Torres Rojas, Genara FOI#14456

From: jcgranite@aol.com
Sent: Tuesday, December 10, 2013 7:34 PM
To: Duffy, Daniel
Cc: Torres Rojas, Genara; Van Duyne, Sheree; Qureshi, Ann
Subject: Freedom of Information Online Request Form

Information:

First Name: joe
Last Name: cassidy
Company: granite excavation and demolition inc
Mailing Address 1: 160 south linden avenue suite 100
Mailing Address 2:
City: south san francisco
State: CA
Zip Code: 94080
Email Address: jcgranite@aol.com
Phone: 6508769400
Required copies of the records: Yes

List of specific record(s):
john f kennedy international airport -flying food group,llc-lease ayd-749- new lease. i need to see the entire lease approx signed in 2008

THE PORT AUTHORITY OF NY & NJ

FOI Administrator

December 13, 2013

Mr. Joe Cassidy
Granite Excavation and Demolition Inc.
160 South Liden Avenue, Suite 100
South San Francisco, CA 94080

Re: Freedom of Information Reference No. 14456

Dear Mr. Cassidy:

This is in response to your December 10, 2013 request, which has been processed under the Port Authority's Freedom of Information Code (the "Code", copy attached) for a copy of Flying Food Group, LLC Lease – No. AYD-149 at John F. Kennedy International Airport.

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/14456-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) 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

Attachment

225 Park Avenue South, 17th Floor
New York, NY 10003
T: 212 435 3642
F: 212 435 7555

Lease No. AYD-749

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

AGREEMENT OF LEASE

Between

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

And

FLYING FOOD GROUP, LLC.

DATED: July 31, 2008

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EXHIBIT B – Payment and Performance Bond
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SCHEDULE E Affirmative Action – Equal Opportunity – Minority Business Enterprises – Women Owned Business Enterprises

SCHEDULE F Local Business Enterprise Program

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

Lease No. AYD-749

AGREEMENT OF LEASE

THIS AGREEMENT OF LEASE, made as of the 31st day of July, 2008, by and between **The Port Authority of New York and New Jersey** (hereinafter called the "Port Authority"), a body corporate and politic, established by Compact between the States of New York and New Jersey with the consent of the Congress of the United States of America, and having an office at 225 Park Avenue South, New York, New York 10003, and **Flying Food Group, LLC**., (hereinafter called the "Lessee"), a limited liability corporation organized and existing under the laws of the State of Delaware, and having an office address at 212 North Sangamon Street, Suite 1A, Chicago, Illinois 60607, whose representative is Mr. David Cotton.

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. **Letting**

(a) Effective as of the Commencement Date, as hereinafter defined, the Port Authority hereby lets to the Lessee and the Lessee hereby hires and takes from the Port Authority at John F. Kennedy International Airport (sometimes hereinafter referred to as the "Airport") in the County of Queens, City and State of New York, upon all the terms, conditions, provisions and agreements of the Lease, the space shown in stipple on the drawing attached hereto, hereby made a part hereof, and marked "Exhibit A," and all other buildings, structures, fixtures, improvements, facilities and other property of the Port Authority located therein, thereon or thereunder, and all buildings, structures, additions, fixtures, improvements, and facilities located, constructed or installed, or which may be located, constructed or installed therein, thereon or thereunder, and all easements and other rights appurtenant thereto and granted by this Lease, all of the foregoing being hereinafter collectively referred to as the "Premises."

(b) 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 Completion Date, as hereinafter defined.

(c) The parties acknowledge that the Premises constitute non-residential real property.

Section 2. **Construction by the Lessee**

(a) (1) The Lessee shall, prior to its submission to the Port Authority of the plans and specifications hereinafter provided for, submit to the Port Authority for its consent the Lessee's comprehensive plan for the development of the Site, including but not limited to, renderings, layouts, locations, models, estimated commencement and completion dates, and preliminary functional plans.

(2) Without limiting the above, the Lessee agrees that said comprehensive plan shall include the complete refurbishment of the interior of the building, the removal of all asbestos to an off-airport site satisfactory to the Port Authority, the removal of all improvements, fixtures and other property as may be situated in or on the Premises on the Commencement Date, the installation of drainage systems, replacement of the entire roof and performance of building system upgrades in a manner determined by the Lessee and consistent with the Lease, all in a manner satisfactory to the Port Authority, and the design and construction on, off and under the Site of:

(i) A state-of-the-art in-flight catering/kitchen facility consisting of approximately 106, 520 square feet of space, including the design, construction and installation of appropriate fixtures, furnishings and equipment as approved by the Port Authority;

(ii) All appropriate lines, mains, cables, manholes, wires, conduits and other facilities required in connection with or relating to the mechanical, utility, electrical, storm sewer, sanitary sewer, telephone, fire alarm, fire protection, gas and other systems needed for the Facility, including all necessary relocations and upgrades with sufficient capacity for the Lessee's `Facility;

(iii) All necessary roadways, ramps and pedestrian circulation areas, together with all associated and related areas and facilities;

(iv) All grading and paving of ground areas and appropriate landscaping, together with all associated and related areas;

(3) All of the foregoing demolition, design, construction and installation work shall be performed by the Lessee on the Site and off the Site where required and, where performed on the Premises, shall be and become a part of the Premises under the Lease and is

sometimes collectively referred to herein as the "Construction Work."

(4) The Lessee shall keep the comprehensive plan covered by this paragraph (a) up to date and shall submit to the Port Authority for its prior approval any amendment, revision or modification thereof.

(b) (1) Prior to the commencement of the Construction Work, the Lessee shall cause to be delivered to the Port Authority a payment and performance bond in favor of the Port Authority (in the form attached hereto as Exhibit B and hereby made a part hereof) in an amount equal to the total contract price of the Construction Work in compliance with the approved plans and specifications, protecting the Port Authority from monetary risk during, relating to or arising out of the Construction Work, issued by a surety company listed in the Financial Management Service of the United State Department of Treasury. Such payment and performance bond shall be in effect during the period from the commencement of the Construction Work to and including the Completion Date (as herein defined) and the Lessee shall keep and maintain said payment and performance bond in full force and effect. The said payment and performance bond shall be in an amount equal to the entire contract price for the Construction Work. Said payment and performance bond shall guarantee the full, faithful and prompt performance of and compliance with, on the part of the Lessee, all of the terms, provisions, covenants and conditions of this Agreement relating to the Construction Work. The existence of the payment and performance bond described in this Agreement shall not limit or alter any other remedies of the Port Authority under this Agreement, and the Port Authority may from time to time and at any time elect to pursue (or not to pursue) its rights under any payment and performance bond without thereby limiting, voiding or relinquishing any of its other rights or remedies under this Agreement.

(2) Prior to the commencement of the Construction Work and in addition to the aforesaid comprehensive plan, the Lessee shall execute and submit to the Port Authority for the Port Authority's approval a Construction Application or Applications in the form prescribed by the Port Authority and including complete plans and specifications of the Construction Work (hereinafter collectively called the "Construction Application"). The Port Authority may refuse to grant approval with respect to the Construction Work if, in its opinion, any of the proposed Construction Work as set forth in said plans and specifications (all of which shall be in such detail as may reasonably permit the Port Authority to make a determination as to whether the requirements hereinafter referred to are met) shall:

(i) Be unsafe, unsound, hazardous or improper for the use and occupancy for which it is designed; or

(ii) Not comply with the Port Authority's requirements for harmony of external architecture of similar existing or future improvements at the Airport; or

(iii) Not comply with the Port Authority's requirements with respect to

external and interior building materials and finishes of similar existing or future improvements at the Airport; or

(iv) Be designed for use for purposes other than those authorized under this Agreement; or

(v) Set forth ground elevations or heights other than those prescribed by the Port Authority; or

(vi) Not provide adequate and proper circulation areas; or

(vii) Not be at locations or not be oriented in accordance with the Lessee's approved Construction Application; or

(viii) Not comply with the provisions of the Basic Lease, as hereinafter defined, including without limiting the generality thereof, those provisions of the Basic Lease providing that the Port Authority will conform to the enactments, ordinances, resolutions and regulations of The City of New York and its various departments, boards and bureaus in regard to 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; or

(ix) Be in violation or contravention of any other provisions and terms of this Agreement; or

(x) Not comply with all applicable governmental laws, ordinances, enactments, resolutions, rules and orders; or

(xi) Not comply with all applicable requirements of the National Board of Fire Underwriters and the Fire Insurance Rating Organization of New York; or

(xii) Not comply with the Port Authority's requirements with respect to landscaping; or

(xiii) Not comply with the Port Authority's requirements and standards with respect to noise, air pollution, water pollution or other types of pollution; or

(xiv) Not comply with any construction limitations set forth in Exhibit A, if any; or

(xv) Not comply with the Americans with Disabilities Act of 1990 and all federal rules, regulations and guidelines pertaining thereto, including but not limited to the American National Standard Specifications for Making Buildings and Facilities

Accessible to and Usable by Physically Handicapped People, ANSI A117.180.

(c) The Construction Work shall be done in accordance with the following terms and conditions:

(1) (a) The Lessee hereby assumes the risk of loss or damage to all of the Construction Work prior to the completion thereof and the risk of loss or damage to all property of the Port Authority arising out of or in connection with the performance of the Construction Work. In the event of such loss or damage, the Lessee shall forthwith repair, replace and make good the Construction Work and the property of the Port Authority without cost or expense to the Port Authority. The Lessee shall itself and shall also require its contractors to indemnify and hold harmless the Port Authority, its Commissioners, officers, agents and employees from and against all claims and demands, just or unjust, of third persons (including employees, officers and agents of the Port Authority) arising or alleged to arise out of the performance of the Construction Work and for all expenses incurred by it and by them in the defense, settlement or satisfaction thereof, including without limitation thereto, claims and demands for death, for personal injury or for property damage, direct or consequential, whether they arise from the acts or omissions of the Lessee, of any contractors of the Lessee, of the Port Authority, or of third persons, or from acts of God or of the public enemy, or otherwise, excepting only claims and demands which result solely from affirmative willful acts or omissions done by the Port Authority, its Commissioners, officers, agents and employees with respect to the Construction Work, provided however, that the Lessee shall not be required to indemnify the Port Authority where indemnity would be precluded pursuant to the provisions of Section 5-322.1 of the General Obligations Law of the State of New York.

(b) If so directed, the Lessee shall at its own expense defend any suit based upon such claim or demand (even if such suit, claim or demand is groundless, false or fraudulent), and in handling such it shall not, without obtaining express advance written 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.

(2) Prior to engaging or retaining an architect or architects for the Construction Work, the name or names of said architect or architects shall be submitted to the Port Authority for its approval. The Port Authority shall have the right to disapprove any architect who may be unacceptable to it. All Construction Work shall be done in accordance with plans and specifications to be submitted to and approved by the Port Authority prior to the commencement of the Construction Work, and until such approval has been obtained the Lessee shall continue to resubmit plans and specifications as required. Upon approval of such plans and specifications by the Port Authority, the Lessee shall proceed diligently at its sole cost and expense to perform the Construction Work. All Construction Work, including workmanship and materials, shall be of first class quality. The Lessee shall re-do, replace or construct at its own

cost and expense, any Construction Work not done in accordance with the approved plans and specifications, the provisions of this Section 2 or any further requirements of the Port Authority. The Lessee shall expend not less than Ex. 2.a.)(hereinafter the "Minimum Construction Amount") in direct payments to contractors, architects, suppliers, subcontractors or any other person engaged by the Lessee or any of its contractors for work performed or materials purchased in connection with the design construction and installation constituting the Construction Work and shall, subject to the provisions of Section 47 hereof, substantially complete the Construction Work no later than 18 months from the Commencement Date. In the event the Lessee does not expend the Minimum Construction Amount as aforesaid, the Lessee shall, within thirty- (30) days following the Completion of the Construction Work, pay to the Port Authority an amount equal to difference between the amount actually expended and the Minimum Construction Amount.

(3) Prior to entering into a contract or contracts for any part of the Construction Work, the Lessee shall submit to the Port Authority for its approval the names of the general contractor and other contractors and subcontractors to whom the Lessee proposes to award said contract or contracts. The Port Authority shall have the right to disapprove any contractor who may be unacceptable to it. The Lessee shall include in all such contracts such provisions and conditions, as may be reasonably required by the Port Authority. Without limiting the generality of the foregoing all of the Lessee's construction contracts shall provide as follows: "If (i) the Contractor fails to perform any of his obligations under the Contract, including his obligation to the Lessee to pay any claims lawfully made against him by any materialman, subcontractor or workman or other third person which arises out of or in connection with the performance of the Contract or (ii) any claim (just or unjust) which arises out of or in connection with the Contract is made against the Lessee or (iii) any subcontractor under the Contract fails to pay any claims lawfully made against him by any materialman, subcontractor, workman or other third persons which arise out of or in connection with the Contract or if in the Lessee's opinion any of the aforesaid contingencies is likely to arise, then the Lessee shall have the right, in its discretion, to withhold out of any payment (final or otherwise and even though such payments have already been certified as due) such sums as the Lessee may deem ample to protect it against delay or loss or to assume the payment of just claims of third persons, and to apply such sums in such manner as the Lessee may deem proper to secure such protection or satisfy such claims.

All sums so applied shall be deducted from the Contractor's compensation. Omission by the Lessee to withhold out of any payment, final or otherwise, a sum for any of the above contingencies, even though such contingency has occurred at the time of such payment, shall not be deemed to indicate that the Lessee does not intend to exercise its right with respect to such contingency. Neither the above provisions for rights of the Lessee to withhold and apply monies nor any exercise or attempted exercise of, or omission to exercise, such rights by the Lessee shall create any obligation of any kind to such materialmen, subcontractors, workmen or other third persons. Until actual payment is made to the Contractor, his right to any amount to be paid under the Contract (even though such amount has already been certified as due) shall be

subordinate to the rights of the Lessee under this provision."

(4) The Lessee shall file with the Port Authority a copy of its contracts with its contractors prior to start of the Construction Work.

(5) The Lessee shall furnish or require its architect to furnish a full time resident engineer or, with the consent of the Port Authority, a representative of the Lessee authorized to act on behalf of the Lessee, during the construction period. The Lessee shall require certification by a licensed engineer of all pile driving data and of all controlled concrete work and such other certifications as may be requested by the Port Authority from time to time.

(6) The Lessee agrees to be solely responsible for any plans and specifications used by it and for any loss or damages resulting from the use thereof, notwithstanding the same have been approved by the Port Authority and notwithstanding the incorporation therein of Port Authority recommendations or requirements. Notwithstanding the requirement for approval by the Port Authority of the contracts to be entered into by the Lessee or the incorporation therein of Port Authority requirements or recommendations, and notwithstanding any rights the Port Authority may have reserved to itself hereunder, the Port Authority shall have no liabilities or obligations of any kind to any contractors engaged by the Lessee or for any other matter in connection therewith and the Lessee hereby releases and discharges the Port Authority, its Commissioners, officers, representatives and employees of and from any and all liability, claims for damages or losses of any kind, whether legal or equitable, or from any action or cause of action arising or alleged to arise out of the performance of any Construction Work pursuant to the contracts between the Lessee and its contractors. Any warranties contained in any construction contract entered into by the Lessee for the performance of the Construction Work hereunder shall be for the benefit of the Port Authority, as well as the Lessee.

(7) The Port Authority shall have the right, through its duly designated representatives, to inspect the Construction Work and the plans and specifications thereof, at any and all reasonable times during the progress thereof and from time to time, in its discretion, to take samples and perform testing in any part of the Construction Work.

(8) The Lessee agrees that it shall deliver to the Port Authority two (2) sets of "as built" microfilm drawings or record drawings of the Construction Work mounted on aperture cards, an electronic CADD data file in a format to be designated by the Port Authority, all of which shall conform to the specifications of the Port Authority (the receipt of a copy of said specifications prior to the execution of this Lease being hereby acknowledged by the Lessee), and the Lessee shall during the term of this Lease keep said drawings and said data file current showing thereon any changes or modifications which may be made. No changes or modifications shall be made without prior Port Authority consent.

(9) The Lessee shall, if requested by the Port Authority, take all

reasonable measures to prevent erosion of the soil and the blowing of sand during the performance of the Construction Work, including but not limited to, the fencing of the Premises or portions thereof or other areas and the covering of open areas with asphaltic emulsion or similar materials as the Port Authority may direct.

(10) Any soil, dirt, sand or other matter (hereinafter in this subparagraph [10] collectively called the "Matter") excavated by the Lessee during the course of the Construction Work and not used at the site shall be delivered and deposited by the Lessee at its expense to any location on the Airport or to any location off the Airport within the Port of New York District as may be designated by the Port Authority, subject to and in accordance with the provisions of Section 2 hereof. The entire proceeds, if any, of the sale or other disposition of the Matter shall belong to the Port Authority. Notwithstanding the foregoing the Port Authority may elect by prior written notice to the Lessee to waive any rights it may have hereunder as to all or portions of the Matter in which event the Lessee at the Lessee's expense shall dispose of the same without further instruction from the Port Authority, subject to and in accordance with the provisions of Section 2 hereof.

(11) The Lessee shall pay or cause to be paid all claims lawfully made against it by its contractors, subcontractors, materialmen and workmen, and all claims lawfully made against it by other third persons arising out of or in connection with or because of the performance of the Construction Work, and shall cause its contractors and subcontractors to pay all such claims lawfully made against them, provided, however, that nothing herein contained shall be construed to limit the right of the Lessee to contest any claim of a contractor, subcontractor, materialman, workman or other person and no such claim shall be considered to be an obligation of the Lessee within the meaning of this Section unless and until the same shall have been finally adjudicated. The Lessee shall use its best efforts to resolve any such claims and shall keep the Port Authority fully informed of its actions with respect thereto.

(12) (i) The Lessee in its own name as insured and with the Port Authority and The City of New York (the "City") as additional insureds shall procure and maintain a policy or policies of (i) Environmental Liability Insurance with a limit of $2 million combined single limit per occurrence covering bodily injury, property damage or environmental damage caused by pollution conditions; including coverage for environmental cleanup on land, in air and on water, and (ii) Commercial General Liability Insurance, including but not limited to, coverage with a broad form property damage endorsement, Premises-operations, products-completed operations (for a minimum of 3 years after the Completion Date as defined in paragraph [i] of this Section and explosion, collapse and underground property damages coverage, personal injury and independent contractors and providing for the coverage in the limit set forth below; and Commercial Automobile Liability Insurance covering owned, non-owned and hired vehicles, automatically covering newly acquired vehicles, and providing for coverage in the limit set forth below; with contractual liability endorsements, where applicable, covering the obligations assumed by the Lessee pursuant to subparagraphs (1) and (6) of this paragraph

(c) and the obligations required of the Lessee's contractors pursuant to subparagraph (1) of this paragraph (c); and Workers' Compensation Insurance in accordance with the requirements of law; which insurance shall be in addition to all policies of insurance otherwise required by the Lease, or the Lessee may provide such insurance by requiring each contractor engaged by it for the Construction Work to procure and maintain such insurance in the contractor's name as insured and with the exceptions of the Workers' Compensation Policy, with the Port Authority, the City and the Lessee as additional insureds including, where applicable, such contractual liability endorsements, said insurance not to contain any exclusion for bodily injury to or sickness, disease or death of any employee of the Lessee or of any of its contractors which would conflict with or in any way impair coverage under the contractual liability endorsement. The said liability policy or policies of insurance shall also provide or contain an endorsement providing that the protections afforded the named insured thereunder with respect to any claim or action against the named insured 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 but such endorsement shall not limit, vary, change, or affect the protections afforded the Port Authority and the City thereunder as additional insureds. In addition, said liability policy or policies of insurance shall also provide or contain an endorsement providing that the protections afforded the Port Authority thereunder with respect to any claim or action against the Port Authority by the Lessee or its contractor(s) shall be the same as the protections afforded the named insured thereunder with respect to any claim or action against the named insured by a third person as if the Port Authority were the named insured thereunder. Said insurance shall be in not less than the following amounts:

		Minimum Limits
(i)	Commercial General Liability Insurance:	
	Combined single limit per occurrence for death, bodily injury and property damage liability	$25,000,000
(ii)	Commercial Automobile Liability Insurance: (covering owned, non-owned and hired vehicles)	
	Combined single limit per occurrence for death, bodily injury and property damage liability	$25,000,000

(ii) The insurance required hereunder shall be maintained in

effect during the performance of the Construction Work and shall be in compliance with and subject to the provisions of paragraphs (b) and (c) of Section 14 of the Lease.

(13) The Lessee shall be under no obligation to reimburse the Port Authority for expenses incurred by the Port Authority in connection with its normal review and approval of the original plans and specifications submitted by the Lessee pursuant to this Section. The Lessee, however, agrees to pay to the Port Authority upon its demand the expenses incurred by the Port Authority in connection with any additional review for approval of any changes, modifications or revisions of the original plans and specifications which may be proposed by the Lessee for the Port Authority's approval. The expenses of the Port Authority for any such additional review and approval shall be computed on the basis of direct payroll time expended in connection therewith plus 100%. Wherever in this Lease reference is made to "direct payroll time," costs computed thereunder shall include a pro rata share of the cost to the Port Authority of providing employee benefits, including but not limited to, pensions, hospitalization, medical and life insurance, vacations and holidays. Such computations shall be in accordance with the Port Authority's accounting principles as consistently applied prior to the execution of this Lease.

(14) The Lessee shall, prior to the commencement of construction and at all times during construction, submit to the Port Authority all engineering studies with respect to construction and samples of construction materials as may be required at any time and from time to time by the Port Authority.

(15) The Lessee shall procure and maintain Builder's Risk (all Risk) Completed Value Insurance on a complete value form covering the Construction Work during the performance thereof including material delivered to the Premises but not attached to the realty, or existing property, until the Construction Work is completed. Such insurance shall be in compliance with and subject to the applicable provisions of Section 12 hereof and shall name the Port Authority, The City of New York, the Lessee and its contractors and subcontractors as insureds and such policy shall provide that the loss shall be adjusted with and payable to the Port Authority. The Lessee shall use such proceeds for the repair, replacement or rebuilding of the Construction Work and any excess shall be paid over to the Port Authority.

(16) Upon the request of the Port Authority from time to time, the Lessee shall submit to the Port Authority its forecasts of the number of people who will be working at various times during the period of construction and the term of the letting hereunder at the Premises, the expected utility demands, noise profiles and such other information as the Port Authority may reasonably require. The Lessee shall continue to submit its latest forecasts and such other information as may be required as aforesaid as the Port Authority shall from time to time and at any time request.

(17) The Lessee shall comply with all the terms and provisions of the approved Construction Application. In the event of any inconsistency between the terms of any

Construction Application and the terms of this Lease, the terms of this Lease shall prevail and control.

(18) Without limiting any of the terms and conditions of this Agreement, the Lessee understands and agrees that it shall put into effect prior to the commencement of any Construction Work an affirmative action program and Minority Business Enterprise (MBE) program and Women-owned Business Enterprise (WBE) program in accordance with the provisions of Schedule E, attached hereto and hereby made a part hereof. The provisions of said Schedule E shall be applicable to the Lessee's contractor or contractors and subcontractors at any tier of construction as well as the Lessee and the Lessee shall include the provisions of said Schedule E within all of its construction contracts so as to make said provisions and undertakings the direct obligation of the construction contractor or contractors and subcontractors at any tier of construction. The Lessee shall and shall require its said contractor or contractors and subcontractors to furnish to the Port Authority such data, including but not limited to, compliance reports relating to the operation and implementation of the affirmative action, MBE and WBE programs called for hereunder as the Port Authority may request at any time and from time to time regarding the affirmative action, MBE and WBE programs of the Lessee and its contractor or contractors and subcontractors at any tier of construction, and the Lessee shall and shall also require that its contractor or contractors and subcontractors at any tier of construction make and put into effect such modifications and additions thereto as may be directed by the Port Authority pursuant to the provisions hereof and said Schedule E to effectuate the goals of the affirmative action, MBE and WBE programs.

(19) In addition to and without limiting any terms and provisions of this Agreement, the Lessee shall provide in its contracts and all subcontracts covering the Construction Work, or any portion thereof, that:

(i) The contractor 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 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 apprenticeships and on-the-job training;

(ii) At the request of either the Port Authority or the Lessee, the contractor shall request such employment agency, labor union or authorized representative of workers with which it has a collective bargaining or other agreement or understanding and which is involved in the performance of the contract with the Lessee to furnish a written statement that such employment agency, labor union or representative shall not discriminate because of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will cooperate in the implementation of the contractor's obligations hereunder;

(iii) The contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor in the performance of the contract, that all qualified applicants will be afforded equal employment opportunity without discrimination because of race, creed, color, national origin, sex, age, disability or marital status;

(iv) The contractor will include the provisions of items (i) through (iii) of this subparagraph in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to its work in connection with the contract;

(v) "Contractor" as used herein shall include each contractor and subcontractor at any tier of construction.

(20) The Lessee understands that there may be communications and utility lines and conduits located on or under the site, which do not, and may not in the future, serve the Premises. The Lessee agrees, at its sole cost and expense, if directed by the Port Authority to do so prior to the issuance by the Port Authority of the certificate as set forth in paragraph (h) hereof, to relocate and reinstall such communications and utility lines and conduits as may be deemed necessary by the Port Authority in connection with the Construction Work on the Premises or off the Premises as directed by the Port Authority and to restore all affected areas (such work being hereinafter collectively called the "Relocation Work"). The Lessee shall perform the Relocation Work subject to and in accordance with all the terms and provisions of this Section and the Relocation Work shall be and become a part of the Construction Work, it being understood, however, that the Relocation Work shall not be or become a part of the Premises hereunder. The Lessee hereby acknowledges that there is a sanitary sewer owned by The City of New York located on the site and that no building construction or any other portion of the Construction Work, other than paving, shall be permitted over said sewer.

(21) Nothing contained in the Lease shall grant or be deemed to grant any contractor, architect, supplier, subcontractor or any other person engaged by the Lessee or any of its contractors in the performance of any part of the Construction Work any right of action or claim against the Port Authority, its Commissioners, officers, agents and employees with respect to any work any of them may do in connection with the Construction Work. Nothing contained herein shall create or be deemed to create any relationship between the Port Authority and any such contractor, architect, supplier, subcontractor or any other person engaged by the Lessee or any of its contractors in the performance of any part of the Construction Work and the Port Authority shall not be responsible to any of the foregoing for any payments due or alleged to be due thereto for any work performed or materials purchased in connection with the Construction Work.

(d) The Lessee may wish to commence construction of portions of the Construction Work prior to the approval by the Port Authority of the Lessee's plans and

specifications therefor pursuant to paragraph (b) hereof and if it does it shall submit a written request to the Port Authority setting forth the work it proposes to then do, it being understood that the demolition work to be performed by the Lessee shall be performed without connection to plans and specifications for construction. The Port Authority shall have full and complete discretion as to whether or not to permit the Lessee to proceed with said work. If the Port Authority has no objection to the Lessee's proceeding with the work, it shall do so by writing a letter to the Lessee to such effect. If the Lessee performs the work covered by said letter it agrees all such work shall be performed subject to and in accordance with all of the provisions of the approval letter and subject to and in accordance with the following terms and conditions:

(1) The performance by the Lessee of the work covered by any request as aforesaid will be at its sole risk and if for any reason the plans and specifications for the Construction Work or any part thereof are not approved by the Port Authority or if the approval thereof calls for modifications or changes in the work undertaken by the Lessee under any approval granted by the Port Authority pursuant to this paragraph (d), the Lessee will, as directed by the Port Authority, at the Lessee's sole cost and expense, either restore the area affected to the condition existing prior to the commencement of any such work or make such modifications and changes in any such work as may be required by the Port Authority.

(2) Nothing contained in any approval hereunder shall constitute a determination or indication by the Port Authority that the Lessee has complied with the applicable governmental laws, ordinances, enactments, resolutions, rules and orders, including but not limited to, those of The City of New York which may pertain to the work to be performed.

(3) The approved work will be performed in accordance with and subject to the terms, indemnities and provisions of the Lease covering the Construction Work and with the terms and conditions of any Construction Application which the Port Authority may request the Lessee to submit even though such Construction Application may not have, at the time of the approval under this paragraph (d), been approved by the Port Authority. In the event of any inconsistency between the terms of any Construction Application and the terms of this Lease, the terms of this Lease shall prevail and control.

(4) No work under any such approval shall affect or limit the obligations of the Lessee under all prior approvals with respect to its construction of the Construction Work.

(5) The Lessee shall comply with all requirements, stipulations and provisions as may be set forth in the aforesaid letter of approval.

(6) In the event that the Lessee shall at any time during the construction of any portion of the Construction Work under the approval granted by the Port Authority

pursuant to this paragraph (d) fail, in the opinion of the Resident Engineer of the Port Authority at the Airport, to comply with all of the provisions of this Lease with respect to the Construction Work, the Construction Application or the approval letter covering the same or be, in the opinion of the said Resident Engineer, in breach of any of the provisions of this Lease, the Construction Application or the approval letter covering the same, the Port Authority shall have the right, acting through said Resident Engineer, to cause the Lessee to cease all or such part of the Construction Work as is being performed in violation of this Lease, the Construction Application or the approval letter. Upon such written direction from the Resident Engineer specifying said non-conformance or breach, the Lessee shall promptly cease construction of the Construction Work specified. The Lessee shall thereupon submit to the Port Authority for its written approval the Lessee's proposal for making modifications, corrections or changes in or to the Construction Work that has been or is to be performed so that the same will comply with the provisions of this Lease, the Construction Application and the approval letter covering the Construction Work. The Lessee shall not commence construction of the portion of the Construction Work that has been halted until such written approval has been received.

(7) It is hereby expressly understood and agreed that neither the field engineer covered by paragraph (e) below nor the Resident Engineer mentioned in subparagraph (6) above has any authority to approve any plans and specifications of the Lessee with respect to the Construction Work, to approve the construction by the Lessee of any portion of the Construction Work or to agree to any variation by the Lessee from compliance with the terms of this Lease, or the Construction Application or the approval letter with respect to the Construction Work. Notwithstanding the foregoing, should the field engineer or the Resident Engineer give any directions or approvals with respect to the Lessee's performance of any portions of the Construction Work which are contrary to the provisions of this Lease, the Construction Application or the approval letter, said directions or approvals shall not affect the obligations of the Lessee as set forth herein nor release or relieve the Lessee from the strict compliance therewith. It is hereby further understood and agreed that the Port Authority has no duty or obligation of any kind whatsoever to inspect or police the performance of the Construction Work by the Lessee and the rights granted to the Port Authority hereunder shall not create or be deemed to create such a duty or obligation. Accordingly, the fact that the Resident Engineer has not exercised the Port Authority's right to require the Lessee to cease its construction of all or any part of the Construction Work shall not be or be deemed to be an agreement or acknowledgment on the part of the Port Authority that the Lessee has in fact performed such portion of the Construction Work in accordance with the terms of the Lease, the Construction Application or the approval letter nor shall such fact be or be deemed to be a waiver by the Port Authority from the requirement of strict compliance by the Lessee with the provisions of the Lease, the Construction Application and the approval letter with respect to the Construction Work.

(8) Without limiting the discretion of the Port Authority hereunder, the

Port Authority hereby specifically advises the Lessee that even if the Port Authority hereafter in the exercise of its discretion wishes to grant approvals under this paragraph (d), it may be unable to do so, so as to permit the Lessee to continue work without interruption following its completion of the work covered by any prior approval hereunder. The Lessee hereby acknowledges that if it commences work pursuant to this paragraph (d), it shall do so with full knowledge that there may not be continuity by it in the performance of its Construction Work under the procedures of this paragraph (d).

(9) No prior approval of any work shall create or be deemed to create any obligation on the part of the Port Authority to permit subsequent work to be performed prior to the approval by the Port Authority of the Lessee's complete plans and specifications therefor.

(e) The Lessee will give the Port Authority fifteen (15) days' notice prior to the commencement of construction. The Port Authority will assign a field engineer to the Construction Work for such periods of time as the Port Authority, in its sole discretion, shall deem desirable from time to time up to and including five (5) days per week. The Lessee shall pay to the Port Authority for the services of said engineer at the following daily rates (prorated approximately for periods of less than one day): the rate of $835.00 per day from January 1, 2008 to and including December 31, 2008; and at the rate of $870.00 per day for the period from January 1, 2009 to and including December 31, 2009. Nothing herein shall prevent the Lessee from requesting the Port Authority to assign said engineer more frequently than as set forth herein, or the Port Authority from complying with such request, but the Port Authority shall not be obligated to do so. Nothing contained herein shall affect any of the provisions of paragraph (h) hereof or the rights of the Port Authority thereunder.

(f) (1) The Construction Work shall be constructed in such a 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. Accordingly, and in addition to all other obligations imposed on the Lessee under this Agreement and without diminishing, limiting, modifying or affecting any of the same, the Lessee shall be obligated to construct as part of the Construction Work hereunder such structures, fences, equipment, devices and other facilities as may be necessary or appropriate to accomplish the foregoing and each of the foregoing shall be and become a part of the Construction Work hereunder.

(2) Notwithstanding the provisions of subparagraph (1) above and in addition thereto, the Port Authority hereby reserves the right from time to time and at any time during the term of the Lease to require the Lessee subsequent to the completion of the Construction Work to design and construct at its sole cost and expense such further 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 subparagraph (1) hereof. The Port

Authority shall determine all locations, the manner, type and method of construction and the size of any of the foregoing. 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. All other provisions of this Section 2 with respect to the Construction Work shall apply and pertain with like effect to any work, which the Lessee is obligated to perform pursuant to this paragraph (f) and upon completion of each portion of such work it shall be and become a part of the Premises. The obligations assumed by the Lessee under this paragraph (f) are a special inducement and consideration to the Port Authority in granting this Lease to the Lessee.

(g) Title to all the Construction Work shall pass to The City of New York as the same or any part thereof is erected, constructed or installed and the same shall be and become a part of the Premises hereunder. For purposes of this paragraph, the phrase "the Construction Work" shall not include the Lessee's personal property or trade fixtures or equipment.

(h) When all the Construction Work is substantially completed and ready for use the Lessee shall advise the Port Authority to such effect and shall deliver to the Port Authority a certificate by an authorized officer of the Lessee and the Lessee's architect or engineer certifying that the Construction Work has been constructed in accordance with the approved plans and specifications and the provisions of this Lease and in compliance with all applicable laws, ordinances and governmental rules, regulations and orders. Thereafter the Construction Work will be inspected by the Port Authority and if the same has been completed as certified by the Lessee and the Lessee's architect or engineer, a certificate to such effect shall be delivered to the Lessee by the Port Authority, subject to the condition that all risks thereafter with respect to the construction and installation of the same and any liability therefor for negligence or other reason shall be borne by the Lessee. The Lessee shall not use or permit the use of the Construction Work for the purposes set forth in the Lease until such certificate is received from the Port Authority.

(i) The date specified in the Port Authority certificate referred to in subparagraph (h) of this Section 2 covering the Construction Work shall be referred to in this Agreement of Lease as the "Completion Date."

(j) The Port Authority shall, if and to the extent required, bring appropriate roadway access stubs and service lines for the supply of cold water, electric power, telephone, and sanitary and storm sewers (said service lines and sanitary and storm sewers being hereinafter collectively referred to as "utility service lines") to such locations at the perimeter of the Site or to the nearest manhole or to other locations off the Site as the Port Authority, in consultation with the Lessee, shall determine. The Lessee at its sole cost and expense is hereby obligated to tie its utility lines and roadways into such locations at or near the perimeter of the Site where such utility service lines and roadway access stubs will be brought by the Port Authority hereunder. The Port Authority shall have no obligation to make available any utility service lines or roadway access stubs to any location with respect to the Cargo Facility prior to receiving

the certificate of the Lessee and of the Lessee's architect or engineer that all of the Construction Work has been completed or that a portion of the Construction Work is properly usable, all as provided in paragraph (h) hereof, and that the Lessee is ready to tie its utility lines and roadways into the utility service lines and roadway access stubs to be furnished by the Port Authority to the Site.

Section 3. Term

(a) The term of the letting under this Lease shall commence on August 1, 2008 (the "Commencement Date"), and, unless sooner terminated, expire at 11:59 o'clock p.m. on the day preceding the tenth anniversary of the Rental Payment Start Date, as hereinafter-defined in Section 4.

(b) Without in any way limiting the provisions set forth in the Sections of this Agreement entitled *"Termination"*, *"Right 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 of the letting under this Agreement, 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 date of such expiration 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 (i) the annual rate of rental in effect on the date of such expiration or termination, plus (ii) 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 give, or 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 4. Rental and Abatement

A. Basic Ground Rental

(a) The Lessee agrees to pay to the Port Authority the following Ground Rentals for the Premises:

(a) The Lessee agrees to pay to the Port Authority the following Ground Rentals for the Premises:

(i) During the period commencing on the Rental Payment Start Date and continuing through the balance of the term of the letting, the Lessee shall pay to the Port Authority the Basic Ground Rental for the Premises at the annual rate of Five Hundred Seventy Ex. 2.a. ("Basic Ground Rental"), payable in equal monthly installments of on the Rental Payment Start Date, as hereinafter defined, and thereafter on the first day of each calendar month thereafter throughout the term of the letting hereunder, subject to the increases as provided in paragraph (b) below.

(ii) The payment of the Basic Ground Rental due and payable by the Lessee to the Port Authority for the period commencing on the Rental Payment Start Date and continuing through the day preceding Deferred Rental Payment Start Date, as hereinafter defined, (the "Deferred Rental Period") shall be deferred during such period. From and after the Deferred Rental Payment Start Date, the Lessee shall pay to the Port Authority the sum of the monthly installments of Basic Ground Rental due and payable during the Deferred Period, with interest thereon at the rate of Ex. 2.a.) per annum, compounded monthly, (the "Deferred Rental") in advance on the Deferred Rental Payment Start Date and on the first day of each of the succeeding thirty five (35) calendar months, in thirty-six (36) consecutive equal monthly installments of principal and interest. The first installment thereof shall be due and payable on the Deferred Rental Payment Start Date, and each following consecutive monthly payment shall be due and payable on the first (1st) day of each and every month thereafter until the entire principal and interest is paid.

(b) As used herein, Consumer Price Index (CPI) 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.

(1) The Port Authority shall ascertain the CPI for the month in which the Commencement Date occurs and for the same calendar month in each year thereafter during the term of this Agreement after the same has been published, and the Port Authority shall also determine the annual percentage increase, if any, for each such twelve month period after the same has been published (hereinafter called "the annual CPI percentage increase").

(2) Effective on the first day of the month in which the first year anniversary of the Commencement Date occurs the rental set forth above in paragraph (a0 shall be increased as follows: (i) the annual rental rate shall be multiplied by a percentage composed of ½ of the annual CPI increase, if any, for the latest twelve month period using the same calendar month in accordance with subparagraph (1) above plus and (ii) the annual rental rate as set forth in said paragraph (b) shall be multiplied by ; and the greater of the two

products so obtained by the calculations set forth in the foregoing clauses (i) and (ii) shall be and become the annual rental in effect for the annual period commencing on the said first day of the month in which the first anniversary of the Commencement Date occurs and ending on the last day of the immediately succeeding twelfth month.

(3) In the event that the CPI is not available for any specified month as hereinabove set forth within the time set forth for payment such index for the latest month then published shall be used to constitute the CPI. In the event of the change of basis or the discontinuance of the publication by the United States Department of Labor of the Consumer Price Index 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, provided, however, that the foregoing shall not preclude the Lessee from contesting the Port Authority's selection.

(4) In the event any said portion of the term of the Lease shall commence on a day other than the first day of a month, the monthly installment due on said day shall be the monthly installment prorated on a daily basis using the actual number of days in said month. In the event any said portion of the term of the Lease shall expire on a day other than the last day of a month, the monthly installment for said month shall be the monthly installment prorated on a daily basis using the actual number of days in the said month.

(c) As used herein,

(i) "Rental Payment Start Date" shall mean the 180th day following the Commencement Date.

(ii) "Deferred Rental Payment Start Date" shall mean the earlier to occur of:

(x) The Four Hundred and Forty-fifth (445th) day following the Commencement date; or

(y) Such earlier date following the completion by the Lessee of the Construction Work described in Section 2 hereof as the Port Authority may designate to the Lessee as the date on which public operations may be commenced in the premises.

(d) 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 applicable Basic Ground Rental computed as follows: if the letting hereunder is terminated effective on a date other than the last day of a month the Basic

Ground Rental for the portion of that month in which the letting remains effective shall be the amount of the monthly installment of Basic Ground Rental prorated on a daily basis, and if the monthly installment due on the first day of that month has not been paid the Lessee shall pay the prorated part of the amount of that installment; if the monthly installment has been paid, then the excess thereof shall be credited to the Lessee's obligations.

(e) Nothing contained in the foregoing shall affect the survival obligations of the Lessee as set forth in Section 25 hereof.

B. Building Rental

(a) In addition to the Basic Ground Rental, the Lessee agrees to pay to the Port Authority a building rental ("Building Rental") in an amount equal to the following:

(i) During the period commencing on the Rental Payment Start Date and continuing through the balance of the term of the letting, the Lessee shall pay to the Port Authority the Building Rental for the Premises at the annual rate of Ex.2.a.) ("Building Rental"), payable in equal monthly installments of on the Rental Payment Start Date and thereafter on the first day of each calendar month thereafter throughout the term of the letting hereunder, subject to the increases as provided in paragraph (b) below.

(ii) The payment of the Building Rental due and payable by the Lessee to the Port Authority for the period commencing on the Rental Payment Start Date and continuing through the day preceding the Deferred Rental Payment Start Date, as hereinafter defined, (the "Deferred Rental Period") shall be deferred during such period. From and after the Deferred Rental Payment Start Date, the Lessee shall pay to the Port Authority the sum of the monthly installments of Building Rental due and payable during the Deferred Period, with interest thereon at the rate of Ex. 2.a. per annum, compounded monthly, (the "Deferred Rental") in advance on the Deferred Rental Payment Start Date and on the first day of the succeeding thirty five (35) calendar months, in thirty-six (36) consecutive equal monthly installments of principal and interest. The first installment thereof shall be due and payable on the Deferred Rental Payment Start Date, and each following consecutive monthly payment shall be due and payable on the first (1st) day of each and every month thereafter until the entire principal and interest is paid.

(b) As used herein, Consumer Price Index (CPI) 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.

(1) The Port Authority shall ascertain the CPI for the month in which the

Commencement Date occurs and for the same calendar month in each year thereafter during the term of this Agreement after the same has been published, and the Port Authority shall also determine the annual percentage increase, if any, for each such twelve month period after the same has been published (hereinafter called "the annual CPI percentage increase").

(2) Effective on the first day of the month in which the first year anniversary of the Commencement Date occurs the rental set forth above in paragraph (a) shall be increased as follows: (i) the annual rental rate shall be multiplied by a percentage composed of ½ of the annual CPI increase, if any, for the latest twelve month period using the same calendar month in accordance with subparagraph (1) above plus ; and (ii) the annual rental rate as set forth in said paragraph (b) shall be multiplied by ; and the greater of the two products so obtained by the calculations set forth in the foregoing clauses (i) and (ii) shall be and become the annual rental in effect for the annual period commencing on the said first day of the month in which the first anniversary of the Commencement Date occurs and ending on the last day of the immediately succeeding twelfth month.

(3) In the event that the CPI is not available for any specified month as hereinabove set forth within the time set forth for payment such index for the latest month then published shall be used to constitute the CPI. In the event of the change of basis or the discontinuance of the publication by the United States Department of Labor of the Consumer Price Index 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, provided, however, that the foregoing shall not preclude the Lessee from contesting the Port Authority's selection.

(4) In the event any said portion of the term of the Lease shall commence on a day other than the first day of a month, the monthly installment due on said day shall be the monthly installment prorated on a daily basis using the actual number of days in said month. In the event any said portion of the term of the Lease shall expire on a day other than the last day of a month, the monthly installment for said month shall be the monthly installment prorated on a daily basis using the actual number of days in the said month.

(c) 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 applicable Building Rental computed as follows: if the letting hereunder is terminated effective on a date other than the last day of a month the Basic Ground Rental for the portion of that month in which the letting remains effective shall be the amount of the monthly installment of Building Rental prorated on a daily basis, and if the monthly installment due on the first day of that month has not been paid the Lessee shall pay the prorated part of the amount of that installment; if the monthly installment has been paid, then the excess thereof shall be credited to the Lessee's obligations.

(d) Nothing contained in the foregoing shall affect the survival obligations of the Lessee as set forth in Section 25 hereof.

C. Abatement

(i) In the event the Lessee shall at any time by the provisions of this Agreement become entitled to an abatement of Basic Ground Rental, the Basic Ground Rental for each square foot of land the use of which is denied the Lessee, shall be reduced for each calendar day or major fraction thereof at the daily rate of Ex. 2.a. as appropriately adjusted to reflect any and all CPI adjustments pursuant to Part A of this Section, above.

(ii) In the event the Lessee shall at any time by the provisions of this Agreement become entitled to an abatement of Building Rental the Building Rental for each square foot of space the use of which is denied the Lessee, shall be reduced for each calendar day or major fraction thereof at the daily rate of Ex. 2.a. as appropriately adjusted to reflect any and all CPI adjustments pursuant to Part B of this Section, above.

Section 5. Use of Premises

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:

(a) For the operation of an in-flight catering/kitchen for the preparation, storage and distribution of aircraft food;
(b) For business and administrative offices in connection with the Lessee's operations hereunder;
(c) For the parking of passenger automobiles used by the officers, employees, invitees and business visitors of the Lessee, including construction workers during the period of construction, and for the loading and unloading of supplies to and from vehicles in connection with the Lessee's operations hereunder; and
(d) For any other purpose or activity which the Port Authority may, from time to time, expressly authorize in advance and in writing.

Section 6. Ingress and Egress

(a) 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) 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) 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. In addition to the rights of closure granted above, the Port Authority may, at any time, temporarily or permanently close, or consent to or request the closing of, any such roadway and any other area at the Airport presently or hereafter used as such, so long as means of ingress and egress reasonably equivalent to that provided in paragraphs (a) and (b) above are concurrently made and remain available to the Lessee. The Lessee hereby releases and discharges the Port Authority, its 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 street, roadway, taxiway or other area used as such whether within or outside the Airport, provided, that the Port Authority makes available to the Lessee a means of ingress and egress reasonably equivalent to that provided in paragraphs (a) and (b) above.

Section 7. Compliance with Governmental Requirements

(a) The Lessee shall comply with all laws and ordinances and governmental rules, regulations, orders and directions which may pertain or apply to (i) the premises, (ii) the operations of the Lessee on the premises hereunder or the Airport, (iii) the occupancy or use of the premises or (iv) with regard to Environmental Requirements only, property outside the premises as a result of the Lessee's use and occupancy of the premises or a migration of Hazardous Substances from the premises. The Lessee shall, in accordance with and subject to the provisions of Section of this Agreement entitled "Construction by the Lessee", make any and all structural and non-structural improvements, alterations or repairs of the Premises and perform all remediation work and clean up of Hazardous Substances required in order to fully satisfy the compliance obligations set forth herein, *provided, however, that*, the Lessee shall have the right, at its sole cost and expense, to have qualified personnel of an independent laboratory, mutually acceptable to the Port Authority and the Lessee, also analyze the samples taken in accordance with applicable State and Federal laws, ordinances, rules, regulations, requirements, orders or direction and *provided, further,* that the said sampling and testing be done in accordance with a methodology approved by the Port Authority. The conclusion of such independent laboratory shall determine whether the Lessee caused the contamination

(b) The Lessee shall procure from all governmental authorities having jurisdiction over the operations of the Lessee hereunder and shall maintain in full force and effect throughout the term of this Agreement all licenses, certificates, permits or other

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

(f) 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 8. **Rules and Regulations**

(a) 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 Rules and Regulations of the Port Authority in effect as of the execution of this Agreement and such reasonable future Rules and Regulations and amendments and supplements to existing Rules and Regulations 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, sanitation or good order. 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 or regulation adopted by it at least ten (10) days before the Lessee shall be required to comply therewith.

(b) If a copy of the Rules and Regulations 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 9. **Various Obligations of the Lessee**

(a) The Lessee shall conduct its operations hereunder in an orderly and proper manner so as not to 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, which is on the Premises, or is a part thereof, or is located elsewhere on or off the Airport.

(b) 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.

(c) 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.

(d) The Lessee shall control all vehicular traffic on the roadways or other areas within the Premises and shall take all precautions reasonably necessary to promote the safety of its customers, patrons, business visitors 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.

(e) 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. Any such waste materials which may be temporarily stored in the open shall be kept in suitable garbage and waste receptacles, the same to be made of metal or other suitable material and equipped with tight fitting covers and to be of a design safely and properly to contain whatever material may be placed therein. The 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 or be permitted to be thrown, discharged or deposited into or upon the waters at or bounding the Airport.

(f) 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. The Lessee shall at all times maintain on the Premises adequate stocks of fresh, usable chemicals for use in such systems 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.

(g) 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 of the letting hereunder 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 the Agreement and shall operate, use and maintain the Premises in accordance with the highest standards and in such manner that there will be at all times a minimum of air pollution, water pollution or any other type of pollution and a minimum of noise emanating 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 the Lease 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. All locations, the manner, type and method of construction and the size 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.

(h) The obligations assumed by the Lessee under paragraph (g) hereof shall

continue throughout the term of this Lease and shall not be limited, affected, impaired or in any manner modified by the fact that the Port Authority shall have approved any Construction Application and supporting plans, specifications and contracts covering Construction Work and notwithstanding the incorporation therein of the Port Authority's recommendations or requirements and notwithstanding that the Port Authority may have at any time during the term of the Lease consented to or approved any particular procedure or method of operation which the Lessee may have proposed or that the Port Authority may have itself prescribed the use of any procedure or method. The agreement of the Lessee to assume the obligations under paragraph (g) hereof is a special inducement and consideration to the Port Authority in entering into this Lease with the Lessee.

(i) Without limiting any other of the Lessee's operations under the Lease, the Lessee shall provide the General Manager of the Airport at the cost and expense of the Lessee 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, notice, 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 that the same are made available to or received by the Lessee with respect to any Environmental Requirements.

(j) In addition to and without limiting the generality of the obligations of the Lessee set forth above and elsewhere in the Lease, the Lessee shall at its sole cost and expense and in accordance with and subject to the provisions of the Section entitled "Construction by the Lessee" hereof, upon notice from the Port Authority, promptly take all actions to completely remove and remediate all Hazardous Substances on the premises or the Airport which qualified personnel of an independent laboratory, mutually acceptable to the Port Authority and the Lessee, and paid for by the Lessee, have concluded result from the Lessee's use and occupancy of the premises or which have been disposed of, released, discharged or otherwise placed on, under or about the premises during the term of the letting hereunder, and to cleanup and remediate all other Hazardous Substances on, about or under the premises or which have migrated from the premises to any adjoining property, which any federal, state or local governmental agency or political subdivision or any Environmental Requirement or any violation thereof require to be remediated, and to cleanup and remediate all Hazardous Substances necessary to mitigate Environmental Damages. The foregoing obligations of the Lessee shall include without limitation the investigation of the environmental condition of the area to be remediated, the presentation of feasibility studies, reports and remedial plans and the performance of any cleanup, remediation, containment, operation, maintenance, monitoring or restoration work; the standard for any of the foregoing to be that standard as required under

Environmental Requirements and in the event that any Environmental Requirement sets forth more than one standard, the standard to be applied shall be that which requires the lowest level of a Hazardous Substance. The Lessee agrees that, notwithstanding the foregoing, the Port Authority shall have the right at any time and from time to time, acting in its sole discretion, to designate any standard or standards of remediation or cleanup permitted or required under any Environmental Requirement, and such designation shall be binding upon the Lessee with respect to its obligations hereunder. Any actions of the Lessee under the foregoing shall be performed in a good, safe and workmanlike manner and shall minimize any impact on activities off the premises. The Lessee shall promptly provide to the Port Authority all copies of test results and reports generated in connection with such actions. 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.

Section 10. <u>Prohibited Acts</u>

(a) 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 which may result in the creation or commission or maintenance of such nuisance, waste or injury on the Premises or at the Airport.

(b) The Lessee shall not create nor permit to be caused or created upon the Premises any obnoxious odors or smokes, or noxious gases or vapors.

(c) 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, fuel system, electrical system, 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) The Lessee shall not itself do nor shall the Lessee give its permission to any other to do any act or thing upon the Premises or at the Airport (1) which will invalidate or conflict with any fire insurance, extended coverage or rental insurance policies covering the Premises or any part thereof, or the Airport or any part thereof, or (2) which, 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 Section 5 hereof. 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 Insurance Services Offices of New York and the National Fire Protection Association, 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 Section 39 hereof, 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 Section 5 hereof, 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) The Lessee shall not dispose of nor permit any one to dispose of any waste material (whether liquid or solid) by means of the toilets, manholes, sanitary sewers or storm sewers in the Premises or on the Airport except after treatment in installations or equipment included in plans and specifications submitted to and approved by the Port Authority.

(f) The Lessee shall not keep or store during any 24-hour period flammable liquids within any enclosed portion of the Premises 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) 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 or item of automotive equipment is equipped with a proper spark-arresting device which has been approved by the Port Authority.

(h) With the exception of a lunchroom for its employees, 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.

(i) 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, (1) that 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 (2) that

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.

(j) 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 (j) 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.

(k) The Lessee shall not fuel or defuel its automotive vehicles or other equipment in the enclosed portion of the Premises without the prior approval of the General Manager of the Airport.

(l) The Lessee shall not use any cleaning materials having a harmful or corrosive effect, on any part of the Premises.

(m) The Lessee shall not use or permit the use of any truss or structural supporting member of the building or roof or any part thereof for the storage of any material or equipment, or to hoist, lift, move or support any material or equipment or other weight or load, by means of said trusses or structural supporting members, without the prior written approval of the Port Authority.

Section 11. <u>Care, Maintenance, Rebuilding and Repair by the Lessee</u>

(a) The Lessee shall, throughout the term of this Lease, 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, except for reasonable wear and tear, perform all necessary preventive maintenance, including but not limited to, painting (the exterior of the structures on 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, subject

to and in accordance with the provisions of Section 39 hereof, 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; and to pay promptly the cost and expense of such repairs, replacements and maintenance;

(4) Without limiting its obligations elsewhere in this Section, the Lessee agrees to perform all decorating and painting (including redecorating and repainting) so that at all times the Premises and all parts thereof are in first class appearance and condition;

(5) 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 Sections 7 and 8 of this Agreement;

(6) Take such anti-erosion measures and maintain the landscaping on the Premises at all times in good condition, including but not limited to, periodic planting and 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, including the cross hatched area delineated on Exhibit A until such area is developed by the Port Authority;

(7) Be responsible for the maintenance and repair of all utility service lines, including but not limited to, service lines for the supply of low pressure water, gas service lines, electrical power and telephone conduits and lines, sanitary sewers and storm sewers, located upon the Premises and used by the Lessee exclusively or in common, or, subject to having access thereto, located off the Premises and used by the Lessee exclusively or in common; and

(8) Repair 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.

(b) In the event the Lessee fails to commence so to maintain, clean, repair, replace, rebuild or paint within a period twenty (20) 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 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.

Section 12. Insurance

(a) The Lessee shall, during the term of this Agreement, insure and keep insured to the extent of the full Replacement Cost thereof, all buildings, structures, improvements, installations, facilities and fixtures now or in the future located on the Premises when the same are located on the Premises against all risks of physical loss or damage, including loss against flood and earthquake, if available, and if not available, then against such hazards and risks as may now or in the future be included under a standard form of fire and extended coverage insurance policy available in the State of New York including damage or loss by windstorm, cyclone, tornado, hail, explosion, riot, civil commotion, aircraft, vehicles, flood, earthquake and smoke, and, if the Port Authority so requests, also covering nuclear property losses and contamination hazards and risks (if such coverage is or becomes available) 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 or the Superintendent of Insurance of The State of New York and the Lessee shall furthermore provide additional insurance with respect to the Premises covering any other property risk that the Port Authority may at any time during the term of this Agreement cover 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) In addition to all other policies of insurance required under this Lease, the Lessee shall also procure and maintain throughout the tem of this Lease (including any and all extensions) Business Interruption Insurance in such amount as shall be at least sufficient to cover, and applicable to, all fees, charges and other payments that are payable by the Lessee to the Port Authority under this Lease including rental expenses for a period of not less than three (3) years for any business interruption 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.

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

(d) In the event the Premises or any part thereof shall be damaged by any casualty against which insurance is carried pursuant to this Section 12, the Lessee shall promptly furnish to the Port Authority such information and data as may be necessary to enable the Port Authority to adjust the loss.

(e) The policies or certificates representing insurance covered by this Section

13 shall be delivered by the Lessee to the Port Authority upon execution of this Agreement by the Lessee and the policies or certificates representing the insurance covered by Section 2 (c)(15) shall be delivered by the Lessee to the Port Authority prior to the commencement of the Construction Work and each policy or certificate delivered shall bear the endorsement of or be accompanied by evidence of payment of the premium thereon and also contain a valid provision obligating the insurance company to furnish the Port Authority and The City of New York thirty (30) days' advance notice of the cancellation, termination, change or modification of the insurance evidenced by said policy or certificate. Any renewal policies or certificates shall be delivered to the Port Authority at least thirty (30) days before the expiration of the insurance, which such policies are to renew.

(f) Regardless, however, of the persons whose interests are insured, the proceeds of all policies covered by this Section 12 shall be applied as provided in Section 13; and the word "insurance" and all other references to insurance in said Section 13 shall be construed to refer to the insurance which is the subject matter of this Section 12, and to refer to such insurance only.

(g) The insurance covered by this Section 12 and by Section 2 (c)(15) shall be written by companies approved by the Port Authority, the Port Authority covenanting and agreeing not to withhold its approval unreasonably. All insurance coverages and policies required under these Sections may be reviewed by the Port Authority for adequacy of terms, conditions and limits of coverage at any time and from time to time during the period the Lease remains in effect. The Port Authority at any such time may make additions, deletions, amendments to or modifications of the above-scheduled insurance requirements and may require such other and additional insurance, in such reasonable amounts, against such other insurable risks and hazards, as the Port Authority may deem advisable and the Lessee shall promptly comply therewith.

Section 13. Damage to or Destruction of 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 available to the Port Authority and be used by the Lessee for that purpose.

(b) Minor Damage. If the Premises, or any part thereof, shall be damaged by fire, the elements, the public enemy or other casualty but not rendered untenantable or unusable for a period of ninety (90) days, the Premises shall be repaired with due diligence in accordance with the plans and specifications for the Premises as they existed prior to such damage by and at the expense of the Lessee and if such damage is covered by insurance, the proceeds thereof shall be made available to and be used by the Lessee for that purpose.

(c) Major Damage to or Destruction of the Premises. If the Premises, or any part thereof, shall be destroyed or so damaged by fire, the elements, the public enemy or other casualty as to be untenantable or unusable for ninety (90) days, or if within ninety (90) days after such damage or destruction the Lessee notifies the Port Authority in writing that in its opinion said Premises will be untenantable or unusable for ninety (90) days, then the Lessee shall proceed with due diligence to make the necessary repairs or replacements to restore such 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 the Port Authority and be used by the Lessee for such restoration.

(d) The obligation of the Lessee to repair or replace shall be limited to the amount of the insurance proceeds provided the Lessee has carried insurance to the extent and in accordance with Section 12 hereof. Any excess of the proceeds of insurance over costs of the restoration shall be retained by the Port Authority.

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

Section 14. Indemnity and Liability Insurance

(a) (1) The Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, agents, employees and representatives, from and against (and shall reimburse the Port Authority for the Port Authority's reasonable costs and expenses, including legal expenses, incurred in connection with the defense of) all claims and demands of third persons, including but not limited to, claims and demands for death or personal injuries, or for property damages, arising out of any default of the Lessee in performing or observing 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 of the acts or omissions of the Lessee, its officers, employees, guests, invitees and other persons who are doing business with the Lessee or who are at the Premises with the consent of the Lessee 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 willful acts 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) 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 and the City as an additional insured shall maintain and pay the premiums on a policy or policies of Commercial General Liability Insurance, including products-completed operations, Premises-operations, and covering bodily injury, including death, and property damage liability, Warehouseman's Legal Liability, and Fire Legal Liability, and providing for coverage in the limit set forth below; and Commercial Automobile Liability Insurance covering owned, non-owned and hired vehicles and including automatic coverage for newly acquired vehicles and providing for coverage in the limit set forth below; and Workers' Compensation Insurance in accordance with the requirements of law. All the aforesaid liability policy or policies 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 but such endorsement shall not limit, vary, change, or affect the protections afforded the Port Authority thereunder as an additional insured. In addition, all the aforesaid liability policy or policies of insurance shall also provide or contain an endorsement providing that the protections afforded the Port Authority thereunder with respect to any claim or action against the Port Authority by the Lessee shall be the same as the protections afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third person as if the Port Authority were the named insured thereunder. The said liability policy or policies of insurance, where applicable, shall also provide or contain a contractual liability endorsement covering the obligations assumed by the Lessee under paragraph (a) hereof.

	Minimum Limits
Commercial General Liability Combined single limit per occurrence for death, bodily injury and property damage liability:	$25,000,000
Commercial Automobile Liability (covering owned, non-owned and hired vehicles) combined single limit per occurrence for death, bodily injury and property damage liability:	$ 25,000,000

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

(c) All insurance coverages and policies required under this Section may be reviewed by the Port Authority for adequacy of terms, conditions and limits of coverage at any time and from time to time during the term of the letting hereunder. The Port Authority may, at any such time, require an increase in the minimum limits, or additions, deletions, amendments or modifications to the above-scheduled insurance requirements, or may require such other and additional insurance, in such reasonable amounts, against such other insurable hazards, as the Port Authority may reasonably deem required and the Lessee shall promptly comply therewith.

(d) As to the insurance required by the provisions of this Section a certified copy of the policies, or a certificate or certificates evidencing the existence thereof, or binders, shall be delivered by the Lessee to the Port Authority upon execution of this Lease and delivery thereof by the Lessee to the Port Authority and the policies or certificates representing the insurance covered by Section 2 (c)(12) shall be delivered by the Lessee to the Port Authority prior to the commencement of the Construction Work. Each policy, certificate or binder delivered as aforesaid shall bear the endorsement of or be accompanied by evidence of payment of the premium thereon. In the event a 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 thirty (30) 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 thirty (30) 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 delivered to the Port Authority.

Section 15. Signs

(a) Except with the prior written approval of the Port Authority, the Lessee shall not erect, maintain or display any signs or any advertising at or on the exterior parts of the Premises or in the Premises so as to be visible from outside the Premises or at or on any other portion of the Airport outside the Premises. Without in any way limiting the foregoing, the Lessee will be permitted to erect an exterior sign on the Premises after the Lessee has received the prior written approval of the Port Authority to do so. Interior signs affecting public safety and security shall be in accordance with established Port Authority standards.

(b) Upon the expiration or termination of the letting, the 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.

Section 16. 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.

Section 17. Additional Rent and Charges

If the Port Authority is required or elects to pay any sum or sums or incurs any obligations or expense by reason of the failure, neglect or refusal of the Lessee to perform or fulfill any 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 Section 4 hereof.

Section 18. Rights of Entry Reserved

(a) The Port Authority, by its officers, employees, agents, representatives and contractors shall have the right at all reasonable times to enter upon the Premises for the purpose of inspecting the same, for observing the performance by the 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.

(b) 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 persons other than the Lessee at the Airport, to maintain existing and future sewerage, utility, mechanical, electrical and other systems or portions thereof on the Premises, including but not limited to, systems for the supply of heat, water, gas, fuel, electricity and for the furnishing of fire-alarm, fire-protection, sprinkler, sewerage, drainage, telegraph and telephone service, including all lines, pipes, mains, wires, conduits and equipment connected with or appurtenant to such 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) 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 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) Nothing in this Section shall or 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 during the letting 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, willful acts of the Port Authority, its employees, agents and

representatives).

(e) At any time and from time to time during ordinary business hours within the six (6) months next preceding the expiration of the letting, the Port Authority, 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.

(f) If, during the last month of the letting, the Lessee shall have removed all or substantially all of its property from the Premises, the Port Authority may immediately enter and alter, renovate and redecorate the Premises.

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

Section 19. <u>Condemnation</u>

(a) (i) As used in this Section, the phrase "temporary interest," when used with reference to real property, shall mean an interest in such real property entitling the owner of such interest to the possession of such property (whether or not such interest includes or is co-extensive with an interest of the Lessee therein under this Agreement), for an indefinite term or for a term terminable at will or at sufferance or for a term measured by a war or an emergency or other contingency or for a fixed term expiring prior to the expiration date of this Lease; and the phrase "permanent interest," when used/ with reference to real property, shall mean an interest in such real property entitling the owner of such interest to possession thereof, other than a temporary interest as above defined, including, among other things, a fee simple and an interest for a term of years expiring on or after the expiration of this Agreement.

(ii) As used in this Section with reference to the Premises, the phrase "a material part" shall mean such a part of the Premises that the Lessee cannot continue to carry on or cause to be carried on the operations described in Section 5 hereof without using such part.

(b) (i) If, in the event of an acquisition by condemnation or the exercise of the power of eminent domain by any body having a superior power of eminent domain of a permanent interest in all or any part of the Premises pursuant to the terms of this Agreement (any such acquisition under this Section being hereinafter referred to as a "permanent taking"), the permanent taking covers all or a material part of the Premises this Agreement and the letting hereunder shall terminate and expire on the earlier of (1) the date the Lessee is deprived of physical possession thereof or (2) the date of such taking; all rentals, fees and payments due under this Agreement shall be apportioned and paid by the Lessee to the date of such termination.

(ii) In the event a permanent taking covers less than all or a material part of the Premises, this Agreement and the term of the letting hereunder shall be deemed terminated as to the part so taken as of the earlier of (1) the date the Lessee is deprived of physical possession of such part or (2) the date of such taking; and with respect to the part not taken, the letting shall continue in full force and effect and the Lessee shall continue to pay all rentals and other sums, charges and fees provided to be paid by the Lessee under this Agreement without any reduction or abatement, provided, however, that the basic rental referred to in Section 4 hereof shall be abated as provided in said Section 4.

(c) If a temporary interest in the Premises or in any part thereof shall be taken in condemnation or other eminent domain proceedings (such taking being hereinafter referred to as "a temporary taking") then this Agreement shall nevertheless continue in full force and effect except to the extent the Lessee may be prevented from so doing pursuant to the terms of the order of the condemning power and the Lessee shall continue to pay all rentals and other sums, charges and fees, if any, provided to be paid by the Lessee under this Agreement without any reduction or abatement therein. If such temporary taking is of a part only and the same shall damage any portion of the Premises, the Lessee at its cost and expense shall diligently repair any such damage and shall put such portion as nearly as possible in the condition thereof immediately prior to such taking.

(d) (i) In the event of a permanent taking of all or any part of the Premises, the Port Authority and the Lessee shall have the right to appear in the condemnation or eminent domain proceedings and to participate in any and all hearings, trials and appeals therein, for the purpose of protecting their interests hereunder. In any such proceeding to determine the value of the Premises so taken, the Port Authority and the Lessee shall together make one claim for their combined interest in the Premises and the building, fixtures, equipment, furnishings and other property constructed, installed or situated therein and thereon (to the extent compensable), and the net award received shall be paid as hereafter provided in this paragraph (d).

(ii) Nothing contained herein shall be deemed to affect in any way any claim the Port Authority may have for the value of any portion of the Airport not included within the Premises hereunder which may be affected by any taking described in this Section or shall serve to give the Lessee any interest in any such claim.

(iii) The rights of the Port Authority and the Lessee in and to the net award or awards upon any permanent taking of all or a material part of the Premises shall be determined as follows and in the following order of priority:

(1) The Port Authority shall be entitled to receive and retain an amount equal to its investment, if any, in the Premises so taken, it being understood by the parties that such investment may only arise pursuant to the request of the Lessee and covered by a supplement to this Lease prepared by the Port Authority and executed by the parties hereto.

(2) The Lessee shall be entitled to receive from the Port Authority an amount equal to the Lessee's unamortized capital investment in the Premises.

(3) The Port Authority shall be entitled to receive and retain an amount equal to the residual value of the Premises, which value shall be based on the projected net operating revenue of the Premises to the Port Authority after the expiration of the Lease, with such net operating revenues escalating over the remaining useful life of the Premises for so long as the Port Authority maintains a leasehold interest covering the Premises hereunder, with such valuation taking into account the effective date of lease termination due to condemnation.

(4) From the remainder of the award paid to the Port Authority, if any, the Port Authority shall be entitled to retain the same.

(iv) Upon a permanent taking of less than all or a material part of the Premises, the award paid to the Port Authority shall be made available to the Lessee for the repair or rebuilding of the buildings constructed thereon, and such portion of the award remaining, after providing for the repair or rebuilding of the buildings constructed thereon shall be distributed in accordance with the provisions of subparagraph (iii) hereof.

(v) Upon a temporary taking of all or any portion of the Premises, and subject to the Lessee's repair obligations as set forth in paragraph (c) hereof, the Lessee shall be entitled to receive from the Port Authority the full amount of the net award except for such portion of the award representing any period of the taking subsequent to the term of the letting hereunder which portion shall be paid to and retained solely by the Port Authority.

(e) (i) The phrase "unamortized capital investment" shall mean, for purposes of this Lease, the amount of the Lessee's investment in the Premises (excluding any personal property whatsoever) arising out of the performance by the Lessee of the Construction Work pursuant to and as set forth in Section 2 of this Lease with respect to the Premises after deduction therefrom of an amount equivalent to an allowance for depreciation and amortization. Such allowance will be computed on a straight-line basis over a period of ten (10) years commencing on the Completion Date.

(ii) The foregoing computation to be made shall not take into consideration the effect of accelerated amortization, if any, granted to or taken by the Lessee on its books or otherwise under the provisions of Section 168(a) of Title 26 USCA or similar legislation hereafter enacted.

(iii) For purposes of this paragraph (e), the Lessee's investment in the Premises shall be equal to the sum of: (1) the amounts paid by the Lessee to independent contractors for work actually performed and labor and materials actually furnished in connection with the construction of the Cargo Facility; and (2) the payments made and expenses incurred by

the Lessee, in connection with such construction, for engineering, architectural, professional and consulting services, the supervision of construction, and other customary and reasonable fees and expenses associated with the financing hereunder, provided, however, that such payments and expenses pursuant to this item (2) shall not exceed 15% of the amounts described in item (1) hereof; in each case, as the above-mentioned amounts, payments and expenses are evidenced, from time to time, by certificates of a responsible fiscal officer of the Lessee, sworn to before a Notary Public and delivered to the Port Authority, which certificates shall (a) set forth, in reasonable detail, the amounts paid to specified independent contractors, the payments made to other specified persons and other expenses incurred by the Lessee, which have not previously been reported in certificates delivered to the Port Authority, (b) have attached thereto reproduction copies or duplicate originals of the invoices of such independent contractors and other persons acknowledging the receipt by them of such amounts and payments, and (c) certify that the amounts, payments and expenses therein set forth constitute portions of the Lessee's investment in the Premises for the purposes of this Lease.

(iv) The sole and entire amount to be paid by the Port Authority to the Lessee from the said remainder of the award under Section 19(d)(iii)(2) shall be (1) in the event of a taking of all of the said Premises, an amount up to the unamortized capital investment, if any, of the Lessee in the Premises, or, (2) in the event of a taking of less than all of the said Premises, an amount equal to an appropriate portion of the unamortized capital investment, if any, of the Lessee in so much of the Premises as are taken. However, the Port Authority shall make such payment to the Lessee only if the amount to be paid by the Port Authority will constitute "unamortized Port Authority funds other than bond proceeds or Federal or State grants expended for capital improvements at the municipal air terminals," within the meaning of said phrase as used in Section 23, I, D of the Basic Lease or if a sum not less than said amount can be retained by the Port Authority (and not be required to be paid to The City of New York) out of the damages or award in respect to such taking without violation of any obligation of the Port Authority to The City of New York under the Basic Lease. Such payment shall be made as of the date upon which such body having superior power of eminent domain obtains possession of any such permanent interest in the demised Premises or after receipt of said award by the Port Authority, whichever shall last occur, and, upon such payment, the Lessee (except with respect to its personal property) shall not have any claim or right to claim or be entitled to any portion of the amount which may be awarded as damages or paid as a result of such taking, and all rights to damages, if any, of the Lessee (except for damages to its personal property) by reason thereof are hereby assigned to the Port Authority.

(v) If, however, the amount to be paid by the Port Authority (the unamortized capital investment, as hereinabove defined, if any, of the Lessee in the Premises) for such leasehold interest will not constitute "unamortized Port Authority funds other than bond proceeds or Federal or State grants expended for capital improvements at the municipal air terminals," within the meaning of said phrase as used in Section 23, I, D of the Basic Lease or if a sum not less than such amount cannot otherwise be retained by the Port Authority (and not be required to be paid to The City of New York) out of the damages or award in respect to such

taking without violation of any obligation of the Port Authority to The City of New York under the Basic Lease, then the aforesaid agreement to make such payment to the Lessee shall be null and void; and in any such event, the Lessee shall have the right to appear and file its claim for damages in the condemnation or eminent domain proceedings, to participate in any and all hearings, trials and appeals therein, and to receive such amount as it may lawfully be entitled to receive as damages or payment as a result of such taking because of its leasehold interest in the Premises up to, but not in excess of, an amount equal to the unamortized capital investment (as hereinabove defined), if any, of the Lessee in the Premises.

(vi) In the event of the taking of all of the Premises and if the Lessee has no unamortized capital investment in the Premises at the time of the taking, then the aforesaid agreement to make such payment to the Lessee shall be null and void; and in that event, this Lease and all rights granted by this Lease to the Lessee to use or occupy the Premises for its exclusive use or for its use in common with others at the Airport and all rights, privileges, duties and obligations of the parties in connection therewith or arising thereunder shall terminate as of the date of the taking, and in that event, the Lessee (except with respect to its personal property) shall not have any claim or right to claim or be entitled to any portion of the amount which may be awarded as damages or paid as a result of such taking, and all rights to damages, if any, of the Lessee (except for damages to its personal property) by reason thereof are hereby assigned to the Port Authority.

(f) In the event of a taking hereunder, the Lessee hereby agrees to deliver possession of all or such portion of the Premises so taken upon the effective date of such taking in the same condition as that required for the delivery of the Premises upon the date originally fixed by this Agreement for the expiration of the term of the letting hereunder. No taking by or conveyance to any governmental authority as described herein shall be or be construed to be an eviction of the Lessee or a breach of this Agreement or be made the basis of any claim by the Lessee against the Port Authority for damages, consequential or otherwise.

Section 20. <u>Assignment and Sublease</u>

(a) Except as otherwise permitted by the terms of this Agreement, the Lessee covenants and agrees that it will not sell, convey, transfer, mortgage, pledge or assign this Agreement or any part thereof, or any rights created thereby or the letting thereunder or any part thereof without the prior written consent of the Port Authority and the payment of the then established consent and legal fees therefor.

(b) The Lessee shall not sublet the Premises or any part thereof without the prior written consent of the Port Authority and, if the subletting is not to an affiliate of the Lessee (that is, an entity controlling, controlled by, or under common control with the Lessee), the payment of the then prevailing fee (currently 10% of the gross amount payable to the Lessee under the sublease), which fee is then being applied to other similarly situated lessees at the Airport on a non-discriminatory basis.

(c) Any sale, assignment, transfer, sublease, 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 thereof, or any license or other interest of the Lessee therein not made in accordance with the provisions of this Agreement shall be null and void *ab initio* and of no force or effect.

(d) If, without the prior written consent of the Port Authority, the Lessee assigns, sells, conveys, transfers, mortgages, pledges or sublets in violation hereof 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 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; nor shall the granting of the Port Authority's approval and consent pursuant to paragraph (a) or (b) of this Section be construed to be a waiver or release by the Port Authority from the further performance by the Lessee of the covenants contained herein.

(e) Any consent granted by the Port Authority to any assignment or subletting or to any sublessee pursuant to the provisions hereof shall not be construed or deemed to release, relieve or discharge any succeeding assignee, successor or transferee of 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 in the event it wishes to sell, convey, transfer, mortgage, pledge, sublet or assign this Agreement or any part thereof, or any rights created thereby or the letting hereunder or any part thereof; and such assignee, successor or transferee or other person claiming any right, title or interest in this Agreement shall not sell, convey, transfer, mortgage, pledge, sublet or assign this Agreement or any part thereof, or any rights created thereby or the letting there-under or any part thereof without such prior written consent of the Port Authority.

(f) The Lessee shall not use or permit any person to use the Premises or any portion thereof except in accordance with the provisions of Section 8 hereof and this Section nor for any purpose other than the purposes stated in Section 5 hereof. Except as provided 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, representatives, contractors, guests, visitors and business invitees.

Section 21. Obligations in Connection with the Conduct of the Lessee's Business

(a) Use its best efforts in every proper manner to develop and increase the business conducted by it hereunder;

(b) Not divert or cause or allow to be diverted, any business from the Airport;

(c) Maintain, in accordance with accepted accounting practice, during the term of the letting hereunder, for one (1) year after the expiration or termination thereof, and for such further period until the Lessee shall receive written permission from the Port Authority to do otherwise, records and books of account recording all transactions of the Lessee at, through, or in anyway connected with the Airport (which records and books of account are hereinafter be called the "Lessee's Records"). The Lessee's Records shall be kept at all times within the Port of New York District.

(d) Permit in ordinary business hours during the effective term of the letting, for one year thereafter, and during such further period as is mentioned in the preceding subdivision (c), the examination and audit by the officers, employees and representatives of the Port Authority of (i) the records and books of account of the Lessee and (ii) also any records and books of account of any company which is owned or controlled by the Lessee, or which owns or controls the Lessee, if said company performs services, similar to those performed by the Lessee, anywhere in the Port of New York District. The Lessee shall make available to the Port Authority within the Port of New York District for examination and audit by the Port Authority pursuant to this paragraph (d) those records and books of account described in (i) which are not required by paragraph (c) above to be kept at all times in the Port of New York District and those records and books of account described in (ii) above (all of the foregoing being hereinafter called the "Other Relevant Records" and the Lessee's Records and the Other Relevant Records being hereinafter collectively referred to as the "Records").

(e) 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 cash registers;

(f) Furnish on or before the twentieth day of each month following the effective date of this Agreement a sworn statement of gross receipts arising out of operations of the Lessee hereunder for the preceding month;

(g) Furnish on or before the twentieth day of April of each calendar year following the effective date of this Agreement a statement of all gross receipts arising out of operations of the Lessee hereunder for the preceding calendar year certified, at the Lessee's expense, by a certified public accountant;

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

(i) Without implying any limitation on the right of the Port Authority to

terminate this Agreement for cause for the breach of any term or condition thereof, the Lessee understands that compliance by the Lessee with the provisions of paragraphs (c) and (d) above are of the utmost importance to the Port Authority in having entered into the percentage fee arrangement under this Agreement and in the event of the failure of the Lessee to maintain, keep within the Port District or make available for examination and audit the Lessee's Records in the manner and at the times or location as provided in this Section then, in addition to all and without limiting any other rights and remedies of the Port Authority, the Port Authority may:

(i) Estimate the gross receipts of the Lessee 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 Lessee's fees based thereon to be payable to the Port Authority when billed; or

(ii) If any such Records have been maintained outside of the Port District, but within the Continental United States then the Port Authority in its sole discretion may (i) require such Records to be produced within the Port District or (ii) examine such Records at the location at which they have been maintained and in such event 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, or

(iii) If any such Records have been maintained outside the continental United States then, in addition to the costs specified in paragraph (2)(ii) above, the Lessee shall pay to the Port Authority when billed all other costs of the examination and audit of such Records 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.

(j) The foregoing auditing costs, expenses and amounts set forth in subparagraphs (ii) and (iii) of paragraph (i) above shall be deemed additional rental under this Agreement payable to the Port Authority with the same force and effect as all other rentals payable hereunder.

(k) In the event that upon conducting an examination and audit as described in this Section the Port Authority determines that unpaid amounts are due to the Port Authority by the Lessee, the Lessee shall be obligated, and hereby agrees, to pay to the Port Authority a service charge in the amount of five percent (5%) of each amount determined by the Port Authority audit findings to be unpaid. Each such service charge shall be payable immediately upon demand (by notice, bill or otherwise) made at any time therefor by the Port Authority. Such service charge (s) shall be exclusive of, and in addition to, any and all other moneys or amounts due to the Port Authority by the Lessee under this Agreement or otherwise. No acceptance by the Port Authority of payment of any unpaid amount or of any unpaid service charge shall be deemed a waiver of the right of the Port Authority of payment of any late

charge(s) or other service charge(s) payable under the provisions of this Section with respect to such unpaid amount. Each such service charge shall be and become fees, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the fees to be paid. Nothing in this Section is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) any rights of the Port Authority under this Agreement, including, without limitation, the Port Authority's rights to terminate this Agreement or (ii) any obligations of the Lessee under this Agreement.

Section 22. <u>Termination by the Port Authority</u>

(a) 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 of any state thereof, provided that if any such judgment or order is stayed or vacated within sixty (60) days after the entry thereof, any notice of 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 thirty (30) 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 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, regardless of the fault of the Lessee; or

(5) Any lien is filed against the Premises because of any act or omission of the Lessee and shall not be discharged of record, or by bonding through an insurance company duly authorized to write such bonds in New York State, within thirty (30) days

after the Lessee has received notice thereof; or

(6) Except as expressly permitted in Section 20 of this Agreement, 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 sixty (60) days after the filing thereof; or

(8) Except as otherwise provided in Section 20 hereof, the Lessee 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 fees or to make any other payment required hereunder for a period of fifteen (15) days after receipt of notice by it from the Port Authority to make such payment; 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 there-after during the continuance thereof, the Port Authority may upon twenty (20) days' notice terminate the rights of the Lessee here-under 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) No acceptance by the Port Authority of rentals, fees, charges or other payments in whole or in part for any period or periods after a default of any of the terms, covenants and conditions hereof to be performed, kept or observed by the Lessee shall be deemed a waiver of any right on the part of the Port Authority to terminate the letting.

(c) No waiver by the Port Authority of any default on the part of the Lessee in performance of any of the terms, covenants or conditions hereof to be performed, kept or observed by the Lessee shall be or be construed to be a waiver by the Port Authority of any other

or subsequent default in performance of any of the said terms, covenants and conditions.

(d) 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.

Section 23. Right of Re-entry

The Port Authority shall, as an additional remedy upon the giving of a notice of termination as provided in Section 22 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 other-wise. 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 24. 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 25. Survival of the Obligations of the Lessee

(a) In the event that the letting shall have been terminated in accordance with a notice of termination as provided in Section 22 hereof, 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 Section 23 hereof, all the rental 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 of 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) The amount of damages for the period of time subsequent to termination or cancellation (or re-entry, regaining or resumption of possession) on account of the Lessee's rental

obligations, shall be the sum of the following:

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

(2) An amount equal to all expenses reasonably incurred by the Port Authority in connection with regaining possession and restoring and reletting the Premises, for legal expenses, putting the Premises in order, including but not limited to, cleaning, decorating and restoring (on failure of the Lessee to restore), maintenance and brokerage fees.

Section 26. <u>Reletting by the Port Authority</u>

The Port Authority upon termination or cancellation pursuant to Section 22 hereof, or upon any re-entry, regaining or resumption of possession pursuant to Section 23 hereof, may occupy the Premises or may relet the Premises, and shall have the right to permit any person, firm or corporation to enter upon the Premises and use the same. Such reletting may be of part only of the Premises or a part thereof together with other space, and for a period of time the same as or different from the balance of the term hereunder remaining, and on terms and conditions the same as or different from those set forth in this Agreement. The Port Authority shall also, upon termination or cancellation pursuant to the said Section 22, or upon its re-entry, regaining or resumption of possession pursuant to the said Section 23, 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 (except to the extent the same have been paid or reimbursed by the Lessee pursuant to subparagraph (b) (2) of Section 25 hereof). No such reletting shall be or be construed to be an acceptance of a surrender.

Section 27. <u>Remedies to be Non-Exclusive</u>

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 28. 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, except for reasonable wear arising from the permitted use of the Premises by the Lessee which does not cause or tend to cause deterioration of the Premises or adversely affect the efficient or proper utilization thereof, 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 29. 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 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 30. Effect of Basic Lease

(a) The Lessee acknowledges that it has received, and is familiar with the contents of, a copy of the Basic Lease. The rights of the Port Authority in the Premises are those granted to it by the Basic Lease, and no greater rights are granted or intended to be granted to the Lessee than the Port Authority has power thereunder to grant.

(b) In accordance with the provisions of the Basic Lease, the Port Authority and the Lessee hereby agree as follows:

(1) This Lease 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 Lease, the Lessee on the termination of the Basic Lease will, at the option of The City of New York, attorn to, or enter into a direct lease on

identical terms with, the City;

(4) The Lessee shall indemnify the City with respect to all matters described in Section 31 of the Basic Lease;

(5) The Lessee shall not use the premises hereunder 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 Lease, which, after the giving of reasonable notice, shall provide the Port Authority with the right to terminate this Lease 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 Lease.

Section 31. <u>Removal of Property</u>

The Lessee shall have the right at any time during the letting to remove its equipment, inventories, trade fixtures and other fixtures removable without material damage to the Premises, and other personal property from the Premises. If the Lessee shall fail to remove its property on or before the termination or expiration of the letting, the Port Authority may remove such property to a public warehouse for deposit or retain the same in its own possession, and sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage and sale, second to any sums owed by the Lessee to the Port Authority, with any balance remaining to be paid to the Lessee; if the expenses of such removal, storage and sale shall exceed the proceeds of sale, the Lessee shall pay such excess to the Port Authority upon demand.

Section 32. <u>Brokerage</u>

The Lessee and the Port Authority represent and warrant to each other that no broker has been concerned on its respective behalf in the negotiation of this Agreement and that there is no broker who is or may be entitled to be paid a commission in connection therewith. The Lessee and the Port Authority shall indemnify and save each other harmless 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 or to the Port Authority, as the case may be, in connection with the negotiation and execution of this Agreement.

Section 33. Limitation of Rights and Privileges Granted

(a) 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
thereof, than the rights and privileges expressly and specifically granted hereby.

(b) The Premises are let to the Lessee and the Lessee takes the same subject to all the following: (i) easements, restrictions, reservations, covenants and agreements, if any, to which the Premises may now be subject, and rights of the public in and to any public street; (ii) rights, if any, of any enterprise, public or private, which is engaged in furnishing heating, light, power, telegraph, telephone, steam, or transportation services and of The City of New York and State of New York; and (iii) 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 34. Notices

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 shall be in writing, and all such notices and requests shall be personally delivered to the duly designated officer or representative of such party or delivered to the 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. 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 and requests may be served. Until further notice, the Port Authority hereby designates its Executive Director and the Lessee designates its representative named on the first page hereof as their respective officers upon whom notices and requests may be served, and the Port Authority designates its office at 225 Park Avenue South, New York, 10003, and the Lessee designates its office as 212 North Sangamon Street, Suite 1A, Chicago, Illinois 60607 as their respective offices where notices and requests may be served. If mailed, the notices herein required to be served shall be deemed effective and served as of the date three (3) days after the certified or registered mailing thereof.

Section 35. Non-Discrimination

(a) Without limiting the generality of any of the provisions of the 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 grounds of race, creed, color, national origin, sex, age, disability or marital status shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises by it, (2) that in the construction of any improvements on, over, or under the Premises and furnishing of services thereon by it, no person on the ground

of race, creed, color, national origin, sex, age, disability or marital status 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) The Lessee shall include the provisions of paragraph (a) of this Section in every agreement or concession it may make pursuant to which any person or persons, other than the 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) 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 non-discrimination provisions the Port Authority may take 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 the Agreement and the letting hereunder with the same force and effect as a termination under the Section of this Agreement providing for 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; and as to any or all the foregoing, the Port Authority may take such action as the United States may direct.

(d) 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 non-compliance 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) Nothing contained in this Section shall grant or 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 36. <u>Affirmative Action</u>

(a) 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, sex, age, disability or marital status 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.

(b) 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 apprenticeships and on-the-job training;

(c) In addition to and without limiting the foregoing, and without limiting the provisions of subparagraphs (18) and (19) of paragraph (c) of Section 2 hereof and Schedule E hereof, 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 of the letting hereunder 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. 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 execution of this Agreement and the delivery thereof by the Lessee to the Port Authority. The Lessee shall incorporate in its said program such revisions and changes which the Port Authority initially or from time to time may require. The Lessee throughout the term of the letting hereunder 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 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.

(d) "Minority" as used herein shall be as defined in paragraph II(c) of Part I of Schedule E.

(e) In the implementation of this Section 36 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.

(f) 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.

(g) Nothing in this Section 36 shall grant or be deemed to grant to the Lessee the right to make any agreement or award for concessions or consumer services at the Airport.

Section 37. <u>The Lessee's Ongoing Affirmative Action-Equal Opportunity Commitment</u>

(a) 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.

(b) In addition to and without limiting the foregoing, and without limiting any other provisions hereof, it is hereby agreed that the Lessee in connection with its continuing operation, maintenance and repair of the Premises, or any portion thereof, as provided in this Agreement, and in connection with every award or agreement for concessions or consumer services at the Airport, shall throughout the term of the letting hereunder 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 its said extensive Affirmative Action program, including the specific affirmative action steps to be taken by the Lessee to meet its aforesaid commitment, within eighteen (18) months after the execution of this Agreement by the Lessee and the delivery thereof to the Port Authority, to the Port Authority for its review and approval. The Lessee shall incorporate in its said program such revisions and changes which the Port Authority initially or from time to time may reasonably require. The Lessee throughout the term of the letting hereunder 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 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.

(c) (1) 'Minority' as used herein shall have the following meaning:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) 'Minority Business Enterprise' (MBE) as used herein shall have the following meaning: any business enterprise which is at least fifty-one percent owned by, or in the case of a publicly owned business, at least fifty-one percent of the stock of which is owned by citizens or permanent resident aliens who are minorities and such ownership is real, substantial and continuing.

(3) 'Women-owned Business Enterprise' (WBE) as used herein shall have the following meaning: any business enterprise which is at least fifty-one percent owned by, or in the case of a publicly owned business, at least fifty-one percent of the stock of which is owned by women and such ownership is real, substantial and continuing.

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

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

(ii) 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.

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

(iv) 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.

(v) 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.

(vi) Insuring that provision is made to provide progress payments to MBEs and WBEs on a timely basis.

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

(d) 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 under the Section of this Agreement providing for 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.

(e) 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.

(f) 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.

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

Section 38. <u>Other Construction by the Lessee</u>

(a) Except as expressly provided in Section 2 hereof, the Lessee shall not erect any structures, make any improvements or do any construction on the Premises or alter, modify, or make additions or improvements or repairs to or replacements of any structure now existing or built at any time during the letting, or install any fixture (other than trade fixtures, removable

without material damage to the freehold, any such damage to be immediately repaired by the Lessee) without the prior written approval of the Port Authority and in the event any construction, improvement, alteration, modification, repair, replacement or addition, is made without such approval 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. No provision hereof or elsewhere in the Lease shall be deemed to grant any right whatsoever to any party other than the Lessee to erect any structures, make any improvements or do any construction on the Premises or alter, modify, or make additions, improvements, repairs to or replacements of any structure now existing or built at any time during the letting, or install any fixture (other than trade fixtures removable without material damage to the Premises, any damage to the Premises caused by such removal to be immediately repaired by the Lessee) without the prior written approval by the Port Authority of a tenant alteration application to be submitted by the Lessee to the Port Authority.

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

Section 39. <u>Place of Payments</u>

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 via the following wire transfer instructions:

Bank: Commerce Bank
Bank ABA Number: 031201360
Account No.: Ex. 1/4

or to such other address as may be substituted therefor by notice by the Port Authority to the Lessee from time to time.

Section 40. Construction and Application of Terms

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

(b) The terms, provisions and obligations contained in the Exhibit 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.

Section 41. Non-liability of Individuals

No Commissioner, director, shareholder, 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.

Section 42. Certain Environmental Testing and Clean-up Obligations

(a) (1) Attached hereto, hereby made a part hereof is an exhibit marked "Exhibit M" which consists of a "J.F.K. International Airport, Building 146, Environmental Subsurface Baseline Investigation, Final Report, dated April 2007" including its appendices and compilation of reports and tests results of subsurface soil and groundwater samples taken on various dates as set forth in Exhibit M from a total of nineteen (19) soil borings setting forth the levels of PP + 40 (Priority Pollutant plus 40 compounds), including total xylenes, methyl tertiary butyl ether (MTBE) tertiary butyl alcohol (TAB), total petroleum hydrocarbons (TPHC), ethylene glycol and propylene glycol, all as more specifically named and set forth in Exhibit M.

(2) All of the aforesaid items for which the said samples were tested as set forth in Exhibit M ("Exhibit M") are hereinafter referred to as the "Analyzed Items."

(3) The Port Authority hereby represents to the Lessee and the Lessee acknowledges and agrees that the aforesaid Exhibit M as attached hereto contains and sets forth tests results and a report of subsurface environmental investigations performed at the Premises by or on behalf of the Port Authority prior to the execution of this Lease and for purposes of establishing the Initial Existing Condition as hereinafter defined.

(4) Further, the Lessee may, subject to the terms and conditions of Section 2 hereof and subject to the coordination requirements of subparagraph (b) (4) below, take other samples from various locations on the Premises selected by the Lessee and agreed to by the Port Authority, which shall be analyzed by qualified personnel of an independent laboratory, retained by the Lessee at its sole cost and expense, and mutually acceptable to the Port Authority and the Lessee, in accordance with State and Federal laws, ordinances, rules, regulations, requirements, orders or directions for petroleum and/or hazardous substance characterization and the results of such independent laboratory shall be set forth in a report prepared by such laboratory and upon delivery of such report and tests results to the Port Authority, such report and test results shall become part of Exhibit M and of the Current Remediation, as hereinafter defined, on condition and provided that: (i) the said sampling and testing were done in accordance with a methodology approved by the Port Authority; (ii) no part of such test results nor any such report shall become part of Exhibit M or of the Initial Existing Condition or of the Current Remediation unless all such samples, test results and the report are completed prior to the Completion Date, as hereinbefore defined in Section 2 hereof; (iii) that should such test results and report list contaminants not now set forth in Exhibit M as attached hereto on the execution date of this Lease or indicate a higher level of any of the Analyzed Items set forth in said Exhibit M then such contaminant or contaminants and such higher level or higher levels shall become part of Exhibit M only if the Lessee proves to the reasonable satisfaction of the Port Authority that such contaminant or contaminants and such higher level or higher levels existed in the Premises prior to the effective date of this Lease and provided, further, that such contaminant or contaminants and such higher level or higher levels were not caused by or did not result from any act or omission of the Lessee or of any of its agents, contractors or representatives; it being expressly understood and agreed that any such newly discovered contaminant or contaminants and such higher level or higher levels not so made a part of Exhibit M shall be included within the Lessee's sole responsibilities for contaminants and remediation at the Premises under paragraph (c) hereof.

(5) The said reports and tests results set forth in Exhibit M (including any supplemental reports and test results as may be called for under paragraph (b) hereof) for the purposes of this Lease, the levels of the Analyzed Items in the soil and upper aquifer in the Premises at the commencement of the term of the letting hereunder and are herein called the "Initial Existing Condition," and said reports and tests results produced in connection therewith and, together with the results of any subsequent reports and tests which may be made supplemental to or which may supersede those in Exhibit M or of the applicable portions thereof as provided for in paragraph (d) below as applied by the aforesaid methodology to all portions of the Premises, are, for purposes of this Lease, hereinafter called the "Existing Condition," provided, however, in no event shall the level of any Analyzed Item in any Existing Condition be above the lower of (i) the level of such Analyzed Item as set forth in the Initial Existing Condition, or (ii) the lowest level to which such Analyzed Item has been remediated to as shown in a succeeding Existing Condition.

(b) (1) It is hereby recognized by the parties hereto that as a result of the reporting of the Initial Existing Condition to the New York State Department of Environmental Conservation (hereinafter called the "DEC") the DEC may require remediation of the Initial Existing Condition including all appropriate borings and wells required for said remediation (which remediation is herein called the "Current Remediation") and that the Port Authority and the DEC are currently undertaking discussions to establish a level to which each of the Analyzed Items in the ground water and soil in the Premises must be remediated by the Current Remediation (which level or levels as established for each of the Analyzed Items is hereinafter called a "Clean-Up Level"). It is understood and agreed solely with respect to and solely during and for the period of the Lessee's performance of the Construction Work under Section 2 hereof, that said Current Remediation shall, as between the Lessee and the Port Authority, be deemed to include the remediation as may be required by the DEC of any contaminant or contaminants discovered by the Port Authority during the performance of the Current Remediation or by the Lessee during the performance of the Construction Work and not now set forth in Exhibit M, provided, however, that such contaminant or contaminants are determined by the Port Authority to have been existing in the Premises prior to the effective date of this Lease and provided, further, that such contaminant or contaminants were not caused by or did not result from any act or omission of the Lessee or of any of its agents, contractors or representatives; and Exhibit M shall be supplemented to include the reports and test results of any such newly discovered contaminant or contaminants so included in the Current Remediation in accordance with the foregoing; it being expressly understood and agreed that any such newly discovered contaminant or contaminants not so made a part of the Current Remediation shall be deemed included within the Lessee's sole responsibilities for contaminant(s) and remediation at the Premises under paragraph (c) hereof. Neither the provisions of this Section 40 nor any reference herein to the DEC or to the Port Authority's Current Remediation or to any governmental agency which may succeed to the DEC shall or shall be construed as any consent by the Port Authority to the jurisdiction of such agency over the Port Authority or its operations at the Airport or any waiver of any Port Authority position or policy with respect thereto.

(2) The Port Authority hereby recognizes that the Lessee may be performing the Construction Work, or portions thereof as the case may be, under Section 2 hereof concurrently with the performance of the Current Remediation and the Lessee hereby likewise recognizes that the performance of the Current Remediation may occur concurrently with the Lessee's performance of the Construction Work. The Port Authority agrees to consult with the Lessee in the scheduling of the Current Remediation so as to provide minimum interference with the Lessee's scheduling of the Construction Work and the Lessee likewise agrees to consult with the Port Authority in the Lessee's scheduling of the Construction Work, subject to the requirements of the DEC for the Current Remediation, so as to provide minimum interference with the Current Remediation.

(3) As between the Lessee and the Port Authority, and based on the Lessee's comprehensive plan and design of the Construction Work under Section 2 hereof, as and when approved by the Port Authority and as further described in and subject to paragraph (c)

below, the Lessee shall not be responsible for the Current Remediation, except that the Lessee shall be responsible for any and all increased expenses including without limitation all costs and expenses relating thereto necessary, required, or appropriate as a result of, caused by, incidental to or triggered by any change in the said Lessee's comprehensive plan or any change in the design, method or scope of the Construction Work required under Section 2 hereof unless such change had theretofore received the prior review and the written approval of the Port Authority including the Port Authority's written consent in a writing signed by the Port Authority's Director of Aviation to the impact of such change on the Current Remediation (which remediation costs and expenses for which the Lessee is solely responsible is hereinafter called the "Lessee's Incremental Costs of the Current Remediation").

(4) Without limiting the generality of any provision of the Lease, in the event that any applicable governmental or regulatory environmental requirements set forth more than one compliance standard, the Port Authority and the Lessee agree that the standard or standards to be applied in connection with any obligation they each may have under the Lease with respect to environmental requirements shall be that which requires or permits the lowest level of a hazardous substance; provided, however, in the event that, after the completion of the Current Remediation, such lowest level of 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 Facility or upon any operations or activities conducted or to be conducted on the Premises or the Facility, then if qualified personnel of an independent laboratory, mutually acceptable to the Port Authority and the Lessee, and retained at the sole cost and expense of the Lessee, concludes the Lessee is responsible for such hazardous substances, the Lessee shall remediate and clean up to such a level so that there is no such restriction placed upon the use and occupancy of the Premises or the Facility or upon any operations or activities conducted or to be constructed on the Premises or the Facility.

(5) The Lessee further agrees that, 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 or cleanup permitted or required under any such environmental requirements, and such designation shall be binding upon the Lessee with respect to its obligations under the Lease with respect to such environmental requirements.

(c) Without limiting the generality of paragraph (b) hereof or any other term or provision of the Lease, the Lessee agrees to accept the Premises "as is" and, except as set forth in subparagraphs (1) through (5) below, to be solely responsible for any and all contaminants, and any and all soil and ground water or other contamination and remediation thereof, in and on the Premises, including without limitation, all costs and expenses thereof (including, without limitation the Lessee's Incremental Costs of the Current Remediation) and any and all claims, penalties or other expenses relating thereto. It is expressly understood and agreed that the proper handling, delivery, treatment, storage, transportation, disposal and depositing (all of the foregoing being hereinafter collectively called "Disposal"), whether on or off the Airport, of any

soil, dirt, sand, water or other matter excavated, disturbed or removed by the Lessee (or by any contractor or contractors of the Lessee) at or from the Premises (or any other area of the Airport) at any time or times including, without limitation, any and all Disposal of such matter in connection with the performance of the Construction Work and any and all remediation and Disposal of such matter and any and all other remediation, Disposal and cleanup (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 such matter or arising therefrom, and the taking or doing of any and all other action or actions necessary, required or appropriate in connection therewith, and in accordance with all Environmental Requirements, shall be the sole and complete responsibility of the Lessee including, without limitation, all costs and expenses thereof and any and all claims, penalties or 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 an Analyzed Item or whether any of the same is at a level or levels above or below the level or levels of the Existing Condition or whether there has or has not been any 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 the Lease. Notwithstanding any other provision hereof to the contrary, the Lessee shall not be responsible for the following remediation of and contamination in and on the Premises:

(1) the Current Remediation except for the Lessee's Incremental Costs of the Current Remediation;

(2) contamination of soil and ground water caused by the acts and omissions of the Port Authority;

(3) remediation (exlusive of the Lessee's Incremental Costs of the Current Remediation) of the Existing Condition required solely by the DEC (or such other applicable governmental agency, if any, succeeding to the DEC and which has jurisdiction over the operations of the Port Authority at the Airport or with whose governmental requirements the Port Authority has agreed to conform) lowering below the Clean-Up Level for an Analyzed Item the level the DEC will accept on the Premises of such Analyzed Item;

(4) contamination caused solely by the flow of ground water or the leaching of soil from outside the Premises;

(5) contamination and contaminants existing in or on the Premises prior to the effective date of this Lease which are discovered subsequent to the establishment of the Existing Condition and are not listed in Exhibit M and the remediation thereof; except that the Lessee shall be solely responsible for such contamination and contaminants and the remediation thereof if (i) the Lessee is not able to or does not establish or prove to the satisfaction of the Port Authority that such contamination and contaminants in fact existed in or on the Premises prior to the effective date of this Lease, or (ii) if any such contamination or