for the monthly statements as described above. All of the foregoing shall be subject to the record keeping obligations of the Lessee under this Agreement and to the review and audit rights of the Port Authority, as provided in this Agreement.

(6) Upon any termination of the letting hereunder (even if stated to have the same effect as expiration), the Lessee shall, within twenty (20) days after the effective date of such termination, make a payment of the Throughput Rental as follows:

(i) Without limiting the above, the Lessee shall within twenty (20) days after the effective date of termination, render to the Port Authority a sworn statement of all "Monthly Cargo Throughput" for each and every month during the period from the last preceding anniversary of the Effective Date up to the date of termination.

(ii) The Lessee shall at the same time pay to the Port Authority the payment then due on account of all Throughput Rental during the period from the last preceding anniversary of the Effective Date up through the date of termination.

(7) Nothing provided above shall affect the survival of obligations of the Lessee as set forth in the Section of this Agreement entitled "Survival of the Obligations of the Lessee".

(d) **Building Subletting Rental.**

(1) The following terms shall have the respective meanings set forth below:

"Market Rate" shall mean the actual gross consideration per square foot per annum actually paid to the Lessee with respect to the space in question.

"Second Floor Office Space" shall mean the second floor office space in the Building.

(2) In the event any Person other than the Lessee uses or occupies any space in the Building, including without limitation the Second Floor Office Space, then the Lessee shall pay to the Port Authority, in addition to all other rental payable hereunder, the following rental (the "Building Subletting Rental"):

(i) For the period from the Effective Date through the day preceding the first anniversary of the Effective Date, the Lessee shall pay to the Port Authority Building Subletting Rental, per square foot of the space in the Building so used or occupied, at the rate of (x)

(Ex. 2.a.) per annum or (y) the Market Rate, whichever is greater, less a credit at the rate of per annum (as adjusted as provided below, the

(ii) Thereafter, Building Subletting Rental shall be calculated as provided above, provided, however, that effective on each anniversary of the Effective Date throughout the Term (including the Extension Term, if any), the O&M Credit shall be increased by the full CPI Percentage Increase.

(3) On the first 20th day of a calendar month to occur after the Effective Date, and on the 20th day of each and every calendar month thereafter and within twenty (20) days after the last day of the Term, the Lessee shall submit to the Port Authority a statement sworn to and signed by a responsible executive or fiscal officer of the Lessee, setting forth with respect to the preceding calendar month all the occupancies within the Premises and the Building Subletting Rental due thereon. At the same time it renders each such statement, the Lessee shall pay to the Port Authority the Building Subletting Rental due with respect to the month to which the statement relates.

(4) It is hereby expressly understood and agreed that the Lessee shall pay to the Port Authority the Building Subletting Rental with respect to each and every Person who occupies or uses any portion of the Building, 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".

(5) It is hereby expressly understood and agreed that neither this Section 8(d) 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 Lessee to sublet the Premises or any portion thereof or to permit any Person other than the Lessee 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 Lessee from any of the obligations and liabilities under this Agreement with respect to any such sublessee, user or occupant.

(6) It is hereby expressly understood and agreed that the specific reference in this Paragraph 4(d) to the use or occupancy of space in the Building, and specifically of the Second Floor Office Space, shall not be deemed a waiver of the Port Authority's right to charge and collect rental or any other fee from the Lessee in the event the Lessee permits a third party to use or occupy any other portion of the Premises.

(e) *CPI Adjustments.*

(1) The following terms shall have the respective meanings set forth below:

"Adjustment Period" shall mean, as the context requires, the period commencing on the Ground Rental Commencement Date and expiring on the day preceding the first anniversary of the Ground Rental Commencement Date (the "First Adjustment Period") and each succeeding twelve-month period beginning on each subsequent anniversary of the Ground Rental Commencement Date to and including the Expiration Date, provided, however, that in the event the Expiration Date is on other than the last day of an Adjustment Period, then, in such event, the last Adjustment Period shall expire on the Expiration Date.

"CPI" or "Consumer Price 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.

"CPI Percentage Increase" shall mean the annual percentage increase, if any, in the CPI, yielded by dividing (x) the amount of the increase, if any, in the CPI for one Reference Month as compared to the CPI for the immediately preceding Reference Month, by (y) the CPI for the earlier of the two Reference Months.

"Reference Month" shall mean the third calendar month prior to the month in which the Ground Rental Commencement Date occurs (the first Reference Month) and each succeeding such calendar month occurring thereafter. For example, if the Ground Rental Commencement Date were December 1, 2007, then September 2007 would be the first Reference Month and September of each succeeding year would be a Reference Month.

(2) The Port Authority shall ascertain the CPI for the first Reference Month and for each succeeding Reference Month after the same has been published, and the Port Authority shall also determine the amount of each CPI Percentage Increase.

(3) In the event the CPI is not available for any Reference Month, the Lessee shall continue to pay the rentals established under this Section 8 at the annual rates then in effect, subject to retroactive adjustment based upon the adjustment to the rentals for such Adjustment Period when the CPI for such Reference Month becomes available. The Lessee hereby agrees to pay to the Port Authority all rentals established under this Section 8 due and owing to the Port Authority on the basis of such retroactive adjustments on demand.

(4) In the event of the change of basis or the discontinuance of the publication by the United States Department of Labor of the CPI, such other appropriate index or indexes shall be substituted as may be agreed by the parties hereto as properly reflecting changes in the value of the current United States money in a manner similar to that established in the said indexes used in the latest adjustment. In the event of the failure of the parties to so agree, the Port Authority may select and use such index or indexes as it deems appropriate.

(5) In no event shall any adjustment in the rentals established under this Section 8 for any change in the CPI result in a decrease in said rentals.

(f) *Proration.* If the annual rentals established under this Section 8 shall be for less than a year of twelve (12) full months, each monthly installment payable during such year shall be equal to one-twelfth (1/12th) of said annual rental. If any installment of the rentals established under this Section 8 shall be for less than a full calendar month, then the rental payment for the portion of the month for which such payment is due shall be the monthly installment prorated on a daily basis using the actual number of days in the said month.

(g) *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 Lessee", unless otherwise notified by the Port Authority in writing, in the event the Lessee 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 Lessee 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 Lessee shall surrender and completely vacate the Premises at an annual rate equal to twice the sum of (x) the annual rate of Ground Rental and MAG Rental in effect on the date of such expiration or termination, plus (y) Throughput Rental and Building 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 Lessee 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 Lessee any right to remain in possession of the Premises after the expiration or termination of the letting under this Agreement. The Lessee acknowledges that the failure of the Lessee 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 Lessee 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 Lessee hereby expressly agrees to indemnify and hold the Port Authority harmless against any such injury, damage or loss.

Section 9. Books and Records

(a) **Maintenance of Books and Records.** The Lessee shall maintain, in English and in accordance with accepted accounting practice, during the Term, for one (1) year after the expiration or earlier termination thereof, and for a further period extending until the Lessee, upon request to the Port Authority, receives written permission from the Port Authority to do otherwise, full and complete records and books of account (including without limitation all agreements and all source documents such as but not limited to original invoices, invoice listings, timekeeping records, and work schedules) recording all transactions of the Lessee at, through, or in anyway connected with the Airport, and outside the Airport if the order therefor is received at the Airport, which records and books of account shall be kept at all times within the Port of New York District and shall separately state and identify each activity conducted by the Lessee at the Airport, it being understood and agreed that nothing in this Section shall grant or shall be deemed to have granted any rights in the Lessee or any third Person to conduct any business, privilege or other activity or transaction at the Airport or off the Airport.

(b) **Affiliate's Books and Records.** The Lessee shall cause any Affiliate, if any such Affiliate performs services similar to those performed by the Lessee, to maintain, in English and in accordance with accepted accounting practice, during the Term, for one (1) year after the expiration or earlier termination thereof, and for a further period extending until the Affiliate shall, upon request to the Port Authority, receive written permission from the Port Authority to do otherwise, full and complete records and books of account (including without limitation all agreements and all source documents such as but not limited to original invoices, invoice listings, timekeeping records, and work schedules) recording all transactions of the Affiliate at, through, or in anyway connected with the Airport, and outside the Airport if the order therefor is received at the Airport, which records and books of account shall be kept at all times within the Port of New York District and shall separately state and identify each activity conducted by the Affiliate at

the Airport, it being understood and agreed that nothing in this Section shall grant or shall be deemed to have granted any rights in the Affiliate to conduct any business, privilege or other activity or transaction at the Airport or off the Airport.

(c) **Port Authority Examination and Audit.** The Lessee shall permit and/or cause to be permitted in ordinary business hours during the term of the letting under this Agreement, for one (1) year thereafter, and during such further period as is mentioned in the preceding paragraphs (a) and (b), the examination and audit by the officers, employees and representatives of the Port Authority of all the records and books of account of the Lessee (including without limitation all corporate records and books of account which the Port Authority in its sole discretion believes may be relevant for the identification, determination or calculation of all fees, rentals and other amounts paid or payable to the Port Authority, all agreements, and all source documents) and all the records and books of account of all Affiliates (including without limitation all corporate records and books of account which the Port Authority in its sole discretion believes may be relevant for the identification, determination or calculation of all fees, rentals and other amounts paid or payable to the Port Authority, all agreements, and all source documents) (all of the foregoing records and books, collectively, the "Books and Records") within ten (10) days following any request by the Port Authority from time to time and at any time to examine and audit any Books and Records.

(d) **Equipment to be Used.** The Lessee shall install and use such equipment and devices, including without limitation computerized record keeping systems, for recording orders taken, or services rendered, as may be appropriate to the Lessee's business and necessary or desirable to keep accurate Books and Records, and without limiting the generality of the foregoing, for any activity involving cash sales, install and use cash registers or other electronic cash control equipment that provides for non-resettable totals and shall permit the inspection by the officers, employees and representatives of the Port Authority of any equipment used by the Lessee, including but not limited to any of the foregoing equipment.

(e) **Failure to Maintain Books and Records as Required.** Without implying any limitation on the right of the Port Authority to terminate this Agreement, including but not limited to, for breach of any term, condition or provision of paragraphs

(a) through (d) above, the Lessee understands that the full reporting and disclosure to the Port Authority of all of the information described in paragraphs (a) through (d) above and provided by the equipment and devices set forth in paragraph (d) above and the Lessee's compliance with all the provisions of said paragraphs (a) through (d) are of the utmost importance to the Port Authority. In the event any Books and Records are maintained outside the Port of New York District or in the event of the failure of the Lessee to comply with all the provisions of paragraphs (a) through (d) above then, in addition to (but without limitation as to) all other rights and remedies of the Port Authority under this Agreement or otherwise and in addition to all of the Lessee's other obligations under this Agreement:

(1) the Port Authority may estimate any amount paid or payable to the Port Authority on any basis that the Port Authority, in its sole discretion, shall deem appropriate, such estimation to be final and binding on the Lessee and the amounts payable to the Port Authority based thereon shall be payable to the Port Authority when billed; and/or

(2) if any Books and Records are maintained outside of the Port of New York District, then the Port Authority in its sole discretion may (x) require on ten (10) days' notice to the Lessee that any such Books and Records be made available to the Port Authority within the Port of New York District for examination and audit pursuant to paragraph (c) hereof and/or (y) examine and audit any such Books and Records pursuant to paragraph (c) hereof at the location(s) they are maintained and if such Books and Records are maintained within the contiguous United States the Lessee shall pay to the Port Authority when billed all travel costs and related expenses, as determined by the Port Authority, for Port Authority auditors and other representatives, employees and officers in connection with such examination and audit and if such Books and Records are maintained outside the contiguous United States the Lessee shall pay to the Port Authority when billed all costs and expenses of the Port Authority, as determined by the Port Authority, of such examination and audit, including without limitation salaries, benefits, travel costs and related expenses, overhead costs, and fees and charges of third party auditors retained by the Port Authority for the purpose of conducting such audit and examination.

(f) **Translation Costs.** Without implying any limitation on the rights or remedies of the Port Authority under this

Agreement or otherwise, including without limitation the right of the Port Authority to terminate this Agreement for breach of any term or provision of this Section, in the event any of the Books and Records are not maintained in English, then the Lessee shall pay to the Port Authority when billed, all costs and expenses of the Port Authority, as determined by the Port Authority, to translate such Books and Records into English.

(g) **Port Authority Costs and Expenses.** Without limiting the generality of the Section hereof entitled "Additional Rent and Charges", the foregoing auditing costs, expenses and amounts of the Port Authority set forth in paragraphs (e) and (f) above shall be deemed rentals hereunder payable to the Port Authority with the same force and effect as the rentals payable to the Port Authority pursuant to the Section hereof entitled "Rental".

Section 10. Late and Service Charges

(a) **Late Charge.** If the Lessee should fail to pay any amount required under this Agreement when due to the Port Authority, including without limitation any payment of 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 (described below) 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 late charge periods on a calendar year basis; 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 (but not less than thirteen) 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 audit findings shall consist of each late charge period following the date the unpaid amount should have been paid under this Agreement.

(b) **Service Charge.** 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), in addition to the late charge provided above, a service charge in

the amount of five percent (5%) of each amount determined by the audit findings to be unpaid.

(c) **No Waiver.** Each late charge and service charge shall be payable immediately upon demand made at any time therefor by the Port Authority, as the case may be. No acceptance by the Port Authority of payment of any unpaid amount shall be deemed a waiver of the right of the Port Authority, respectively, to payment of any late charge or service charge payable under the provisions of this Section with respect to such unpaid amount. Each late charge and service charge shall be recoverable in the same manner and with like remedies as if it were originally a part of the Ground Rental or other rentals as set forth in the section of this Agreement entitled "Rental". Nothing in this Section is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (x) any rights of the Port Authority under this Agreement, including without limitation the rights of the Port Authority set forth in the Article of this Agreement entitled "Termination by the Port Authority" or (y) any obligations of the Lessee under this Agreement. In the event that any late charge imposed pursuant to this Section shall exceed a legal maximum applicable to such late charge, then, in such event, each such late charge payable under this Agreement shall be payable instead at such legal maximum.

Section 11. Place of Payments

All payments required of the Lessee 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, PENNSYLVANIA 19195-1517

or made via the following wire transfer instructions:

Bank: Commerce Bank
Bank ABA Number: 031201360
Account Number: (Ex.1)

or sent to such other address, or pursuant to such other wire transfer instructions, as may hereafter be substituted therefor by the Port Authority, from time to time, by notice to the Lessee.

Section 12. Security Deposit

(a) **Letter of Credit Required.** Upon the Lessee's execution and delivery of this Agreement to the Port Authority, the Lessee shall deliver to the Port Authority, and shall maintain throughout the term of this Agreement as security for the Lessee'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 Lessee 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 Two Hundred Thousand Dollars and No Cents (\$200,000.00), 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 of the letting under this Agreement 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 Lessee 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 Lessee 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 Lessee. 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 Lessee. 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 Lessee 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 Lessee at any time during the term of the letting under this Agreement 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 Lessee 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 Lessee, 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 Lessee. 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 Lessee, of this Agreement. The Lessee agrees that it will not assign, mortgage or encumber such cash security. The Port Authority shall not pay or allow interest thereon; but the Lessee 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 Lessee made thereafter, the Port Authority will return any cash security deposit resulting from the drawing down of the original letter of credit. The Lessee 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 Lessee under this Agreement.

(h) *After Expiration or Termination.* After the expiration of the letting and upon written request therefor by the Lessee, the Port Authority will return to the Lessee any valid letters of credit and any cash security delivered to the Port Authority by the Lessee 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 Lessee return the same to the Lessee 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.

(i) *Employer Identification Number.* For purposes of the foregoing, the Lessee hereby certifies that its I.R.S. Employer Identification Number is 20-2232628.

(j) *Security Agreement.* Notwithstanding the foregoing, however, the Lessee hereby agrees that this Agreement comprises an agreement included under the "Agreement", as such term is defined in that certain security agreement entered into between the Port Authority and the Lessee, dated as of October 1, 2004, and identified by Port Authority Agreement No. AX-781 (as supplemented and amended, the "Security Agreement"), and the Lessee's obligations under the foregoing paragraphs of this Section may be fulfilled pursuant to the Security Agreement. The Lessee expressly agrees that a breach or failure to perform

or comply with any of the terms and conditions of the Security Agreement, including without limitation any failure to provide a letter of credit in accordance with the requirements of the Security Agreement at any time during the term of any agreement subject to the Security Agreement, or any failure of any banking institution issuing a letter of credit to make one or more payments as provided in such letter of credit, shall constitute a material breach of this Agreement as well as of the Security Agreement, thereby entitling the Port Authority immediately to exercise any and all rights available to it, including without limitation the right to terminate this Agreement pursuant to the Section hereof entitled "*Termination by the Port Authority*".

Section 13. 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 Lessee 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 Lessee 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 Lessee 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 Lessee 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 Lessee shall indemnify the City, as a third party beneficiary, with respect to all matters described in Section 31 of the Basic Lease;

(5) The Lessee 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 Lessee 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 Lessee 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 Lessee pursuant to this Agreement.

Section 14. Compliance with Governmental Requirements

(a) **Obligation to Comply.** The Lessee 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 of this Agreement which as a matter of law are applicable to or which affect (w) the Premises or the ground water thereunder, (x) the operations of the Lessee at the Premises or the Airport, (y) the occupancy and use of the Premises and/or (z) any Hazardous Substance which has migrated from or from under the Premises. The Lessee shall, in accordance with and subject to the provisions of the Section hereof entitled "*Construction by the Lessee*" 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 Substances required in order to fully satisfy the compliance obligations set forth herein.

(b) **Obligation to Procure Licenses, etc.** The Lessee shall procure from all Governmental Authorities having jurisdiction over the operations of the Lessee hereunder all licenses, certificates, permits or other authorizations that may be necessary for the conduct of such operations. "Governmental Authority" shall not be construed as intending to include The Port Authority of New York and New Jersey, the lessor under this Agreement.

(c) **No Submission by Port Authority.** The obligation of the Lessee 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. 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) *Obligation under Basic Lease.* Since the Port Authority has agreed in the Basic Lease to conform to the enactments, ordinances, resolutions and regulations of The City of New York and its various departments, boards and bureaus 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, the Lessee shall comply with all such enactments, ordinances, resolutions and regulations which would be applicable to its operations hereunder if the Port Authority were a private corporation, except in cases where the Port Authority either notifies the Lessee that it need not comply with or directs it not to comply with any such enactments, ordinances, resolutions or regulations which are applicable only because of the Port Authority's agreement in the Basic Lease. The Lessee shall, for the Port Authority's information, deliver to the Port Authority promptly 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 Lessee 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 Lessee, the Port Authority, to the extent that it may lawfully do so, shall indemnify and hold the Lessee harmless from and against all claims, actions, damages, liabilities, fines, penalties, costs and expenses suffered or incurred by the Lessee as a result of non-compliance with such enactment, ordinance, resolution or regulation.

(e) *Time for Compliance.* The Lessee 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 15. Rules and Regulations

(a) *On the Premises.* The Lessee 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 Lessee 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 Lessee 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 Lessee of every such future rule, regulation, or Airport Standard adopted by it at least ten (10) days before the Lessee shall be required to comply therewith.

(b) *Off the Premises.* The use by the Lessee 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 the 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) *Availability of Copies.* If a copy of the Rules and Regulations or the Airport Standards Manual is not attached, then the Port Authority will notify the Lessee thereof either by delivery of a copy, or by making a copy available at the office of the Secretary of the Port Authority.

Section 16. Various Obligations of the Lessee

(a) *Conduct of Operations.*

(1) The Lessee shall conduct its operations hereunder in an orderly and proper manner, so as not to unreasonably annoy, disturb or be offensive to others at or off the Airport. The Lessee shall take all reasonable measures to eliminate vibrations originating on the Premises tending to damage any equipment, structure, building or portion of a building that is on the Premises, or is a part thereof, or is located elsewhere on or off the Airport.

(2) The Lessee shall use its best efforts to conduct all its operations at the Premises in a safe and careful manner, following in all respects the best practices of the Lessee's industry in the United States.

(b) *Lessee's Employees.* The Port Authority shall have the right to object to the Lessee regarding the conduct and demeanor of the employees of the Lessee whereupon the Lessee will take all steps reasonably necessary to remove the cause of the objection. If requested by the Port Authority the Lessee 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.

(c) *Vehicular Traffic.* The Lessee shall control all vehicular traffic on the roadways or other areas within the Premises or serving the same the use of which is granted to the Lessee hereunder, and shall take all precautions reasonably necessary to promote the safety of its passengers and all other persons. The Lessee shall employ such means as may be necessary to direct the movement of vehicular traffic within the Premises to prevent traffic congestion on the public roadways leading to the Premises.

(d) *Waste Disposal.* The Lessee 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 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 tightfitting covers, and to be of a design safely

and properly to contain whatever material may be placed therein. The Lessee 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 thrown, discharged or deposited into or upon the waters at or bounding the Airport.

(e) *Fire Extinguishing Equipment.* From time to time and as often as reasonably required by the Port Authority, the Lessee shall conduct pressure, water-flow, and other appropriate tests of the fire extinguishing system and apparatus, fire-alarm and smoke detection systems and any other fire protection systems which constitute a part of the Premises. The Lessee shall keep in proper functioning order all fire-fighting equipment, fire-alarm and smoke detection equipment on the Premises and the Lessee shall at all times maintain on the Premises adequate stocks of fresh, usable chemicals for use in such systems, equipment and apparatus. The Lessee shall notify the Port Authority prior to conducting such tests. If requested by the Port Authority, the Lessee shall furnish the Port Authority with a copy of written reports of such tests.

(f) *Minimization of Pollution.* In addition to compliance by the Lessee 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 Lessee of the Premises or the operations of the Lessee 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 Lessee agrees that it shall exercise the highest degree of safety and care and shall conduct all its operations under this Agreement and shall operate and maintain the Premises and shall use 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 from, arising out of or resulting from the operation, use or maintenance of the Premises by the Lessee and from the operations of the Lessee under this Agreement. The Port Authority hereby reserves the right from time to time and at any time during the term of this Agreement to require the Lessee, and the Lessee 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. The manner, type and method of construction and the size and location of any of the foregoing shall be determined by the Port Authority. The Lessee 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. The obligations assumed by the Lessee under this paragraph shall not be relieved or diminished by the fact that the Port Authority shall have approved any construction application and supporting plans, specifications and contracts covering construction work, or that the Port Authority's recommendations or requirements have been incorporated therein. The Lessee's agreement to assume the obligations under this paragraph is a special inducement and consideration to the Port Authority in entering into this Agreement with the Lessee.

(g) *Oil Separators.* The Lessee shall periodically inspect, clean out and maintain the oil separators located on the Premises, and the oil separators located outside the Premises if they exclusively serve the Premises.

(h) *Signs.*

(1) Except with the prior written approval of the Port Authority, the Lessee shall not erect, maintain or display any signs or 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 or on any other portion of the Airport outside the Premises. Interior and exterior signs affecting public safety and security shall be in accordance with established Port Authority standards.

(2) Upon the expiration or termination of the letting, the Lessee shall remove, obliterate or paint out, as the Port Authority may direct, any and all signs and advertising on the Premises or elsewhere on the Airport, and in connection therewith shall restore the portion of the Premises and 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 Lessee so to remove, obliterate or paint out each and every such sign or advertising and so to restore the Premises and the Airport, the Port Authority may perform the necessary work and the Lessee shall pay the cost thereof to the Port Authority on demand.

(i) **Obstruction Lights.** The Lessee shall install, maintain and operate at its own expense such obstruction lights on the Premises as the Federal Aviation Administration 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.

(j) **Access to Public Landing Area.**

(1) The Lessee shall prevent access by persons or vehicles (unless duly authorized by the Port Authority) to the Public Landing Area from the Premises except for aircraft, which aircraft shall be equipped with radio receivers tuned to control tower frequencies and adequately manned in accordance with applicable Port Authority Rules and Regulations. Such aircraft may be towed by a motor vehicle equipped with a radio receiver tuned to the appropriate control tower frequency and adequately manned, or by such other means as may be approved by the Port Authority. The Lessee shall control access by its passengers and patrons from and to aircraft ramp, apron and parking areas on the Premises and shall maintain control of its passengers and patrons while they are upon said areas by proper measures to insure that the highest standards of safety are maintained.

(2) The Lessee shall furnish adequate security and guard service on a 24-hour, seven day-a-week basis (or take such comparable measures as approved by the Port Authority from time to time) for the prevention of access to and control of persons on the aeronautical operations areas of the Premises and the prevention of access to the Public Landing Area.

Section 17. Additional Provisions Concerning the Air Cargo Facility

(a) **No Additional Port Authority Responsibility.** The Port Authority shall have no responsibility or obligation in connection with the Air Cargo Facility except for the leasing of the Premises hereunder to the Lessee for the operation by the Lessee of the Air Cargo Facility.

(b) **Necessary Agreements and Approvals.** The Lessee shall use every effort to enter into, obtain, procure and maintain any and all agreements, permissions, approvals or other authority

necessary for the operation of the Air Cargo Facility and shall upon request from the Port Authority furnish to the Port Authority a copy of any and all such agreements, permissions and approvals as requested by the Port Authority.

(c) *Financial Risks.* The Lessee hereby assumes all financial risks associated with the Air Cargo Facility and the fact that the Lessee loses or has lost money or is not making a profit on the Air Cargo Facility shall in no event excuse the performance or observance by the Lessee under this Agreement or be the basis for any claim or action against the Port Authority under this Agreement or otherwise.

(d) *Essence of this Agreement.* The Lessee hereby acknowledges and agrees that the terms and provisions of this Section are of the essence of this Agreement and are a special consideration to the Port Authority in entering into this Agreement.

Section 18. Prohibited Acts

(a) *Nuisance.* The Lessee shall commit no unlawful 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.

(b) *Obnoxious Odors, etc.* The Lessee shall not create or permit to be caused or created upon the Premises any obnoxious odors or smokes, or noxious gases or vapors. The creation of exhaust fumes by the operation of the Lessee's internal-combustion engines or aircraft engines of other types, so long as such engines are maintained and are being operated in a proper manner, shall not be a violation of this paragraph.

(c) *No Interference with Systems.* The Lessee 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 fire-protection system, sprinkler system, alarm system, fire hydrants and hoses and other systems, if any, installed or located on, under, or in the Premises.

(d) *Safety Requirements.* The Lessee shall not do or permit to be done any act or thing upon the Premises that (x) 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 (y) 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 "Use of Premises". The Lessee 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 Fire Insurance Rating Organization 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 Lessee on the Premises, and the Lessee shall, subject to and in accordance with the provisions of the Section hereof entitled "Construction by the Lessee", make any and all structural and 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 reason of any failure on the part of the Lessee to comply with the provisions of this paragraph any fire insurance rate, 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 it would be if the Premises were properly used for the purposes permitted by the Section hereof entitled "Use of Premises", then the Lessee 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 Lessee.

(e) **No Sale of Merchandise or Services.**

(1) The Lessee 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, unless the Lessee obtains the prior written consent of the Port Authority.

(2) The Port Authority, by itself or by contractors, lessees or permittees, shall have the exclusive right to install, maintain and receive the revenues from all coin-operated or other vending machines or devices installed by it and operated on the Premises for the sale of merchandise of all types or for the rendering of services, provided, however, that no such machine or device shall be installed except upon the request of the Lessee. If the Port Authority does not install and maintain any such machine that the Lessee may reasonably request, the Lessee shall have the right to do so, provided, however, that (x) the Lessee shall pay or cause to be paid to the Port Authority each month for each machine upon the same basis for the preceding month as any concessionaire, permittee or licensee of the Port Authority then operating machines at the Airport for the sale of similar merchandise or the rendering of similar services, and (y) in the event the Lessee exercises such right the Port Authority, at any time thereafter, may substitute for the Lessee's machines other machines selling similar merchandise or services operated by the Port Authority or by its licensee, permittee or concessionaire, and thereupon the Lessee shall remove its machines.

(f) *Flammable Liquids.* The Lessee shall not keep or store during any 24-hour period flammable liquids within any enclosed portion of the Premises (other than in rooms or areas expressly constructed for the storage of such liquids) in excess of the Lessee's working requirements during the said 24-hour period. Any such liquids having a flash point of less than 110° F. shall be kept and stored in safety containers of a type approved by the Underwriters Laboratories or the Factory Mutual Insurance Association.

(g) *Operation of Engines in Enclosed Spaces.* The Lessee shall not operate any engine or any item of automotive equipment in any enclosed space on the Premises unless such space is adequately ventilated and unless such engine is equipped with a proper spark-arresting device that has been approved by the Port Authority.

(h) *Interference with Access.* The Lessee 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 adjacent or near the Premises.

(i) *Overloading.* The Lessee shall not overload any floor and shall repair 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 or paved area will bear.

(j) *Use of Structural Members.* The Lessee shall not use or permit the use of any structural supporting member of the buildings or roofs 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, without prior approval of the Port Authority.

(k) *Corrosive Cleaning Materials.* The Lessee shall not use any cleaning materials having a harmful corrosive effect, on any part of the Premises.

(l) *Fueling in Enclosed Areas.* The Lessee shall not fuel or defuel any equipment in the enclosed portions of the Premises without prior approval of the General Manager of the Airport.

(m) *Disposal of Hazardous Substances.* The Lessee shall not dispose of, release or discharge or permit anyone to dispose of, release or discharge any Hazardous Substance on the Premises or at the Airport.

(n) *Automobile Parking.* Except as otherwise permitted hereunder, the Lessee shall prevent all persons from parking automobiles on the Premises, except that automobiles may be permitted to be on the Premises for a reasonable period of time for the purpose of discharging or picking up cargo and for official and special purposes.

Section 19. Construction by the Lessee

(a) *No Construction without Prior Written Approval.* The Lessee shall not erect any structures, make any improvements or do any other construction work on the Premises or alter, modify, or make additions or improvements to 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 Lessee) without the prior written approval of the Port Authority. In the event any construction, improvement, alteration, modification or addition is made without such prior written approval of the Port Authority, then upon reasonable

notice so to do, the Lessee 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 Lessee to comply with such notice, the Port Authority may effect the removal or change and the Lessee shall pay the cost thereof to the Port Authority.

(b) *No Repairs, etc., without Prior Written Approval.* Notwithstanding the obligation of maintenance imposed upon the Lessee by the provisions of the Section hereof entitled "Care, Maintenance, Rebuilding and Repair by the Lessee", the Lessee shall not make any repairs or replacements (except emergency repairs or replacements) unless and until it has first obtained an approved Port Authority alteration application for such repairs or replacements which shall then be performed in full accordance with the terms of said alteration application.

Section 20. Care, Maintenance, Rebuilding and Repair by the Lessee

(a) *Lessee's Obligation.* The Lessee shall 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 Lessee or by those of its officers or employees or of other persons on or at the Premises with the Lessee'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 Airport which may be damaged or destroyed by the acts or omissions of the Lessee or by those of its officers or employees or of other persons on or at the Premises with the Lessee's consent.

(b) *Various Repair and Maintenance Obligations.* The Lessee shall, throughout the term of this Agreement, assume the entire responsibility and shall relieve the Port Authority from all responsibility for all repair, rebuilding and maintenance whatsoever in the Premises, whether such repair, rebuilding or maintenance be ordinary or extraordinary, partial or entire, inside or outside, foreseen or unforeseen, structural or otherwise, and without limiting the generality of the foregoing, the Lessee shall:

(1) Keep at all times in a clean and orderly condition and appearance, the Premises and all the Lessee's fixtures, equipment and personal property which are located in

any part of the Premises which is open to or visible by the general public;

(2) Remove all snow and ice and perform all other activities and functions necessary or proper to make the Premises available for use by the Lessee;

(3) Take good care of the Premises and maintain the same at all times in good condition; perform all necessary preventive maintenance, including but not limited to painting (the exterior of the Premises and areas visible to the general public to be painted only in colors which have been approved by the Port Authority); and make all repairs and replacements, and do all rebuilding, inside and outside, ordinary and extraordinary, partial and entire, foreseen and unforeseen, structural or otherwise, which repairs, rebuilding and replacements by the Lessee shall be in quality and class not inferior to the original in materials and workmanship;

(4) 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 hereof entitled "*Compliance with Governmental Requirements*" and "*Rules and Regulations*". The Lessee shall enter into and keep in effect throughout the term of this Agreement a contract or contracts with a central station alarm company acceptable to the Port Authority to provide continuous and automatic surveillance of the fire protection system on the Premises. The Lessee shall insure that all fire alarm signals with respect to the Premises shall also be transmitted to the Airport's police emergency alarm board or to such other location on the Airport as the General Manager of the Airport may direct. The Lessee's obligations hereunder shall in no way create any obligation whatsoever on the part of the Port Authority;

(5) Take such anti-erosion measures and maintain the landscaping at all times in good condition, including but not limited to periodic replanting, as the Port Authority may require, and perform and maintain such other landscaping with respect to all portions of the Premises not paved or built upon as the Port Authority may require;

(6) Be responsible for the maintenance and repair of all utility service lines, including but not limited to, service lines for the supply of water, electric power and telephone

conduits and lines, sanitary sewers and storm sewers, located upon the Premises or located adjacent to the Premises and exclusively serving the Premises;

(7) Be responsible for the maintenance and repair of any damage to the paving or other surface of the Premises caused by any oil, gasoline, grease, lubricants or other flammable liquids and substances having a corrosive or detrimental effect thereon; and

(8) Be responsible for all paving, lighting, signage, storm drains, culverts, cables, supporting structures, cleaning and snow removal in connection with existing and future access roadways which are located off of the Premises and serve the Premises exclusively.

(c) *Port Authority Right to Perform at Lessee's Cost.* In the event the Lessee fails to commence so to maintain, clean, repair, replace, rebuild or paint within a period of one hundred eighty (180) days after notice from the Port Authority so to do in the event that the said notice specifies that the required work to be accomplished by the Lessee includes maintenance and/or repair other than preventive maintenance; or within a period of twenty (20) days if the said notice specifies that the work to be accomplished by the Lessee involves preventive maintenance only, or fails diligently to continue to completion the repair, replacement, rebuilding or painting of all of the Premises required to be repaired, replaced, rebuilt or painted by the Lessee 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 included in the said notice, and the cost thereof shall be payable by the Lessee upon demand.

(d) If the performance of any of the foregoing repair, maintenance, replacement, repainting or rebuilding obligations of the Lessee requires work to be performed near an active Taxiway or where safety of operations is involved; the Lessee shall at its own expense, unless otherwise permitted by the Port Authority in writing, post guards or take such other appropriate measures as may be directed by the General Manager of the Airport to ensure that such work is performed safely.

Section 21. Property Insurance

(a) *Obligation to Insure.* The Lessee shall, during the term of this Agreement, insure and keep insured to the extent of 100% of the replacement value thereof, the entire Premises and all other buildings, structures, improvements, installations, facilities and fixtures now or in the future located on the Premises against all risks of physical loss or damage (including, but not limited to flood and earthquake risks), if available, and if not available, then against such hazards and risks as may now or in the future be included under the Standard Form of Fire Insurance Policy of the State of New York and also against damage or loss by windstorm, cyclone, tornado, hail, explosion, riot, civil commotion, aircraft, vehicles and smoke, under the Standard Form of Fire Insurance Policy of New York and the form of extended coverage endorsement prescribed as of the effective date of the said insurance by the rating organization having jurisdiction, and if the Port Authority so requests, also covering contamination hazards and risks and boiler and machinery hazards and risks in a separate insurance policy or policies or as an additional coverage endorsement to the aforesaid policies in the form as may now or in the future be prescribed as of the effective date of said insurance by the rating organization having jurisdiction and/or the Superintendent of Insurance of the State of New York and the Lessee shall furthermore provide additional insurance covering any other peril of loss or damage that the Port Authority at any time during the term of this Agreement covers by carrier or self-insurance covered by appropriate reserves at other locations at the Airport upon written notice to the Lessee to such effect.

(b) *Named Insureds.* The aforesaid insurance coverages and renewals thereof shall insure the Port Authority, the Lessee and the City of New York, as insureds, as their interests may appear, and shall provide that the loss, if any, shall be adjusted with and payable to the Port Authority.

(c) *Prompt Notification of Loss.* In the event the Premises or any part thereof shall be damaged by any casualty against which insurance is carried pursuant to this Section, the Lessee shall promptly notify the Port Authority and promptly furnish to the Port Authority such information and data as may be necessary to enable the Port Authority to adjust the loss.

(d) *Evidence of Insurance.* The policies or certificates representing insurance covered by this Section shall be delivered by the Lessee to the Port Authority prior to the Effective Date and each policy or certificate delivered shall bear the endorsement of or be accompanied by evidence of payment of the premium thereon, and also shall contain a valid provision obligating the insurance company to furnish the Port Authority and the City of New York fifteen (15) days' advance notice of the cancellation, termination, change or modification of the insurance evidenced by said policy or certificate. Renewal policies or certificates shall be delivered to the Port Authority at least ten (10) days before the expiration of the policy that is being renewed.

(e) *Application of Proceeds.* Regardless, however, of the Persons whose interests are insured, the proceeds of all policies covered by this Section shall be applied as provided in the Section hereof entitled "*Damage to or Destruction of the Premises*"; and the word "insurance" and all other references to insurance in said Section shall be construed to refer to the insurance which is the subject matter of this Section, and to refer to such insurance only.

(f) *Port Authority Approval.* The insurance covered by this Section shall be written by companies approved by the Port Authority, the Port Authority covenanting and 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 or if any of the carriers issuing such policies shall be or become unsatisfactory to the Port Authority, the Lessee shall promptly obtain a new and satisfactory policy in replacement, the Port Authority covenanting and agreeing not to act unreasonably hereunder. If at any time the Port Authority so requests, a certified copy of each of said policies shall be made available by the Lessee to the Port Authority for inspection and reproduction at an office of the Lessee within the Port of New York District.

Section 22. Damage to or Destruction of the Premises

(a) *Removal of Debris.* If the Premises or any part thereof, shall be damaged by fire, the elements, the public enemy or other casualty, the Lessee shall promptly remove all debris resulting from such damage from the Premises, and to the extent, if any, that the removal of debris under such

circumstances is covered by insurance, the proceeds thereof shall be made available to and be used by the Lessee for such purpose.

(b) *Restoration Obligation.* If the Premises, or any part thereof, shall be destroyed or damaged by fire, the elements, the public enemy or other casualty, then the Lessee shall notify the Port Authority and proceed with due diligence to make the necessary repairs or replacements to restore the Premises in accordance with the plans and specifications for the Premises as the same existed prior to such damage or destruction; or with the approval in writing of the Port Authority make such other repairs, replacements or changes as may be desired by the Lessee. If such destruction or damage was covered by insurance, the proceeds thereof shall be made available to and used by the Lessee for such restoration.

(c) *Limitation on Obligation.* So long as the Lessee has carried insurance to the extent and in accordance with the Section hereof entitled "*Property Insurance*", the obligation of the Lessee to repair or replace shall be limited to the amount of the insurance proceeds. Any excess of the proceeds of insurance over the costs of the restoration shall be retained by the Port Authority.

(d) *"Express Agreement to the Contrary"*. The Lessee hereby expressly acknowledges and agrees that no damage or destruction of the Premises shall entitle the Lessee to terminate or suspend the letting hereunder or to be released or relieved of its obligations hereunder, including without limitation the obligation to pay all rentals. The parties hereby stipulate that the provisions of this Section constitute an "express agreement to the contrary" pursuant to Section 227 of the Real Property Law of New York, and neither the provisions of Section 227 of the Real Property Law of New York nor those of any similar statute shall extend or apply to this Agreement.

Section 23. Indemnity and Liability Insurance

(a) *Indemnification.*

(1) The Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, employees and representatives, from and against (and shall reimburse the Port Authority for the Port Authority's costs and expenses, including legal expenses, whether those of the Port Authority's Law

Department or otherwise, 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, or out of the use or occupancy of the Premises by the Lessee or by others with its consent, or out of any other acts or omissions of the Lessee, its officers, employees, guests, representatives, customers, contractors, invitees or business visitors on the Premises, or arising out of the acts or omissions of the Lessee, its officers and employees elsewhere at the Airport (excepting only claims and demands arising from the sole negligence of the Port Authority), 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.

(2) If so directed, the Lessee shall at its own expense defend any suit based upon any such claim or demand (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.

(b) *Liability Insurance.*

(1) In addition to the obligations set forth in paragraph (a) of this Section and all other insurance required under this Agreement, the Lessee during the term of this Agreement in its own name as insured and including the Port Authority as an additional insured, including without limitation for Premises-operations and completed operations, shall maintain and pay the premiums on a policy or policies of (i) Commercial General Liability Insurance, including Premises-operations, completed operations, and covering bodily injury, including death, and property damage liability, broadened to include or equivalent separate policies covering aircraft liability, none of the foregoing to contain care, custody or control exclusions, and providing for coverage in the limits set forth below, and (ii) Commercial Automobile Liability Insurance covering owned, non-owned and hired vehicles and automatically covering newly

acquired vehicles in not less than the minimum limit set forth below, and (iii) Warehouseman's Legal Liability Insurance. Each policy of insurance shall also provide or contain an endorsement providing that the protections afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third person shall pertain and apply with like effect with respect to any claim or action against the Lessee by the Port Authority and any claim or action against the Port Authority by the Lessee as though the Port Authority were a named insured, but such endorsement shall not limit, vary, change or affect the protection afforded the Port Authority thereunder as an additional insured. In addition, each policy of Commercial General Liability Insurance shall also provide or contain a contractual liability endorsement covering the obligations assumed by the Lessee under paragraph (a) hereof.

<u>Type of Coverage</u>	<u>Minimum Limits</u>
<u>Commercial General Liability</u>	
Combined single limit per occurrence for death, bodily injury and property damage liability:	\$25,000,000.00
<u>Commercial Automobile Liability</u>	
(covering owned, non-owned and hired vehicles) combined single limit per occurrence for death, bodily injury and property damage liability:	\$25,000,000.00
<u>Warehouseman's Legal Liability</u>	\$5,000,000.00

(2) The Lessee shall also procure and maintain in effect, or cause to be procured and maintained in effect, Workers' Compensation Insurance and Employer's Liability Insurance in accordance with and as required by law and including coverage for asbestos exposure.

(3) In addition to all other policies of insurance required under this Agreement, the Lessee shall also procure and maintain throughout the term of the letting under this Agreement (including any and all extensions) Business Interruption Insurance in such amounts as shall be at least sufficient to cover, and be applicable to, all fees, charges and other

payments that are payable by the Lessee to the Port Authority under this Agreement for a period of not less than three (3) years for any business interruption loss or losses in business revenue that occur when the Premises or any portion thereof, is unusable or is out of operation due to a fire or for any other risks or hazards that are normally covered under a standard form of "All Risk" policy.

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

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

(6) As to the insurance required by the provisions of this Section, a certified copy of each policy or a certificate evidencing the existence thereof, or a binder, shall be delivered to the Port Authority. As to insurance required by this Section, delivery shall be made before the Effective Date. In the event any binder is delivered, it shall be replaced within thirty (30) days by a certified copy of the policy or a certificate. Each such copy or certificate shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified without giving fifteen (15) days' written advance notice thereof to the Port Authority. Each such copy 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 fifteen (15) days prior to the expiration of each expiring policy, except for any policy expiring after the date of

expiration of the term of this Agreement. 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 the form or substance or if any of the carriers issuing such policies shall be or become unsatisfactory to the Port Authority, the Lessee shall promptly obtain a new and satisfactory policy in replacement, the Port Authority covenanting and agreeing not to act unreasonably hereunder. If the Port Authority at any time so requests, a certified copy of each of the policies shall be made available by the Lessee to the Port Authority for inspection and reproduction at an office of the Lessee within the Port of New York District.

Section 24. Services to the Lessee

(a) *No Services Except as Expressly Provided.* Except as expressly provided in this Section, the Port Authority shall not be obligated to perform or furnish any services or utilities whatsoever in connection with this Agreement or the use and occupancy of the Premises.

(b) *Electricity.* The Port Authority shall sell, furnish and supply to the Lessee for use on the Premises, and the Lessee agrees to take from the Port Authority and pay for electricity of the same voltage, phase and cycle as supplied to the Premises by the public utility in the vicinity, but limited however, to a maximum of the installed transformer capacity serving each portion of the Premises on the Effective Date, at the same charge which would be made by such public utility for the same quantity under the same conditions and in the same service classification but in no event less than an amount that would reimburse the Port Authority for its cost of obtaining and supplying electricity to the Lessee hereunder; charges shall be payable by the Lessee when billed and the quantity of electricity consumed shall be measured by the meter or meters installed for the purpose; provided, however, that if for any reason any meter or meters fail to record the consumption of electricity, the consumption during the period such meter or meters are out of service will be considered to be the same as the consumption for a like period either immediately before or after the interruption as elected by the Port Authority. The Port Authority shall not discontinue the supply of electricity

except upon fifteen (15) days' notice to the Lessee and unless a supply of electricity of the same voltage, phase and cycle (subject to the KVA limitation aforesaid) shall be available from another supplier and upon any such discontinuance the Lessee shall be at liberty to contract or otherwise arrange for the supply of such current after the expiration of said fifteen (15) days from any other Person, firm or corporation. The Port Authority shall install the appropriate meters.

(c) **Water.** The Port Authority agrees to sell, furnish and supply to the Lessee 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 Lessee agrees to take such water from the Port Authority and to pay the Port Authority therefor an amount equal to that which would be charged by the municipality or other supplier of the same (whether or not representing a charge for water or other services measured by water consumption) for the same quantity, used under the same conditions and in the same service classification plus the cost to the Port Authority of supplying such water which shall not be less than ten percent (10%) nor in excess of fifty percent (50%) of the amount charged. The charge therefor shall be payable by the Lessee when billed and the quantity of water consumed shall be measured by the meter or meters installed for the purpose; provided, however, that if, for any reason, any meter or meters fail to record the consumption of water, the consumption during the period such meter or meters are out of service will be considered to be the same as the consumption for a like period immediately before or after the interruption, as elected by the Port Authority. The Port Authority shall install the appropriate meters. In the event meters are not installed to measure the consumption of water under high pressure, the quantity of such water used by the Lessee will be based upon equitable estimates of consumption, which estimates shall be deemed binding on the Lessee.

(d) **Sewerage.** The Lessee 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 Lessee in its use and occupancy of the

Premises, and shall hereafter impose charges or increase existing charges for such services, the Lessee 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 to the Premises or its use and occupancy thereof.

(e) **Extermination.** In the event the Port Authority shall provide extermination service for the enclosed areas of the Premises, the Lessee 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.

(f) **No Port Authority Obligation.**

(1) 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 Lessee shall be in default hereunder after the period, if any, herein granted to cure such default shall have expired.

(2) 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.

(g) **No Constructive Eviction.** 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 Lessee or grounds for any diminution or abatement of rental, or (unless resulting from the negligence or wilful failure of the Port Authority) shall be grounds for any claim by the Lessee for damages, consequential or otherwise.

Section 25. Additional Rent and Charges

If the Port Authority has paid any sum or has incurred any obligations or expenses (including without limitation payments to third persons and internal Port Authority costs and expenses) which the Lessee has agreed to pay or reimburse the Port Authority for or if the Port Authority is required or elects to

pay any sum or sums or incurs any obligations or expense (including without limitation payments to third persons and internal Port Authority costs and expenses) by reason of the failure, neglect or refusal of the Lessee to perform or one or more of the conditions, covenants or agreements contained in this Agreement or as a result of an act or omission of the Lessee contrary to the said conditions, covenants and agreements, the Lessee 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 rent as set forth in the Section hereof entitled "Rental".

Section 26. Rights of Entry Reserved

(a) *Port Authority's Right to Enter.* 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 Lessee 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) *Maintenance of Utility and Other Systems.* Without limiting the generality of the foregoing, the Port Authority, by its officers, employees, agents, representatives, and contractors, and furnishers of utilities and other services, shall have the right, for its own benefit, for the benefit of the Lessee, or for the benefit of others than the Lessee at the Airport, to maintain existing and future utility, mechanical, electrical and other systems and to enter upon the Premises at all reasonable times to make such repairs, replacements or alterations as may, in the opinion of the Port Authority, be deemed necessary or advisable and, from time to time, 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 Lessee.

(c) *Lessee to Provide Access.* In the event that any property of the Lessee 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 and thus shall interfere with the inspection, maintenance or repair of any such system, the Lessee shall move such property, as directed by the Port Authority, in order that the access may be had to the system or part thereof for its inspection, maintenance or repair, and, if the Lessee shall fail to so move such property after direction from the Port Authority to do so, the Port Authority may move it and the Lessee hereby agrees to pay the cost of such moving upon demand.

(d) *No Port Authority Obligation.* Nothing in this Section shall be construed to impose upon the Port Authority any obligations so to construct or maintain or to make repairs, replacements, alterations or additions, or shall create any liability for any failure so to do. The Lessee is and shall be in exclusive control and possession of the Premises and the Port Authority shall not in any 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 Lessee 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) *Entry prior to Expiration.* 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, for and by its agents and employees, whether or not accompanied by prospective lessees, 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. If, during the last month of the letting, the Lessee shall have removed all or substantially all its property from the Premises, the Port Authority may immediately enter and alter, renovate and redecorate the Premises.

(f) *No Constructive Eviction.* 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 Lessee nor be made the grounds for any abatement of rental nor any claim or demand for damages, consequential or otherwise.

Section 27. 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 Lessee's interest in this Agreement or the leasehold estate created hereby, 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 Lessee or in any direct or indirect constituent entity of the Lessee, 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 above) of the Lessee, 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 Lessee or that is the general partner of any partnership that is the Lessee, (2) the issuance of additional stock or membership interest in, respectively, any corporation or limited liability company that is the Lessee or that is the general partner of any partnership that is the Lessee, 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 Lessee or that is a general or limited partner of any partnership that is the Lessee.

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

The Lessee 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 Lessee 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 Lessee effects any Assignment, Transfer or Sublease, or if the Premises are occupied by anybody other than the Lessee, 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 Lessee, nor a release of the Lessee by the Port Authority from the further performance by the Lessee 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 Lessee 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 Lessee 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 "*Use of Premises*". Except as provided in this Agreement or otherwise permitted in writing by the Port Authority, the Lessee shall not permit the Premises to be used or occupied by any Person other than its own officers, employees, passengers, contractors and representatives.

Section 28. Quiet Enjoyment

The Port Authority covenants and agrees that as long as it remains the lessee of the Airport the Lessee, 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 29. Termination by the Port Authority

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

(1) The Lessee 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 Lessee 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 the Lessee, 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 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 cancellation shall be and become null, void and of no effect; or

(3) 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 Lessee, and such possession or control shall continue in effect for a period of sixty (60) days; or

(4) The Lessee shall voluntarily abandon, desert or vacate the Premises or discontinue its operations at the Airport, or after exhausting or abandoning any right of further appeal, the Lessee because of an act or omission of the Lessee, 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 at the Airport; or

(5) Any lien is filed against the Premises because of any act or omission of the Lessee and shall not be discharged within thirty (30) days after the Lessee has received notice thereof; or

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

(7) 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 Lessee and shall not be dismissed within ninety (90) days after the filing thereof; or

(8) If a corporation, shall, without the prior written approval of the Port Authority, become a possessor or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or

(9) The Lessee shall fail duly and punctually to pay the rentals or to make any other payment required hereunder when due to the Port Authority and shall continue in its failure to pay rentals or to make any other payments required hereunder for a period of fifteen (15) days after receipt of notice by it from the Port Authority to make such payments; or

(10) The Lessee 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 thirty (30) 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 Lessee shall have commenced to perform whatever may be required for fulfillment within thirty (30) 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 upon twenty (20) days' notice terminate the rights of the Lessee 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) *Other Rights and Remedies.* 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 Lessee, and the exercise by the Port Authority of any right of termination shall be without prejudice to any other such rights and remedies.

(c) *No Waiver.* No failure by the Port Authority to insist upon the strict performance of any agreement, term, covenant or condition of this Agreement or to exercise any right or remedy consequent upon a breach or default thereof, and no extension, supplement or amendment of this Agreement during or after a breach thereof, unless expressly stated to be a waiver, and no acceptance by the Port Authority of rentals, fees, charges or other payments in whole or in part after or during the continuance of any such breach or default, shall constitute a waiver of any such breach or default of such agreement, term, covenant or condition. No agreement, term, covenant or condition of this Agreement to be performed or complied with by the Lessee, and no breach or default thereof, shall be waived, altered or modified except by a written instrument executed by the Port Authority. No waiver by the Port Authority of any default or breach on the part of the Lessee in performance of any agreement, term, covenant or condition of this Agreement shall affect or alter this Agreement, but each and every agreement, term, covenant and condition thereof shall continue in full force and effect with respect to any other then existing or subsequent breach or default thereof.

(d) *Waiver of Trial by Jury, etc.* The Lessee waives its right to trial by jury in any summary proceeding or action that may hereafter be instituted by the Port Authority against the Lessee 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 Lessee 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 30. Rights of Re-entry

The Port Authority shall, as an additional remedy upon the giving of a notice of termination as provided in the Section hereof entitled "Termination by the Port Authority" or any other Section hereof, have the right to re-enter 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 Lessee under this Agreement, and shall in no event constitute an acceptance of surrender.

Section 31. Waiver of Redemption

The Lessee 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 obtains possession of the Premises in any lawful manner.

Section 32. Survival of the Obligations of the Lessee

(a) *Obligations Survive Termination.* In the event that the letting shall have been terminated in accordance with a notice of termination as provided in the Section hereof entitled "Termination by the Port Authority", or the interest of the Lessee canceled 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 the Section hereof entitled "Right of Re-entry", then all the obligations of the Lessee under this Agreement shall survive such termination or cancellation, or re-entry, regaining or resumption of possession and shall remain in full force and effect for the full term or the letting under this Agreement, 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, cancellation, 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) *Amount of Damages for Rentals.* The amount of damages for rentals for the period of time subsequent to termination or cancellation (or re-entry, regaining or resumption of possession) shall be the sum of the following:

(1) The amount of the total of all annual Ground Rentals less the installments thereof payable prior to the effective date of termination, except that the credit to be allowed for the installments 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;

(2) The amount of the total of all annual MAG Rental less the installments thereof payable prior to the effective date of termination except that the credit to be allowed for the installments 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;

(3) On account of the Lessee's obligation to pay the Throughput Rental, an amount equal to the Throughput Rental that would have been paid by the Lessee during the balance of the Term if there had been no termination or cancellation (or re-entry, regaining, or resumption or possession), calculated by multiplying (x) the number of days remaining through the Expiration Date, by (y) one-thirtieth of the average, over the twelve (12) months preceding the date of such termination, cancellation, etc., during which the Premises were open and in operation, of the excess of the Monthly Cargo Throughput over the Monthly Base Cargo Throughput, by (z) the rate of Throughput Rental applicable through the Expiration Date;

(4) On account of the Lessee's obligations to pay the Condition Survey Costs set forth in the Section hereof entitled "*Joint Periodic Condition Survey*", an amount equal to the Condition Survey Costs under said Section less the amount thereof payable prior to the effective date of termination; and

(5) An amount equal to all expenses reasonably incurred by the Port Authority in connection with such

termination, cancellation, re-entry, regaining or resumption of possession, the restoration of the Premises (on failure of the Lessee to restore), the reletting of the Premises, the care and maintenance of the Premises during any period of vacancy of the Premises, the foregoing to include without limitation legal expenses (including but not limited to the cost to the Port Authority of in-house legal services), brokerage fees and commissions, repairing and altering the Premises and putting the Premises in order (such as but not limited to cleaning and decorating the Premises).

Section 33. 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 Persons, 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 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 Lessee under this Agreement, without affecting, altering or diminishing the obligations of the Lessee 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 Lessee against its survived obligations hereunder any net amount remaining after deducting from the amount actually received from any lessee, licensee, permittee or other occupier in connection with the use of the said 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 34. 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 of any other remedy available to the Port Authority or to the Lessee 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 35. Surrender

The Lessee 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 good condition, and all of the Premises shall be free and clear of all liens, encumbrances, and security interests and of any rights of any sublessees or other occupants of the Premises.

Section 36. Acceptance of Surrender of Lease

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 Lessee. Except as expressly provided in this Section, neither the doing of, nor any omission so 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 37. Removal of Property

(a) *Lessee's Personal Property.* Except as provided in paragraph (b) of this Section, all personal property (including trade fixtures) installed by the Lessee in or on the Premises, shall be deemed to be and remain the property of the Lessee (the "Lessee's Personal Property"). All of the Lessee's Personal Property, provided that the Lessee shall install suitable replacements therefor if such property is necessary to operate the Premises in accordance with the terms and provisions hereof,

may at the Lessee's option be removed by the Lessee from the Premises at any time during the Term. Furthermore, notwithstanding the previous sentence, all of the Lessee's Personal Property shall, unless otherwise agreed in writing by the parties hereto, be removed by the Lessee on or before the expiration or other termination of the Term. Any of the Lessee's Personal Property, except for Tanks (as defined in the Section hereof entitled "Storage Tanks"), remaining on the Premises thereafter shall be deemed abandoned by the Lessee. Without limiting any other term or provision of this Agreement, the Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, agents, employees and contractors from all claims of third persons arising out of the Port Authority's removal and disposition of property so abandoned by the Lessee, including claims for conversion, claims for loss of or damage to the Lessee's Personal Property, claims for injury to Persons (including death), and claims for any other damages, consequential or otherwise.

(b) *No Removal of Cargo Handling Systems.* Notwithstanding the foregoing or any term or condition of this Agreement to the contrary, the Lessee shall not remove from the Premises any cargo handling systems or equipment, or signs which are generic to the Premises, whether or not installed by the Lessee, except with the prior written approval of the Port Authority and in accordance with any requirements set forth in such approval.

Section 38. Purchase of Property

The Port Authority shall have the option from time to time exercisable by notice to the Lessee effective on the expiration or earlier termination of the letting of the Premises hereunder, or any part thereof, to purchase all, or such part as the Port Authority elects, of the Lessee's Personal Property (including trade fixtures but excluding ground vehicles) including without limiting the generality of the foregoing any system for handling cargo), as and to the extent any of the foregoing are personal property, which may at the time of the giving of such notice have been installed or placed on the Premises. In the event the Port Authority exercises its option to make a purchase, the Port Authority shall pay to the Lessee a sum equal to the reasonable value of the Lessee's Personal Property (including trade fixtures) purchased. The Lessee hereby agrees that it shall use reasonable commercial efforts so that on the effective date of

the purchase and sale none of the aforesaid items shall be subject to any lien, security interest or other encumbrance, and if after the Lessee having used such reasonable commercial efforts any such property remains subject to any lien, security interest or other encumbrance the reasonable value of such property shall be reduced to properly reflect such lien, security interest or other encumbrance. Upon request of the Port Authority the Lessee will execute a bill of sale or such other document of conveyance as the Port Authority may request to transfer title to the aforesaid items to the Port Authority (including a warranty of title to the Port Authority) and the Port Authority shall pay the purchase price. Further, the Lessee shall from time to time execute such other documentation as the Port Authority may require and prepare evidencing the option of the Port Authority, as herein provided, to purchase the aforesaid personal property, including without limitation, security agreements and filings pursuant to the Uniform Commercial Code.

Section 39. 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 or with reference to the Public Landing Area shall mean such portion of the Premises or the Public Landing Area 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 Lessee of all covenants, agreements, terms and provisions contained herein or required by law to be observed or performed by the Lessee, permit the restoration of the Premises so as to enable the Lessee to operate, maintain and develop the Premises in accordance with the requirements of this Agreement, including without

limitation the Section hereof entitled "Use of Premises", 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 and the Public Landing Area.

(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 or of the Public Landing Area, then the Lessee 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 "Rental" 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 Lessee 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 Lessee 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 or the Public Landing Area.

(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 Lessee shall give prompt notice thereof to the Port Authority, (x) the Term shall not be reduced or affected in any way and (y) the Lessee shall continue to pay in full all rentals payable by the Lessee 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 or the Public Landing Area, then the Lessee 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 Section hereof entitled "Rental".

(d) Lessee's Cooperation.

The Lessee 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 Lessee.

To the extent a condemnation claim by the Lessee 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 Lessee may file a claim in a condemnation proceeding.

Section 40. Brokerage

The Lessee represents and warrants that no real estate broker has been concerned on its behalf in the negotiation of this Agreement and that there is no real estate broker who is or may be entitled to be paid a commission in connection therewith. The Lessee 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 Lessee in connection with the negotiation and execution of this Agreement.

Section 41. Notices

(a) *Notices to be in Writing.* Except where expressly required or permitted herein to be oral, all notices, directions, requests, consents and approvals required to be given to or by either party (each, a "Notice") shall be in writing, and each Notice all shall be personally delivered to the duly designated officer or representative of such party or delivered to the office of such officer or representative during regular business hours, or forwarded to him or to the party at such address by certified or registered mail.

(b) *Designated Representative.* The Lessee 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 may be served. Until further Notice, the Port Authority hereby designates its Executive Director, and the Lessee designates Carl A Smitelli as their respective officers upon whom Notices may be served, and the Port Authority designates its office at 225 Park Avenue South, New York, New York 10003, and the Lessee designates its office at Building 261, John F. Kennedy International Airport, Jamaica, NY 11430, as their respective offices where Notices may be served.

(c) *When Notices Deemed Given.* 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 42. Joint Periodic Condition Survey

(a) *Definitions.* As used herein the following terms shall have the following meanings:

"Condition Survey" shall mean an inspection by the Condition Survey Contractor of the Premises, including without limitation the then current state of cleaning, maintenance and repairs, janitorial services, painting, structural and nonstructural conditions, surface and subsurface conditions, environmental conditions, lighting of building areas, ramp and apron areas, and the condition of utilities and utility systems, fire-fighting and fire protection equipment and systems, communications and communications systems, antipollution systems and devices, fuel facilities and systems, and the Lessee's fixtures, equipment and personal property.

"Condition Survey Contract" shall mean a contract awarded to a Condition Survey Contractor, or entered into between the Port Authority and a Condition Survey Contractor, for the performance by such Condition Survey Contractor of a Condition Survey at any of the applicable times specified in paragraph (b) hereof;

"Condition Survey Contractor" shall mean the reputable engineering firm, licensed or authorized to do business in the State of New York, to whom the Condition Survey Contract is awarded pursuant to paragraph (b) hereof.

"Condition Survey Costs" shall mean and include with respect to each Condition Survey all amounts paid and expenses incurred by the Port Authority, including all interest, costs, damages and penalties, in accordance with the provisions of the Section hereof entitled "Additional Rent and Charges" for, relating to or in connection with Condition Survey work to be performed under the Condition Survey Contract.

"Condition Survey Report" shall mean the report prepared by the Condition Survey Contractor after its completion of the Condition Survey, including without limitation any and all recommendations for repair, maintenance, rebuilding and cleaning of all items or areas covered by the Condition Survey.

"Report Date" shall mean the date of the Port Authority's written notice to the Lessee by which the Port Authority delivers to the Lessee the Condition Survey Report.

(b) *Condition Survey.* In addition to any inspection of the Premises which may be made under any other Section of this

Agreement or otherwise, a Condition Survey of the Premises shall be conducted by the Condition Survey Contractor within the time period, and subject to and in accordance with the terms and conditions, provided below.

(c) **Time Period and Notice Procedure.** No earlier than sixty (60) days preceding the last day of the month which constitutes the twelfth month preceding the Expiration Date, the Port Authority may advise the Lessee of a proposed Condition Survey (which may include all or particular portions of the items enumerated above in the definition of "Condition Survey") and including the name of the proposed Condition Survey Contractor who will perform the Condition Survey and the proposed scope and fee structure of the proposed Condition Survey Contract. Within thirty (30) days after the Port Authority's notice to the Lessee, the Lessee shall advise the Port Authority in writing of its concurrence or objection to the proposed Condition Survey Contract. In the event the Lessee fails to respond during the said time period, said non-response shall be deemed a concurrence and the Port Authority shall proceed with the said Condition Survey Contract. In the event the Lessee notifies the Port Authority of its objections to the proposed Condition Survey Contract or Condition Survey Contractor, the parties shall consult with each other in good faith to resolve such dispute. If such resolution is not reached within thirty (30) days, then the Port Authority, if it so elects, shall make a determination as to the issue or issues in dispute. The parties hereby agree that the Port Authority's determination of said issues, including the Condition Survey Contract and the Condition Survey Contractor, shall be final.

(d) **Port Authority Policies and Practices.** It is hereby expressly understood and agreed that the selection of each Condition Survey Contractor and the award of any Condition Survey Contract shall be subject to and consistent with the Port Authority's policies and practices for the selection and award of similar contracts and the Port Authority shall have as full a right to require the use of competitive bidding and award, or other basis of award, for any such Condition Survey Contract as if the work on such contract were being performed solely for the Port Authority; and further that the Condition Survey Contract shall contain terms and conditions which are standard to Port Authority contracts or consistent with such standard provisions.

(e) **Costs.** With respect to each Condition Survey, all Condition Survey Costs shall be shared equally between the Port

Authority and the Lessee. Accordingly, the Lessee hereby agrees to pay to the Port Authority fifty percent (50%) of the Condition Survey Costs with respect to each Condition Survey as follows:

(1) The Lessee shall pay to or reimburse the Port Authority for the Condition Survey Costs as follows: The Port Authority shall after the completion of the Condition Survey under a Condition Survey Contract and, if it elects, also from time to time during the course of the performance of such Condition Survey, submit to the Lessee a certificate or certificates setting forth the Condition Survey Costs at the date of each such certificate. Within thirty (30) days after the delivery of each such certificate, the Lessee shall pay to the Port Authority an amount representing fifty percent (50%) of the amount of the Condition Survey Costs set forth in such certificate. Upon its final determination of the Condition Survey Costs, the Port Authority shall submit to the Lessee a certificate marked "Final", setting forth the final determination of the Condition Survey Costs with respect to each Condition Survey Contract as reduced by any previous payment with respect to such Condition Survey Contract, and the Lessee shall and hereby agrees to pay to the Port Authority within thirty (30) days of the date of such certificate an amount representing fifty percent (50%) of the amount of the Condition Survey Costs set forth in such certificate; provided, however, that neither the foregoing nor any certificate delivered by the Port Authority, nor any payment made by the Lessee shall waive or impair any right of the Port Authority of review and audit with respect to the Condition Survey Costs with respect to each Condition Survey Contract and provided, further, that in the event any such review or audit by the Port Authority requires an adjustment of the Condition Survey Costs, the Lessee promptly shall be credited with, or shall pay, as the case may be, all amounts required by such adjustment.

(2) Without limiting any of the terms and provisions of the Section hereof entitled "Additional Rent and Charges", any and all amounts required to be paid by the Lessee hereunder may be added to any installment of rental 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 part of the rental as set forth in the Section hereof entitled "Rental".

(f) *Required and Recommended Actions.* Within ninety (90) days after the Report Date, the Lessee shall commence all required or recommended items and actions contained each Condition Survey Report that are necessary or required to meet the Lessee's maintenance, repair or other obligations, duties or responsibilities under this Agreement, unless the Port Authority expressly advises the Lessee to the contrary as to any particular item(s), and the Lessee shall diligently continue the same to completion; provided, however, that the Lessee shall promptly commence any and all items, action or work related to or affecting or involving fire safety, health, structural integrity, life safety, security and other emergency response.

(g) *Rights of Entry.* The Condition Survey Contractor shall have all rights of entry to the Premises during all reasonable times as appropriate or required to perform or complete the Condition Survey and the Condition Survey Report under the Condition Survey Contract.

(h) *No Waiver, etc.* Neither the provisions of this Section, including without limitation the right of the Port Authority to have the Lessee perform and complete the work recommended or required by the Condition Survey Report, the obligation of the Lessee so to perform and complete such work, nor any such performance thereof by the Lessee, any failure of the parties to select a Condition Survey Contractor, any failure of any Condition Survey Contractor to perform and complete a Condition Survey Contract, nor any failure by the Lessee or the Port Authority to pay the Condition Survey Costs with respect to any Condition Survey Contract or any portion thereof, shall be deemed to release, waive, diminish, limit or impair any of the obligations, duties, responsibilities or liabilities of the Lessee under any term, provision, covenant or condition of this Agreement or to limit, waive, affect, restrict or impair any right or remedy of the Port Authority, including without limitation any right of the Port Authority to terminate the letting hereunder, whether before or after the Report Date. Without limiting the foregoing, it is expressly understood and agreed that the Lessee shall not postpone or delay any action, maintenance, rebuilding or repair or other item or thing required to be taken by the Lessee under any other section of this Agreement.

Section 43. 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.

"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 paragraph (m) of this Section.

"Initial Environmental Report" shall mean the report attached hereto as Exhibit B and hereby made a part hereof.

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

(b) *Lessee'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 Lessee 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, whether any aspect of such condition existed prior to, on or after the Effective Date, including without limitation all Environmental Requirements and all Environmental Damages, and to indemnify and hold harmless the Port Authority against all such risks, claims, penalties, responsibilities, costs and expenses.

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

(i) the remediation or removal of the Existing Condition;

(ii) the remediation or removal of Hazardous Substances in the soil or ground water in, on or under the Premises caused by the sole acts or omissions of the Port Authority on or after the Effective 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 or removed, but only so long as the Lessee 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 (x) onto the Premises from outside the Premises or (y) outside the Premises from the Premises, the migration of which is not a result of or in connection with any act or omission, including without limitation any non-negligent act or omission, of the Lessee or of Persons other than the Lessee which use, occupy or are on the Premises with the consent of the Lessee.

(c) **Compliance with Environmental Requirements.** Without limiting the Lessee's obligations elsewhere under this Agreement to comply with all laws, ordinances, governmental rules, regulations and orders which were or at any time are in effect during the Term, the Lessee 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, the Lessee or others with the consent of the Lessee at the Premises or the Lessee's operations at the Airport, (y) the occupancy and use of the Premises by the Lessee 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 the Lessee. Without limiting the generality of the foregoing and as part of the Lessee's

fulfillment of the foregoing obligations, the Lessee 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 or any other documentation or information;

(2) the obtaining of any surety bond or the giving of any other financial assurances; and

(3) 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 the Lessee's operations at the Premises.

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

(1) completely remove and remediate all Hazardous Substances in, on and under the Premises and at the Airport resulting from or in connection with the use and occupancy of the Premises by the Lessee or any affiliated company of the Lessee or which have been or permitted to be disposed of, released, discharged or otherwise placed in, on or under the Airport by the Lessee or any affiliated company of the Lessee or which have been disposed of, released, discharged or otherwise placed in, on or under the Premises during the term of the letting of the Premises under this Agreement or during the term of any previous agreement between the Lessee or any affiliated company of the Lessee and the Port Authority covering the Lessee's or any such affiliated company's use and/or occupancy of the Premises or any portion thereof;

(2) except as provided in paragraph (b) (2) of this Section, remove and 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 or removed; and

(3) except as provided in paragraph (b)(2) of this Section, remove and 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. The Lessee 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, the Lessee 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 Term, to such equitable relief, including restraining injunctions and declaratory judgments, to enforce compliance by the Lessee of its environmental obligations under this Agreement, including without limitation all the Lessee's obligations under this Section. In the event that the Lessee fails to comply with or perform any of such obligations, the Port Authority at any time during 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 Lessee shall pay to the Port Authority as additional rent its 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 hereof entitled "Additional Rent and Charges".

(g) *Information and Reports.* Without limiting any other of the Lessee's obligations under this Agreement and except as provided in paragraph (b)(2) of this Section, the Lessee, 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 the Lessee shall promptly acknowledge, swear to, sign or otherwise fully execute the same. The Lessee agrees that any of the foregoing may be filed by the Port Authority with the appropriate Governmental Authority on behalf of the Lessee at the Lessee's cost and expense. Further, the Lessee 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 provided by the Lessee to a Governmental Authority, and by a Governmental Authority to the Lessee, within two (2) business days after the same have been made available to or received by the Lessee with respect to any Environmental Requirements or Environmental Damages.

(h) *Indemnification.* Without limiting the generality of any other provision of this Agreement, and except as provided in paragraph (b)(2) of this Section, the Lessee shall indemnify, hold harmless and reimburse the Port Authority, its Commissioners, officers, employees and representatives from all claims, demands, penalties, fines, liabilities (including strict liability), settlements, 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 or any Environmental Requirement which the Lessee is obligated to comply with pursuant to this Agreement, or the risks and responsibilities assumed hereunder by the Lessee for the condition of the Premises or a breach or default of the Lessee's obligations under this Section. If so directed, the Lessee 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 Lessee 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 the Lessee 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.

(2) The Lessee further agrees that, notwithstanding the terms and conditions of paragraph (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 the Lessee 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 the Lessee with respect to its obligations under this Agreement with respect to Environmental Requirements.

(3) Nothing in this paragraph (i) shall be construed to require the Lessee 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 the Lessee 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 the Lessee 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, and 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 the Lessee, 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 the Lessee 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. The Lessee 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 the Lessee and not used at the Premises shall vest in the Lessee upon the excavation or removal thereof and all such Matter shall be delivered and deposited by the Lessee at the Lessee'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 the Lessee.

(3) In the event the Lessee discovers any Hazardous Substance in, on or under the Premises, the Lessee 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 the Lessee be required by this paragraph (k) (3) to violate any Environmental Requirement.

(4) Promptly upon final disposition of any Hazardous Substance from the Premises or the Airport, the Lessee 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 facility. 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.

(1) **Port Authority Right to Enter for Investigations.**
Without limiting the foregoing and without limiting the generality of the provisions of the Section hereof 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 the Lessee 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 unreasonably interfere with the Lessee'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 Lessee 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 State 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 hereof entitled "*Care, Maintenance, Rebuilding and Repair by the Lessee*", the Lessee 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 or its designee(s) (if any) or any prior occupant of the Premises.

(o) **Survival of Obligations.** Without limiting the generality of any other term or provision of this Agreement, all of the obligations of the Lessee 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 the Lessee 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 the Lessee may have against third parties at law, equity or otherwise.

(q) *Lessee 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 Lessee or by any Affiliate, or the performance of any work by any of them, or the acts or omissions of the Lessee, its officers, agents or employees, or the acts or omissions of any Affiliate of the Lessee or of any sublessees or others who occupied the Premises with the permission of the Lessee or an Affiliate of the Lessee or their officers, agents or employees.

(2) The Lessee shall be responsible for the remediation and removal 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, removal or cleanup 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 the Lessee or any of its agents, contractors or representatives, sublessees or subusers, including but not limited to, any refusal or failure by the Lessee 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 the Lessee to any abatement, reduction, diminution or suspension of any of the rentals or charges under this Agreement.

(r) *Incidental Remediation of Existing Condition.* Notwithstanding any other term or condition of this Agreement,

it is hereby understood and agreed that the Lessee'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 or removed in consequence of or incidental to the Lessee's performance of any of its obligations under this Agreement, whether due to the fact that the Lessee cannot remediate or remove one or more Hazardous Substances for which it is responsible to remediate or remove without also remediating or removing 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 or removal.

(s) *Similarly Situated Persons.* The Port Authority has advised the Lessee 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 the Lessee in a similar manner as similarly situated Persons at the Airport.

(t) *Remediation to Existing Condition at End of Term.* The Lessee 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.

(u) *Exit Baseline.*

(1) Without limiting any other term or provision hereof, all the obligations of the Lessee under this Section shall survive the expiration or termination of the letting of the Premises or any portion thereof, provided, however, the Lessee shall not be responsible for any Hazardous Substances in, on, under or about the Premises which the Lessee can prove occurred after the date that the Lessee shall have surrendered the Premises to the Port Authority and were not due to the acts or omissions of the Lessee.

(2) Between the eighth (8th) and sixth (6th) 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, the Lessee shall at its sole cost and expense and subject to the terms and provisions of the Section hereof entitled "*Construction by the Lessee*", sample and test the soil and ground water in, on and under the Premises in accordance with such standards, methods, protocol and procedures as shall be required by the Port Authority in its sole discretion after consultation with the Lessee in such locations as specified by the Port Authority (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 State 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 methodology approved by the Port Authority.

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

Section 44. Storage Tanks

(a) *Definitions.* The following terms shall have the respective meanings set forth as follows:

"*Discharge*" shall mean the presence, pumping, pouring, venting, emitting, emptying, leakage, deposit, spill, discharge or other release of Hazardous Substances from Tanks or in connection with their use, operation, maintenance, testing or repair.

"*Tanks*" shall mean all underground storage tanks and all above ground storage tanks installed in the Premises as of the commencement of the Lessee's occupancy of the Premises or any portion thereof, together with all underground storage tanks and all above ground storage tanks installed in the Premises during the Term, and their appurtenances, pipes, lines, fixtures and other related equipment.

(b) *Lessee to Have Responsibility for All Tanks.* Notwithstanding any other facts or circumstances to the contrary, including without limitation any vesting of title to

the Tanks in the City of New York pursuant to any construction or alteration application or otherwise, the Lessee hereby agrees that title and ownership of the Tanks shall be and remain in the Lessee, that all Tanks shall be registered by the Lessee in the name of the Lessee as operator and owner and that the Lessee shall have full and sole responsibility for all the Tanks, and shall release and relieve the Port Authority from all costs and responsibility for the Tanks. 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 by the Lessee shall be installed pursuant to the terms and conditions of this Agreement including without limitation the Section hereof entitled "*Construction by the Lessee*", and nothing in this Section shall be deemed to be permission or authorization to install any Tanks.

(c) **Maintenance of Tanks.** Without limiting the generality of any of the provisions of this Agreement, the Lessee agrees that it shall be solely responsible for maintaining, testing and repairing the Tanks. The Lessee shall not perform any servicing, repair or non-routine maintenance to the Tanks without the prior written approval of the Port Authority. In addition, the Lessee, at its sole cost and expense, shall make all modifications to the Tanks and take all other actions so that the Tanks shall at all times comply with all applicable Environmental Requirements.

(d) **Removal.**

(1) The Lessee shall remove all the Tanks from the Premises on or before the expiration of this Agreement (unless the Lessee shall have received the prior written approval of the Port Authority to have abandoned a tank in place and such abandonment continues to meet all applicable Environmental Requirements) and the Lessee agrees to dispose of the Tanks off the Airport in accordance with all applicable Environmental Requirements.

(2) Any removal of the Tanks shall be performed pursuant to an alteration application prepared by the Lessee and submitted to the Port Authority for the Port Authority's approval and in connection with such removal, the Lessee 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 any contamination disclosed by said testing. In the event the Lessee 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 Lessee hereby agrees to pay all costs and expenses of the Port Authority arising out of such removal, disposal, restoration and remediation.

(e) *Compliance with Environmental Requirements.* Without limiting the generality of any other term or provision of this Agreement, the Lessee shall at its cost and expense comply with all Environmental Requirements applicable to the Tanks, including without limitation any modifications or closures required thereby, and any Discharge, including without limitation testing the Tanks and registering the Tanks in the name of the Lessee as owner and operator, submitting all required clean-up plans, bonds and other financial assurances, performing all required clean-up and remediation of Discharges and filing all reports, making all submissions to, providing all information required by, and complying with all requirements of, all Governmental Authorities pursuant to all such Environmental Requirements. 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 Lessee or shall be grounds for non-compliance therewith by the Lessee.

(f) *Lessee's Assumption of Risks.*

(1) The Lessee 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, "Tank Claims") 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 Lessee 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 Requirement 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 Lessee or of the contractors of the Lessee or of third persons or out of the acts of God or the public enemy or otherwise including Tank 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. It is understood the foregoing indemnity shall cover all claims, demands, penalties, settlements, damages, fines, costs and expenses of or imposed by any Governmental Authority under the aforesaid Environmental Requirements.

(2) If so directed the Lessee shall at its expense defend any suit based upon any such Tank Claim (even if such Tank 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.

(3) The terms and conditions of this paragraph (f) are intended to allocate obligations and responsibilities between the Lessee and the Port Authority only, and nothing in this paragraph (f) shall limit, modify or otherwise alter the rights and remedies which the Port Authority or the Lessee may have against third parties at law, equity or otherwise.

(g) *Survival of Obligations.* Without limiting or affecting the terms and provisions of the Section hereof entitled "*Survival of the Obligations of the Lessee*", the Lessee's obligations under this Section shall survive the expiration or earlier termination of this Agreement.

(h) *Port Authority-directed Testing and Remediation.* In addition to the requirements of the Section hereof entitled "*Compliance with Governmental Regulations*" and paragraph (e) of this Section, the Port Authority shall have the right upon notice to the Lessee to direct the Lessee, at the Lessee's sole

cost and expense, (x) 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 (y) 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 Lessee and submitted to the Port Authority for the Port Authority's approval.

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

Section 45. Non-Discrimination

(a) *Covenant to Comply.* Without limiting the generality of any of the provisions of this Agreement, the Lessee, for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the ground of race, creed, color, sex or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises, (2) that in the construction of any improvements on, over, or under the Premises and furnishing of services thereon, no person on the ground of race, creed, color, sex or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination, (3) that the Lessee shall use the Premises 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, Part 21, Non-discrimination in Federally-assisted programs of 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 Lessee's operations at the Airport, whether by reason of agreement between the Port Authority and the United States Government or otherwise.

(b) *Inclusion in Agreements.* The Lessee shall include the provisions of paragraph (a) of this Section in every sublease, agreement or concession it may make pursuant to which any Person or Persons, other than the Lessee, 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 covenant.

(c) *Noncompliance Constitutes Material Breach.* The Lessee's noncompliance with the provisions of this Section shall constitute a material breach of this Agreement. In the event of the breach by the Lessee of any of the above nondiscrimination provisions the Port Authority may take appropriate action to enforce compliance; or in the event such noncompliance shall continue for a period of twenty (20) days after receipt of written notice from the Port Authority, the Port Authority shall have the right to terminate this Agreement and the letting hereunder with the same force and effect as a termination under the Section hereof entitled "*Termination by the Port Authority*", or may pursue such other remedies as may be provided by law; and as to any or all the foregoing, the Port Authority may take such action as the United States may direct.

(d) *Indemnification.* The Lessee 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 Lessee's noncompliance with any of the provisions of this Section and the Lessee shall reimburse the Port Authority for any loss or expense incurred by reason of such noncompliance.

(e) *No Deemed Grant of Other Rights.* Nothing contained in this Section shall be deemed to grant to the Lessee 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 the Premises.

Section 46. Affirmative Action

The Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to

insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Lessee 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 Lessee assures that it will require that its covered suborganizations provide assurances to the Lessee 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.

Section 47. The Lessee's Ongoing Affirmative Action, Equal Opportunity and Local Business Enterprises Commitment

(a) The Lessee's Ongoing Affirmative Action, Equal Opportunity Commitment.

(1) In addition to and without limiting any other term or provision of this Agreement, the Lessee shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status and shall undertake or continue existing programs of affirmative action to ensure that minority group persons and women are afforded equal employment opportunity without discrimination. Such programs shall include, but not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selections for training or retraining, including apprenticeship and on-the-job training.

(2) In addition to and without limiting the foregoing, and without limiting the provisions of the Section hereof entitled "Non-Discrimination" and Schedule E, it is hereby agreed that the Lessee in connection with its continuing operation, maintenance and repair of the Premises, or any portion thereof, and in connection with every award or agreement for concessions or consumer services at the Airport, shall throughout the Term commit itself to and use good faith efforts to implement an extensive program of affirmative action, including specific affirmative action steps to be taken by the Lessee, to ensure maximum opportunities for employment and contracting by minorities and women, and by Minority Business

Enterprises and Women-owned Business Enterprises. In meeting the said commitment the Lessee agrees to submit to the Port Authority for its review and approval its said extensive affirmative action program, including the specific affirmative action steps to be taken by the Lessee to meet its aforesaid commitment, within sixty (60) days after the Effective Date. The Lessee shall incorporate in its said affirmative action program such revisions and changes which the Port Authority initially or from time to time may reasonably require. The Lessee throughout the term of this Agreement shall document its efforts in implementing the said program, shall keep the Port Authority fully advised of the Lessee's progress in implementing the said affirmative action program and shall supply to the Port Authority such information, data and documentation with respect thereto as the Port Authority may from time to time and at any time request, including but not limited to annual reports.

(3) Good faith efforts to include meaningful participation by MBEs and WBES shall include at least the following:

(v) Dividing the work to be subcontracted into smaller portions where feasible.

(vi) Actively and affirmatively soliciting bids for subcontracts from MBEs and WBES, including circulation of solicitations to minority and female contractor associations. The Lessee shall maintain records detailing the efforts made to provide for meaningful MBE and WBE participation as called for in paragraph (b) above, including the names and addresses of all MBEs and WBES contacted and, if any such MBE or WBE is not selected as a joint venturer or subcontractor, the reason for such decision.

(vii) Making plans and specifications for prospective work available to MBEs and WBES in sufficient time for review.

(viii) Utilizing the list of eligible MBEs and WBES maintained by the Port Authority or seeking minorities and women from other sources for the purpose of soliciting bids for subcontractors.

(ix) Encouraging the formation of joint ventures, partnerships or other similar arrangements among

subcontractors, where appropriate, to insure that the Lessee will meet its obligations hereunder.

(x) Insuring that provisions are made to provide progress payments to MBEs and WBEs on a timely basis, preferably biweekly, and that retainage is paid to MBEs and WBEs when they have completed their work.

(xi) Submitting quarterly reports to the Port Authority (Office of Business and Job Opportunity) detailing its compliance with the provisions hereof.

(xii) Requiring each contractor to submit to the Lessee with each payment request evidence that all MBE and WBE contractors have been paid in accordance with their contract.

(4) The Lessee's non-compliance with the provisions of this Section shall constitute a material breach of this Agreement. In the event of the breach by the Lessee of any of the above provisions the Port Authority may take any appropriate action to enforce compliance; or in the event such non-compliance shall continue for a period of twenty (20) days after receipt of written notice from the Port Authority, the Port Authority shall have the right to terminate this Agreement and the letting hereunder with the same force and effect as a termination for default by the Lessee in the performance or observance of any other term or provision of this Agreement, or may pursue such other remedies as may be provided by law.

(5) In the implementation of this Section, the Port Authority may consider compliance by the Lessee with the provisions of any federal, state or local law concerning affirmative action equal employment opportunity which are at least equal to the requirements of this Section, as effectuating the provisions of this Section. If the Port Authority determines that by virtue of such compliance with the provisions of any such federal, state or local law that the provisions hereof duplicate or conflict with such law the Port Authority may waive the applicability of the provisions of this Section to the extent that such duplication or conflict exists.

(6) Nothing herein provided shall be construed as a limitation upon the application of any laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents.

(7) Nothing in this Section shall be deemed to grant the Lessee the right to make any agreement or award for concessions or consumer services at the Airport.

(b) *The Lessee's Local Business Enterprise Commitment.*

The Lessee 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 48. Federal Airport Aid

(a) The Lessee shall:

(1) Furnish good, prompt and efficient service hereunder, adequate to meet all demands therefor of airlines being handled at the Airport;

(2) Furnish said service on a fair, equal and non-discriminatory basis to all users thereof; and

(3) Charge fair, reasonable and non-discriminatory prices for each unit of sale or service.

(b) As used in paragraph (a) above, "service" shall include furnishing parts, materials and supplies (including sale thereof).

(c) The Port Authority has applied for and received a grant or grants of money from the Administrator of the Federal Aviation Administration pursuant to the Airport and Airways Development Act of 1970, as the same has been and may hereafter be amended and supplemented or superseded by similar federal legislation, 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, lessees and permittees thereon. The performance by the Lessee of the covenants, promises and obligations contained in this Section and in the Section hereof entitled "*Business Development and Method of Operation*", is therefore a special consideration and inducement to the execution of this Agreement by the Port Authority, and the Lessee further covenants and agrees that if the

Administrator of the Federal Aviation Administration or any other governmental officer or body having jurisdiction over the enforcement of the obligations of the Port Authority in connection with the Federal Airport Aid, shall make any orders, recommendations or suggestions respecting the performance by the Lessee of such covenants, promises and obligations, the Lessee will promptly comply therewith, at the time or times when and to the extent that the Port Authority may direct.

Section 49. Business Development and Method of Operation

(a) The Lessee shall use its best efforts in every proper manner to develop and increase the business conducted by it hereunder and shall not divert or cause or allow to be diverted, any business from the Airport.

(b) The principal purpose of the Port Authority in the making of this Agreement is to make available on the Airport a cargo reception, storage and distribution facility for the better accommodation, convenience and benefit of the Air Cargo industry and in fulfillment of the Port Authority's obligation to operate the Airport for the use and benefit of the public. Consistent with the provisions of the Section hereof entitled "Use of Premises", the Lessee 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, for the operation of a first class cargo facility and that it will furnish the foregoing 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.

(c) As used hereunder, "services" shall include the furnishing of parts, materials and supplies (including the sale thereof).

(d) The Lessee shall be open for and provide services at the Premises during regular business hours.

(e) The Lessee covenants and agrees that it will not enter into any agreement or understanding, express or implied, binding

or non-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 services, products, or articles furnished or sold by the Lessee.

(f) The Lessee shall at all times during the letting hereunder cause to be maintained a full, adequate, experienced and proficient management staff all of whom (as well as other employees of the Lessee) shall be reputable and of good character. No individual shall be knowingly employed or retained by or on behalf of the Lessee if he or she has been convicted of a serious misdemeanor or a felony.

Section 50. Special Provisions relating to Permit #AYD-380

(a) **Rentals and Fees Independently Payable.** The Lessee expressly acknowledges that the rentals and other charges payable under this Agreement constitute obligations separate and independent of the fees payable under the Lessee's Port Authority Permit Number AYD-380 dated as of September 30, 2004 (the "Cargo Handling Permit"), which fees shall remain independently payable in accordance with the terms of the Cargo Handling Permit.

(b) **If Permit Revoked or Terminated.**

(1) Notwithstanding that the rentals payable under this Agreement and the fees payable under the Cargo Handling Permit, respectively, constitute separate and independent obligations of the Lessee, as stated above, the parties acknowledge and agree that both agreements relate to the Lessee's activities at the Airport, and, accordingly, it may be appropriate in certain circumstances for this Agreement to be terminated upon the revocation or termination of the Permit.

(2) The Port Authority shall have the right, in the event the Cargo Handling Permit is revoked by the Port Authority or terminated by the Lessee, in either event whether with or without cause, to terminate this Agreement and the letting hereunder on thirty (30) days' notice. The foregoing shall be in addition to (and without limitation as to) any other termination rights of the Port Authority hereunder, including without limitation under the Section hereof entitled "Termination by the Port Authority".

(3) The Lessee shall have the right, in the event the Cargo Handling Permit is revoked by the Port Authority without cause or terminated by the Lessee without cause, to terminate this Agreement and the letting hereunder on thirty (30) days' notice.

Section 51. Miscellaneous

(a) *Relationship of the Parties.* Notwithstanding any other term or provision hereof, this Agreement does not constitute the Lessee as the agent or representative of the Port Authority for any purpose whatsoever. Neither a partnership nor any joint venture is hereby created.

(b) *Lessee's Rights Non-Exclusive.* Except as expressly provided herein with respect to the Premises, neither the execution of this Agreement by the Port Authority nor anything contained herein shall grant or be deemed to grant to the Lessee any exclusive rights or privileges.

(c) *Updating of Federal Requirements.* The Lessee specifically acknowledges and agrees that the Federal requirements set forth in Schedule E may be revised or updated from time to time and that, accordingly, the Port Authority may from time to time, by notice to the Lessee, provide to the Lessee revised or updated forms of Schedule E to replace the Schedule E currently attached to and forming a part of this Agreement. Such replacement Schedule E shall, from the effective date of such notice, be deemed to constitute an integral part of this Agreement.

(d) *Construction and Application of Terms.*

(1) 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.

(2) Unless otherwise expressly specified, 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 the Agreement stated, shall have the same force and effect as if herein set forth in full.

(3) 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.

(4) The fact that certain of the terms and provisions hereunder are expressly stated to survive the expiration or termination of the letting hereunder shall not mean that those provisions hereunder which are not expressly stated to survive shall terminate or expire on the expiration or termination of the letting hereunder and do not survive such termination or expiration.

(5) The parties agree that any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be applicable to the interpretation of this Agreement or any amendments, addenda or supplements hereto or any Exhibits or Schedules hereto.

(e) **Non-liability of Individuals.** No Commissioner, director, officer, agent or employee of either party shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or of any supplement, modification or amendment to this Agreement or because of any breach thereof, or because of its or their execution or attempted execution.

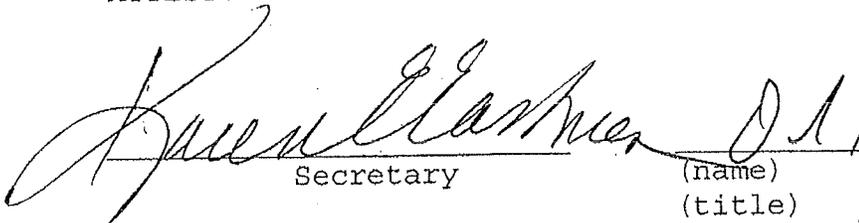
(f) **Entire Agreement.** This Agreement consists of the following: Sections 1 through 51 and Exhibits A and B and Schedules E and Schedule F attached hereto. It constitutes the entire agreement of the parties on the subject matter hereof and may not be changed, modified, discharged or extended except by written instrument duly executed by the Port Authority and the Lessee. The Lessee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in this Agreement.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, and intending to be legally bound, the Port Authority and the Lessee have executed these presents as of the date first written above.

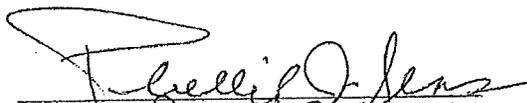
THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY

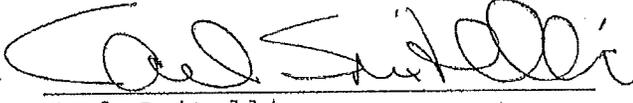
ATTEST:


Secretary (name) Dawn Kagan (title) Assistant Director Business, Properties & Airport Development

CARGO AIRPORT SERVICES USA LLC

~~ATTEST:~~
WITNESSED


(name) PHILLIP J. JENSEN (title) Director of Sales


Carl Smitelli
Chief Executive Officer
(Seal)

Port Authority Use Only	
Approval as to Terms:	Approval as to Form:
	



EXEMPTION (4) – DRAWINGS OF NON-PUBLIC AREAS