



**THE PORT AUTHORITY OF NY & NJ**

Daniel D. Duffy  
*FOI Administrator*

July 31, 2012

Ms. Kai Pan  
Integra Realty Resources  
5 Riverway, Suite 200  
Houston, TX 77056

Re: Freedom of Information Reference No. 13300

Dear Ms. Pan:

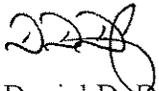
This is a response to your July 5, 2012 request, which has been processed under the Port Authority's Freedom of Information Code (the "Code") for a copy of Host Hotels Lease No. ANA-037 and the supplement signed in 2011 for Building 346 and 12.57 acres at EWR.

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/13300-LPA.pdf>. Paper copies of the available records are available upon request.

Certain material responsive to your request is exempt from disclosure pursuant to Exemption (1) 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

# HOST HOTELS & RESORTS, L.P.

Lease No. ANA-037

Supplement No. 3

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## Attachments

Schedule E	MBE/WBE Program
Schedule F	Local Business Enterprises Program
Schedule G	Airport Concession Disadvantaged Business Enterprise (ACDBE) Program
Exhibit Supp. 3-A	Ballroom

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

Port Authority Lease No. ANA-037  
(dated as of February 10, 1983)  
Supplement No. 3  
Port Authority Facility - Newark  
Liberty International Airport

### SUPPLEMENTAL AGREEMENT

THIS AGREEMENT, dated as of October 1, 2011 (the "**Effective Date**"), by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (the "**Port Authority**"), and HOST HOTELS & RESORTS, L.P. (formerly known as "Host Marriott, L.P."), a Delaware limited partnership (the "**Lessee**"),

WITNESSETH, That:

WHEREAS, the Port Authority and Host Marriott Corporation, formerly known as "Marriott Corporation", heretofore entered into an agreement of lease identified above by Port Authority Lease Number and by date (such lease, as supplemented and amended, the "**Lease**"), covering certain premises at the above-mentioned Port Authority Facility (the "**Premises**");

WHEREAS, by an Assignment of Lease and Assumption of Obligations dated October 8, 1993, as amended, Host Marriott Corporation assigned the Lease to HMH Properties, Inc.;

WHEREAS, by an Assumption of Lease Agreement and an Assignment of Lease with Assumption and Consent, both dated as of December 30, 1998, the Lessee, as the successor by merger to HMH Properties, Inc., assumed the Lessee's obligations under the Lease with the Port Authority's consent;

WHEREAS, the Premises have been developed, and are operated, as the Newark Liberty International Airport Marriott Hotel (the "Hotel"),

WHEREAS, the parties desire to extend the term of the Lease;

WHEREAS, the Lessee intends to make certain upgrades and renovations to the Hotel, and is willing to commit to investing up to approximately \$164 million in such upgrades and investments over the extended term of the Lease;

WHEREAS, the Lessee is specifically willing to commit to invest, in the near future, up to approximately \$34 million towards the construction of an approximately 10,000 square foot ballroom and the reconfiguring of the food and beverage service facilities at the Premises; and

WHEREAS, the Port Authority and the Lessee also desire to amend the Lease in certain other respects;

NOW, THEREFORE, in consideration of the covenants and mutual agreements herein contained, the Port Authority and the Lessee hereby agree as follows:

**Section 1.        Extension of Term**

The term of the letting under the Lease (the "Term") is hereby extended, such that it shall expire on December 31, 2055 (the "Expiration Date"), subject to earlier termination pursuant to the terms of the Lease, as hereby extended and amended.

**Section 2.        Rental**

**(a)   *Amendments to Section 5.***

Effective as of the Effective Date, Section 5 of the Lease, entitled "Rental", shall be amended as set forth below in this Section.

(1) Subdivisions 5.1.3 and 5.1.3.1 shall be deleted in their entirety, and the following shall be substituted in their place:

"5.1.3 "Annual Period" shall mean the calendar year, or, with respect to calendar year 2011, the portion thereof commencing upon the Effective Date.

5.1.3.1 "Quarterly Period" shall mean a calendar quarter."

(2) Subdivision 5.1.4 shall be deleted in its entirety.

(3) Subdivisions 5.1.5 and 5.1.5.1 shall be deleted in their entirety, and the following shall be substituted in their place:

"5.1.5 "MAG" or "Minimum Annual Guaranteed Rental" shall mean, with respect to the Annual Periods enumerated below, the following amounts set forth opposite such Annual Periods:

<u>Annual Period</u>	<u>MAG Amount</u>
2011	\$2,200,000
2012	\$2,266,000
2013	\$2,333,980
2014	\$2,403,999
2015 - 2019	\$2,476,119
2020 - 2024	\$2,576,119
2025 - 2029	\$2,676,119
2030 - 2034	\$2,776,119
2035 - 2039	\$2,876,119
2040 - 2044	\$3,076,119
2045 - 2049	\$3,276,119
2050 - 2055	\$3,476,119"

(4) Section 5.2, entitled "Basic Rental", is hereby deleted in its entirety, and the following is substituted in its place:

**"5.2 Basic Rental**

During each Annual Period, the Lessee shall pay to the Port Authority a basic rental for the Premises at a rate per annum equal to the MAG applicable to such Annual

Period pursuant to subdivision 5.1.5 above (the "Basic Rental"), payable in advance in monthly installments on the first day of each calendar month. For the purpose of calculating the Basic Rental due for any Annual Period that is other than 365 days, the MAG amount applicable to such Annual Period shall be prorated over the actual number of days contained in such Annual Period."

(5) Section 5.3, entitled "Percentage Rental", is hereby deleted in its entirety, and the following is substituted in its place:

**"5.3 Percentage Rental**

(a) For each Annual Period, the Lessee shall pay to the Port Authority an annual percentage rental ("Percentage Rental") as follows:

(i) for each Annual Period through 2014, in an amount equal to the excess of (x) the amount that is six percent (6.0%) of Gross Receipts for such Annual Period over (y) the MAG amount applicable to such Annual Period; and

(ii) for each Annual Period from 2015 through 2055, in an amount equal to the excess of (x) the amount that is six and one-half percent (6.5%) of Gross Receipts for such Annual Period over (y) the MAG amount applicable to such Annual Period.

(b) The computation of Percentage Rental for each Annual Period (or portion of an Annual Period, as hereafter provided) shall be individual to such Annual Period (or such portion) and without relation to any other Annual Period (or portion thereof).

(c) For the purpose of calculating the Percentage Rental due for any Annual Period that is other than 365 days, the MAG amount applicable to such Annual Period shall be prorated over the actual number of days contained in such Annual Period."

**(b) Interpretation of Defined Terms.**

(1) Whenever the uncapitalized terms "annual period", "quarterly period", "guaranteed minimum annual basic rental amount", "basic rental" and "percentage rental" are used in the Lease, as hereby extended and amended, they shall be deemed to mean, respectively, "Annual Period", "Quarterly Period", "MAG", "Basic Rental" and "Percentage Rental", as defined above.

(2) Whenever the uncapitalized term "gross receipts" is used in the Lease, as hereby extended and amended, it shall be deemed to mean "Gross Receipts", as defined in Section 5.1.2 of the Lease.

**Section 3. Late and Service Charges**

Section 54 of the Lease is hereby deleted in its entirety, and the following is substituted in its place:

**"Section 54. Late and Service Charges**

(a) *Late Charge.* If the Lessee should fail to pay any amount required under this Agreement when due to the Port Authority, including without limitation any payment of Rental or any payment of utility or other charges, or if any such amount is found to be due as the result of an audit, then, in such event, the Port Authority may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount for each late charge period (described below) during the entirety of which such amount remains unpaid, each such late charge not to exceed an amount equal to eight-tenths of one percent of such unpaid amount for each late charge period. There shall be twenty-four late charge periods on a calendar year basis; each late charge period shall be for a period of at least fifteen (15) calendar days, except one late charge period each calendar year may be for a period of less than fifteen (but not less than thirteen) calendar days. Without limiting the generality of the foregoing, late charge periods in the case of amounts found to have been owing to the Port Authority as the result of audit findings shall consist of each late charge period following the date the unpaid amount should have been paid under this Agreement.

(b) *Service Charge.* If any such amount is found to be due as the result of an audit, then, in such event, the Port Authority may impose (by statement, bill or otherwise), in addition to the late charge provided above, a service charge in the amount of five percent (5%) of each amount determined by the audit findings to be unpaid.

(c) *Amounts "found to be due as the result of an audit".* It is specifically understood that initially underbilled amounts of Rental or other charges that are subsequently sought from the Lessee pursuant to a corrected bill, unless such underbilling was based on information provided by the Lessee (such as the amount of the Lessee's gross receipts), shall not constitute amounts "found to be due as the result of

an audit" under the provisions of the foregoing paragraphs (a) or (b).

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

#### **Section 4. Place of Payments**

Section 37.1 of the Lease is hereby deleted in its entirety, and the following is substituted in its place:

"37.1 All payments required of the Lessee pursuant to 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 19195-0001

or made via the following wire transfer instructions:

CREDIT BANK NAME: TD BANK  
CREDIT BANK ADDRESS: 6000 Atrium Way, Mount Laurel NJ 08054  
CREDIT BANK ABA #: 031201360  
BENEFICIARY ACCT/ID #: (EX. 1)  
BENEFICIARY NAME: THE PORT AUTHORITY OF NY & NJ

or sent to such other address, or pursuant to such other wire transfer instructions, as may hereafter be substituted

therefor by the Port Authority, from time to time, by notice to the Lessee. All payments should reference the agreement number of this Agreement, ANA-037."

**Section 5. Investment in Premises**

**(a) Certain Definitions.**

"**Ballroom/F&B Work Period**" shall mean the period from the Effective Date through January 31, 2014, such date to be extended on a day-for-day basis due to *force majeure*, provided, however, that in no event shall *force majeure* include (x) failure to obtain governmental approvals in a timely manner or (y) lack of funds or any other financial inability or difficulty.

"**Extended Term**" shall mean the period from the Effective Date through the Expiration Date.

"**Lessee Investment**" shall mean the cost of any improvement, replacement, alteration, upgrade, reconfiguration, refurbishment, restoration or addition (or portion thereof) made to the Premises, provided, however, that "Lessee Investment" shall not include (x) any costs incurred before February 3, 2011, (y) the cost of any equipment or fixture or the making of any improvement unless such equipment, fixture or improvement is actually and completely installed in or made to the Premises, or (z) the amount of any payment made to an Affiliate of the Lessee that exceeds the amount that would be payable to a party not an Affiliate of the Lessee in an arm's-length transaction for the same goods or services, and provided, further, that "soft costs", such as the costs of engineering, architectural, professional and consulting services and construction management or supervision, shall not exceed twenty percent (20%) of the total amount of "Lessee Investment".

"**Remainder Work Period**" shall mean the period from the Effective Date through December 31, 2015.

**(b) Required Lessee Investment.**

As a special inducement and consideration to the Port Authority in entering into this Agreement with the Lessee, the Lessee shall make Lessee Investments of up to One Hundred Sixty-Four Million Dollars (\$164,000,000), but not less than One

Hundred Sixty Million Dollars (\$160,000,000) during the Extended Term.

(1) During the Ballroom/F&B Work Period, the Lessee shall construct, as a part of the Hotel, a ballroom of approximately 10,000 square feet, substantially as shown in Exhibit Supp. 3-A (the "Ballroom"), and renovate and reconfigure the Hotel's food and beverage service facilities (the "F&B Reconfiguration"). During the Remainder Work Period, the Lessee shall complete other improvements to the Hotel (collectively, with the Ballroom and the F&B Reconfiguration, the "Initial Lessee Work"). The costs to be incurred in completing the Initial Lessee Work shall be up to Thirty-Four Million Dollars (\$34,000,000), but not less than Thirty Million Dollars (\$30,000,000) (the "First Investment Period Required Lessee Investment").

(2) The Lessee shall make, regularly throughout the Extended Term, additional Lessee Investments totaling at least One Hundred Thirty Million Dollars (\$130,000,000) (the "Extended Term Required Lessee Investment"), allocated to ongoing infrastructure improvements and repairs to the building envelope and systems, such as to the building windows, doors, roofs, façade, chillers, boilers; and to the acquisition, installation, replacement, rehabilitation, repair and refurbishment of Furniture, Fixtures and Equipment ("FF&E").

**(c) Required Investment Timeframes.**

(1) By the end of the Ballroom/F&B Work Period, the Lessee shall have completed construction of the Ballroom and F&B Reconfiguration. By the end of the Remainder Work Period, the Lessee shall have spent a total amount on the Initial Lessee Work equal to at least the amount of the First Investment Period Required Lessee Investment.

(2) By December 31 of 2025, 2035 and 2045 (each such December 31, a "Measurement Date"), the Lessee shall have made Lessee Investments in a cumulative amount that is at least equal to \$160,000,00.00 multiplied by a fraction of which the numerator is the number of Annual Periods elapsed as of such Measurement Date (including the 2011 Annual Period and the Annual Period to which such Measurement Date belongs) and the denominator is 45. For example, by December 31, 2025, the cumulative amount of Lessee Investments that the Lessee shall

have made pursuant to the foregoing requirement is \$160,000,000 times 15/45, or \$53,333,333.

(3) The parties acknowledge and agree that in the event of the Lessee's failure to fulfill the requirements provided in paragraph (c)(1) above in accordance with the terms thereof, the damages sustained by the Port Authority would be considerable but would be difficult to quantify. Accordingly, if the Lessee fails to fulfill such requirements in accordance with their terms, then, so long as such failure continues, the Lessee shall pay Basic Rental at a rate that is one and one-half (1.5) times the applicable MAG amount set forth in Section 5.1.5 of the Lease, as hereby amended; and shall also pay Percentage Rental at one and one-half (1.5) times the applicable rate (i.e., 6% for each Annual Period through 2014 and 6.5% for each Annual Period from 2015 through 2055) pursuant to Section 5.3 of the Lease, as hereby amended, i.e., in an amount equal to 9% or 9.75%, as applicable, of the excess of Gross Receipts over the applicable MAG amount set forth in Section 5.1.5 of the Lease, as hereby amended.

(4) The parties acknowledge and agree that in the event of the Lessee's failure to fulfill the requirements provided in paragraph (c)(2) above in accordance with the terms thereof, the damages sustained by the Port Authority would be considerable but would be difficult to quantify. Accordingly, if the Lessee fails to fulfill such requirements in accordance with their terms, then, so long as such failure continues, the Lessee shall pay Basic Rental at a rate that is one and one-half (1.5) times the applicable MAG amount set forth in Section 5.1.5 of the Lease, as hereby amended; and shall also pay Percentage Rental at one and one-half (1.5) times the applicable rate (i.e., 6% for each Annual Period through 2014 and 6.5% for each Annual Period from 2015 through 2055) pursuant to Section 5.3 of the Lease, as hereby amended, i.e., in an amount equal to 9% or 9.75%, as applicable, of the excess of Gross Receipts over the applicable MAG amount set forth in Section 5.1.5 of the Lease, as hereby amended.

**(d) Accounting and Reporting.**

Commencing in 2012, the Lessee shall, not later than March 31 of each year, deliver to the Port Authority a report, certified by a duly authorized representative of the Lessee (a "Lessee Investment Report"), setting forth: (x) all the Lessee

Investments made during the previous Annual Period (or, in the case of the report to be delivered on March 31, 2012, all Lessee Investments made in 2011 after February 3, 2011), and (y) the aggregate amounts of Lessee Investments made in all prior Annual Periods after February 3, 2011. Each Capital Investment Report shall separately identify items of the First Investment Period Required Lessee Investment and the Extended Term Required Lessee Investment, and shall separately identify soft costs. At the Port Authority's request, the Lessee shall promptly deliver to the Port Authority copies of supporting documentation, including without limitation copies of invoices and contracts, relating to the Lessee Investments reported in any Annual Report.

**(e) Port Authority Examination and Audit.**

(1) Within ten (10) days following any request by the Port Authority from time to time and at any time, the Lessee shall permit and/or cause to be permitted in ordinary business hours, during the Investment Periods and for three (3) years thereafter, the examination and audit by the officers, employees and representatives of the Port Authority of all the records and books of account of the Lessee that the Port Authority in its sole discretion believes may be relevant for the identification, determination or calculation of the Capital Investments (all of the foregoing records and books, collectively, the "**Books and Records**").

(2) All Books and Records shall be made available within the Port of New York District for examination and audit by the Port Authority. Notwithstanding the foregoing, if any Books and Records are maintained outside of the Port of New York District, then the Port Authority in its sole discretion may (x) require on ten (10) days' notice to the Lessee that any such Books and Records be made available to the Port Authority within the Port of New York District for examination and audit and/or (y) examine and audit any such Books and Records at the location(s) they are maintained. If such Books and Records are maintained within the contiguous United States the Lessee shall pay to the Port Authority when billed all reasonable and necessary travel costs and related expenses, as reasonably determined by the Port Authority, for Port Authority auditors and other representatives, employees and officers in connection with such examination and audit, and if such Books and Records are maintained outside the contiguous United States the Lessee shall pay to the Port Authority when billed all reasonable and

necessary costs and expenses of the Port Authority, as reasonably determined by the Port Authority, of such examination and audit, including without limitation salaries, benefits, travel costs and related expenses, overhead costs, and fees and charges of third party auditors retained by the Port Authority for the purpose of conducting such audit and examination.

**(f) No Limitation as to Other Obligations.**

The requirements in this Section 5 relating to the work to be performed and/or the Lessee Investments to be made by the Lessee, or the Lessee's performance or making of the same, shall not be deemed to replace or supersede, or otherwise limit or diminish, the Lessee's obligations of maintenance and repair set forth elsewhere in the Lease.

**(g) Application of Other Lease Provisions.**

The parties acknowledge, without limitation, that the provisions of Section 19 of the Lease, entitled "*Alterations and Improvements by the Lessee*", shall apply to the alterations and improvements made in fulfillment of the Lessee Investment required in this Section 5, and that, accordingly, "Unamortized Capital Investment", as defined in Section 49.8 of the Lease, shall include (without limitation) such alterations and improvements, as well as the capital investment made to the Premises in connection with the initial construction of the Hotel.

**Section 6. Security Deposit**

**(a) Letter of Credit Required.** Upon the Lessee's execution and delivery of this Agreement to the Port Authority, the Lessee shall deliver to the Port Authority, and shall maintain throughout the term of the Lease, as hereby amended and extended, as security for the Lessee's full, faithful and prompt performance of and compliance with all of its obligations thereunder and as security for the payment of all rentals, fees, charges and obligations of the Lessee owed or which may become due and owing to the Port Authority, a clean irrevocable letter of credit in favor of the Port Authority in the amount of **Four Hundred Thousand Dollars and No Cents (\$400,000.00)** (the "**Security Amount**"), issued by a banking institution acceptable to the Port Authority and having its main office within the Port of New York District.

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

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

**(d) Right to Draw Down.** In addition to any and all other remedies available to it, the Port Authority shall have the right, at its option at any time and from time to time, with or without notice, to draw upon each letter of credit or any part thereof in whole or partial satisfaction of any of its claims or demands against the Lessee. There shall be no obligation on the Port Authority to exercise such right and neither the existence of such right nor the holding of a letter of credit or any cash security shall cure any default or breach by the Lessee of the Lease, as hereby amended and extended. No action by the Port Authority pursuant to the terms of any letter of credit, or receipt by the Port Authority of funds from any bank issuing any letter of credit, shall constitute a waiver of any breach or default by the Lessee of its obligations under the Lease, as hereby amended and extended; and the existence of or recourse to

any such letter of credit shall not limit the Port Authority's rights and remedies otherwise available under the Lease, as hereby amended and extended, upon any such breach or default.

(e) **Material Inducement.** The Lessee acknowledges that the Port Authority is entering into this Agreement in reliance on the Lessee's agreement to the provisions of this Section, and that such agreement constitutes a material element of the consideration inducing the Port Authority to enter into and execute this Agreement. In the event of any failure of the Lessee at any time during the Term to provide such letter of credit valid and available to the Port Authority, and any failure of any banking institution issuing any such letter of credit to make one or more payments as provided in such letter of credit, the Port Authority shall have the right, in addition to any and all other remedies provided under the Lease, as hereby amended and extended, or at law or in equity, to immediately terminate the Lease, as hereby amended and extended, upon written notice to the Lessee.

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

(g) **Use of Proceeds.** In the event that the Port Authority shall have drawn down the letter of credit referred to in paragraph (a) of this Section, the Port Authority shall have the right, at its option, at any time and from time to time, with or without notice, to use the amount held, or any part thereof, as cash security in whole or partial satisfaction of any of its claims or demands against the Lessee. There shall be no obligation on the Port Authority to exercise such right and neither the existence of such right nor the holding of such cash security itself shall cure any default or breach, on the part of the Lessee, of the Lease, as hereby amended and extended. The Lessee agrees that it will not assign, mortgage or encumber such cash security. The Port Authority shall not pay or allow interest thereon; but the Lessee may collect or receive annually any interest paid on cash deposited in interest-bearing bank accounts less any part thereof or amount which the Port Authority is or may hereafter be entitled or authorized by law to retain or to charge in connection therewith, whether as or in lieu of administrative expense or custodial charge, or

otherwise, provided, however, that the Port Authority shall not be obligated by this provision to place or to keep cash deposited hereunder in interest-bearing bank accounts. Upon the Port Authority's acceptance of a substitute letter of credit, and upon request by the Lessee made thereafter, the Port Authority will return any cash security deposit resulting from the drawing down of the original letter of credit. The Lessee shall have the same rights to receive any such deposit during the existence of a valid letter of credit as it would have to receive such sum upon expiration of the letting and fulfillment of the obligations of the Lessee under the Lease, as extended and amended by this Agreement.

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

(i) **Employer Identification Number.** For purposes of the foregoing, the Lessee hereby certifies that its I.R.S. Employer Identification Number is (Ex. 1)

(j) **Other Agreements with the Port Authority.** In addition to securing the Lessee's obligations under the Lease, as hereby amended and extended, as provided in paragraph (a) above, the letter of credit required in this Section, in the Security Amount, shall also secure the Lessee's full, faithful and prompt performance of and compliance with all of its obligations and the payment of all rentals, fees, charges and obligations of the Lessee owed or which may become due and owing to the Port Authority under all other agreements to which the Lessee and the Port Authority may be parties.

**Section 7. Compliance with Sustainable Design Guidelines**

The Lessee agrees that, in the performance of all construction work, it will comply with the Port Authority's policy on sustainable design as set forth in the sustainable design guidelines, as promulgated by the Port Authority Engineering Department from time to time, in effect at the time of such construction.

**Section 8. Sale, Assignment, etc.; Mortgages**

**(a) Amendments to Section 7.**

Effective as of the Effective Date, Section 7 of the Lease is hereby amended as follows:

(1) Section 7.2 is hereby deleted in its entirety, and the following is substituted in its place:

"7.2 (a) Commencing from the Supp. 3 Effective Date, and continuing for the remainder of the term of the letting, the Lessee shall have the right to Assign this Agreement and the letting hereunder in its entirety to a Qualified Assignee, provided that all of the conditions set forth in subparagraphs (ii), (iii) and (v) of Section 7.1.2 are satisfied, provided, further, that such proposed assignee shall not be a Prohibited Person, and provided, further, that no such Assignment pursuant to this paragraph 7.2 shall be effective until an assignment and assumption agreement in the form annexed hereto as "Exhibit Z" has been executed by the Port Authority, the Lessee and the proposed assignee. This Agreement may not be Assigned pursuant to this paragraph 7.2 more than seven (7) times.

(b) If the ownership interests in the Lessee or any Affiliate are publicly traded, an Assignment of this Agreement resulting from the sale of such ownership interests shall not require the Port Authority's consent.

(c) The foregoing shall be without limitation as to the provisions of the following Section 7.2.1 relating to certain payments by the Lessee to the Port Authority, which shall apply to all Assignments.

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

"Affiliate" of a Person shall mean any other Person that is directly or indirectly Controlled by, under the Control of, or under common Control with the first Person.

"Assign" or "Assignment" (whether or not capitalized) shall include, without limitation, any transaction or series of transactions that effect a change in Control of the Lessee.

"Control" shall mean to possess, directly or indirectly, the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Person" shall mean and include an individual, company (including a limited liability company), corporation, partnership, joint venture, estate, trust, unincorporated association, any Federal, state, county or municipal government, bureau, department or agency thereof, and any other entity.

"Prohibited Person" shall mean any Person, or any Person that is controlled by a Person, or any Person who is an Affiliate of, or holds five percent (5%) or more of the equity interest in, a Person:

(1) that has been or is currently under indictment for or convicted of a crime in any jurisdiction, or the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency;

(2) that has had a development agreement with the Port Authority terminated for willful default or breach, has had a contract terminated by a governmental agency in the States of New York or New Jersey for willful breach or default or has had a contract terminated for any cause relating to an indictment or conviction of such Person or its principals;

(3) that is in material default beyond any applicable grace period, under any agreement with the Port Authority or has been, within the preceding five (5) years, in material default, beyond any applicable grace period, under any agreement with the Port Authority;

(4) that has been suspended, debarred, found not responsible or otherwise disqualified from entering into any contract with any governmental agency or been denied a government contract for failure to meet standards related to integrity;

(5) that has had any sanction imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement,

misrepresentation or anti-trust regardless of the dollar amount of the sanctions or the date of their imposition;

(6) that is organized in or controlled from a country which is subject to any of the following: (i) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended; (ii) the International Emergency Economic Powers Act of 1976, 50 U.S.C. § 1701, et seq., as amended; and (iii) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405, as amended;

(7) that engages in any dealings or transactions or is blocked or subject to blocking pursuant to Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the "Executive Order"), or is otherwise associated with any such Person in any manner violative of the Executive Order or any State or City of New York or the State of New Jersey statutes, codes, regulations, orders or other governmental action relating to activities referenced in this clause (7);

(8) that is on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other U.S. Department of Treasury's Office of Foreign Assets Control regulation or executive order ("OFAC") and/or with whom the Landlord is restricted from doing business with under OFAC or under any statute, executive order, or other governmental action or any State or City of New York or the State of New Jersey statutes, codes, regulations, orders or other governmental action relating to activities referenced in this clause (8);

(9) that has (w) filed a petition under any insolvency statute, (x) made a general assignment for the benefit of its creditors, (y) commenced a proceeding for the appointment of a receiver, trustee, liquidator or conservator of itself or of the whole or any substantial part of its property or shall otherwise be dissolved or liquidated, or (z) filed a petition seeking reorganization or liquidation or similar relief under any applicable law or statute, or has been subject to any of foregoing in the preceding five (5) years;

(10) that is involved or has been involved in a material litigation or similar proceeding adverse to the Port Authority or any subsidiary thereof;

(11) whose involvement or presence in the hotel or the premises, in the Port Authority's sole discretion, could create a potential security threat, and/or is repugnant to the public policy of the United States or other governmental authorities, or who may be involved in a public controversy (it being understood that if any Person's involvement in the hotel and/or the premises is subject to the express approval of a federal or state governmental actor, and all such approvals are granted, then such Person shall be deemed excluded from this clause (11));

(12) whose involvement or presence in the hotel or the premises would create any conflict of interest as defined under the Public Officers Law of the State of New York between any Commissioner of the Port Authority and itself or its chief executive officer, chief operating officer, chief financial officer, president, chairman of the board, other similar senior executive, or any Person or entity which controls, is controlled by, or is under common control with it; and

(13) that shall not subject or submit itself to the jurisdiction of the courts of the State of New Jersey in any actions relating to the hotel and/or this Agreement.

"**Qualified Assignee**" shall mean (x) an Institutional Lender (as defined in Section 8.1), (y) an entity whose only nominal and beneficial owners are the Lessee and an Institutional Lender.

"**Supp. 3 Effective Date**" shall mean the "Effective Date", as defined in Supplement No. 3 to this Agreement."

(2) The third sentence of Section 7.2.4 shall be deleted in its entirety, and the following shall be substituted in its place:

"It is the intention of the parties that, except as specifically provided elsewhere in this Agreement, the hotel shall be operated during the term of the letting by Marriott Hotel Services, Inc. under the Marriott flag."

(3) There shall be added a new Section 7.2.6, as follows:

"7.2.6 (a) The Lessee shall not be permitted to change the flag of the hotel without the prior written consent of the Port Authority. The Port Authority shall respond in writing to the Lessee's request for a new flag within a reasonable time period after receipt of the request. The Port Authority shall not be obligated to consent to such new flag unless (x) in the opinion of the Director of the Aviation Department of

the Port Authority the best interests of the hotel and the Airport would be served by replacing the existing flag with the new proposed flag, (y) the hotel under such new flag would be an Upper Scale Hotel, and (z) the Port Authority has consented to the amended or new operating agreement and/or the franchise agreement, as the case may be (which consent shall not be withheld if in the Port Authority's opinion (p) the requirements of Section 7.2.4 are satisfied and (q) the conditions set forth in the first sentence of Section 7.2.3 are satisfied). In the event that, in connection with a proposed change of flag, the Port Authority consents to a separate franchise agreement, such consent shall be given pursuant to a "Consent to Franchise Agreement" prepared by the Port Authority and executed by the Lessee, the franchisor and the Port Authority.

(b) "Upper Scale Hotel" shall mean a hotel that is ranked as "upper upscale" or better in the chain scale segment by Smith Travel Research, or a hotel that is ranked in the "upscale" segment or better by J.D. Power and Associates North America Guest Satisfaction Index Study. If the hotel rankings published by both Smith Travel Research and J.D. Power and Associates North American Guest Satisfaction Index Study are discontinued, the parties shall mutually agree upon another substantially similar publication which ranks hotel chains based upon substantially similar criteria such as performance and services."

**(b) Amendments to Section 8.**

Effective as of the Effective Date, Section 8 of the Lease is hereby amended and restated in its entirety, to read as follows:

**Section 8. Leasehold Mortgaging**

**8.1 Definitions**

The following terms (whether or not capitalized) shall have the meanings set forth below:

"Institutional Lender" shall mean any one of the following that is not a Prohibited Person:

(iii) a commercial bank, investment bank, trust company, savings bank, credit union or savings and loan association qualified to do business in the State of New Jersey;

(iv) an insurance company having assets in excess of \$500,000,000 and qualified to do business in the State of New Jersey;

(v) a reputable and accredited college or university;

(vi) a profit-sharing or members' or employees' pension trust or fund of a governmental body, union or corporation whose shares are traded on a national stock exchange, the assets of which fund or trust are in excess of \$500,000,000;

(vii) a corporation whose shares are traded on a national stock exchange and whose assets are in excess of \$500,000,000;

(viii) a real estate investment trust whose shares are traded on a national stock exchange and whose assets are in excess of \$500,000,000; or

(ix) the Economic Development Authority of the State of New Jersey, but only if the Lessee in connection with the hotel has obtained monies from the issuance of industrial development bonds by the said Economic Development Authority pursuant to Section 103 of the Internal Revenue Service Code of 1954, as amended;

provided, however, that any dollar amount set forth above shall be increased every five (5) years after the Supp. 3 Effective Date by the percentage increase in the CPI during the preceding five (5) year period, where "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, or any successor index selected by the Port Authority in connection with the administration of its leases.

"Leasehold Mortgage" shall mean a loan secured by a leasehold mortgage for a term not to extend beyond the Expiration Date, as defined in Supplement No. 3 to this Agreement. The aggregate amount secured thereby shall not exceed the Mortgage Amount.

"Leasehold Mortgagee" shall mean such Institutional Lender which in accordance with the applicable provisions of this Agreement shall become the holder of the Leasehold Mortgage.

"Mortgage Amount" shall mean an amount not to exceed eighty percent (80%) of the fair market value of the Lessee's interest in this Agreement.

"Recognized Mortgagee" shall mean a holder of a Leasehold Mortgage with respect to which the Port Authority has given the notice provided in Section 8.4(b), stating that the benefits of Sections 8.5 and 8.6 apply to such holder.

"Refinancing of the Leasehold Mortgage" or "Refinancing" shall mean (i) the entering into of a new Leasehold Mortgage by the Lessee upon the expiration or termination of a previously existing Leasehold Mortgage or (ii) the advancing of additional monies under an existing Leasehold Mortgage.

"Refinanced Amount" for purposes of this Agreement shall mean the original principal amount of such new Leasehold Mortgage described in subdivision (i) in the foregoing definition of "Refinancing of the Leasehold Mortgage" or, in the event of a refinancing pursuant to subdivision (ii) in the foregoing definition of "Refinancing of the Leasehold Mortgage", then "Refinanced Amount" shall mean the original principal amount of said Leasehold Mortgage as amortized on the effective date of the refinancing, said amortization to be on a straight line basis from the effective date of the Leasehold Mortgage to the Expiration Date, plus the additional monies advanced pursuant to the refinancing of the Leasehold Mortgage.

## 8.2 Leasehold Mortgages

8.2.1 (a) If this Agreement is then in full force and effect, the Lessee may, without the consent of the Port Authority, at any time and from time to time, make a Leasehold Mortgage in an amount not in excess of the Mortgage Amount, provided that:

(i) such Leasehold Mortgage is made to an Institutional Lender;

(ii) such Leasehold Mortgage does not cover property other than the Premises;

(iii) such Leasehold Mortgage is not cross-defaulted or cross-collateralized with agreements covering any other property; and

(iv) at the time such Leasehold Mortgage is closed (x) there shall be no default of which notice has been given that remains uncured, (y) no Event of Default shall have occurred and be continuing and (z) no notice of termination shall have been given pursuant to Article 17 of this Agreement and be in effect.

(b) At least thirty (30) days prior to the effective date of a proposed Leasehold Mortgage, the Lessee shall notify the Port Authority of the identity of the proposed

Institutional Lender; and within five (5) days of the execution thereof, the Lessee shall deliver to the Port Authority a true and complete copy of the executed Leasehold Mortgage and of the executed note or bond secured by the Leasehold Mortgage.

(c) The Leasehold Mortgage may not be assigned except to an Institutional Lender. At least thirty (30) days prior to the effective date of a proposed assignment of the Leasehold Mortgage, the Lessee shall notify the Port Authority of the identity of the proposed assignee; and within five (5) days of the execution thereof, the Lessee shall deliver to the Port Authority a true and complete copy of the executed assignment of the Leasehold Mortgage.

(d) Notwithstanding anything contained in any Leasehold Mortgage or in this Section 8, it is understood and agreed that the rights of any Leasehold Mortgagee, including the Recognized Mortgagee, shall be subject and subordinate to this Agreement. The terms, covenants, conditions and provisions of this Agreement shall govern as between the Port Authority, the Lessee and the Recognized Mortgagee, and in the event of any inconsistency between the terms, covenants, conditions and provisions of this Agreement and the terms, covenants, conditions and provisions of a Leasehold Mortgage, the terms, covenants, conditions, and provisions of this Agreement shall control. Notwithstanding any provisions of any Leasehold Mortgage to the contrary, the Lessee shall be deemed to be the Lessee hereunder for all purposes unless and until the Recognized Mortgagee shall have acquired the Lessee's interest herein or a New Lease has been executed pursuant to this Article, as the case may be. Any Leasehold Mortgage granted hereunder shall make reference to the provisions of this Agreement and shall provide that the Leasehold Mortgage and the rights of the Recognized Mortgagee thereunder are and shall be in all respects subject to all provisions of this Agreement. Without limiting the generality of the foregoing, each Leasehold Mortgage shall contain the following provisions:

"This mortgage is executed upon the condition (i) that no purchaser at any foreclosure sale shall acquire any right, title or interest in or to the agreement hereby mortgaged (the "Lease") unless such purchaser, or the person, firm or corporation to whom or to which such purchaser's right has been assigned, in the instrument transferring to such purchaser or to such assignee of the interest of the Lessee under the Lease, assumes and agrees to perform all of the terms, covenants and

conditions of the Lease thereafter to be observed or performed on the part of such Lessee, (ii) that no further or additional mortgage or assignment of the Lease shall be made except in accordance with the provisions of the Lease and (iii) that a duplicate original of the instrument containing such assumption agreement, duly executed and acknowledged by purchaser or assignee and in recordable form, is delivered to the Port Authority promptly after the consummation of such sale or assignment.

"The mortgagee agrees to have the proceeds of any insurance or the proceeds any condemnation award applied to the repair or restoration of the mortgaged premises to the extent such application is required by the provisions of the Lease."

(e) The Port Authority agrees that if it is requested by a qualified Institutional Lender to amend this Agreement as a condition to the issuance by such Lender of a commitment for a Leasehold Mortgage to the Lessee it will not unreasonably refuse to consent to such amendment provided that the proposed amendment in the sole opinion of the Port Authority (which opinion shall not be exercised arbitrarily) does not adversely affect the Port Authority's rights hereunder or the operation of the hotel in the manner contemplated by the provisions hereof and such proposed amendment is not inconsistent with the terms of this Agreement.

(f) Except as expressly authorized herein the Lessee shall not mortgage the Lessee's interest in this Agreement or the letting hereunder in whole or in part.

#### 8.2.2 Payments to Port Authority

(a) Each time the Lessee places a mortgage or refinances an existing mortgage on its leasehold interest pursuant to Section 8.2.1 above, the Lessee hereby agrees to pay the Port Authority twenty percent (20%) of the following amount: the amount of the principal of the particular leasehold mortgage or the Refinanced Amount of the particular refinancing (as such term is defined in Section 8.1.5) less the amortized principal amount or amortized Refinanced Amount as of the effective date of the new mortgage or the immediately preceding leasehold mortgage or refinancing whenever made pursuant to the provisions of this Agreement, as said immediately preceding mortgage principal amount or Refinanced Amount is amortized on a straight line basis from the effective date of such immediately preceding leasehold mortgage or refinancing to the expiration date of the letting

under this Agreement. Notwithstanding the foregoing, in the event that there has been no prior assignment of this Agreement and there has been no leasehold mortgage or refinancing of the Lessee's leasehold interest in which the Port Authority received a percentage pursuant to this Section 8.2.2 then the provisions of paragraph (c) below shall apply.

(b) Notwithstanding the provisions of the foregoing paragraph (a), in the event this Agreement and the letting hereunder have been assigned under an assignment covered by Section 7.1.2 or Section 7.2.1 then the Lessee hereby agrees to pay the Port Authority twenty percent (20%) of the following amount: the amount of the principal of the particular leasehold mortgage or the Refinanced Amount of the particular Refinancing, as the case may be, less the greater of the following amounts: the amortized total gross sales price as of the effective date of the new mortgage or refinancing paid as consideration for the immediately preceding assignment, as said immediately preceding total gross sales price is amortized on a straight line basis from the effective date of said assignment to the expiration date of the letting or the amount of the amortized principal or amortized Refinanced Amount as of the effective date of the new mortgage or refinancing of the immediately preceding leasehold mortgage or refinancing, if any, made by the present Lessee, as said immediately preceding leasehold mortgage or Refinanced Amount is amortized on a straight line basis from its effective date to the expiration date of the letting.

(c) In the event that there has been no prior assignment of this Agreement and there has been no leasehold mortgage or refinancing of the Lessee's leasehold interest in which the Port Authority received a percentage pursuant to this Section 8.2.2 then the Lessee hereby agrees to pay the Port Authority twenty percent (20%) of the following amount: the amount of the principal of the particular leasehold mortgage less the Unamortized Capital Investment as determined in accordance with the provisions of Section 49.8 of this Agreement as of the effective date of the mortgage. All payments to the Port Authority pursuant to this Section 8.2.2 shall be made no later than the effective date of the particular Leasehold Mortgage or refinancing.

### **8.3 Recognized Mortgagee**

(a) *Notice to Port Authority.* If the Lessee intends to mortgage its leasehold estate to an Institutional Lender, and if the amount of the loan to be secured by such Leasehold Mortgage is not in excess of the Mortgage Amount, then the

proposed holder of such Leasehold Mortgage may provide the Port Authority with notice of its name and address together with a true and complete copy of such proposed Leasehold Mortgage, a certification (x) that such holder is an Institutional Lender and (y) that the Leasehold Mortgage complies with the other requirements of Section 8.2.1(a), and an appraisal or other evidence that the amount of the loan secured by the Leasehold Mortgage is not in excess of the Mortgage Amount.

(b) *Port Authority Response.* The Port Authority shall, within twenty (20) Business Days after receipt of the notice provided in the foregoing Section 8.4(a), notify the Lessee whether the Leasehold Mortgagee described in the notice is a Recognized Mortgagee, entitled to the benefits of the following Sections. If the Port Authority determines that the proposed Leasehold Mortgagee is not entitled to such benefits, the Port Authority shall set forth the reasons therefor, provided, however, that the Port Authority's determination with respect to the proposed Leasehold Mortgagee under this paragraph (b) shall be based solely upon (x) whether or not the proposed Leasehold Mortgagee is an Institutional Lender, (y) whether the Leasehold Mortgage otherwise complies with the requirements of Section 8.2.1(a) and (z) whether or not the amount of the Leasehold Mortgage will exceed the Mortgage Amount.

(c) *Certain Rights of Recognized Mortgagees.*

(1) No cancellation, surrender or modification of this Agreement shall be effective unless consented to in writing by the Recognized Mortgagee, and no cancellation, surrender or modification of this Agreement effectuated without the prior written consent of the Recognized Mortgagee shall be binding on the Recognized Mortgagee.

(2) Unless prohibited by applicable law, the Recognized Mortgagee shall have the right to be a party in any condemnation or eminent domain proceeding affecting the Premises for the purpose of protecting its interest in such proceeding.

(3) A standard mortgagee clause naming the Recognized Mortgagee may be added to any and all casualty insurance policies required to be carried by the Lessee hereunder on condition that the insurance proceeds are to be applied in the manner specified in this Agreement, and the Leasehold Mortgage shall so provide; provided, however, that the Leasehold Mortgage may provide a manner for the

disposition of such proceeds, if any, otherwise payable directly to the Lessee.

(d) *Notices*

(1) Notices from the Port Authority to the Recognized Mortgagee shall be mailed to the address furnished to the Port Authority pursuant to Section 8.3(a) above, and those from the Recognized Mortgagee to the Port Authority shall be mailed to the address designated in or pursuant to the provisions of Section 15 of Supplement No. 3 to this Agreement. In the event of any assignment of a Leasehold Mortgage or in the event of a change of address of the Recognized Mortgagee or of an assignee thereof, notice of the new name and address shall be provided to the Port Authority.

(2) Such notices, demands and requests shall be given in the manner described in Section 15 of Supplement No. 3 to this Agreement and shall be governed by the provisions of that Section.

**8.4 Recognized Mortgagee - Default and Termination**

(a) *Default Notices.*

(1) Upon giving the Lessee any notice of (x) a default under this Agreement, or (y) a termination of the Lessee's interest in this Agreement, or (z) a matter on which the Port Authority may predicate or claim a default by the Lessee, the Port Authority shall at the same time give a copy of such notice to the Recognized Mortgagee. No such notice by the Port Authority to the Lessee shall be deemed to have been duly given unless and until a copy thereof has been so given to the Recognized Mortgagee at its address last provided by such Recognized Mortgagee to the Port Authority pursuant to the provisions of this Article.

(2) From and after the date on which the Port Authority gives such notice to the Recognized Mortgagee, the Recognized Mortgagee shall have the same period, for remedying any default or acts or omissions which are the subject matter of such notice, or causing the same to be remedied, as is given to the Lessee after the giving of such notice to the Lessee plus, in each instance, the additional periods of time specified in Section 8.4(c) hereof to remedy, commence remedying or cause to be remedied the defaults or acts or omissions which are the subject matter of such notice. The Port Authority shall accept such performance by or at the instigation of such Recognized Mortgagee as if the same had been done by the Lessee. The Lessee shall authorize the Recognized Mortgagee to take any such action at the Recognized

Mortgagee's option, and shall authorize entry upon the Premises by the Recognized Mortgagee for such purpose.

(b) *Termination Notices.*

(1) Anything contained in this Agreement to the contrary notwithstanding, if any default occurs and continues for such period as would entitle the Port Authority to terminate this Agreement and the letting hereunder, the Port Authority shall not have the right to effectuate such termination unless, following the expiration of the period of time given the Lessee to cure such default or the act or omission which gave rise to such default, the Port Authority shall give the Recognized Mortgagee notice of the Port Authority's intent to so terminate (a "Termination Notice") at least ten (10) Business Days in advance of the proposed effective date of such termination if such default is capable of being cured solely by the payment of money, and at least twenty (20) Business Days in advance of the proposed effective date of such termination if such default is not capable of being cured solely by the payment of money.

(2) The provisions of the following paragraph (c) shall apply if, during such ten (10) or twenty (20) Business Day period (the "Termination Notice Period"), the Recognized Mortgagee:

(i) notifies the Port Authority of such mortgagee's desire to nullify such notice (a "Nullification Notice"); and

(ii) pays or causes to be paid to the Port Authority all Rentals and other payments then due and in arrears as specified in the Termination Notice, as well as all Rentals and other payments which may become due from the Lessee during the Termination Notice Period and of which the Recognized Mortgagee is given written notice by the Port Authority; and

(iii) complies or in good faith, with diligence and continuity, commences to comply with all nonmonetary requirements of this Agreement then in default and susceptible of being complied with by the Recognized Mortgagee. If the curing of any nonmonetary default requires the Recognized Mortgagee to obtain possession of the Premises, then the Recognized Mortgagee shall be deemed to have commenced in good faith to comply with the obligation of the Lessee with diligence and continuity, subject to the effects of any stay which may prevent it from so doing, if it has commenced and is prosecuting with

due diligence proceedings to obtain such possession, whether through foreclosure of its Leasehold Mortgage, an application for the appointment of a receiver or otherwise or, having obtained such possession, is then undertaking to comply with such obligation with due diligence.

(iv) The Recognized Mortgagee may, at any time, withdraw its Nullification Notice, in which case the Recognized Mortgagee shall have no further liability with respect to the Nullification Notice from and after the date of such withdrawal, and the Port Authority shall have all the rights and remedies available to it under this Agreement as if the Nullification Notice had not been sent.

(c) *Procedure on Default.*

(1) If the Port Authority elects to terminate the Lessee's leasehold interest by reason of any default of the Lessee, and the Recognized Mortgagee shall have proceeded in the manner provided for by Section 8.4(b) above, the specified date for the termination of the Lessee's leasehold interest as fixed by the Port Authority in its Termination Notice shall be extended for a period of six (6) months, provided that the Recognized Mortgagee shall, during such six (6) month period, pay or cause to be paid the Rentals and other monetary obligations of the Lessee under this Agreement as the same become due and continue its good faith efforts to perform all of the Lessee's other obligations under this Agreement, subject to the effects of any stay which may prevent it from doing so.

(2) If at the end of such six (6) month period the Recognized Mortgagee is complying with the foregoing paragraph (b), then, provided that the Recognized Mortgagee continues so to comply, this Agreement shall not then terminate, and the time for completion by the Recognized Mortgagee of the actions being taken by it pursuant to paragraph (b)(2)(iii) above shall be extended for such additional period of time as may be required for the completion thereof with all due diligence, taking into account the effect of any stay which may prevent the Recognized Mortgagee from proceeding with such actions. Nothing contained herein, however, shall be construed to extend the term of the letting hereunder beyond the Expiration Date or to require the Recognized Mortgagee to continue any foreclosure proceedings after completion of the cure of the default in respect of which the Termination Notice was issued. If such default is cured and the Recognized Mortgagee discontinues such foreclosure proceedings, this Agreement shall continue in

full force and effect as if the Lessee had not defaulted under this Agreement.

(d) *Recognized Mortgagee Need Not Cure Specified Defaults.* Nothing contained herein shall require the Recognized Mortgagee or its designee, as a condition to its exercise of its rights under this Article, or any purchaser at a foreclosure sale, to cure any non-monetary default of the Lessee not susceptible of being cured by the Recognized Mortgagee, designee or purchaser (including, by way of example and not as a limitation, the Lessee's filing of a bankruptcy petition) in order to comply with the provisions of this Section 8.4.

#### 8.5 New Lease

(a) *New Lease.* In the event of a termination of the Lessee's leasehold interest, notwithstanding the fact that the Recognized Mortgagee may have had and did not exercise or properly exercise the right under Section 8.4 hereof to prevent such termination, the Port Authority shall, in addition to any notice provided for in Section 8.4 hereof, provide the Recognized Mortgagee with written notice that this Agreement has been terminated, together with a statement of all sums which would at that time be due by the Lessee under this Agreement but for such termination, and of all other defaults, if any, hereunder then known to the Port Authority. The Port Authority agrees to enter into a new lease (the "New Lease") of the Premises with the Recognized Mortgagee for the remainder of the term of this Agreement, effective as of the date of termination of this Agreement, at the rentals and upon the terms, covenants and conditions (excluding requirements which are not applicable or which have already been fulfilled) of this Agreement, provided that:

(i) the Recognized Mortgagee shall make written request upon the Port Authority for such New Lease within sixty (60) days after the date the Recognized Mortgagee receives the Port Authority's Notice of Termination of this Agreement given pursuant to Section 8.4; and

(ii) the Recognized Mortgagee or its designee shall pay or cause to be paid to the Port Authority at the time of the execution and delivery of such New Lease any and all sums that would at the time of execution and delivery thereof be due pursuant to this Agreement but for such termination and, in addition thereto, all expenses, including attorney's fees, that the Port Authority shall have incurred by reason of such termination and the

execution and delivery of the New Lease and which have not otherwise been received by the Port Authority from the Lessee. The Port Authority shall give the Recognized Mortgagee written notice of all such sums, and neither the Recognized Mortgagee nor its designee shall be responsible for paying any such sum until it has been so notified of the amount thereof.

(b) Any New Lease made pursuant to this Section 8.5 shall be prior to any mortgage or other lien, charge or encumbrance on the Premises, and the lessee under such New Lease shall have the same right, title and interest in and to the Premises as the Lessee had under this Agreement.

(c) In the event of termination of this Agreement and the execution and delivery of a New Lease to the Recognized Mortgagee pursuant to this Section 8.5, nothing herein contained shall be deemed to impose any obligation on the part of the Port Authority to deliver physical possession of the Premises to the Recognized Mortgagee. The Port Authority agrees, however, that the Port Authority will, at the sole cost and expense of the Recognized Mortgagee, cooperate in the prosecution of summary proceedings to evict the Lessee in the event of such termination.

#### **8.6 Assignment of New Lease; Right of First Refusal**

(a) *Assignment of New Lease.* The Recognized Mortgagee may, without the Port Authority's consent (but subject to the provisions of the following paragraph (b)), assign the New Lease to:

(i) an Institutional Lender that has retained a Permitted Hotel Operator to manage and operate the Hotel or

(ii) a Permitted Hotel Operator that has unencumbered assets in excess of the greater of (x) \$100,000,000 or (y) fifty percent (50%) of the fair market value of the Premises (provided, however, that the foregoing dollar amount shall be increased every five (5) years after the Supp. 3 Effective Date by the percentage increase in the CPI during the preceding five (5) year period),

provided, that the Recognized Mortgagee shall, at least ninety (90) days prior to the effective date of such assignment, provide to the Port Authority a notice (a "New Lease Assignment Notice") setting forth (x) a copy of the proposed instrument(s) of assignment, containing, *inter alia*, the name, address and telephone number of the proposed assignee, (y) the

terms of the assignment and (z) an affidavit of the assignee or an authorized officer or general partner thereof, setting forth the following:

(A) in the case of a partnership, the names and addresses of all general partners and of all other partners having a five percent (5%) or greater ownership interest in the assignee,

(B) in the case of a corporation, the names and addresses of all directors and officers and of all Persons having a five percent (5%) or greater ownership interest in the assignee, and

(C) in the case of a limited liability company or other entity, the names and addresses of all managers or other Persons charged with the direction or management of its affairs and of all Persons having a five percent (5%) or greater ownership interest in the assignee; and

such other documents and information as the Port Authority may request to verify that the assignee is an Institutional Lender and/or a Permitted Hotel Operator, as the case may be.

(2) "Permitted Hotel Operator" shall mean a financially responsible Upper Scale Hotel operator of excellent repute that is not a Prohibited Person, with not less than ten (10) years' experience in the successful operation of at least ten (10) Upper Scale Hotels of comparable size to the Hotel, with permanent staff and with resources adequate to assure at all times the fulfillment of all of the Lessee's and operator's obligations under this Agreement and with the capacity to operate the Hotel as part of a national reservations system.

(b) *Port Authority's Right of First Refusal.* The Port Authority shall have ninety (90) days from its receipt of the New Lease Assignment Notice to agree to purchase or acquire the said interest, on the same terms and conditions as contained in the New Lease Assignment Notice or for a consideration as favorable to the seller, transferor or assignor as contained in the terms and conditions described in the New Lease Assignment Notice. In the event the Port Authority fails to notify the proposed seller, transferor or assignor of its intention to purchase its interest then the interest may be sold, transferred or assigned to the Person named in the notice on the terms stated therein, provided such Person qualifies as an assignee as provided above, and provided further that no such sale, transfer or assignment shall be effective until an agreement of assignment and

assumption in the form annexed hereto as Exhibit Z has been executed by the Port Authority, the Assignor and the proposed assignee.

**Section 9. Joint Condition Survey**

**(a) Definitions.**

As used herein the following terms shall have the following meanings:

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

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

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

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

**"Condition Survey Report"** shall mean the report, including all working or preliminary drafts, prepared by the Condition Survey Contractor after its completion of the Condition Survey, including without limitation any and all recommendations for

repair, maintenance, rebuilding and cleaning of all items or areas covered by a Condition Survey.

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

(b) **Condition Survey.** In addition to any inspection of the Premises which may be made under any other Section of the Lease, as hereby amended and extended, or otherwise, a Condition Survey of the Premises shall be conducted by a Condition Survey Contractor (x) not more frequently than once in every ten (10) Annual Periods (a **"Periodic Condition Survey"**), and (y) once within the last Annual Period of the Term (the **"Final Condition Survey"**), subject to and in accordance with the terms and conditions provided below.

(c) **Time Period and Notice Procedure.** From time to time, the Port Authority may notify the Lessee of a proposed Condition Survey (which may include all or particular portions of the items enumerated above in the definition of "Condition Survey"), including the name of the proposed Condition Survey Contractor who will perform the Condition Survey and the proposed scope and fee structure of the proposed Condition Survey Contract. Such notices of proposed Condition Survey shall, in the case of Periodic Condition Surveys, not be made more than once in every ten (10) Annual Periods, and in the case of the Final Condition Survey, not be made earlier than sixty (60) days preceding the last day of the month which constitutes the twelfth month preceding the Expiration Date. Within thirty (30) days after the Port Authority's notice to the Lessee, the Lessee shall advise the Port Authority in writing of its concurrence or objection to the proposed Condition Survey Contract. In the event the Lessee fails to respond within such thirty-day time period, such non-response shall be deemed a concurrence and the Port Authority shall proceed with the said Condition Survey Contract. In the event the Lessee notifies the Port Authority of its objections to the proposed Condition Survey Contract or Condition Survey Contractor, the parties shall consult with each other in good faith to resolve such dispute. If such resolution is not reached within thirty (30) days, then the Port Authority, if it so elects, shall make a determination as to the issue or issues in dispute. The parties hereby agree that the Port Authority's determination of said issues, including the

Condition Survey Contract and the Condition Survey Contractor, shall be final.

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

**(e) Costs.** With respect to each Condition Survey, all Condition Survey Costs shall be shared equally between the Port Authority and the Lessee. Accordingly, the Lessee hereby agrees to pay to the Port Authority fifty percent (50%) of the Condition Survey Costs with respect to each Condition Survey as follows:

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

Port Authority, nor any payment made by the Lessee, shall waive or impair any right of the Port Authority of review and audit with respect to the Condition Survey Costs with respect to each Condition Survey Contract, and provided, further, that in the event any such review or audit by the Port Authority requires an adjustment of the Condition Survey Costs, the Lessee promptly shall be credited with, or shall pay, as the case may be, all amounts required by such adjustment.

(2) Without limitation as to any of the terms and provisions of the Section of the Lease, as hereby amended and extended, entitled "*Additional Rent and Charges*", any and all amounts required to be paid by the Lessee hereunder may be added to any installment of rental thereafter due under the Lease, as hereby amended and extended, and each and every part of the same shall be and become additional rent, recoverable by the Port Authority in the same manner and with like remedies as if it were part of the rental as set forth in the Section of the Lease, as hereby amended and extended, entitled "*Rental*".

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

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

(h) **No Waiver, etc.** Neither the provisions of this Section, including without limitation the right of the Port Authority to have the Lessee perform and complete the work recommended or required by the Condition Survey Report, the obligation of the Lessee so to perform and complete such work,

nor any such performance thereof by the Lessee, any failure of the parties to select a Condition Survey Contractor, any failure of any Condition Survey Contractor to perform and complete a Condition Survey Contract, nor any failure by the Lessee or the Port Authority to pay the Condition Survey Costs with respect to any Condition Survey Contract or any portion thereof, shall be deemed to release, waive, diminish, limit or impair any of the obligations, duties, responsibilities or liabilities of the Lessee under any term, provision, covenant or condition of the Lease, as hereby amended and extended, or to limit, waive, affect, restrict or impair any right or remedy of the Port Authority, including without limitation any right of the Port Authority to terminate the letting under the Lease, as hereby amended and extended, whether before or after the Report Date. Without limitation as to the foregoing, it is expressly understood and agreed that the Lessee shall not postpone or delay any action, maintenance, rebuilding or repair or other item or thing required to be taken by the Lessee under any other section of the Lease, as hereby amended and extended.

**Section 10. Environmental Obligations**

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

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

"**Disposal**" shall have the meaning provided in paragraph (k) of this Section.

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

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

(i) All requirements pertaining to reporting, licensing, permitting, investigation, and remediation of emissions, discharges, releases, or threatened releases of Hazardous Substances into the air, surface water, groundwater or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Substances, or the transfer of property on which Hazardous Substances exist;

(ii) All requirements pertaining to the protection from Hazardous Substances of the health and safety of employees or the public; and

(iii) Without limiting the generality of the foregoing, New Jersey Pollutant Discharge Elimination System Permit Number NJ0134791, under which the Lessee is a co-permittee with the Port Authority, and the Stormwater Pollution Prevention Plan and Best Management Practices adopted thereunder.

**"Exit Baseline"** shall have the meaning provided in paragraph (q) of this Section.

**"Governmental Authority"** shall mean any federal, state, municipal or other governmental authority, board or agency of any state, nation or government (including without limitation the Federal Aviation Administration), except that it shall not be construed to include the Port Authority.

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

supplemented and by the regulations adopted and publications promulgated pursuant thereto.

"**Matter**" shall have the meaning provided in paragraph (k) of this Section.

**(b) Lessee's Assumption of Environmental Liability.**

(1) Without limiting the generality of any of the other terms and provisions of the Lease, as hereby amended and extended, but subject to the provisions of paragraph (b) (2) below, the Lessee hereby expressly agrees to assume all responsibility for, relieve the Port Authority from, and reimburse the Port Authority for, any and all risks, claims, penalties, costs and expenses of any kind whatsoever caused by, arising out of or in connection with, the condition of the Premises, whether any aspect of such condition existed prior to, on or after February 10, 1983, the commencement date of the Lease, including without limitation all Environmental Requirements and all Environmental Damages, and to indemnify and hold harmless the Port Authority against all such risks, claims, penalties, responsibilities, costs and expenses.

(2) Notwithstanding the foregoing, it is hereby agreed and understood that *except as set forth in paragraph (k) of this Section*, the Lessee shall not be responsible (notwithstanding any law or regulation that may allocate responsibility to the Lessee) for the following:

(i) the remediation or removal of, or the payment of any costs associated with the remediation or removal of, Hazardous Substances present on, about or under any portion of the Premises if such presence occurred prior to the commencement of the Lessee's tenancy or other occupancy of such portion of the Premises;

(ii) the remediation or removal of, or the payment of any costs associated with the remediation or removal of, Hazardous Substances in, on or under the Premises caused solely by the acts or omissions of the Port Authority; and

(iii) any Hazardous Substance that, on or after February 10, 1983, has migrated (x) onto the Premises from outside the Premises or (y) outside the Premises from the Premises, of which neither the initial presence nor the migration is a result of or in connection with any act or

omission, including without limitation any non-negligent act or omission, of the Lessee or of Persons other than the Lessee which use, occupy or are on the Premises with the consent of the Lessee.

(3) References herein to the "acts or omissions" or "negligence", and the like, of the Port Authority or the Lessee shall be deemed to include the employees, agents and contractors of such party.

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

(1) the preparation of and submission to all applicable Governmental Authorities of any notice, negative declaration, remedial action workplan, no further action letter, remediation agreement or any other documentation or information;

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

(3) complying with the provisions of all Environmental Requirements becoming effective on or relating to

the termination, expiration or surrender of the letting of the Premises or of any portion thereof under the Lease, as hereby amended and extended, or on the closure or transfer of the Lessee's operations at the Premises.

**(d) *Obligation to Remediate.*** In addition to and without limitation as to the generality of the obligations of the Lessee set forth above and elsewhere in the Lease, as hereby amended and extended, the Lessee shall, at its sole cost and expense and in accordance with and subject to the provisions of the Section of the Lease, as hereby amended and extended, entitled "*Alterations and Improvements by the Lessee*", upon notice from the Port Authority, promptly take all actions to:

(1) except as provided in paragraph (b)(2) of this Section, completely remove and remediate all Hazardous Substances in, on and under the Premises and at the Airport resulting from or in connection with the use and occupancy of the Premises by the Lessee or any Affiliate or which have been or permitted to be disposed of, released, discharged or otherwise placed in, on or under the Airport by the Lessee or any Affiliate or which have been disposed of, released, discharged or otherwise placed in, on or under the Premises during the Term or during the term of any previous agreement between the Lessee or any Affiliate and the Port Authority covering the Lessee's or any such Affiliate's use and/or occupancy of the Premises or any portion thereof;

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

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

**(e) *Particular Obligations Included.*** The obligations set forth in paragraphs (c) and (d) of this Section shall include but not be limited to the investigation of the environmental condition of the area to be remediated, the preparation of feasibility studies, reports and remedial plans and the performance of any removal, remediation, containment, operation,

maintenance, monitoring or restoration work and shall be performed in a good, safe and workmanlike manner. The Lessee shall promptly provide the Port Authority with copies of all test results and reports generated in connection with such obligations. Promptly upon completion of such investigation and remediation, the Lessee shall seal or cap all monitoring wells and test holes, remove all associated equipment and restore the remediated property.

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

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

by the Port Authority, to provide the General Manager of the Airport with copies of all information, documentation, records, correspondence, notices, certifications, reports, test results and all other submissions provided by the Lessee to a Governmental Authority, and by a Governmental Authority to the Lessee, within two (2) business days after the same have been made available to or received by the Lessee with respect to any Environmental Requirements or Environmental Damages.

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

**(i) Compliance Standard.**

(1) Without limitation as to the generality of any provision of the Lease, as hereby amended and extended, in the event that any Environmental Requirement sets forth more than one compliance standard, the Lessee agrees that the standard or standards to be applied in connection with any obligation it may

have under the Lease, as hereby amended and extended, with respect to such Environmental Requirement shall be that which requires or permits the lowest level of a Hazardous Substance; provided, however, that in the event such lowest level of a Hazardous Substance requires or allows the imposition of any restriction of any nature whatsoever upon the use or occupancy of the Premises or any other portion of the Airport or upon any operations or activities conducted or to be conducted on the Premises or the Airport or upon the transfer of the Premises or the Airport, then the Lessee shall remediate to such a level so that there is no such restriction placed upon the use and occupancy of the Premises or the Airport or upon any operations or activities conducted or to be conducted on the Premises or the Airport.

(2) The Lessee further agrees that, notwithstanding the terms and conditions of paragraph (i)(1) above, the Port Authority shall have the right at any time and from time to time, acting in its sole discretion and without any obligation whatsoever to the Lessee or otherwise to do so, to designate any level or levels or standard or standards of remediation permitted or required under any Environmental Requirement, and such designation shall be binding upon the Lessee with respect to its obligations with respect to Environmental Requirements under the Lease, as hereby amended and extended.

**(j) Burden of Proof.**

(1) The Lessee agrees that in any legal action or proceeding in which the Port Authority and the Lessee are opposing parties, the Lessee shall have the burden of proof, as hereinafter defined, as to any and all issues of fact with respect to: (x) whether the presence of any Hazardous Substance on, about or under the Premises occurred prior or subsequent to the commencement of the term of the Lease; (y) whether any Hazardous Substance disposed of or released from the Premises or which migrated from the Premises came to be present on, about or under the Premises prior or subsequent to the commencement of the term of the Lease; and (z) whether the Lessee exacerbated any pre-existing environmental condition so as to cause a Hazardous Substance to first become regulated during the Term. "Burden of proof" shall mean both the legal burden of going forward with the evidence and the legal burden of establishing the truth of any fact by a preponderance of the evidence.

(2) Without limitation as to the definition of "burden of proof" and the legal burdens thereby imposed on the Lessee of going forward with the evidence and establishing the truth of any fact, as set forth in the final sentence of the foregoing subparagraph (1), the parties hereby agree that in any situation described in clause (x) or (y) of the foregoing subparagraph (1) the Lessee shall have met its burden of proof if the Lessee can establish that the particular Hazardous Substance in question has not been used, stored or generated in connection with any activity engaged in at the Premises after the commencement of the term of the Lease.

**(k) Disposal of Matter.**

(1) It is expressly understood and agreed that the proper handling, delivery, treatment, storage, transportation, disposal and depositing (collectively, "Disposal"), whether on or off the Airport, of any soil, dirt, sand, silt, water, asbestos, lead, PCB's, demolition or construction debris or other matter excavated or removed by the Lessee or its contractors at, from or under the Premises or any other area of the Airport (all such soil, etc. or other matter, collectively, the "Matter") at any time or times, and regardless of the nature or composition of such Matter, including without limitation any and all Disposal of any Matter in connection with the performance of the repair, replacement, rebuilding of the Premises, or any other construction work, and any and all remediation and Disposal of any Matter and any and all other remediation and Disposal (whether soil, upper aquifer or otherwise) necessary, required or appropriate as a result of, caused by, incidental to or triggered by such excavation, disturbance or removal of the Matter or arising therefrom, and the taking or doing of any and all other action or actions necessary, required or appropriate in connection therewith, shall be the sole and complete responsibility of the Lessee, including without limitation all costs and expenses thereof and any and all Environmental Damages, Environmental Requirements, claims, penalties and other expenses relating thereto. The foregoing obligations of the Lessee shall obtain and apply with full force and effect irrespective of the nature or source of any contaminant, pollutant, chemical, waste or other substance or whether any of the same is a Hazardous Substance. The Lessee shall perform all of the foregoing in accordance with and

subject to all the terms, provisions, covenants and conditions of the Lease, as hereby amended and extended.

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

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

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

**(1) Port Authority Right to Enter for Investigations.**  
Without limitation as to the foregoing or the generality of the provisions of the Section of the Lease, as hereby amended and extended, entitled "*Rights of Entry Reserved*", and subject to and in accordance with the provisions of such Section, the Port Authority and its designees shall have the right (but not the obligation) to enter upon the Premises upon forty-eight (48) hours' notice to the Lessee to conduct testing and related activities from existing wells, if any, to make additional wells

and borings and to conduct testing and related activities therefrom. In the exercise of the foregoing rights, the Port Authority and its designees shall not unreasonably interfere with the Lessee's use and occupancy of the Premises.

**(m) Survival of Obligations.** Without limitation as to the generality of any other term or provision of the Lease, as hereby amended and extended, all of the obligations of the Lessee under this Section shall survive the expiration or earlier termination of the letting of the Premises or any portion thereof.

**(n) No Waiver of Rights against Third Parties.** The terms and conditions of this Section are intended to allocate the obligations and responsibilities between the Lessee and the Port Authority, and nothing in this Section or elsewhere in the Lease, as hereby amended and extended, shall be deemed to limit, modify waive or otherwise alter the rights, claims and remedies that the Port Authority or the Lessee may have against third parties at law, equity or otherwise.

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

**(p) Remediation prior to End of Term.** The Lessee hereby covenants and agrees that it shall, on or before the cessation of the letting hereunder or any portion thereof (whether such cessation be by termination, expiration or otherwise), completely remove and remediate all Hazardous Substances in, on or under the Premises, except as provided in paragraph (b) (2) of this Section.

**(q) Exit Baseline.**

(1) Without limitation as to any other term or provision hereof, all the obligations of the Lessee under this Section shall survive the expiration or termination of the letting of the Premises or any portion thereof, provided,

however, that the Lessee shall not be responsible for any Hazardous Substances in, on, under or about the Premises that the Lessee can prove (x) occurred after the date of the Lessee's surrender of the Premises to the Port Authority and (y) were not due to the acts or omissions of the Lessee.

(2) Between the eighth (8<sup>th</sup>) and sixth (6<sup>th</sup>) months immediately preceding the Expiration Date or within three months after the effective date of the termination the letting hereunder, as the case may be, the Lessee shall at its sole cost and expense and subject to the terms and provisions of the Section of the Lease entitled "*Alterations and Improvements by the Lessee*", sample and test the soil and ground water in, on and under the Premises in accordance with such standards, methods, protocol and procedures as shall be required by the Port Authority, in its sole discretion after consultation with the Lessee, in such locations as specified by the Port Authority (such sampling and testing of the soil and groundwater, the "**Exit Baseline**"). All such sampling, testing and the preparation of any associated report shall be performed by a New Jersey State approved independent consultant and laboratory, said sampling and testing shall produce a fair and representative sampling of the Premises and said sampling and testing shall be performed in accordance with methodology approved by the Port Authority.

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

#### **Section 11. Storage Tanks**

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

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

"**Tanks**" shall mean all underground storage tanks and all above ground storage tanks installed in the Premises as of the commencement of the Lessee's occupancy of the Premises or any

portion thereof, together with all underground storage tanks and all above ground storage tanks installed in the Premises during the Term, and their appurtenances, pipes, lines, fixtures and other related equipment.

**(b) Lessee to Have Responsibility for All Tanks.**

Notwithstanding any other facts or circumstances to the contrary, the Lessee hereby agrees that title and ownership of the Tanks shall be and remain in the Lessee, that all Tanks shall be registered by the Lessee in the name of the Lessee as operator and owner and that the Lessee shall have full and sole responsibility for all the Tanks, and shall release and hold harmless the Port Authority from all costs and responsibility for the Tanks. The Port Authority has made no representations or warranties with respect to the Tanks or their location and shall assume no responsibility for the Tanks. All Tanks installed by the Lessee shall be installed pursuant to the terms and conditions of the Lease, as hereby amended and extended, including without limitation the Section thereof entitled "*Alterations and Improvements by the Lessee*", and nothing in this Section shall be deemed to be any permission or authorization to install Tanks.

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

**(d) Removal.**

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

(2) Any removal of the Tanks shall be performed pursuant to an alteration application prepared by the Lessee and submitted to the Port Authority for the Port Authority's approval and, in connection with such removal, the Lessee shall restore the Premises to the same condition existing prior to the installation of the Tanks, shall perform such testing of the Tanks and of the soil, sub-soil and ground water in the vicinity of the Tanks as shall be required by the Port Authority and shall clean up and remediate any contamination disclosed by said testing. In the event the Lessee does not remove the Tanks as required by subparagraph (1) above, the Port Authority may enter upon the Premises and effect the removal and disposal of the Tanks, restoration of the Premises and such remediation, and the Lessee hereby agrees to pay all costs and expenses of the Port Authority arising out of such removal, disposal, restoration and remediation.

**(e) Compliance with Environmental Requirements.** Without limitation as to the generality of any other term or provision of the Lease, as hereby amended and extended, the Lessee shall at its cost and expense comply with all Environmental Requirements applicable to the Tanks, including without limitation any modifications or closures required thereby, and any Discharge, including without limitation testing the Tanks and registering the Tanks in the name of the Lessee as owner and operator, submitting all required clean-up plans, bonds and other financial assurances, performing all required clean-up and remediation of Discharges and filing all reports, and making all submissions to, providing all information required by, and complying with all requirements of, all Governmental Authorities pursuant to all such Environmental Requirements. Nothing in the foregoing shall be construed as a submission by the Port Authority to the application to itself of the Environmental Requirements, provided, however, that no immunity or exemption of the Port Authority from the Environmental Requirements shall excuse the Lessee from complying therewith.

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

(1) The Lessee hereby assumes all risks arising out of or in connection with the Tanks and all Discharges, whether foreseen or unforeseen, and shall indemnify and hold harmless the Port Authority, its Commissioners, officers, agents and employees from and against (and shall reimburse the Port Authority for their costs and expenses including without

limitation penalties, fines, liabilities, settlements, damages, attorney and consultant fees, investigation and laboratory fees, clean-up and remediation costs, court costs and litigation expenses), all claims and demands, just or unjust, of third persons (such claims and demands, "Tank Claims") including but not limited to those for personal injuries (including death), property damages, or environmental impairment, arising or alleged to arise out of, or in any way related to, the failure of the Lessee to comply with each and every term and provision of this Section, or the Tanks, or any Discharge, or any lawsuit brought or threatened, settlement reached or any governmental order relating to the Tanks or a Discharge, or any violation of any Environmental Requirement or demands of any Governmental Authority based upon or in any way related to the Tanks or a Discharge, and whether such arise out of the acts or omissions of the Lessee or of the contractors of the Lessee or of third persons or out of the acts of God or the public enemy or otherwise. It is understood that the foregoing indemnity shall cover all claims, demands, penalties, settlements, damages, fines, costs and expenses of or imposed by any Governmental Authority under the Environmental Requirements.

(2) If so directed, the Lessee shall at its expense defend any suit based upon any such Tank Claim (even if such Tank Claim is groundless, false or fraudulent) and in handling such it shall not, without first having express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority.

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

(g) *Survival of Obligations.* Without limiting or affecting the terms and provisions of the Section of the Lease, as hereby amended and extended, entitled "*Survival of the Obligations of the Lessee*", the Lessee's obligations under this

Section shall survive the expiration or earlier termination of the Lease, as hereby amended and extended.

(h) **Port Authority-directed Testing and Remediation.** In addition to the requirements of the Section of the Lease, as hereby amended and extended, entitled "*Law Compliance, Taxes and Excises*", and paragraph (e) of this Section, the Port Authority shall have the right upon notice to the Lessee to direct the Lessee, at the Lessee's sole cost and expense, (x) to perform such reasonable testing of the Tanks as the Port Authority may direct and to perform such testing of the soil, subsoil and ground water of the Premises and of such surrounding area as the Port Authority may direct, and (y) to clean-up and remediate any Discharge, regardless of whether any Environmental Requirement or Governmental Authority requires such testing, clean-up or remediation, which testing, clean-up and remediation shall be performed pursuant to an alteration application prepared by the Lessee and submitted to the Port Authority for the Port Authority's approval.

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

## **Section 12. Affirmative Action**

(a) **Deletion of Sections 45 and 45A of the Lease.** Sections 45 and 45A of the Lease are hereby deleted in their entirety, and the following provisions of this Section 12, the following Section 13 and Schedules E, F and G hereto are substituted in their place.

(b) **Affirmative Action.** The Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Lessee assures that no person shall be excluded on these grounds from participating in

or receiving the services or benefits of any program or activity covered by this subpart. The Lessee assures that it will require that its covered suborganizations provide assurances to the Lessee that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

**Section 13. The Lessee's Ongoing Affirmative Action, Equal Opportunity, Local Business Enterprises and ACDBE Participation Commitment**

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

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

(2) In addition to and without limiting the foregoing, and without limiting the provisions of Section 44 of the Lease, entitled "*Facilities Non-Discrimination*", and Schedule E to this Agreement, it is hereby agreed that the Lessee in connection with its continuing operation, maintenance and repair of the Premises, or any portion thereof, and in connection with every award or agreement for concessions or consumer services at the Airport, shall throughout the Term commit itself to and use good faith efforts to implement an extensive program of affirmative action, including specific affirmative action steps to be taken by the Lessee, to ensure maximum opportunities for employment and contracting by minorities and women, and by Minority Business Enterprises and Women-owned Business Enterprises. In meeting the said commitment, the Lessee agrees to submit to the Port Authority

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

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

(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 subparagraph (2) 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 ensure that the Lessee will meet its obligations hereunder.

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

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

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

(4) The Lessee acknowledges that the Port Authority is entering into this Agreement in reliance on the foregoing commitments and that such commitments are a material element of the consideration inducing the Port Authority to enter into and execute this Agreement. In the event of the breach by the Lessee of any of the above provisions, the Port Authority may take any appropriate action to enforce compliance; or in the event such non-compliance shall continue for a period of twenty (20) days after receipt of written notice from the Port Authority, the Port Authority shall have the right to terminate this Agreement and the letting hereunder with the same force and effect as a termination for default by the Lessee in the performance or observance of any other term or provision of this Agreement, or may pursue such other remedies as may be provided by law.

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

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

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

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

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

**(c) *Airport Concession Disadvantaged Business Enterprise (ACDBE) Participation.***

The Lessee agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement or any management contract, or subcontract, purchase or lease agreement or other agreement covered by 49 CFR Part 23. The Lessee agrees to include the above statements in any concession agreement or contract covered by 49 CFR Part 23 that it enters and cause those businesses to similarly include the statements in any further agreement. Further, the Lessee agrees to comply with the terms and provisions of Schedule G.

**Section 14. Brokerage**

The Lessee represents and warrants that no broker has been concerned on its behalf in the negotiation of this Agreement and that there is no broker, finder or similar agent who is or may be entitled to be paid a commission in connection therewith. The Lessee shall indemnify and save harmless the Port Authority of and from any claim for commission or brokerage made by any and all persons, firms or corporations whatsoever, based on the acts or omissions of the Lessee, for services rendered to the Lessee in connection with the negotiation and execution of this Agreement.

**Section 15.     Notices**

**(a)   *Notices to be in Writing.***

Except where expressly required or permitted herein to be oral, all notices, directions, requests, consents and approvals required to be given to or by either party (each, a "Notice") shall be in writing.

**(b)   *Delivery.***

All Notices shall be (x) personally delivered to such party or a duly designated officer or representative of such party at such party's designated address during regular business hours; (y) delivered by reliable overnight delivery service to such party's designated address; or (z) mailed to such party, officer or representative by registered or certified mail with return receipt at such party's designated address, to the attention of the representative designated by such party from time to time.

**(c)   *Designated Representative and Address.***

(1) Until further Notice, the Port Authority hereby designates its Executive Director, at its offices at 225 Park Avenue South, New York, New York 10003, as its representative and address for service of Notices.

(2) Until further Notice, the Lessee designates its General Counsel, at c/o Host Hotels, 6903 Rockledge Drive, Suite 1500, Bethesda, Maryland 20817, as its representative and address for service of Notices.

**(d)   *When Notices Deemed Given.***

Each Notice shall be deemed given and effective (x) upon receipt, (y) in the event of a refusal by the addressee, on the first tender of such Notice to the addressee at the designated address and (z) in the event of failure of delivery by reason of changed address of which no notice was given hereunder, on the first attempt at delivery. A party receiving a Notice that does not comply with the technical requirements for Notices under this Section may elect to waive any deficiencies and treat the Notice as duly given and effective.

**Section 16. Effect of Amendments**

(a) Except as hereby amended, all of the terms, covenants, provisions, conditions and agreements of the Lease shall be and remain in full force and effect.

(b) Except as otherwise specifically provided, all amendments to the Lease hereunder shall be effective as of the Effective Date.

**Section 17. Miscellaneous**

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

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

(c) ***Updating of Federal Requirements.*** The Lessee specifically acknowledges and agrees that the Federal requirements set forth in Schedule E may be revised or updated from time to time and that, accordingly, the Port Authority may from time to time, by notice to the Lessee, provide to the Lessee revised or updated forms of Schedule E to replace the Schedule E currently attached to and forming a part of this Agreement. Such replacement Schedule E shall, from the effective date of such notice, be deemed to constitute an integral part of this Agreement. Notwithstanding the foregoing, the Lessee shall not be obligated to cause any contractor with whom the Lessee has in force a contract on the date the Lessee receives a replacement Schedule E from the Port Authority, or with whom the Lessee enters into a contract within thirty (30) days after such date, to comply with any added or revised requirement that the replacement Schedule E establishes.

(d) ***OFAC Compliance.***

(1) The Lessee hereby represents and warrants to the Port Authority that the Lessee (x) is not, and shall not become, a person or entity with whom the Port Authority is restricted

from doing business under the regulations of the Office of Foreign Assets Control ("OFAC") of the United States Department of the Treasury (including without limitation those named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including without limitation Executive Order 13224 of September 23, 2001, *Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism*), or other governmental action, and (y) is not engaging and shall not engage in any dealings or transactions with, and is not and shall not be otherwise associated with (as determined by the Secretary of the Treasury of the United States of America), such persons or entities. The Lessee acknowledges that the Port Authority is entering into this Agreement in reliance on the foregoing representations and warranties and that such representations and warranties are a material element of the consideration inducing the Port Authority to enter into and execute this Agreement. In the event of any breach of any of the foregoing representations and warranties by the Lessee, the Port Authority shall have the right, in addition to any and all other remedies provided under this Agreement or at law or in equity, to immediately terminate this Agreement upon written notice to the Lessee. The Lessee further acknowledges that there shall be no cure for such a breach. In the event of any such termination by the Port Authority, the Lessee shall, immediately on receipt of the Port Authority's termination notice, cease all use of and operations permitted under this Agreement and surrender possession of the Premises to the Port Authority without the Port Authority being required to resort to any other legal process. Termination on the afore-described basis shall be deemed a termination for cause.

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

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

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

**(e) Construction and Application of Terms.**

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

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

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

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

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

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

because of any breach thereof, or because of its or their execution or attempted execution.

(g) **Entire Agreement.** This Agreement consists of the following: Sections 1 through 17 and Schedules E, F and G and Exhibit Supp. 3-A attached hereto. It constitutes the entire agreement of the parties on the subject matter hereof and may not be changed, modified, discharged or extended except by written instrument duly executed by the Port Authority and the Lessee. The Lessee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in this Agreement.

### **SIGNATURES TO FOLLOW**

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

THE PORT AUTHORITY OF NEW YORK  
AND NEW JERSEY

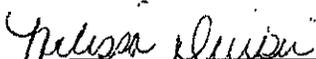
ATTEST:

  
Secretary

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

~~WITNESS~~  
~~ATTEST:~~

HOST HOTELS & RESORTS, L.P.  
By: Host Hotels & Resorts, Inc.,  
its general partner

  
(name) Melissa Durbin  
(title) Senior Legal Assistant

  
(name) Larry K. Harvey  
(title) Executive Vice President  
Chief Financial Officer

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

JJL

**Schedule E**  
**MBE/WBE Program**

SCHEDULE E

AFFIRMATIVE ACTION-EQUAL OPPORTUNITY---MINORITY BUSINESS ENTERPRISES ---WOMEN-OWNED BUSINESS ENTERPRISES REQUIREMENTS

PART I. Affirmative Action Guidelines - Equal Employment Opportunity

I. As a matter of policy, the Port Authority hereby requires the Lessee and the Contractor shall require the Contractor, as hereinafter defined, to comply with the provisions set forth hereinafter in this Schedule E and in Section 13 of Supplement No. 3 to Port Authority Lease No. ANA-037 (herein called the "Lease") with Host Marriott, L.P. (herein and in the Lease called the "Lessee"). The provisions set forth in this Part I are similar to the conditions for bidding on federal government contract adopted by the Office of Federal Contract Compliance and effective May 8, 1978.

The Lessee as well as each bidder, contractor and subcontractor of the Lessee and each subcontractor of a contractor at any tier of construction (herein collectively referred to as the "Contractor") must fully comply with the following conditions set forth herein as to each construction trade to be used on the construction work or any portion thereof (said conditions being herein called "Bid Conditions"). The Lessee hereby commits itself to the goals for minority and female utilization set forth below and all other requirements, terms and conditions of the Bid Conditions. The Lessee shall likewise require the Contractor to commit itself to the said goals for minority and female utilization set forth below and all other requirements, terms and conditions of the Bid Conditions by submitting a properly signed bid.

II. The Lessee and the Contractor shall each appoint an executive of its company to assume the responsibility for the implementation of the requirements, terms and conditions of the following Bid Conditions:

(a) The goals for minority and female participation expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work are as follows:

(1)	Minority participation	
	Minority, except laborers	30%
	Minority, laborers	40%
(2)	Female participation	
	Female, except laborers	6.9%
	Female, laborers	6.9%

These goals are applicable to all the Contractor's construction work performed in and for the Premises.

The Contractor's specific affirmative action obligations required herein of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make good faith efforts to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract. Compliance with the goals will be measured against the total work hours performed.

(b) The Contractor shall provide written notification to the Lessee and the Lessee shall provide written notification to the Port Authority's Aviation Department and Office of Business and Job Opportunity within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

(c) As used in these specifications:

(1) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941:

(2) "Minority" includes:

(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).

(d) Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the construction work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 those provisions which include the applicable goals for minority and female participation.

(e) The Contractor shall implement the specific affirmative action standards provided in subparagraphs (1) through (16) of Paragraph (h) hereof. The goals set forth above are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the Premises. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

(f) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations hereunder.

(g) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(h) The Contractor shall take specific affirmative actions to ensure equal employment opportunity ("EEO").

The evaluation of the Contractor's compliance with these provisions shall be based upon its good faith efforts to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

(1) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each phase of the construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other supervisory personnel at the Premises are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at the Premises.

(2) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(3) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female

referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

(4) Provide immediate written notification to the Lessee when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(5) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and training programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (2) above.

(6) Disseminate the Contractor's EEO Policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the Contractor's newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the Contractor's EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

(7) Review, at least every six months the Contractor's EEO policy and affirmative action obligations hereunder with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decision including specific review of these items with on-terminal supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at the Premises. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(8) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

(9) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations and to State-certified

minority referral agencies serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(10) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the Premises and in areas of a Contractor's workforce.

(11) Tests and other selecting requirements shall comply with 41 CFR Part 60-3.

(12) Conduct, at least every six months, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

(13) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations hereunder are being carried out.

(14) Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(15) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(16) Conduct a review, at least every six months, of all supervisors' adherence to and performance under the Contractors' EEO policies and affirmative action obligations.

(i) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (subparagraphs (1)-(16) of Paragraph (h) above). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under Paragraph (h) hereof provided that: the Contractor actively participates in the group, makes good faith efforts to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes good faith efforts to meet its individual goals and

timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's non-compliance.

(j) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation hereof if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation hereof if a specific minority group of women is underutilized).

(k) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex or national origin.

(l) The Contractor shall not enter into any subcontract with any Person or firm debarred from Government contracts pursuant to Executive Order 11246.

(m) The Contractor shall carry out such sanctions and penalties for violation of this clause including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered by the Lessee. Any Contractor who fails to carry out such sanctions and penalties shall be in violation hereof.

(n) The Contractor, in fulfilling its obligations hereunder shall implement specific affirmative actions steps, at least as extensive as those standards prescribed in paragraph (h) hereof so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of these provisions, the Lessee shall proceed accordingly.

(o) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g. mechanical apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and location at which the work is performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

(p) 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 (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

(q) Without limiting any other obligation, term or provision under the Lease, the Contractor shall cooperate with all federal, state or local agencies established for the purpose of implementing affirmative action compliance programs and shall comply with all procedures and guidelines established or which may be established by the Port Authority.

PART II. MINORITY BUSINESS ENTERPRISES AND WOMEN-OWNED BUSINESS ENTERPRISES

As a matter of policy the Port Authority requires the Lessee and the Lessee shall itself and shall require that any Contractor utilized by the Lessee to perform contract work ("the work") on the premises including without limitation construction work to use every good faith effort to provide for meaningful participation by Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs) in the work pursuant to the provisions of this Schedule E. For purposes hereof, "Minority Business Enterprise" "(MBE)" shall mean any business enterprise which is at least fifty-one percentum owned by, or in the case of a publicly owned business, at least fifty-one percentum of the stock of which is owned by citizens or permanent resident aliens who are minorities and such ownership is real, substantial and continuing. For the purposes hereof, "Women-owned Business Enterprise" "(WBE)" shall mean any business enterprise which is at least fifty-one percentum owned by, or in the case of a publicly owned business, at least fifty-one percentum of the stock of which is owned by women and such ownership is real, substantial and continuing. A minority shall be as defined in paragraph II(c) of Part I of this Schedule E. "Meaningful participation" shall mean that at least seventeen percent (17%) of the total dollar value of the construction contracts (including subcontracts) covering the construction work are for the participation of Minority Business Enterprises and Women-owned Business Enterprises, of which at least twelve percent (12%) are for the participation of Minority Business Enterprises. Good faith efforts to include meaningful participation by MBEs and WBEs shall include at least the following:

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

(b) Actively and affirmatively soliciting bids for subcontracts from MBEs and WBEs, including circulation of solicitations to minority and female contractor associations. The Contractor shall maintain records detailing the efforts made to provide for meaningful MBE and WBE participation in the work, 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.

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

(d) 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.

(e) Encouraging the formation of joint ventures, partnerships or other similar arrangements among subcontractors, where appropriate, to insure that the Lessee and Contractor will meet their obligations hereunder.

(f) Insuring that provision is made to provide progress payments to MBEs and WBEs on a timely basis, preferably bi-weekly, and that retainage is paid to MBEs and WBEs when they have completed their work.

(g) Not requiring bonds from and/or providing bonds and insurance for MBEs and WBEs, where appropriate.

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

Certification of MBEs and WBEs hereunder shall be made by the Office of Business and Job Opportunity of the Port Authority. If the Contractor wishes to utilize a firm not already certified by the Port Authority, it shall submit to the Port Authority a written request for a determination that the proposed firm is eligible for certification. This shall be done by completing and forwarding such form as may be then required by the Port Authority. All such requests shall be in writing addressed to the Office of Business and Job Opportunity, the Port Authority of New York and New Jersey, 233 Park Avenue South, 4<sup>th</sup> Floor, New York, New York 10003 or such other address as the Port Authority may specify by notice to the Lessee. Certification shall be effective only if made in writing by the Director in charge of the Office of Business and Job Opportunity of the Port Authority. The determination of the Port Authority shall be final and binding.

The Port Authority has compiled a list of the firms that the Port Authority has determined satisfy the criteria for MBE and WBE certification. This list may be supplemented and revised from time to time by the Port Authority. Such list shall be made available to the Contractor upon request. The Port Authority makes no representation as the financial responsibility of such firms, their technical competence to perform, or any other performance-related qualifications.

Only MBE's and WBE's certified by the Port Authority will count toward the MBE and WBE goals.

Please note that only sixty percent (60%) of expenditures to MBE or WBE suppliers will count towards meeting the MBE and WBE goals. However, expenditures to MBE or WBE manufacturer's (i.e. suppliers that produce goods from raw materials or substantially alter them before resale) are counted dollar for dollar.

INITIALED:	
For the Port Authority	For the Lessee
KD	KSH

**Schedule F**  
**Local Business Enterprises Program**

## **SCHEDULE F**

### **LOCAL BUSINESS ENTERPRISE & EMPLOYMENT OPPORTUNITY**

As a matter of policy the Port Authority hereby requires the Lessee and the Lessee shall require any Contractor utilized by the Lessee to perform work on the premises, to comply with the provisions set forth hereinafter in this Schedule F.

#### **PART I. Local Business Enterprise**

The Lessee and each Contractor shall use every good faith effort to maximize the participation of Local Business Enterprises (LBEs) in the Contract Work ("the work") on the premises, including without limitation the construction work. By accessing the link below you can obtain information on Air Services Development Office (ASDO) LBE Programs, LBE Vendor Profiles, access ASDO's on-line vendor retrieval system (BASIS) and information about any meetings on LBEs scheduled by the Authority. The Port Authority has not checked the references, capabilities or financial background of the firms listed in the directory, but is making such information available solely for the purpose of advising the bidders of LBEs who may be interested in providing services and/or materials to the successful bidder.

- <http://www.asdoonline.com>

Good faith efforts to include LBEs in the work shall include at least the following:

- A. Dividing the work to be subcontracted and services and materials to be procured into small portions, where feasible.
- B. Soliciting bids on portions of the work to be subcontracted and services and materials to be procured from firms listed with ASDO and such other LBEs as the Lessee deems appropriate.

It is specifically understood and agreed that the requirements set forth herein for the participation of LBEs shall not alter, limit, diminish, or modify any of the obligations under this Lease including, without limitation, the obligation to comply with the Affirmative Action-Equal Opportunity and Minority and Women-owned Business Enterprises provisions set forth in Schedule E hereof.

Local Business Enterprise shall mean a business entity located within the County of Queens for LaGuardia and John F. Kennedy International Airports, Counties of Essex, Hudson and Union for Newark Liberty International Airport and for Stewart International Airport, Counties within a 25-mile radius.

#### **PART II. Local Employment Opportunity**

The Port Authority is committed to making employment opportunities available to local residents and expects that the Lessee and its Contractors will work with the Council for Airport Opportunity (CAO) to utilize the labor talent available from local communities

surrounding the airport. Information regarding Council for Airport Opportunity programs can be accessed at the following websites:

- <http://www.caony.com>
- <http://www.caonj.com>

A local resident is defined as residing within the County of Queens for LaGuardia and John F. Kennedy International Airports and as residing within the Counties of Essex, Hudson and Union for Newark Liberty International Airport.

INITIALED:	
For the Port Authority	For the Lessee
KO	LKF

**Schedule G**  
**Airport Concession Disadvantaged Business Enterprise**  
**(ACDBE) Program**

## SCHEDULE G

### AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PARTICIPATION

In accordance with regulations of the US Department of Transportation 49 CFR Part 23, the Port Authority has implemented an Airport Concession Disadvantaged Business Enterprise (ACDBE) program under which qualified firms may have the opportunity to operate an airport business. The Port Authority has established an ACDBE participation goal, as measured by the total estimated annual gross receipts for the overall concession program. The goal is modified from time to time and posted on the Port Authority's website: [www.panynj.gov](http://www.panynj.gov).

The overall ACDBE goal is a key element of the Port Authority's concession program and Concessionaire shall take all necessary and reasonable steps to comply with the requirements of the Port Authority's ACDBE program. The Concessionaire commits to making good faith efforts to achieve the ACDBE goal. Pursuant to 49 CFR 23.25 (f), ACDBE participation must be, to the greatest extent practicable, in the form of direct ownership, management and operation of the concession or the ownership, management and operation of specific concession locations through subleases. The Port Authority will also consider participation through joint ventures in which ACDBEs control a distinct portion of the joint venture business and/or purchase of goods and services from ACDBEs. In connection with the aforesaid good faith efforts, as to those matters contracted out by the Concessionaire in its performance of this agreement, the Concessionaire shall use, to the maximum extent feasible and consistent with the Concessionaire's exercise of good business judgment including without limit the consideration of cost competitiveness, a good faith effort to meet the Port Authority's goals. Information regarding specific good faith steps can be found in the Port Authority's ACDBE Program located on its above-referenced website. In addition, the Concessionaire shall keep such records as shall enable the Port Authority to comply with its obligations under 49 CFR Part 23 regarding efforts to offer opportunities to ACDBEs.

#### Qualification as an ACDBE

To qualify as an ACDBE, the firm must meet the definition set forth below and be certified by the New York State or New Jersey Uniform Certification Program (UCP). The New York State UCP directory is available on-line at [www.nysucp.net](http://www.nysucp.net) and the New Jersey UCP at [www.njucp.net](http://www.njucp.net).

An ACDBE must be a small business concern whose average annual receipts for the preceding three (3) fiscal years does not exceed \$47.78 million and it must be (a) at least fifty-one percent (51%) owned and controlled by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least fifty-one percent (51%) of the stock is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially or economically disadvantaged individuals who own it. The personal net worth standard used in determining eligibility for purposes of

part 23 is \$750,000.

The ACDBE may, if other qualifications are met, be a franchisee of a franchisor. An airport concession is a for-profit business enterprise, located on an airport, which is subject to the Code of Federal Regulations 49 Part 23, subpart F, that is engaged in the sale of consumer goods or services to the public under an agreement with the sponsor, another concessionaire, or the owner or operator of a terminal, if other than the sponsor. The Port Authority makes a rebuttable presumption that individuals in the following groups who are citizens of the United States or lawful permanent residents are "socially and economically disadvantaged":

- a. Women;
- b. Black Americans which includes persons having origins in any of the Black racial groups of Africa;
- c. Hispanic Americans which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- d. Native Americans which includes persons who are American Indians, Eskimos, Aleuts or Native Hawaiians;
- e. Asian-Pacific Americans which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia or Hong Kong;
- f. Asian-Indian Americans which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, Maldives Islands, Nepal and Sri Lanka; and
- g. Members of other groups, or other individuals, found to be economically and socially disadvantaged by the Small Business Administration under Section 8(a) of the Small Business Act, as amended (15 U.S.C. Section 637(a)).

Other individuals may be found to be socially and economically disadvantaged on a case-by-case basis. For example, a disabled Vietnam veteran, an Appalachian white male, or another person may claim to be disadvantaged. If such individual requests that his or her firm be certified as ACDBE, the Port Authority, as a certifying partner in the New York State and New Jersey UCPs will determine whether the individual is socially or economically disadvantaged under the criteria established by the Federal Government. These owners must demonstrate that their disadvantaged status arose from individual circumstances, rather than by virtue of membership in a group.

Certification of ACDBEs hereunder shall be made by the New York State or New Jersey UCP. If Concessionaire wishes to utilize a firm not listed in the UCP directories but

which the Concessionaire believes should be certified as an ACDBE, that firm shall submit to the Port Authority a written request for a determination that the firm is eligible for certification. This shall be done by completing and forwarding such forms as may be required under 49 CFR Part 23. All such requests shall be in writing, addressed to Lash Green, Director, Office of Business and Job Opportunity, The Port Authority of New York and New Jersey, 233 Park Avenue South, 4th Floor, New York, New York 10003 or such other address as the Port Authority may designate from time to time. Contact [OBJOcert@panynj.gov](mailto:OBJOcert@panynj.gov) for inquiries or assistance.

General

In the event the signatory to this agreement is a Port Authority permittee, the term Concessionaire shall mean the Permittee herein. In the event the signatory to this agreement is a Port Authority lessee, the term Concessionaire shall mean the Lessee herein.

INITIALED:	
For the Port Authority	For the Lessee
KO	LGH

**Exhibit Supp. 3-A**  
**Ballroom**



For the Lessee

STATE OF Maryland )

) ss

COUNTY OF Montgomery )

On the 9 day of December in the year 2011, before me, the undersigned, a Notary Public in and for said state, personally appeared Larry K. Harvey, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Melissa Durbin

(notarial seal and stamp)

Embossed Hereon is My  
Carroll County, Maryland Notary Public Seal  
My Commission Expires April 06, 2014  
MELISSA A. DURBIN

AMERICAN



AGREEMENT OF LEASE

THIS AGREEMENT, made as of *FEBRUARY 10, 1983* by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called "the Port Authority") a body corporate and politic created 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 and place of business at One World Trade Center, New York, New York 10048 and MARRIOTT CORPORATION (hereinafter called "the Lessee") a corporation organized and existing under and by virtue of the laws of the State of Delaware having an office and place of business at Marriott's Essex House, New York, New York, the representative of which is John Herold,

WITNESSETH, That:

WHEREAS, in fulfillment of the Port Authority's obligation to operate facilities for the use and benefit of the public it is desirable to provide at Newark International Airport a hotel for the accommodation, convenience and welfare of the traveling public and other users of Newark International Airport; and

WHEREAS, the hotel shall be of a character and size commensurate with the character and size of said Airport and with current and projected passenger usage of such Airport; and

WHEREAS, the Port Authority and the Lessee recognize that to provide such hotel the Lessee may seek financing through the issuance of industrial development bonds subsequent to the Completion Date, as such term is defined in paragraph 4.14 of this Agreement, by a qualifying issuer of industrial development bonds pursuant to Section 103 of the Internal Revenue Code of 1954, as amended, and the regulations promulgated thereunder if such hotel shall qualify as an exempt airport facility under Section 103(b)(4)(D) and the regulations promulgated thereunder; and

WHEREAS, the Lessee has represented to the Port Authority and hereby agrees that no industrial development bonds will be issued in connection with the hotel until the said Completion Date and the Lessee will not obtain either directly or indirectly any monies resulting from the issuance of said industrial development bonds until the said Completion Date;

NOW, THEREFORE, in consideration of the covenants and mutual agreements of the parties hereto, the Port Authority and the Lessee hereby covenant and agree as follows:

Section 1. Letting

1.1 The Port Authority hereby lets to the Lessee and the Lessee hereby hires and takes from the Port Authority at Newark International Airport (sometimes hereinafter referred to as "the Airport" or "the Facility") in the City of Newark, County of Essex and State of New Jersey the following:

the land shown in stipple on the sketch annexed hereto, made a part hereof and marked "Exhibit A," together with the improvements, fixtures and other property of the Port Authority located or to be located therein, thereon or thereunder, all of the foregoing being sometimes hereinafter referred to as "the site", and the hotel and all improvements, fixtures, permanently affixed equipment and other structures which in accordance with the provisions of this Agreement are to be constructed and installed thereon, the said site, together with the hotel and the improvements, fixtures, permanently affixed equipment and other structures and replacements therefor being hereinafter sometimes collectively referred to as "the premises"; reserving, however, unto the Port Authority all rights in and to the ground and other subsurface areas below said land and the right in the Port Authority to use the same so long as such use shall not affect the structural integrity or right of support of the hotel; and reserving, further, unto the Port Authority all rights in the air space of areas adjoining the premises as well as above the roof or uppermost portion of the hotel whether such

air space rights are used in connection with adjacent buildings or improvements, or for buildings or improvements extending over the roof or uppermost level of the hotel.

1.2 Prior to the execution of this Agreement, the Lessee has thoroughly examined the site and the Lessee agrees to accept the site "as is", in the condition existing on the commencement date set forth in Section 2 hereof. The Port Authority makes no representations or warranties with respect to the condition of the site or the suitability thereof for the design and construction of the hotel by the Lessee.

Section 2. Term of the Letting

The term of the letting under this Agreement shall commence on *FEBRUARY 10, 1983* and shall, unless sooner terminated, or unless extended, expire on December 31, 2015.

Section 3. Use of Premises

3.1 Subject to all the provisions of this Agreement, the Lessee shall use the premises for the construction and operation of a superior first class hotel for transient guests containing a minimum of 400 guest rooms, (designed for expansion to 600 or more guest rooms), banquet, meeting, conference rooms and convention facilities such as are customarily found or provided in airport hotels of such size, class and character, full service restaurant offering attended sit-down service, bar, cocktail lounge and coffee shop, controlled on-site parking facilities, and such other shops and services as may from time to time be consented to in advance by the Port Authority in accordance with the provisions of Section 9 of this Agreement.

3.2 "Superior first class hotel" as used in this Agreement means an above average hotel, with deluxe features containing accommodations and public areas generally modern or fine traditional in style, tastefully furnished and decorated and very comfortable, all of which in most cases will satisfy the discriminating traveler.

Section 4. Development and Construction of Hotel

4.1 The Lessee at its sole cost and expense shall design, construct and equip on the premises in accordance with the provisions hereinafter set forth, a superior first class hotel as described in the Section of this Agreement entitled "Use of Premises".

4.2 The Port Authority shall designate to the Lessee the architect or engineer (staff or retained by the Port Authority) for coordinating the review and processing of the Lessee's design drawings, plans and specifications for the hotel and for inspecting construction thereof.

4.3 Within thirty (30) days following execution of this Agreement, the Lessee shall designate to the Port Authority the architect and engineer selected by the Lessee to perform and supervise the construction of the hotel. Neither the architect nor the engineer shall be retained by the Lessee until the Port Authority has given its approval therefor which approval shall not be unreasonably withheld by the Port Authority if the proposed architect and engineer are qualified and licensed in New Jersey and experienced in design and construction of hotel structures of the kind contemplated in this Agreement and have sufficient experienced staff and other resources necessary to handle expeditiously all aspects relating to the design and construction of the hotel.

4.4 Not later than thirty (30) days following approval by the Port Authority of the architect and engineer selected by the Lessee in accordance with Paragraph 4.3 above, the Lessee shall prepare, execute and 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. The Lessee shall adopt and incorporate in such plans and specifications, renderings, layouts and models and shall thereafter construct the hotel in accordance with the Port Authority's requirements and criteria for the design and construction of the hotel as set forth in detail in the Port Authority Design Guide annexed to this Agreement, hereby made a part hereof and marked "Exhibit A-1". Without limiting the generality of the foregoing, the Lessee agrees that said comprehensive plan shall include the construction of:

- (i) a hotel of the type and size set forth in Section 3 of this Agreement;
- (ii) All appropriate lines, pipes, 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 hotel;
- (iii) All necessary ground and elevated roadways and ramps and pedestrian circulation areas;
- (iv) Appropriate landscaping;
- (v) The demolition of all existing buildings, improvements and structures, if any, on the site,
- (vi) On-site controlled parking facilities of the type described in Section 10 of this Agreement.

4.4.1 The Lessee agrees at its sole cost and expense to design and construct the hotel and all the appurtenant items set forth in paragraph 4.4, such design and construction being sometimes hereinafter collectively referred to as "the construction work".

4.4.2 Within thirty (30) days following receipt by the Port Authority of the Lessee's comprehensive plan referred to in paragraph 4.4 above, the Port Authority shall give its written approval thereto or shall request such

revisions or modifications therein as the Port Authority may deem appropriate. The Lessee shall submit such revisions or modifications to the comprehensive plan within twenty (20) days after receipt of such request from the Port Authority and if additional further revisions or modifications are requested by the Port Authority prior to approval by the Port Authority of the Lessee's comprehensive plan then the Lessee shall promptly so revise or modify its comprehensive plan.

4.5 Prior to the commencement of the construction work and following approval by the Port Authority of the Lessee's comprehensive plan, the Lessee shall diligently prepare and submit to the Port Authority for the Port Authority's approval complete plans and specifications therefor. The Port Authority may refuse to grant approval with respect to 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 as shown in the Lessee's comprehensive plan; or

(iii) Not comply with the Port Authority's requirements with respect to external and interior building materials and finishes at the Airport as set forth in Exhibit A-1; or

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

(v) Set forth building limits, ground elevations or heights other than those prescribed by the Port Authority and shown on the Lessee's comprehensive plan, or

(vi) Not provide adequate and proper circulation areas or on-site controlled parking facilities; or

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

(viii) Not comply with the provisions of the Basic Lease, 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 Newark 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; or

(ix) Not conform to the building limit lines and to such ground elevation and height limits as indicated on Exhibit A; or

(x) Be in violation or contravention of any other requirements or criteria set forth in Exhibit A-1 or of any other provisions and terms of this Agreement; or

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

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

(xiii) Not comply with the Port Authority's requirements with respect to landscaping as set forth in Exhibit A-1; or

(xiv) Not comply with Port Authority's requirements and standards with respect to noise, wind load, snow load, air pollution, water pollution and other types of pollution, as set forth in Exhibit A-1; or

(xv) Not comply with Port Authority requirements with respect to the installation of approved automatic fire protection, sprinkler, and smoke alarm systems as set forth in Exhibit A-1.

The Port Authority agrees that it will not object to items set forth in the Lessee's plans and specifications submitted pursuant to this paragraph 4.5 to the extent that such items were set forth in the Lessee's comprehensive plan as approved by the Port Authority, unless such items do not comply with the foregoing.

4.5.1 To the extent that Exhibit A-1 does not indicate the precise information or other necessary description to enable the Lessee to design and construct the hotel in conformance with the provisions of this Section 4, the same will be supplied by the Port Authority on request.

4.5.2 Within thirty (30) days following receipt by the Port Authority of the Lessee's complete plans and specifications referred to in paragraph 4.5 above, the Port Authority shall give its written approval thereto or shall request such revisions or modifications therein as the Port Authority may deem appropriate in accordance with the provisions of paragraph 4.5. The Lessee shall submit such revisions or modifications to the complete plans and specifications within thirty (30) days after receipt of such request from the Port Authority and if additional or further revisions or modifications are requested by the Port Authority prior to approval of such plans and specifications by the Port Authority then the Lessee shall promptly so revise or modify such plans and specifications.

4.5.3 The design and specifications for proposed furniture, trade fixtures and removable equipment shall be submitted to the Port Authority for review and comment no later than thirteen (13) months following commencement of the construction work by the Lessee.

4.6 In connection with review by the Port Authority of the submissions under paragraphs 4.4 and 4.5 above, the Lessee shall submit to the Port Authority such additional data, detail or information as the Port Authority may from time to time reasonably request.

4.6.1 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 plans and specifications submitted by the Lessee pursuant to this Section except that the Lessee agrees to pay to the Port Authority upon demand the expenses incurred by the Port Authority in connection with any additional review for approval of any changes, modifications or revisions of plans and specifications previously submitted or previously approved which may be proposed by the Lessee for the Port Authority's approval. Notwithstanding the foregoing there will be no charges payable by the Lessee for insubstantial or immaterial changes and revisions. 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 Agreement reference is made to "direct payroll time", costs computed therefor 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 Agreement.

4.7 Subject to the provisions of paragraphs 4.8 and 4.12 hereof, the Lessee shall commence construction of the hotel as soon as possible after approval by the Port Authority of the Lessee's complete construction plans and specifications; the Lessee shall expeditiously continue such construction so as to complete the hotel as early as possible and in any event by the date referred to in paragraph 4.13 hereof. Nothing in the foregoing shall be construed to prevent the Lessee from requesting Port Authority approval pursuant to paragraph 4.18 below to commence the construction work prior to Port Authority approval of the Lessee's complete plans and specifications.

4.8 Prior to entering into any contract for the construction work or for the installation of fixtures, furniture or removable equipment in the premises the Lessee shall submit to the Port Authority for its approval the name of the general contractor to whom it proposes to award any such contract, and if requested, the form of contract to be used by the Lessee. The Lessee shall include in any such contract such provisions relating to labor harmony and payments to subcontractors as the Port Authority may reasonably require. 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 of 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."

The Lessee shall file with the Port Authority a copy of its contracts with its general contractors within thirty (30) days after the execution date of each such contract. Such contract need not disclose prices paid to the contractors but this shall not be construed to relieve the Lessee from submitting to the Port Authority all the information and documentation required by paragraph 49.8 of this Agreement.

4.8.1 The Port Authority shall have the right to disapprove any proposed general contractor who may be unacceptable to it. The Lessee shall be solely responsible for any plans, specifications, data or materials used by it or its contractors and for any loss, damage or liability resulting from the use thereof, notwithstanding that the same have been approved by the Port Authority and notwithstanding the incorporation therein of Port Authority recommendations or requirements pursuant to this Agreement. Notwithstanding the requirement for approval by the Port Authority of the contracts to be entered into by the Lessee or the approval or disapproval thereof by the Port Authority 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 to others in connection with any proposed or actual contracts entered into by the Lessee for construction or installation work hereunder 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 or guarantees contained in any contract entered into by the Lessee for the

performance of construction or installation work hereunder shall be for the benefit of the Port Authority as well as the Lessee, and the contracts shall so provide.

4.9 The Port Authority shall have no responsibility for the supply of any utilities or services (including but not limited to electricity, steam or water) required for the performance of the construction work. The Lessee shall be responsible for making separate arrangements with the appropriate public utility for the supply of all such utilities and for acquiring and installing all necessary equipment or devices for handling, distributing, transforming, transmission or reduction of any of such utilities or services and for payment for utilization or consumption of any such all as more particularly set forth in the Section of this Agreement entitled "Utilities and Services".

4.10 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 as may reasonably be required at any time and from time to time by the Port Authority. The Port Authority may require certification by a licensed engineer of structural aspects of the construction. At any and all times during the progress of the construction work the Port Authority shall have the right through its duly designated representatives to inspect the construction work, and the machinery or equipment used in connection therewith, which the Lessee or its contractor, shall demonstrate upon reasonable request from the Port Authority and from time to time, in its discretion, the Port Authority shall have the right to take samples and perform testing on any part of the construction work provided same does not unreasonably interfere with performance of the construction work. All construction work performed by the Lessee pursuant to this Agreement shall be in accordance with the approved Construction Application and all of the plans, specifications, drawings and other data forming a part thereof and the Lessee shall redo or replace at its own expense any work not done in accordance herewith. All workmanship and materials shall be of a type and quality consistent with construction of a superior first class hotel as defined in paragraph 3.2. No work shall be commenced by or on behalf of the Lessee until the Construction Application and plans and specifications referred to in this Section have been finally approved by the Port Authority. In the event of any inconsistency between the terms of any Construction Application and the terms of this Agreement the terms of this Agreement shall prevail and control. Upon completion of the work the Lessee shall deliver to the Port Authority two (2) sets of "as built" microfilm drawings of the construction work mounted on aperture cards, all of which shall conform to the requirements 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 the letting under this Agreement keep said drawings current showing thereon any changes or modifications to the premises which may be made during the term of the letting pursuant to Section 19 of this Agreement (no changes or modifications shall be made without prior Port Authority consent).

4.11 The Lessee shall, prior to and during the performance of the construction work take all reasonable measures to prevent erosion of the soil and the blowing of sand or materials and if necessary shall erect fencing or partitioning and cover open areas with asphaltic emulsion or similar materials as the Port Authority may reasonably direct.

4.11.1 The Lessee shall not have title to any soil, dirt, sand or other matter (hereinafter in this paragraph collectively called "the matter") excavated by the Lessee during the course of the construction work but the Lessee shall be permitted to use the matter for performance of the construction work at the site. All soil, dirt, sand or other matter not used by the Lessee at the site shall be delivered by the Lessee at its expense to any location on the Airport as may be designated by the Port Authority. The Lessee shall have no interest in the proceeds, if any, of the sale or other disposition of the matter. Notwithstanding the foregoing the Port Authority may elect by prior written notice to the Lessee to waive all of its rights to all or portions of the matter in which event the Lessee at its expense shall dispose of the same without further instruction from the Port Authority.

4.11.2 Without limiting the generality of the provisions of this Agreement, including without limitation the provisions of paragraph 4.11 above, the hotel 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 Lessee's operations in or its use or maintenance of the premises under this Agreement. The Lessee understands that it may be obligated to construct such reasonable structures, fences, equipment, devices and other facilities as may be necessary or appropriate to accomplish the objectives as set forth in 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. If the Lessee pursuant to paragraph 12.8

is required to design and construct such facilities subsequent to the completion of the construction work under this Section, 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 of the provisions of this Section 4 with respect to the construction work shall apply and pertain with like effect to any work which the Lessee is obligated to perform during the term of the letting pursuant to this paragraph and upon completion of such work it shall be and become a part of the premises hereunder.

4.12 The Lessee will give the Port Authority fifteen (15) days' notice prior to the commencement of construction.

4.12.1 In the event that the Lessee shall fail at any time during the construction of any portion of the construction work under this Agreement, in the opinion of the Port Authority, to comply with material provisions of this Agreement with respect to the construction work, the Port Authority shall have the right, to cause the Lessee to cease such part of the construction work as is being performed in violation of this Agreement. Upon written direction from the General Manager of the Airport specifying the reasons therefor, the Lessee shall promptly cease construction of the portion of the construction work specified and shall 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 Agreement. After receipt of the said proposal the Port Authority will expeditiously advise the Lessee as to whether or not the Lessee's proposal is acceptable and if unacceptable the reasons therefor. The Lessee shall not commence construction of the portion of the construction work that has been halted until written approval has been received from the Port Authority.

4.12.2 It is expressly understood and agreed that neither the field engineer covered by paragraph 4.18.7 hereof nor the Resident Engineer mentioned in paragraph 4.18.6 below 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. It is hereby further understood and agreed that should the field engineer referred to in paragraph 4.18.7 give any directions or approvals with respect to the Lessee's performance of any portion of the construction work which are contrary to the provisions of this Agreement or the approved Construction Application, said directions or

approvals shall not affect the obligations of the Lessee as set forth herein, nor release or relieve the Lessee from the 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 deemed to create such a duty or obligation. Accordingly, the fact that the Port Authority has not exercised its 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 work in accordance with the terms of this Agreement and the approved Construction Application nor shall such fact be or be deemed to be a waiver by the Port Authority from the requirement of compliance by the Lessee with the provisions of this Agreement and the approved Construction Application with respect to the construction work.

4.12.3 Title to the construction work shall vest in the City of Newark immediately upon erection or affixation of all or any part thereof on or to the site and shall then be and become a part of the premises. If requested so to do, the Lessee shall execute such documents as the Port Authority may request confirming such ownership by the City of Newark and the date or dates thereof.

4.13 The Lessee shall substantially complete the construction work and equipping of the hotel as early as possible so that the hotel shall be substantially completed and ready for occupancy not later than thirty months following the Commencement Date of the letting under this Agreement, as such date is prescribed in Section 2 hereof, provided, however, that such thirty month period may be subject to extension due to causes or conditions beyond the Lessee's control which causes or conditions shall mean solely the following:

4.13.1 Delays by the Port Authority in reviewing and approving the Lessee's submission of plans and specifications under paragraphs 4.4, 4.5 or 4.6 above so long as such Port Authority delay is not occasioned by the failure of the Lessee to submit the same when required and to supply additional necessary information requested by the Port Authority, it being understood that the foregoing shall not be construed as limiting the Port Authority's or Lessee's obligations under paragraphs 4.4, 4.5 and 4.6 above.

4.13.2 Delays by the Lessee in obtaining required governmental approvals or authorization (where applicable) for the construction or installation work provided the Lessee has expeditiously applied for and promptly processed the same;

4.13.3 Strikes, labor disturbances, unavailability of materials, acts of God, conditions of war or national emergency, riots, or other public disorder, adverse weather conditions, restraining orders issued by a court of competent jurisdiction if such order has been granted without the fault of the Lessee, to the extent that the impact of the foregoing is not avoidable or reducible by the good faith efforts of the Lessee.

4.14 When the construction work has been substantially completed and the hotel is ready for use by the Lessee and the general public, the Lessee shall deliver to the Port Authority a certificate to such effect signed by an authorized officer of the Lessee certifying that the construction work and the complete equipping of the hotel has been performed in accordance with the approved Construction Application and the plans, specifications data and materials forming a part thereof, in compliance with paragraph 4.5.3 and in compliance with all applicable government laws, ordinances, rules, regulations, requirements, orders and directions, and the provisions of this Agreement. Within thirty (30) days thereafter the construction work and the equipping of the hotel will be inspected by the Port Authority and unless such certification is not correct or the Port Authority determines that the construction work is unsuitable for occupancy and use by the Lessee or the general public, a certificate of substantial completion 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 date specified in such certificate or the date of delivery of such certificate to the Lessee, whichever is later, shall constitute the "Completion Date" under this Agreement. Except as provided in paragraph 4.14.1 below, the Lessee shall not use or permit the use of the premises for the purposes set forth in Section 3 of this Agreement prior to the Completion Date.

4.14.1 In the event that from time to time integral and material portions of the hotel are substantially completed or ready for use by the general public, the Lessee

may deliver to the Port Authority a certificate signed by an authorized officer of the Lessee certifying that such portion of the construction work has been constructed in accordance with the approved construction application and the plans, specifications, data and material forming a part thereof, and in compliance with all applicable laws, ordinances and governmental rules, regulations and orders, and the provisions of this Agreement, and specifying that such portion of the construction work can be properly used even though the construction work has not been completed and that the Lessee desires such use. Within thirty (30) days thereafter the Port Authority will inspect such portion of the construction work, and unless such certification is not correct or the Port Authority determines that the said portion of the construction work is unsuitable for occupancy and use by the Lessee or the general public, the Port Authority shall deliver a certificate to the Lessee with respect to such portion of the construction work permitting the Lessee to use such portion of the hotel facility for the purposes set forth in Section 3 hereof. In such event the Lessee may use such portion of the hotel subject to the condition that all risk 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 and subject to such further limitations, restrictions and requirements as the Port Authority may at that time impose. Use of any portion of the premises for the purposes set forth in Section 3 hereof prior to the Completion Date in accordance with the foregoing provision shall be upon all the terms, provisions and conditions of this Agreement except as amended by the terms of the above-mentioned Port Authority consent.

THERE IS NO PARAGRAPH 4.15.

4.16 All construction and installation of all equipment which the Lessee shall do under this Section 4 shall be done strictly in accordance with the following:

4.16.1 The Lessee hereby assumes, and shall indemnify and hold harmless the Port Authority, its Commissioners, officers, agents and employees against, the following distinct and several risks whether they arise from acts or omissions of the Lessee, any contractors of the Lessee, the Port Authority, employees, agents and representatives of the Port Authority, third persons, or from acts of God or the public enemy, or otherwise, (including claims of the City of

Newark against the Port Authority pursuant to the provisions of the Basic Lease whereby the Port Authority has agreed to indemnify the City against claims) excepting only risks which result solely from the affirmative wilful acts done by the Port Authority subsequent to commencement of the construction work.

4.16.1.1 Risk of loss or damage to all or any part of the construction work prior to the completion thereof and the risk of loss or damage to any 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.

4.16.1.2 The risk of 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 the Port Authority 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.

4.16.2 The Lessee shall pay or cause to be paid when due all claims lawfully made against it by its contractors, subcontractors or 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 the Lessee shall cause its contractors and subcontractors to pay all such claims lawfully made against them. In the event the Lessee in good faith undertakes to contest any such claim by instituting appropriate proceedings to pursue its rights and remedies under the law it may, if permitted by law, defer payment of such claims and in such event the Lessee shall diligently and continuously pursue its rights and remedies

and shall promptly give notice to the Port Authority in writing of its intention and shall keep the Port Authority fully informed with respect thereto. The Lessee shall indemnify the Port Authority against any claims, damages or losses that may arise or result therefrom, including interest thereon, and costs and expenses including attorneys' fees and penalties or fines. If a lien is filed against the premises the Lessee agrees to discharge, remove or bond same within thirty (30) days after filing. Nothing herein contained shall be deemed to constitute consent to the creation of any lien or claim against the premises nor to create any rights in said third persons against the Port Authority.

4.16.3 The Lessee in its own name as assured with the Port Authority as an additional assured shall procure and maintain or cause to be procured and maintained in effect during the performance of the construction work Owner's Protective Liability Insurance, including automotive, with a contractual liability endorsement covering the obligations assumed by the Lessee pursuant to paragraphs 4.8 and 4.16.1 of this Section 4 which shall be in addition to all policies of insurance otherwise required by this Agreement or the Lessee may provide such insurance by requiring each contractor engaged by it for the construction work to procure and maintain such insurance including such contractual liability endorsement, said insurance not to contain any care, custody or control exclusions, and 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 the coverages resulting from the Port Authority's status as additional assured or the coverage under the contractual liability endorsement. Said insurance to also contain an endorsement providing that the protection afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third party shall pertain and apply with like effect with respect to any claim or action against the Lessee by the Port Authority, but said endorsement shall not limit, vary, change or affect the protections afforded the Port Authority as an additional assured. Said insurance shall be in limits not less than the limits set forth for such categories of insurance in the following schedule:

(i) Bodily-injury Liability

For injury to or wrongful death  
to one person .....\$10,000,000

For injury or wrongful death to  
more than one person for any  
one occurrence .....\$10,000,000

Aggregate Products  
Completed Operations.....\$10,000,000

(ii) Property Damage Liability

For all damage arising out of  
injury to or destruction of  
property in any one  
occurrence.....\$5,000,000

Aggregate Products Completed  
Operations .....\$5,000,000

Aggregate Operations .....\$5,000,000

Aggregate Protective .....\$5,000,000

Aggregate Contractual.....\$5,000,000

4.16.4 In addition to the insurance above  
required, prior to the commencement of any work the Lessee  
shall procure and maintain in effect, or cause to be procured  
and maintained in effect:

4.16.4.1 Builder's Risk Insurance (All  
Risk) - Completed Value Form covering loss or damage to  
the construction work from such risks as are described  
in subparagraph 14.1.1 of paragraph 14.1 of this Agree-  
ment, and to include coverage of all materials delivered  
to the premises, but not attached to the land. Such  
insurance shall name the Lessee as assured with the  
Port Authority, the City of Newark, and the Lessee's  
contractors and subcontractors as additional assureds  
and such policy shall provide that the loss shall be

adjusted with and payable to the Lessee, the proceeds thereof to be used by the Lessee for the repair, replacement, rebuilding or other performance of the construction work, and any excess shall be paid over to the Port Authority.

4.16.4.2 Worker's Compensation and Employer's Liability Insurance required by law.

4.16.5 Each policy of insurance described in paragraphs 4.16.3 and 4.16.4 shall, unless otherwise set forth therein be subject to the applicable provisions of Section 14 of this Agreement.

4.17 Without limiting any of the terms and conditions of this Agreement the Lessee understands and agrees that it will put into effect prior to the commencement of any construction work an affirmative action program and minority business entrepreneur program in accordance with the provisions of Section 45 and Section 45A of this Agreement. The provisions of said Sections 45 and 45A of this Agreement shall be applicable to the Lessee's contractor or contractors as well as the Lessee and the Lessee shall include the provisions of said Sections 45 and 45A within all of its construction contracts so as to make said provisions and undertakings the direct obligation of the construction contractor or contractors. The Lessee and its contractor shall furnish to the Port Authority such data as the Port Authority may request at any time and from time to time regarding the affirmative action program of the Lessee and its contractor and the Lessee and its contractor shall make and put into effect such modifications and additions thereto as may be directed by the Port Authority pursuant to said Section 45 and Section 45A to effectuate the goals of affirmative action and minority business entrepreneur program.

4.18 The Lessee may wish to commence construction of portions of the construction work prior to the approval by the Port Authority of its plans and specifications pursuant to paragraph 4.5 hereof, and if it does it shall submit a

written request to the Port Authority setting forth the work it proposes then to do. 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 the provisions of the approval letter and subject to and in accordance with the following terms and conditions:

4.18.1 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 4.18, the Lessee will, as directed by the Port Authority, at its 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.

4.18.2 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 Newark, which may pertain to the work to be performed.

4.18.3 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 4.18, been approved by the Port Authority.

4.18.4 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.

4.18.5 The Lessee shall comply with all requirements, stipulations and provisions as may be set forth in the letters of approval.

4.18.6 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 4.18 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, the Lessee shall promptly cease construction of the portion 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.

4.18.7 The Port Authority will assign a field engineer or engineers to the construction work. The Lessee shall pay to the Port Authority for the

services of said engineer or engineers the sum of Two Hundred Fifty Dollars and No Cents (\$250.00) for each day or part thereof that the engineer or engineers are so assigned. This agreement for the services of said field engineer may be revoked at any time by either party on thirty (30) days' notice to the other, but if revoked by the Lessee it shall continue during the period construction under any partial approvals pursuant to this paragraph 4.18 is performed.

4.18.8 It is hereby expressly understood and agreed that neither the field engineer covered by paragraph 4.18.7 hereof nor the Resident Engineer mentioned in paragraph 4.18.6 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 portion 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.

4.18.9 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 4.18, 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 4.18, 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 4.18.

4.18.10 No prior approval of any work in connection with the construction work shall create or be deemed to create any obligation on the part of the Port Authority to permit subsequent work to be performed in connection therewith prior to the approval by the Port Authority of the Lessee's complete plans and specifications therefor. It is understood that no such prior approval shall release or relieve the Lessee from its obligation to submit complete plans and specifications for the construction work and to obtain the Port Authority's approval of the same as set forth in Section 4.5 hereof. It is further understood that in the event the Lessee elects not to continue to seek further approval letters pursuant to this paragraph 4.18, the obligations of the Lessee to restore the area and to make modifications and changes as set forth in subparagraph (1) above, shall be suspended until the Lessee's submission of its complete plans and specifications in accordance with Section 4.5 hereof.

Section 5. Rental

5.1 Definitions For the purposes of this Section 5 and for all other purposes under this Agreement the following terms shall have the respective meanings provided below:

5.1.1 "Rental Start Date" shall mean the earliest of the following dates:

- (i) the first day of the thirtieth calendar month following the calendar month in which the commencement date of the term of the letting shall occur; or
- (ii) the Completion Date specified in paragraph 4.14 of this Agreement; or
- (iii) such date as the Lessee is authorized to use a portion of the premises pursuant to paragraph 4.14.1 of this Agreement.

5.1.2 "Gross Receipts" shall mean and include all monies, receipts or revenue paid or payable to the Lessee for sales made, services rendered or facilities used at or in connection with the operation of the hotel or the use or occupancy of the premises, or for sales made or services rendered elsewhere at the Airport, or outside the Airport if the service is performed at, from, or, by the hotel including but not limited to the following:

- (a) gross room rentals, charges and other revenues arising from the use or occupancy of rooms;
- (b) gross food and beverages sales or services;
- (c) gross rental or fee (fixed or percentage of gross receipts) due under any space lease, license or concession agreement covering any portion of the hotel or the premises provided, however, that if any space lease, license or concession agreement is made which is not authorized by or made in accordance with the terms of this Agreement then (without limiting any other remedies available to the Port Authority hereunder) all of the gross receipts of such space lessee, licensee or concessionaire shall be deemed to be the receipts of the Lessee and a part of Gross Receipts hereunder;

(d) any other receipts or revenues of the Lessee, including but not limited to those arising out of the operation of the parking facilities, vending machines, sale or procurement of travel, transportation and entertainment ticket reservation services, sightseeing tours and any other off-premises sales or services;

provided, however, that there shall be excluded from gross receipts hereunder (i) any taxes imposed by law which are paid by a customer and are directly payable to the taxing authority by the Lessee; (ii) all gratuities payable to the Lessee's employees but are paid by customers to the Lessee which gratuities are directly remitted by the Lessee to its employees and (iii) all revenues arising out of or resulting from the Lessee's operations at the Facility pursuant to separate written agreement with the Port Authority.

5.1.3 "Annual period" shall mean as the context requires, the twelve-month period commencing with the Rental Start Date and each of the twelve-month periods commencing on the anniversaries of the said date provided, however, that if the Rental Start Date hereunder occurs on other than the first day of a calendar month the first annual period shall include the portion of the month in which the Rental Start Date shall occur subsequent to such date plus the succeeding 12 calendar months and each such subsequent annual period shall commence on the anniversaries of the first day of the first full calendar month following the Rental Start Date.

5.1.3.1 "Quarterly period" shall mean as the context requires, the three month period commencing on the Rental Start Date and each three month period thereafter occurring during each annual period under this Agreement, provided, however, that if the Rental Start Date occurs on other than the first day of a calendar month the first quarterly period shall include the portion of the month in which the Rental Start Date occurs plus the succeeding three calendar months.

5.1.4 "Annual fixed rental amount" shall mean for and during each of the first five annual periods hereunder the sum of Four Hundred Thousand Dollars and No Cents (\$400,000.00). For and during each annual period occurring during the period from the commencement of the sixth annual period and continuing through the end of the tenth annual period it shall mean the sum of Five Hundred Thousand Dollars and No Cents (\$500,000.00). For and during each annual

period occurring during the period from the commencement of the eleventh annual period and continuing through the end of the fifteenth annual period it shall mean the sum of Six Hundred Thousand Dollars and No Cents (\$600,000.00). For and during each annual period occurring during the period from the commencement of the sixteenth annual period and continuing through the end of the twentieth annual period it shall mean the sum of Seven Hundred Thousand Dollars and No Cents (\$700,000.00). For and during each annual period occurring during the period from the commencement of the twenty-first annual period and continuing through the end of the twenty-fifth annual period it shall mean the sum of Eight Hundred Thousand Dollars and No Cents (\$800,000.00). For and during each annual period occurring during the period from the commencement of the twenty-sixth annual period and continuing through the end of the thirtieth annual period it shall mean the sum of Nine Hundred Thousand Dollars and No Cents (\$900,000.00), and for and during each annual period occurring during the period from the commencement of the thirty-first annual period and continuing through the expiration date of the term of the letting under this Agreement as set forth in Section 2 hereof it shall mean the sum of One Million Dollars and No Cents (\$1,000,000.00).

5.1.5 "Guaranteed minimum annual basic rental amount" shall mean for and during each of the first three annual periods hereunder the sum of Four Hundred Thousand Dollars and No Cents (\$400,000.00). For the fourth annual period hereunder it shall mean a rental equal to the greater of (i) the annual fixed rental amount for such annual period established pursuant to the provisions of subparagraph 5.1.4 of this paragraph, or (ii) the sum obtained by applying eighty percent (80%) to the total basic and percentage rental payable by the Lessee to the Port Authority in the third annual period pursuant to the provisions of this Agreement. For and during the fifth annual period it shall mean a sum equal to the greater of (i) the annual fixed rental amount for such annual period established pursuant to the provisions of subparagraph 5.1.4 of this Agreement, or (ii) the sum obtained by applying eighty percent (80%) to the average of the total basic and percentage rental payable by the Lessee to the Port Authority in the third and fourth annual periods pursuant to the provisions of this Agreement. For and during the sixth annual period and for and during

each annual period thereafter occurring during the balance of the term of the letting under this Agreement guaranteed minimum annual basic rental amount shall mean a sum equal to the greater of (i) the respective annual fixed rental amounts established for each such annual period pursuant to the provisions of subparagraph 5.1.4 of this Agreement, or (ii) the sum obtained by applying eighty percent (80%) to the average of the total basic and percentage rental payable by the Lessee to the Port Authority in the three preceding annual periods pursuant to the provisions of this Agreement.

5.1.5.1 Whenever reference is made to annual fixed rental amounts, guaranteed minimum annual basic rental amounts, or to any one of either of such amounts, it shall mean the annual fixed rental amount or amounts or the guaranteed minimum annual basic rental amount or amounts, as the case may be, reduced by the operation of the abatement and/or prorations provision of this Agreement.

## 5.2 Basic Rental

During each annual period occurring during the term of the letting under this Agreement the Lessee shall pay to the Port Authority a basic rental for the premises at a rate per annum equal to the guaranteed minimum annual basic rental amount established for each such annual period, payable in advance in monthly installments equal to 1/12th of the applicable basic rental on the first day of each and every month during each such annual period, provided, however, that, if the rental start date occurs on other than the first day of the month, the applicable basic rental for the portion of the month during which the rental start date shall occur shall be the amount of the applicable monthly installment stated above in this paragraph prorated on a daily basis.

## 5.3 Percentage Rental

The Lessee shall pay to the Port Authority an annual percentage rental equivalent to the excess over the guaranteed minimum annual basic rental amount established for each annual period of six percent (6%) of all the gross receipts of the Lessee arising during each such annual period. The computation of percentage rental for each annual period, or a portion of an annual period, as hereinafter

provided, shall be individual to such annual period, or such portion of an annual period, and without relation to any other annual period, or any other portion of any annual period.

5.3.1 For the purpose of calculating the percentage rental due for any annual period which is other than 365 days the annual fixed rental amounts mentioned in subparagraph 5.1.4 and the guaranteed minimum annual basic rental amounts mentioned in subparagraph 5.1.5 shall be prorated over the actual number of days contained in such annual period.

5.4 Time of Payment of Percentage Rental  
Computation of Amounts and Accounting

5.4.1 The Lessee shall pay the percentage rental as follows: on the 20th day of the month following the close of each quarterly period occurring during each annual period under this Agreement and on the 20th day of the month following the end of each annual period the Lessee shall render to the Port Authority a certified statement showing its gross receipts for the immediately preceding quarterly period and showing its cumulative gross receipts from the date of the commencement of the annual period for which the report is made through the last day of the preceding quarterly period; whenever such statement shall show that the percentage stated above in paragraph 5.3 applied to the cumulative gross receipts of the Lessee as set forth in such statement for that annual period is in excess of the guaranteed minimum annual basic rental amount established for that annual period, the Lessee shall pay at the time of rendering the statement an amount equal to such excess and the Lessee shall thereafter on the 20th day of each month during that annual period and on the 20th day of the month following the end of that annual period pay an amount equal to the said percentage applied to all its gross receipts during each subsequent month of that annual period. Within one hundred twenty (120) days after the close of each annual period the Lessee shall render to the Port Authority a certified statement showing its total gross receipts for such annual period and total percentage rental due on account thereof and if any adjustments are required the same shall be made at the time such report is rendered. At any time that the applicable guaranteed minimum

annual basic rental amount is decreased by abatement as herein provided so that there is an excess of gross receipts as to which percentage rental has not been paid, the same shall be payable to the Port Authority on demand.

5.4.2 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 rental computed as follows: first, if the letting hereunder is terminated effective on a date other than the last day of a month the basic rental for the portion of that month in which the letting remains effective shall be the amount of the applicable monthly installment of basic rental for that month prorated on a daily basis, and if the applicable 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 applicable monthly installment has been paid, then the excess thereof shall be credited to the Lessee's obligations; second, the Lessee shall within thirty (30) days after the effective date of termination render to the Port Authority a certified statement of all its gross receipts for the annual period in which the effective date of termination happens to fall; third, the payment then due on account of percentage rental for the annual period in which the effective date of termination happens to fall shall be the excess over the prorated guaranteed minimum annual basic rental amount established for such annual period of the percentage stated in paragraph 5.3 above applied to all the gross receipts of the Lessee arising during such annual period; said guaranteed minimum annual basic rental amount being prorated by multiplying the same by a fraction, the numerator of which shall be the number of days from the commencement of the annual period through the effective date of termination and the denominator of which shall be 365, less any percentage rental payments previously made for such annual period. For the purpose of calculating the guaranteed minimum annual basic rental amount for such annual period the annual fixed rental amounts set forth in subparagraph 5.1.4 of this Agreement shall each be similarly prorated.

5.5 Abatement

5.5.1 In the event that the Lessee shall at any time pursuant to the provisions of this Agreement become entitled to an abatement of rent, the applicable basic rental set forth in paragraph 5.2 hereof shall be abated for the period the abatement is in effect on an equitable basis giving effect to the amount, quality and character of the space, the use of which is denied the Lessee as compared with the total amount of space in the premises.

5.5.2 In the event that during the term of the letting under this Agreement the Lessee shall be partially evicted and shall remain in possession of the premises or the balance thereof, the Lessee agrees that notwithstanding it might have the right to suspend payment of the rent in the absence of this provision, it agrees to pay and will pay at the times and in the manner herein provided, the full rent reserved less an abatement thereof computed in accordance with the above.

5.5.3 During any annual period in which the Lessee shall be entitled to abatement, the guaranteed minimum annual basic rental amount and the annual fixed rental amount established for such annual period shall be reduced proportionately to the reduction of the basic rental.

5.5.4 There shall be no abatement of rental under this Agreement for any portion of the premises or for any portion of the term except as specifically provided in this Agreement.

5.5.5 Nothing contained in this Section shall affect the survival of the obligations of the Lessee as set forth in the Section of this Agreement entitled "Survival of the Obligations of the Lessee".

5.6 Obligations in Connection with Any Percentage Rental

The Lessee shall:

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

5.6.2 Not divert or cause or allow to be diverted, any business from the Airport;

5.6.3 Maintain, in accordance with accepted accounting practice, during the term of this Agreement, for one (1) year after the expiration or earlier termination thereof, and for a further period extending 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 anywise connected with the Airport, which records and books of account shall be kept at all times within the Port of New York District, and which records and books of account shall show (i) the basis and all supporting documents for each and every statement required to be furnished hereunder by the Lessee, (ii) the gross receipts of whatever kind or nature from its operations at the Airport (except for those gross receipts arising out of or resulting from the Lessee's operations elsewhere at the Facility pursuant to separate written agreement with the Port Authority) (iii) all gross receipts received by the Lessee from any space lessee or licensee or concessionaire, whether in the form of rental payments or otherwise, and (iv) such other information as the Port Authority may request from time to time. The Lessee, however, shall not be required to maintain such records and such books of account pertaining to the said transactions during any annual period for more than five (5) years after the end of said annual period. All statements required to be supplied or submitted by the Lessee under this Section shall be certified by a responsible officer of the Lessee and in addition to the statements which the Lessee is required to submit under this Section, the Lessee shall cause to be submitted to the Port Authority after the close of each annual period a statement of all the gross receipts arising hereunder during such annual period, certified, at the Lessee's expense, by a certified public accountant. The Port Authority shall have the right during normal business hours and from time to time throughout the effective period of this Agreement and for three years subsequent to the expiration or termination of the letting hereunder to examine and audit for all purposes of this Agreement all the books and records of the Lessee relating to or in anywise connected with the operation of the hotel. The certified public accountancy firm selected by the Lessee to provide the certification referred to in this subparagraph shall be approved in advance by the Port Authority but such approval shall not be withheld if such firm is of national repute, has had experience in hotel accounting and has sufficient staff and resources to perform its tasks hereunder.

5.6.4 The Lessee shall cause to be installed and used cash registers, sales slips and invoicing machines and any other equipment or device for recording room revenues, orders taken, sales made or services rendered as may be appropriate to the conduct of a hotel and necessary or desirable to keep accurate records. The Lessee shall permit during ordinary business hours the inspection by employees and representatives of the Port Authority of such equipment used by the Lessee including but not limited to cash registers and recording tapes, provided, however, that such inspections shall not unreasonably interfere with the operation of the hotel.

Section 6. Law Compliance, Taxes and Excises

6.1 The Lessee shall be responsible for procuring and maintaining throughout the letting hereunder all necessary permits, certificates, authorizations and licenses (including hotel, innkeepers and liquor, wine and beer for consumption on the premises) from all governmental authorities having jurisdiction over the operations of the Lessee at the premises or at the Facility.

6.2 The Lessee shall promptly comply with the provisions of any and all present and future governmental laws, rules and regulations, requirements, ordinances, orders and directions which may validly pertain or apply to the operations of the Lessee on the premises or at the Facility or its occupancy of the premises and shall make any and all improvements, alterations, changes or repairs of or to the premises, whether structural or non-structural, ordinary or extraordinary, that may be required at any time hereafter under any present or future governmental law, rule, regulation, ordinance, requirement, order or direction, including without limitation any changes, replacements, alterations or substitutions in materials, furniture, furnishings or equipment that may be required at any time under any present or future governmental law, order, rule, regulation, requirement, enactment, ordinance, order or direction. The improvements, alterations or changes shall be performed by the Lessee in accordance with the provisions of this Agreement entitled "Alterations and Improvements by the Lessee".

6.2.1 In the event the Lessee in good faith wishes to contest or challenge the validity or applicability of any laws, rules, regulations, requirements, ordinances, orders and directions and if such does not involve matters of safety, health or preservation of property it may defer compliance, if permitted by law and in such event the Lessee shall diligently and continually pursue its rights and remedies under the law to contest or challenge the same and shall keep the Port Authority fully informed with respect thereto. In the event the Lessee undertakes to so challenge or contest, it shall indemnify the Port Authority against any claims, damages or causes that may arise or result therefrom and shall provide the Port Authority with security in form acceptable to it against any loss or penalty which may be imposed against the Port Authority as a result of the Lessee's action. The Lessee agrees that 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, 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. The Lessee further understands and agrees that its right to contest or challenge as set forth in this paragraph 6.2.1 shall not extend to those items covered by paragraph 6.3 below even if those items may be included in paragraph 6.2 above.

6.3 The Lessee shall comply with the enactments, ordinances, resolutions and regulations of local governmental authority in regard to construction, maintenance, health and fire protection which would be applicable if the Port Authority were a private corporation to the extent that the Port Authority finds it practicable so to do, except in cases where the Port Authority either notifies the Lessee that it need not comply with or directs it not to comply with any such enactments, ordinances, resolutions or regulations. 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. 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.

6.3.1 The Lessee shall have such time within which to comply with the laws, ordinances, rules and regulations described in paragraphs 6.2 and 6.3 of this Section as the authorities enforcing the same shall allow.

6.4 The provisions of this Section are not to be construed as a submission by the Port Authority to the application to itself of such governmental laws, rules, regulations, requirements, ordinances, orders and directions, or any of them, and no alleged or purported immunity or exemption from any of the foregoing available to the Port Authority shall excuse compliance or be grounds for non-compliance on the part of the Lessee. In no event shall the Lessee raise any claim or defense in any contest or challenge involving in any way immunity of the Port Authority, its governmental nature or the provisions of any statute respecting the Port Authority without first obtaining express advance consent from the General Counsel of the Port Authority.

6.5 Upon the expiration or earlier termination of the letting under this Agreement the Lessee shall cause to be assigned and transferred to the Port Authority or its designee, all assignable or transferrable hotel, innkeepers or other licenses, permits or other authorizations (including liquor, wine and beer licenses) secured by the Lessee or on its behalf for or in connection with the operations of the hotel or the use of the premises hereunder. The form of such assignment or transfer shall be as prescribed by the Port Authority (but nothing in such form of assignment shall extend the Lessee's liability under such licenses, permits or authorizations for any claims accruing subsequent to the effective date of the assignment) or the governmental body having jurisdiction thereof and the Lessee shall cooperate fully in executing such assignment or transfer including attending any hearings required therefor and including in such cooperation the taking of any affirmative action as may be necessary or desirable for the issuance of any new license, permit or authorization to the Port Authority or its said designee such as the timely surrender or cancellation by or on behalf of the Lessee of the license, permit or authorization in question. No consideration or monies shall be payable to the Lessee on account of such assignments or transfers but the Port Authority shall reimburse the Lessee for its expenses in connection with the foregoing.

6.6 The Lessee shall pay all license, certification, permit and examination fees, duties, excises and all other governmental charges of every character present and future which may be assessed, levied, exacted or imposed on the Lessee's property, operations or occupancy hereunder or on any property whatsoever which may be received at the premises or on the gross receipts, rental or income therefrom including any penalties or interest thereon and any taxes on personal property which may be assessed, levied, exacted, or imposed, and the Lessee shall make all applications, reports required in connection therewith. If any bond or other undertaking shall be required by any governmental authority in connection with any of the operations of the Lessee or any property received or exhibited by the Lessee at the premises, the Lessee shall furnish the same and pay all expenses in connection therewith. The Lessee shall also pay any corporate franchise and excise and other taxes, fees and other charges assessed, levied or imposed on the Lessee in respect of its corporate existence or its right to do business. No alleged or purported immunity or exemption from any taxes or fees described in this paragraph available to the Port Authority shall be grounds for or excuse non-payment thereof by the Lessee.

6.7 The Lessee shall pay any and all real estate taxes or any other tax, assessment, levy, fee or charge, general or special, ordinary or extraordinary, foreseen or unforeseen of whatever nature or kind which during the term of the letting hereunder may be levied, assessed, imposed or charged by any taxing or other governmental authority upon the premises or upon the hotel or any other structure or improvement erected or made thereon or any appurtenances or any facilities of the hotel or upon the leasehold estate hereby created, or with respect to the rental or Lessee's income therefrom in lieu of any tax, assessment, levy or charge which would otherwise be a real estate tax, assessment, levy or charge. The Lessee's obligation hereunder shall include any such as are levied, assessed, imposed or charged upon the Port Authority and any payments made by the Port Authority to the taxing authority, by agreement or otherwise, in lieu of any tax, assessment, levy or charge. If any such tax, assessment, levy or charge, or payment in lieu thereof, is paid directly by the Port Authority, the Lessee shall pay the Port Authority therefor. If the taxing or governmental body imposing the tax or charge referred to herein does not segregate the amount

thereof attributable to the hotel and the premises from the balance of the Facility then the Port Authority shall allocate the same equitably on the basis of a proportion between the total number of square feet in the Facility subject to such taxes and the total number of square feet in the hotel and the premises. The Lessee shall pay the allocable portion thereof as directed by the Port Authority either to the Port Authority or to the taxing or governmental body. The Lessee shall file all applications and furnish all information required in connection therewith and shall pay any penalties or interest thereon other than on amounts directly payable by the Port Authority as to which the Lessee has made prompt and timely payments to the Port Authority as required hereunder.

6.7.1 The Lessee shall have the right at its sole cost and expense to contest or review by appropriate legal proceedings or in such other manner as may be provided by law any and all taxes, assessments, levies, fees or charges which may be levied, assessed, imposed or charged directly against the Lessee or directly against the Lessee's property or improvements located on the premises or its operations therein. In the event that the Lessee undertakes such contest or review, it shall indemnify the Port Authority against any claims, damages, or losses that might arise or result therefrom. In the event that the Lessee undertakes such contest or review it may defer or suspend the payment of any such taxes, assessments, levies, fees or charges herein provided for pending the outcome of such contest or review but the Lessee shall provide the Port Authority with security reasonably acceptable to it against any losses or penalties which may be imposed as a result of the Lessee's actions. If the Lessee undertakes to contest or review pursuant to this paragraph 6.7.1 the Lessee 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. Notwithstanding the provisions of this paragraph 6.7.1 the Lessee shall not have the right to contest or review any taxes, assessments, levies, fees or charges if the Port Authority in its opinion determines that the Port Authority has an interest therein and such interest would be adversely affected by such contest or review and the Lessee shall not have the right to defer the payment of any taxes, assessments, levies, fees or charges if the Port Authority is of the opinion that payment of same should not be suspended or deferred.

6.7.2 In no event shall the Lessee raise any defense or claim 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, its governmental nature or the provisions of any statutes respecting suits against the Port Authority.

Section 7. Sale, Assignment or Transfer, Subleasing

7.1 During the term of the letting under this Agreement, the Lessee covenants and agrees that it will not, except only as hereinafter expressly permitted, sell, assign, sublet, transfer, mortgage, pledge, hypothecate, encumber or in any way, convey or dispose of the premises, or this Agreement or any part thereof, or any rights created thereby or the letting thereunder or any part thereof, or any license or other interest of the Lessee therein without the prior written consent of the Port Authority, which consent shall not be withheld by the Port Authority as and to the extent such sale, assignment, subletting, transfer, mortgage, pledge, hypothecation, encumbrance, conveyance or disposition shall be concluded in accordance with the following provisions of this Section.

7.1.1 During such period as Marriott Corporation is the Lessee under this Agreement the Lessee may assign this Agreement and the letting hereunder in its entirety to a person, firm or corporation which is and continues to be wholly owned and controlled by the Lessee, or which wholly owns and controls and continues to wholly own and control the Lessee, or which is and continues to be wholly owned and controlled by a person, firm or corporation which wholly owns and controls and continues to wholly own and control the Lessee, or into which the Lessee is merged or consolidated if the resulting corporation has a financial standing as of the date of the merger or consolidation at least as good as that of the Lessee (by which is meant that its working capital, its current assets, its ratio of current assets to current liabilities, its ratio of fixed assets to fixed liabilities and its net worth shall be at least as favorable as that of the Lessee) and such assignment is required in connection with such merger or consolidation, provided, however, that

no such assignment, sale or transfer pursuant to this paragraph 7.1.1 shall be effective until an agreement of assignment and assumption in the form annexed hereto as "Exhibit X" has been executed by the Port Authority, the Lessee and the proposed assignee. "Control as used in this Section 7 shall mean legal and beneficial ownership by one person, firm or corporation of all interest in another firm, or ownership by one person, firm or corporation of all of the capital stock and voting rights of another corporation.

7.1.2 For the period commencing with the Completion Date and continuing up to and including the second anniversary of the Completion Date (such period being sometimes hereinafter called the "Initial Financing Period") the Lessee shall have the right to make a single assignment of this Agreement and the letting hereunder in its entirety if all of the following conditions are satisfied:

(i) the proposed assignee qualifies as an Institutional Lender as defined in Section 8.1.1; or the proposed assignee is a joint venture of which Marriott Corporation, the original lessee hereunder, and one or more Institutional Lenders are the co-venturers; or the proposed assignee is a general partnership the sole partners of which are Marriott and one or more Institutional Lenders or the proposed assignee is a limited partnership of which Marriott Corporation or one or more Institutional Lenders or both are the general partners and the limited partners are Marriott Corporation or one or more Institutional Lenders or both; and

(ii) the proposed assignee and any officer, director or partner thereof and any person, firm or corporation having an outright or beneficial interest in twenty percent (20%) or more of the monies invested in the proposed assignee, if said assignee is a corporation or partnership, by loans thereto, stock ownership therein or any other form of financial interest has as of the date of the proposed assignment a good

reputation for integrity and financial responsibility and has not been convicted of or under current indictment for any crime and is not currently involved in civil anti-trust or fraud litigation; and

(iii) the Port Authority has not had any unfavorable experience with the proposed assignee, or any of its officers, directors, or partners, or any person, firm or corporation having an outright or beneficial interest in twenty percent (20%) or more of the monies invested in the proposed assignee, if said assignee is a corporation or partnership, by loans thereto, stock ownership therein or any other form of financial interest; and

(iv) the total sales price paid or payable to the Lessee as consideration for assigning this Agreement and the letting hereunder shall not exceed the Lessee's Unamortized Capital Investment as such term is defined in Section 49.8 of this Agreement; and

(v) the proposed assignee or any officer, director or partner thereof or any person, firm or corporation having an outright or beneficial interest in twenty percent (20%) or more of the monies invested in the proposed assignee, if said assignee is a corporation or partnership, by loans thereto, stock ownership therein or any other form of financial interest shall not be in conflict of interest, as defined under the laws of the States of New York and New Jersey, with any Commissioner of the Port Authority as of the date of the proposed assignment;

Notwithstanding the foregoing no assignment, sale or transfer pursuant to this paragraph 7.1.2 shall be effective until an assignment and assumption agreement in the form annexed hereto as "Exhibit X" has been executed by the Port Authority, the Lessee and the proposed assignee. In the event of an assignment to a joint venture or partnership pursuant to paragraph 7.1.2 or paragraph 7.2 it is understood and agreed that all co-venturers and all general partners will be jointly and severally liable for all of the assignee's obligations set forth in said assignment and assumption agreement including but not limited to its obligations as tenant under this Agreement. In the event

that the Lessee (Marriott Corporation) has previously assigned this Agreement pursuant to Section 7.1.1 hereof then Marriott Corporation shall also be a party to and execute said assignment and assumption agreement and the term "assignor" as used therein shall include the Marriott Corporation and all the liabilities and obligations attendant on the "assignor" thereunder shall be applicable to and assumed by Marriott Corporation.

7.1.3 No assignment of this Agreement by the Lessee pursuant to Section 7.1.2 above shall be effective unless and until (i) the assignor and assignee obtain the Port Authority's consent to an operating agreement pursuant to which the assignor agrees to operate the hotel on behalf of the assignee during the remainder of the term of the letting subsequent to the effective date of the assignment; and (ii) the assignor and assignee shall have executed and delivered to the Port Authority the form of "Consent to Operating Agreement" prepared by the Port Authority and submitted to the assignor and assignee, it being understood that the hotel shall be operated by the Marriott Corporation. It is hereby understood and agreed that so long as Marriott Corporation is the Lessee under this Agreement the hotel shall be operated by the Marriott Corporation. In the event of an assignment of this Agreement by the Lessee, Marriott Corporation, pursuant to Section 7.1.1 then the hotel shall be operated by such assignee.

7.1.4 The Lessee understands and agrees that during the Initial Financing Period it shall not have the right to assign this Agreement and the letting thereunder pursuant to Section 7.1.2 if the Lessee has previously during said period obtained a mortgage on its leasehold interest pursuant to Section 8.2 of this Agreement.

7.2 Commencing with the day following the end of the Initial Financing Period and continuing for the remainder of the term of the letting the Lessee shall have the right to assign this Agreement and the letting hereunder in its entirety to an assignee qualifying as an assignee under subparagraph (i) of Section 7.1.2 and provided that all of the conditions set forth in subparagraphs (ii) (iii) and (v) of Section 7.1.2 are satisfied and provided further that no such assignment pursuant to this paragraph 7.2 shall be effective until an assignment and assumption agreement in the form annexed hereto as "Exhibit Z" has been executed by

the Port Authority, the Lessee and the proposed assignee. This Agreement may not be assigned pursuant to this paragraph 7.2 more than seven (7) times.

7.2.1 (a) Each time this Agreement and the letting hereunder is assigned pursuant to the provisions of paragraph 7.2 above or is assigned as a result of and in conjunction with the foreclosure of the Lessee's leasehold mortgage pursuant to Section 8 the Lessee hereby agrees to pay the Port Authority twenty percent (20%) of the following amount: the total gross sales price for the particular assignment less the amortized total gross sales price as of the effective date of the assignment of the immediately preceding assignment whenever made pursuant to the provisions of this Agreement, as said immediately preceding total gross sales price is amortized on a straight line basis from the effective date of the preceding assignment to the expiration date of the letting under this Agreement.

(b) Notwithstanding the foregoing in the event that the particular assignor had mortgaged or refinanced an existing mortgage on its leasehold interest pursuant to the provisions of Section 8.2.1 and the Port Authority pursuant to the provisions of said Section 8 received a percentage of the principal amount of said leasehold mortgage or refinancing then the Lessee, in lieu of the formula set forth in the preceding subparagraph (a), hereby agrees to pay the Port Authority twenty percent (20%) of the following amount: the total gross sales price for the particular assignment less the amortized principal amount or amortized Refinanced Amount as of the effective date of the assignment of said leasehold mortgage or refinancing, as said principal amount of said leasehold mortgage or said Refinanced Amount is amortized on a straight line basis from the effective date of the said leasehold mortgage or refinancing to the expiration date of the letting.

(c) In the event that there has been no prior assignment of this Agreement and there has been no leasehold mortgage or refinancing of the Lessee's leasehold interest in which the Port Authority received a percentage

pursuant to Section 8.2.2, then the Lessee hereby agrees to pay the Port Authority twenty percent (20%) of the following amount: the total gross sales price for the particular assignment less the Unamortized Capital Investment as determined in accordance with the provisions of Section 49.8 of this Agreement as of the effective date of the assignment. For purposes of this Section 7.2.1 acquisition of the Lessee's leasehold interest by the Leasehold Mortgagee in lieu of foreclosure shall be deemed to be an assignment. All payments to the Port Authority pursuant to this Section 7.2.1 shall be made no later than the effective date of the particular assignment. The Lessee upon request from the Port Authority shall submit to the Port Authority in connection with any assignment pursuant to Section 7.2 or leasehold mortgage or refinancing pursuant to Section 8.2.1 a copy of the assignment, leasehold mortgage or refinancing agreement, as the case may be, together with all related contracts, documents and agreements in conjunction therewith as well as any additional information and data in connection therewith that the Port Authority may reasonably request.

7.2.1.1 "Total gross sales price" for purposes of this Agreement shall mean all and every consideration of any kind, form or nature whatsoever resulting from or accruing to the assignor for the assignment, including but not limited to, monetary payments, assumption or satisfaction of the assignor's obligations and debts including the Leasehold Mortgage or an assignment subject to any of the assignor's obligations or debts including the Leasehold Mortgage and any other items of value resulting from or accruing to the assignor as a result of or in connection with the assignment. The Lessee hereby agrees that the total gross sales price for a particular assignment shall represent the fair market value for such assignment and the total gross sales price for an assignment and the principal amount or Refinanced Amount of any Leasehold Mortgage or refinancing pursuant to Section 8.2.1 shall be negotiated in good faith and at arms length with each assignee and mortgagee and the Lessee recognizes the interests of the Port Authority in connection therewith. If the Lessee agrees to any assignment which the Port Authority believes is one in which the total gross sales price is less than the fair market value or if the Port Authority believes that the total gross sales price for an assignment or that the principal amount or Refinanced

Amount of any leasehold mortgage or refinancing is less than the Lessee would otherwise receive because of other considerations in the transaction which are beneficial to the Lessee then the Port Authority by giving written notice to the Lessee shall have the right to challenge such total gross sales price or such principal amount or refinanced amount of such leasehold mortgage or refinancing as to the Port Authority's rights therein. If the Port Authority does so challenge and the dispute is not settled within ninety (90) days by agreement between the parties then such dispute shall be disposed of by arbitration. Arbitration shall be by three arbitrators; one being appointed by the Port Authority, one being appointed by the Lessee and the third being appointed by the other two arbitrators. In the event the arbitrator appointed by the Port Authority and the arbitrator appointed by the Lessee cannot within thirty (30) days after their appointment agree on the appointment of the third arbitrator then such third neutral arbitrator shall be appointed in accordance with the then existing rules of the American Arbitration Association. Arbitration shall be in accordance with the then existing rules of the American Arbitration Association or any successor association. Costs of said arbitration shall be borne equally by the Port Authority and the Lessee. Each arbitrator shall be a certified master of industrial appraisal or shall have at least ten (10) years experience in the valuation of real estate.

The questions to be submitted to the arbitrators in the event of an assignment which the Port Authority believes is for less than fair market value shall be as follows:

"(1) Taking into account the Port Authority's interests in the sharing of proceeds pursuant to Section 7.2.1 of this Agreement is the total gross sales price for the assignment less than the fair market value thereof?"

If the arbitrators decide that the answer to question (1) above is "Yes" then the second question to be submitted to the arbitrators shall be as follows:

"(2) What is the fair market value of the assignment taking into account the Port Authority's interests in the sharing of proceeds pursuant to Section 7.2.1 of this Agreement?"

The questions to be submitted to the arbitrators in the event of an assignment or a leasehold mortgage or refinancing of an existing leasehold mortgage which the Port Authority believes is less than it would otherwise be because of other considerations in the transaction beneficial to the Lessee shall be as follows:

"(3) Taking into account the Port Authority's interests in the sharing of proceeds pursuant to Section

7.2.1 or Section 8.2.2 of this Agreement is the total gross sales price for the assignment or the principal amount or refinanced amount of the leasehold mortgage or refinancing of an existing leasehold mortgage less than it would otherwise be because of other considerations in the transaction which are beneficial to the Lessee?"

If the arbitrators decide that the answer to question (3) above is "Yes" then the next question to be submitted to the arbitrators shall be as follows:

"(4) What is the monetary value of the other considerations in the transaction which are beneficial to the Lessee and did not take into account the Port Authority's interests in the sharing of proceeds pursuant to Section 7.2.1 or Section 8.2.2 of this Agreement?"

The fair market value determined by the arbitrators pursuant to question (2) or the monetary value determined by the arbitrators pursuant to question (4) above shall constitute the total gross sales price for the assignment or shall be added to the total gross sales price for the assignment of the principal amount of the leasehold mortgage or refinanced amount of the refinancing, as the case may be, solely for the purpose of determining the amount owing to the Port Authority pursuant to Section 7.2.1 and Section 8.2.2 and solely for the purpose of computing the amount owing to the Port Authority pursuant to said Sections in the event of any future assignment, leasehold mortgage or refinancing in future transactions pursuant to said Sections 7.2 and 8.2.1. It is understood and agreed that the Port Authority shall not be precluded from challenging the total gross sales price for an assignment or the principal amount of any leasehold mortgage or refinanced amount of any refinancing because the Port Authority shall have consented to such assignment pursuant to Section 7.2 or consented to such leasehold mortgage or refinancing pursuant to Section 8.2.1, provided, however that the Port Authority's challenge shall be made no later than one hundred eighty (180) days from the effective date of the particular assignment or particular leasehold mortgage or refinancing. The parties hereto recognize that the Lessee (Marriott Corporation) is obligated pursuant to this Agreement to operate the hotel subsequent to an assignment of its leasehold interest and in conjunction therewith to enter into an operating agreement with the assignee, which operating agreement will provide for payment of a management fee to the Marriott Corporation. Marriott Corporation hereby represents to the Port Authority that in no less than 100% of the management arrangements entered into by Marriott in the three years immediately preceding the commencement date of this Agreement for the operation of hotels in the United States which were neither constructed by Marriott

Corporation nor in which prior to the management agreement Marriott Corporation held any equity or financial interest, the management fee payable to Marriott Corporation was no less than twenty percent (20%) of the "operating profit" as such term is defined in "Schedule O" attached hereto and hereby made a part hereof and was based upon a management agreement in which the financial arrangement is as set forth in said Schedule O. Based upon such representations the Port Authority hereby agrees that if the Marriott Corporation as Lessee and in connection with an assignment pursuant to Section 7.2 enters into an operating agreement with the Assignee whereby the financial arrangement and the management fee payable to Marriott Corporation in all its aspects is as set forth in Schedule O, then the Port Authority will not challenge the total gross sales price being less than the fair market value of the assignment or being less because of other considerations in the transaction beneficial to the Lessee on the basis of the financial arrangement and the management fee but nothing herein shall preclude the Port Authority from challenging the assignment on any other grounds.

The Lessee hereby agrees to submit to the Port Authority a new schedule detailing its financial arrangement and management fee at such time or times during the term of the letting as the customary financial arrangement and management fee payable to Marriott Corporation for the operation of hotels which were neither constructed by Marriott Corporation nor in which prior to the management agreement Marriott Corporation held any equity or financial interest changes from that set forth in Schedule O. The Port Authority will advise the Lessee in writing as to whether or not it accepts such schedule as Marriott's customary financial arrangement and management fee and if the Port Authority does so accept same, said schedule shall from and after the effective date of such acceptance become the new Schedule O to this Agreement in lieu of the Schedule O attached hereto or in lieu of the Schedule O that may have previously replaced said original Schedule O.

7.2.2 In the event that there has not been an assignment of this Agreement by the Lessee (Marriott Corporation) during the Initial Financing Period then no assignment of this Agreement by the Lessee pursuant to Section 7.2 shall be effective unless and until (i) the assignor and assignee obtain the Port Authority's consent to an operating agreement pursuant to which the assignor agrees to operate the hotel on behalf of the assignee during the remainder of the term of the letting subsequent to the effective date of the assignment; and (ii) the assignor and assignee shall have executed and delivered to the Port Authority the form of "Consent to Operating Agreement" prepared by the Port

Authority and submitted to the assignor and assignee. Notwithstanding any further assignments of this Agreement in accordance with the provisions of paragraph 7.2 it is understood and agreed that except as specifically provided elsewhere in this Agreement the hotel shall be operated by the Marriott Corporation during the entire term of the letting. Subject to the provisions hereinafter set forth the operating agreement consented to by the Port Authority pursuant to Section 7.1.3 or this Section 7.2.2 as the case may be, shall survive any subsequent transfer, assignment or conveyance by the Lessee of its interest in this Agreement and the letting hereunder and such operating agreement shall be assumed or ratified by the party to whom this Agreement is transferred, assigned or conveyed and such party shall undertake all the liabilities and obligations of the Lessee thereunder.

7.2.3 Notwithstanding the provisions of Paragraph 7.1.3 and Paragraph 7.2.2 the Port Authority agrees it will not withhold its consent to the proposed operating agreement referred to in each such paragraph if in the Port Authority's opinion the requirements set forth in Paragraph 7.2.4 below are satisfied and if in the Port Authority's opinion the terms, provisions and conditions of the proposed operating agreement are not contrary to or inconsistent with this Agreement and do not adversely affect the Port Authority's interests or rights under this Agreement nor would they interfere with the operation of the type of hotel provided for in this Agreement. In the event the Port Authority has previously consented to an operating agreement pursuant to the provisions of Paragraph 7.1.3 or Paragraph 7.2.2 and this Agreement and the letting hereunder has been subsequently assigned then upon written request from the Lessee and operator the Port Authority will within a reasonable time period consider and respond in writing to proposed amendments to the existing operating agreement but the Port Authority will not consent to such amendments if in the Port Authority's opinion such proposed amendments are contrary to or inconsistent with either the requirements set forth in Section 7.2.4 below or the terms and conditions of this Agreement and if in the Port Authority's opinion such amendments would adversely affect the Port Authority's interests or rights under this Agreement or would interfere with the operation of the type of hotel provided for in this Agreement.

7.2.4 The Lessee understands and agrees that regardless of the form of the operating agreement, the operator of the hotel shall be obligated and required to

comply with all of the terms, provisions, covenants and conditions of this Agreement and the same shall apply to the operator as though the operator were the Lessee hereunder except that the operator shall not be responsible for the payment of rental or the other payment obligations of the Lessee under this Agreement. The Lessee understands and agrees that the payment of the management fee to the operator shall be subordinate to the payment of all rentals, fees, charges and other payment obligations due to the Port Authority under this Agreement and that no management fee shall be paid to or be retained by the operator unless all of said rentals, fees, charges and other payments due under this Agreement have been paid to the Port Authority. It is the intention of the parties that the hotel be operated by the Marriott Corporation during the term of the letting. Notwithstanding the obligation of the operator above set forth, the Lessee shall continue to be primarily and fully liable for the performance of all of the terms, provisions, covenants and conditions of this Agreement and for securing compliance therewith by the operator and all acts or omissions of the operator shall be and shall be deemed to be the acts or omissions of the Lessee. In the event of any inconsistency between the provisions of the operating agreement and the provisions of this Agreement the provisions of this Agreement shall control unless the Port Authority Consent to Operating Agreement specifically and expressly provides otherwise with respect to the operating agreement which is being consented to. The Lessee shall frequently inspect and review the operations and activities of the operator and shall forthwith communicate to it any requests, directions or notices, delivered or communicated to the Lessee by the Port Authority in accordance with the provisions of this Agreement and the Lessee shall secure the prompt compliance with and performance of the same. Notwithstanding the foregoing and in spite of any efforts by the Lessee to secure such compliance, any breach or violation of the terms, provisions, covenants and conditions of this Agreement by the operator shall be and be deemed to be a breach or violation of this Agreement by the Lessee and the Port Authority shall have all rights and remedies consequent upon a breach or violation as are reserved to it by this Agreement and the provisions of this Agreement relating to default and termination shall apply as if the operator were the lessee hereunder. Without limiting the generality of the foregoing the Lessee shall require the operator to maintain books and records referred to in Section 5 hereof and shall require the operator to permit the auditing and examination thereof by the Port Authority in accordance with said Section 5. The operating agreement shall also provide for the prompt replacement of those on-site employees active in the management or operation of the hotel who are not properly performing their functions and activities in accordance with the terms of their employment arrangements.

7.2.5 The Lessee shall not be permitted to replace the then existing operator of the hotel without the prior written consent of the Port Authority. The Lessee shall advise the Port Authority in writing in the event that the existing operator of the hotel is in default of a material term or condition of the operating agreement or in the event of a material problem or material dispute between the Lessee and operator. The operator shall be given a reasonable time period within which it shall use its best efforts to cure such default. The Lessee and operator shall each use best efforts to resolve any such dispute or problem within a reasonable time period. The Lessee shall advise the Port Authority in writing of the operator's efforts to cure such default or the Lessee's and the operator's efforts to resolve such dispute or problem. Marriott Corporation hereby agrees that as operator (and any successor operator shall agree in the operating agreement) it will use best efforts to cure all defaults and resolve all disputes and problems with the Lessee and to advise the Port Authority of such efforts. In the event that after a reasonable time period (which shall be no less than sixty (60) days) the operator after using its best efforts is still in default under the operating agreement or after using their best efforts the dispute or problem has not been resolved the Lessee may request that the Port Authority consent to a new proposed operator of the hotel. The Port Authority shall respond in writing to the Lessee's request for a new operator within a reasonable time period after receipt of the request. The Port Authority shall not be obligated to consent to such new operator unless in the opinion of the Director of the Aviation Department of the Port Authority (a) the operator has used best efforts to cure the default or the Lessee and operator have used best efforts to resolve the dispute or problem, (b) the best interests of the operation of the hotel and the Airport would be served by replacing the existing operator with such new proposed operator and (c) such new proposed operator meets the criteria for a Permitted Hotel Operator as set forth in Section 8.9. Furthermore, if the Director of Aviation is prepared to consent to a new operator pursuant to the foregoing sentence, the Port Authority need not consent to such new operator unless and until the Lessee and proposed new operator obtain the Port Authority's consent to an operating agreement (which consent will not be withheld if in the Port Authority's opinion (i) the requirements of Paragraph 7.2.4 are satisfied, and (ii) the conditions set forth in the first sentence of Paragraph 7.2.3 are satisfied)

pursuant to which the new proposed operator agrees to operate the hotel on behalf of the Lessee during the remainder of the term of the letting and the Lessee and operator shall have executed and delivered to the Port Authority the form of "Consent to Operating Agreement" prepared by the Port Authority and submitted to the Lessee and proposed new operator.

7.3 No assignment of this Agreement or the letting hereunder shall be effective if on the effective date of such proposed assignment (i) the Lessee shall be in default for non-payment of rent, (ii) the Lessee shall be in default under any of the terms, covenants or provisions of this Agreement on its part to be kept, performed or observed, (iii) this Agreement shall not be in full force and effect, or (iv) the Port Authority shall have served a notice of termination pursuant to Section 21 of this Agreement.

7.4 The Lessee shall not sublet the premises or any portion thereof without the prior written consent of the Port Authority.

7.4.1 Nothing contained herein shall be deemed to affect the Lessee's right to enter into space leases and concession agreements for the use and occupancy of portions of the hotel building for the purpose of conducting a permitted consumer service therein provided such are in accordance with the provisions of Section 9 of this Agreement entitled "Space Leases".

7.4.2 Nothing contained herein shall be deemed to affect the Lessee's right to mortgage the leasehold under this Lease pursuant to the provisions of Section 8 of this Agreement entitled "Leasehold Mortgaging".

7.5 Any sale, assignment, transfer, sublease, mortgage, pledge, hypothecation, encumbrance, conveyance or disposition of the premises or this Agreement or any part thereof, or any license or other interest of the Lessee

therein not made in accordance with this Section or Section 8 shall be null and void ab initio and of no force or effect.

7.6 The Lessee for its own account shall pay all reasonable costs and expenses, including costs and expenses incurred by the Port Authority, in connection with any assignment, sale, transfer or sublease made in accordance with this Section.

7.7 If without the prior written consent of the Port Authority, the Lessee assigns, sells, conveys, transfers, mortgages, pledges or sublets in violation of this Section or if the premises are occupied by anybody other than Lessee, the Port Authority may collect all sums, charges and fees, including rental from any assignee, sublessee or anyone who claims a right under this Agreement or letting or who occupies the premises; 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.

Section 8. Leasehold Mortgaging

8.1 Definitions:

8.1.1 "Institutional Lender" shall mean any one of the following:

(i) a commercial bank, trust company, savings bank, or savings and loan association and qualified to do business in the State of New Jersey;

(ii) an insurance company having assets in excess of \$500,000,000 and qualified to do business in the State of New Jersey;

(iii) a reputable and accredited college or university;

(iv) a profit-sharing or members' or employees' pension trust or fund of a governmental body, union or corporation whose shares are traded on a national stock exchange, the assets of which fund or trust are in excess of \$500,000,000; or

(v) a corporation whose shares are traded on a national stock exchange and whose assets are in excess of \$500,000,000; or

(vi) a real estate investment trust whose shares are traded on a national stock exchange and whose assets are in excess of \$500,000,000; or

(vii) the Economic Development Authority of the State of New Jersey, but only if the Lessee in connection with the hotel has obtained monies from the issuance of industrial development bonds by the said Economic Development Authority pursuant to Section 103 of the Internal Revenue Service Code of 1954, as amended.

8.1.2 "Mortgage Amount" during the Initial Financing Period shall mean an amount not to exceed one hundred percent (100%) of the Lessee's Unamortized Capital Investment in the premises as such term is defined in paragraph 49.8.

8.1.3 "Leasehold Mortgage" shall mean a loan secured by a leasehold mortgage for a term of at least seven (7) years and not to extend beyond the expiration date of the letting set forth in Section 2 of this Agreement. There shall only be one Leasehold Mortgage in existence at any one time.

8.1.4 "Leasehold Mortgagee" shall mean such Institutional Lender which in accordance with the applicable provisions of this Agreement shall become the holder of the Leasehold Mortgage.

8.1.5 "Refinancing of the Leasehold Mortgage" shall mean (i) the entering into of a new Leasehold Mortgage by the Lessee subsequent to the expiration or termination of a previously existing Leasehold Mortgage or (ii) the advancing of additional monies under an existing Leasehold Mortgage. "Refinanced Amount" for purposes of this Agreement shall mean the original principal amount of such new Leasehold Mortgage described in subdivision (i) or in the event of a refinancing pursuant to subdivision (ii) then "Refinanced Amount" shall mean the

original principal amount of said Leasehold Mortgage as amortized on the effective date of the refinancing, said amortization to be on a straight line basis from the effective date of the Leasehold Mortgage to the expiration date of the term of the letting, plus the additional monies advanced pursuant to the refinancing of the Leasehold Mortgage.

8.2 Notwithstanding the provisions of Section 7 of this Agreement and without otherwise limiting the generality thereof, the Lessee, during the Initial Financing Period, as such term is defined in paragraph 7.1.2 of this Agreement, shall have the right to mortgage one time only the Lessee's leasehold interest under this Agreement in an amount not in excess of the Mortgage Amount under a Leasehold Mortgage to an Institutional Lender approved by the Port Authority in advance which approval shall not be withheld if all of the following conditions are satisfied:

(i) the proposed Institutional Lender and each officer, director or partner thereof and each person, firm or corporation having an outright or beneficial interest in twenty percent (20%) or more of the monies invested in the proposed Institutional Lender, if said Institutional Lender is a corporation, association or partnership, by loans thereto, stock ownership therein or any other form of financial interest, has, as of the date of the proposed financing, a good reputation for integrity and financial responsibility and has not been convicted of or under current indictment for any crime and is not currently involved in civil anti-trust or fraud litigation;

(ii) the Port Authority has not had any unfavorable experience with the proposed Institutional Lender, or any of its officers, directors, or partners, or any person, firm or corporation having an outright or beneficial interest in twenty percent (20%) or more of the monies invested in the proposed Institutional Lender if said Institutional Lender is a corporation, association or partnership, by loans thereto, stock ownership therein or any other form of financial interest;

(iii) the proposed Institutional Lender or any officer, director or partner thereof or any person, firm or corporation having an outright or beneficial interest in twenty percent (20%) or more of the monies invested in the proposed Institutional Lender, if said Institutional Lender is a corporation, association or partnership, by loans thereto, stock ownership therein or any other form of financial interest shall not be in conflict of interest, as defined under the laws of the States of New York and New Jersey, with any Commissioner of the Port Authority as of the date of the proposed financing.

(iv) there are no liens of any kind on the premises; and

(v) the Lessee shall not be in default for non-payment of rent or in default under any of the terms, covenants or provisions of this Agreement on its part to be performed and this Agreement shall be in full force and effect and the Port Authority shall not have served a notice of termination pursuant to Section 21 of this Agreement; and

(vi) there has not been a previous assignment of this Agreement and the letting hereunder pursuant to Section 7.1.2 of this Agreement.

8.2.1 For the period commencing with the day following the end of the Initial Financing Period and continuing for the remainder of the term of the letting the Lessee shall have the right to mortgage the Lessee's leasehold interest under this Agreement under a Leasehold Mortgage to an Institutional Lender approved by the Port Authority in advance which approval shall not be withheld if all of the terms and conditions set forth in subparagraphs (i), (ii), (iii), (iv), (an existing leasehold mortgage which will terminate, expire or be cancelled on or prior to the effective date of the new Leasehold Mortgage or Refinancing shall not be deemed a lien for purposes of subparagraph (iv)), and (v) of paragraph 8.2 have been fulfilled. The Lessee shall not be permitted to mortgage its leasehold interest (including the refinancing of an existing Leasehold Mortgage) pursuant to this Section 8.2.1 more than seven (7) times.

8.2.2 (a) Each time the Lessee places a mortgage or refinances an existing mortgage on its leasehold interest pursuant to paragraph 8.2.1 above, the Lessee hereby agrees to pay the Port Authority twenty percent (20%) of the following amount: the amount of the principal of the particular leasehold mortgage or the Refinanced Amount of the particular refinancing (as such term is defined in Section 8.1.5) less the amortized principal amount or amortized Refinanced Amount as of the effective date of the new mortgage of the immediately preceding leasehold mortgage or refinancing whenever made pursuant to the provisions of this Agreement, as said immediately preceding mortgage principal amount or Refinanced Amount is amortized on a straight line basis from the effective date of such immediately preceding leasehold mortgage or refinancing to the expiration date of the letting under this Agreement. Notwithstanding the foregoing in the event that there has been no prior assignment of this Agreement and there has been no leasehold mortgage or refinancing of the Lessee's leasehold interest in which the Port Authority received a percentage pursuant to this Section 8.2.2 then the provisions of subparagraph (c) below shall apply.

(b) Notwithstanding the provisions of the foregoing subparagraph (a), in the event this Agreement and the letting hereunder have been assigned under an assignment covered by Section 7.1.2 or Section 7.2.1 then the Lessee hereby agrees to pay the Port Authority twenty percent (20%) of the following amount: the amount of the principal of the particular leasehold mortgage or the Refinanced Amount of the particular refinancing, as the case may be, less the greater of the following amounts: the amortized total gross sales price as of the effective date of the new mortgage or refinancing paid as consideration for the immediately preceding assignment, as said immediately preceding total gross sales price is amortized on a straight line basis from the effective date of said assignment to the expiration date of the letting or the amount of the amortized principal or amortized Refinanced Amount as of the effective date of the new mortgage or refinancing of the immediately preceding leasehold mortgage or refinancing, if any, made by the present Lessee, as said immediately preceding leasehold mortgage or Refinanced Amount is amortized on a straight line basis from its effective date to the expiration date of the letting.

(c) In the event that there has been no prior assignment of this Agreement and there has been no leasehold mortgage or refinancing of the Lessee's leasehold interest in which the Port Authority received a percentage pursuant to this Section 8.2.2 then the Lessee hereby agrees to pay the Port Authority twenty percent (20%) of the following amount: the amount of the principal of the particular

leasehold mortgage less the Unamortized Capital Investment as determined in accordance with the provisions of Section 49.8 of this Agreement as of the effective date of the mortgage. All payments to the Port Authority pursuant to this Section 8.2.2 shall be made no later than the effective date of the particular Leasehold Mortgage or refinancing.

8.2.3 The Lessee, at least ninety (90) days prior to the proposed effective date of a proposed Leasehold Mortgage, shall notify the Port Authority in writing of the identity of the proposed Institutional Lender, and shall also submit to the Port Authority for its approval a copy of the form of the proposed Leasehold Mortgage and of the note or bond which the Leasehold Mortgage was given to secure. The Port Authority will advise the Lessee in writing within forty-five (45) days after receipt of such notification and submission whether or not the Port Authority will consent to such proposed Institutional Lender and such proposed Leasehold Mortgage and note or bond and the Port Authority will also set forth the provisions the Port Authority finds unacceptable. On the date of its execution, or within five (5) days thereafter, the Lessee shall deliver to the Port Authority a conformed copy of the executed Leasehold Mortgage and of the executed note or bond which the Leasehold Mortgage was given to secure.

8.2.4 The Leasehold Mortgagee shall not assign or transfer the Leasehold Mortgage to other than an Institutional Lender approved by the Port Authority which approval shall not be withheld if the proposed assignee or transferee meets the qualifications described in subdivisions (i), (ii) and (iii) of paragraph 8.2 above. The Lessee, at least ninety (90) days prior to the effective date of the proposed assignment of the Leasehold Mortgage shall submit to the Port Authority for its approval, notwithstanding any other form of notice to the Port Authority actual or constructive, the name and address of the proposed assignee together with a copy of the proposed assignment. The Port Authority will advise the Lessee in writing within forty-five (45) days after such submission whether or not the Port Authority will approve such proposed assignee and assignment and the Port Authority will also set forth the provisions the Port Authority finds unacceptable. On the effective date of such assignment or within five (5) days thereafter, the assignee shall deliver to the Port Authority a conformed copy of the executed assignment of the Leasehold Mortgage.

8.2.5 Notwithstanding anything contained in the Leasehold Mortgage or any consent or approval of the Port Authority thereto, it is understood and agreed that the

rights of the Leasehold Mortgagee shall in all respects be as specified in and shall be subject and subordinate to the terms, covenants, conditions and provisions set forth in this Agreement and to the terms, covenants and conditions of the Operating Agreement, if one is in effect, pursuant to the provisions of this Agreement. The terms, covenants, conditions and provisions of this Agreement shall govern as between the Port Authority and the Lessee and the terms, covenants, conditions and provisions of the Operating Agreement shall govern as between the Lessee and the Operator in the event of an assignment by the Lessee pursuant to Section 7.1.2 or Section 7.2 of this Agreement. As between the Port Authority and the Operator respectively, and the Leasehold Mortgagee, in the event of any inconsistency between the terms, covenants, conditions and provisions of this Agreement or the Operating Agreement, as the case may be, and the terms, covenants, conditions and provisions of the Leasehold Mortgage, the terms, covenants, conditions and provisions of this Agreement or the Operating Agreement shall control. Notwithstanding any provisions of the Leasehold Mortgage to the contrary, the Lessee for all purposes shall be deemed to be the Lessee hereunder unless and until the Leasehold Mortgagee shall have acquired the Lessee's interest herein or a new lease has been executed pursuant to this Section, as the case may be. The Leasehold Mortgage shall make reference to the provisions of this Agreement and the provisions of Sections 7.1.3 and 7.2.2, 7.2.3, 7.2.4 and 7.2.5 of this Agreement and shall provide that the Leasehold Mortgage and the rights of the Leasehold Mortgagee thereunder are and shall be in all respects subject thereto.

8.2.6 Any approval or consent by the Port Authority hereunder whether to the Leasehold Mortgage or to any assignment thereof shall apply only to the specific transaction thereby authorized and shall not relieve the Lessee or the Leasehold Mortgagee from the requirement of obtaining the prior approval or consent of the Port Authority, to each and every further assignment of the Leasehold Mortgage.

8.2.7 The Port Authority agrees that if it is requested by a qualified Institutional Lender to amend this Agreement as a condition to the issuance by such Lender of a commitment for a Leasehold Mortgage to the Lessee it will not unreasonably refuse to consent to such amendment provided that the proposed amendment in the sole opinion of the Port Authority (which opinion shall not be exercised arbitrarily) does not adversely affect the Port Authority's rights hereunder or the operation of the hotel in the manner contemplated by the provisions hereof and such proposed amendment is not inconsistent with the terms of this Agreement.

8.3 Except as expressly authorized in Paragraph 8.2 and Paragraph 8.2.1 the Lessee shall not mortgage the Lessee's interest in this Agreement or the letting hereunder in whole or in part.

8.4 If the Leasehold Mortgagee shall have given to the Port Authority a written notice specifying its name and address together with a conformed copy of the Leasehold Mortgage, the Port Authority shall send to the Leasehold Mortgagee a copy of each notice of default given under the Section of this Agreement entitled "Termination" at the same time as and whenever any such notice of default shall have been sent to the Lessee, such copy to be addressed to the Leasehold Mortgagee at the address last furnished by it to the Port Authority, and no notice of default shall be deemed to have been given by the Port Authority unless and until a copy thereof shall have been so given to the Leasehold Mortgagee. The Lessee irrevocably directs that the Port Authority accept, and the Port Authority agrees to accept, the curing of such default by the Leasehold Mortgagee as if and with the same force and effect as though cured by the Lessee.

8.4.1 Unless and until such time as it becomes the Lessee hereunder, the Leasehold Mortgagee, except to the extent provided in Paragraph 8.5 of this Agreement, shall not have any right in or to the operation or use of the premises or the hotel to be constructed thereon for the purposes set forth in this Agreement or for any other purpose whatsoever. The Leasehold Mortgagee shall not enter into or be entitled to enter into possession of the premises under this Agreement except to the extent afforded to it under this Agreement.

8.5 If the Port Authority shall elect to terminate the letting under the Section of this Agreement entitled "Termination", then the Port Authority shall give written notice of such termination to the Leasehold Mortgagee if it shall have become entitled to notice as provided in Paragraph 8.4. The Leasehold Mortgagee shall have the right to extend the effective date of such termination as specified in the notice for a period not to exceed six (6) months provided the Leasehold Mortgagee shall give notice of such extension to the Port Authority on or prior to the effective date of termination and shall simultaneously with the giving of its notice to the Port Authority cure or arrange to the satisfaction of the Port Authority for the curing of all such defaults which are susceptible of being cured and arrange to the satisfaction of the Port Authority for the continued operation of the Hotel by the then Operator (if there has been an assignment of this Agreement pursuant to Section 7.1.2 or Section 7.2 of this Agreement) in accordance with the terms of the Operating Agreement or in the event there is no Operator then by such Operator pursuant to such Operating Agreement as has been consented to in writing by the Port Authority, the Leasehold Mortgagee and such Operator to execute such Consent to Operating Agreement as is prepared by the Port Authority. During such six month period the Leasehold Mortgagee shall perform or cause to be performed all of the Lessee's obligations under this Agreement hereunder and shall pay or cause to be paid the rental due to the Port Authority. At the end of such six-month period the Port Authority shall be entitled to proceed to effect termination of the letting under this Agreement unless within such time (i) the Leasehold Mortgagee shall have acquired the Lessee's interest under this Agreement by foreclosure of its mortgage, by curing the defaults or otherwise and shall have executed and delivered to the Port Authority an agreement in form satisfactory to the Port Authority wherein the Leasehold Mortgagee agrees to assume performance and observance of each of the covenants and conditions herein contained on the Lessee's part to be performed as though it were the original Lessee under this Agreement; or (ii) the Leasehold Mortgagee or a purchaser shall have acquired title to the Lessee's interest under this Agreement pursuant to foreclosure or by an assignment in lieu of foreclosure as set forth in Paragraph 8.7 of this Agreement.

8.5.1 The Leasehold Mortgagee shall not be entitled to foreclose its mortgage or to have the Lessee's interest assigned to itself in lieu of such foreclosure unless at least ninety (90) days prior to commencing such foreclosure or requesting such assignment in lieu of foreclosure, the Leasehold Mortgagee shall have given the Port Authority written notice of its intention to foreclose or to have this Agreement assigned to itself which notice shall state the then principal balance of the Leasehold Mortgage, the amount of accrued and unpaid interest thereon, and the per diem interest which will accrue on the Leasehold Mortgage from and after the giving of such notice. The Port Authority shall have the right following the giving of such notice by the Leasehold Mortgagee, to purchase the Leasehold Mortgage for an amount equal to the total amount specified in such notice from the Leasehold Mortgagee, including per diem interest to the date of purchase. If the Port Authority shall fail to notify the Leasehold Mortgagee within the ninety (90) day period specified in the notice of its intention to purchase the Leasehold Mortgage the Leasehold Mortgagee shall be entitled to proceed to foreclose the Leasehold Mortgage or to accept an assignment in lieu of foreclosure in accordance with the provisions of this Agreement.

8.6 If, in the event this Agreement is terminated by reason of the occurrence of any event of default specified in Section 21 of this Agreement, the Port Authority, within thirty (30) days after the effective date of such termination receives notice from the Leasehold Mortgagee that the Leasehold Mortgagee requests a new lease for the balance of the original term of the letting set forth herein the Port Authority, provided the Leasehold Mortgagee is entitled to receive the notice described in paragraph 8.5 above, shall, within thirty (30) days following its receipt of such request or within ten (10) days following the expiration of such longer period during which any decree or order of any Court having jurisdiction over the Lessee shall have the effect of preventing the Port Authority, as Lessor, from execution or delivering such new lease, prepare and deliver to the Leasehold Mortgagee a new lease for the balance of what would have been the remainder of the term of this Agreement, provided that such notice from the Leasehold Mortgagee shall not be effective unless accompanied by payment of a sum of money equal to any and all sums, fees, charges and rentals which had been due and payable by the Lessee as of the date of termination. In the event the Leasehold Mortgagee shall not deliver an executed copy of such new lease to the Port Authority within thirty (30) days of its receipt thereof together with a sum of money equal to all expenses, costs and fees, including

reasonable counsel fees, as and when the same shall be incurred by the Port Authority in terminating this Agreement and in acquiring possession of the premises together with a sum of money equal to all sums, fees and charges, including rentals, which, but for such termination, would have become due and payable under this Agreement up to and including the date of the commencement of the term of such new lease, and all expenses, including reasonable attorney's fees, incidental to the preparation, printing, execution, delivery and recording of such new lease, the Leasehold Mortgagee shall have no further rights or interest in or to the premises and the new lease shall be deemed null and void and of no further force and effect except that the Leasehold Mortgagee shall on demand return all copies thereof to the Port Authority. The granting of a new lease to the Leasehold Mortgagee shall not affect the survival of the Lessee's obligations hereunder as provided in Section 23.

8.6.1 In the event of termination of this Lease and the execution and delivery of a new lease to the Leasehold Mortgagee pursuant to this paragraph, nothing herein contained shall be deemed to impose any obligation on the part of the Port Authority to deliver physical possession of the premises to the Leasehold Mortgagee. The Port Authority agrees, however, that the Port Authority will, at the sole cost and expense of the Leasehold Mortgagee, cooperate in the prosecution of summary proceedings to evict the Lessee in the event of such termination.

8.6.2 If as a result of a prior assignment pursuant to the provisions of this Agreement the operator of the hotel is not the Lessee under this Agreement or is not one of the entities comprising the Lessee then neither the termination of the letting under this Agreement nor the execution and delivery of a new lease pursuant to the provisions of this Section shall affect the operation of the hotel by the operator which shall continue as if the Operating Agreement remained in full force and effect and the lessee under any new lease shall enter into, assume or ratify the Operating Agreement and undertake all the liabilities and obligations of the Lessee thereunder except as to those amendments requested by the Lessee and approved by the Port Authority pursuant to Paragraph 7.2.3 of this Agreement.

8.6.3 If there has not been an assignment of this Agreement pursuant to Section 7 or if there has been an assignment of this Agreement pursuant to Section 7.1.1 or to a joint venture or partnership pursuant to Section 7.1.2 of which Marriott Corporation is a partner or joint venturer then upon the termination of the letting and the execution and delivery of a new lease pursuant to this Section 8 or upon acquisition of title of the Lessee's interest by foreclosure or by an assignment in lieu of foreclosure pursuant to this Section 8 then the new lessee shall engage a new

operator to operate the hotel but such new lessee shall not engage any operator or enter into any operating agreement unless (i) such operator qualifies as a Permitted Hotel Operator as defined in Section 8.9, (ii) the Port Authority has consented in writing to the operating agreement entered into between the new lessee and new operator, the Port Authority shall not withhold its consent to such operating agreement if in the Port Authority's opinion the conditions and requirements set forth in Paragraphs 7.2.3 and 7.2.4 are satisfied and (iii) the Port Authority, the new lessee and new operator have executed the form of Consent to Operating Agreement prepared by the Port Authority.

8.7 If the Leasehold Mortgagee shall acquire the title to the Lessee's interest under this Agreement by foreclosure of the Leasehold Mortgage or if the Leasehold Mortgagee or purchaser shall acquire title to the Lessee's interest under this Agreement by an assignment in lieu of foreclosure, or if the Leasehold Mortgagee shall acquire title to the Lessee's interest under this Agreement under a new lease pursuant to this Section, or if a purchaser at a foreclosure sale shall acquire such title, (it being understood and agreed that such purchaser who acquires the Lessee's leasehold interest either as a purchaser at foreclosure or by an assignment in lieu of foreclosure must be (1) an Institutional Lender as defined in Section 8.1.1 except that such purchaser for purposes of subdivisions (ii), (iv), (v) and (vi) of said Section need only have assets in excess of \$100,000,000 or (2) a Permitted Hotel Operator provided, that if the previous Lessee was not the operator of the hotel, the hotel, subject to the provisions of this Agreement, shall continue to be operated by the previous Lessee's operator), the Leasehold Mortgagee or such purchaser shall not assign, sell or transfer this Agreement or such lease replacing this Agreement except to a person who shall qualify as an assignee under the provisions of Section 7.2.2 and in accordance with the said Section 7.2.2 provided, however, that no sale, assignment or transfer of this Agreement or such new lease as shall replace this Agreement shall occur or be effective in any way unless the seller, transferor or assignor shall first notify the Port Authority of the interest it proposes to sell, transfer or assign, the name of the proposed seller, transferee or assignee and all of the terms of the sale, transfer or assignment. The Port Authority shall have ninety (90) days from its receipt of such notice to agree to purchase or acquire the said interest, on the same terms and conditions as contained in the notice or for a consideration as favorable to the seller, transferor or assignor as contained in the terms and conditions described in the notice. In the event the Port Authority fails to notify the proposed seller, transferor or assignor of its intention to purchase his interest then the interest may be sold, transferred or assigned to the person named in the notice on the terms stated therein provided such person qualifies as an assignee as provided above and provided further that no such sale, transfer or assignment shall be effective until an agreement of assignment and assumption in the form annexed hereto as Exhibit Z has been executed by the Port Authority, the Assignor and the proposed assignee.

8.8 No sale, transfer or assignment by the Lessee of its interest in this Agreement to the Port Authority shall create a merger between the estates of the Port Authority and the Lessee unless the Port Authority, the Lessee and the Leasehold Mortgagee shall specifically consent to such merger in writing, nor shall any such sale, transfer or assignment be deemed to affect or diminish the liabilities of the Lessee named in this Agreement, whether for survived damages or otherwise.

8.9 For purposes of this Section 8 and Section 7 of this Agreement "Permitted Hotel Operator" shall mean a financially responsible superior first class hotel operator of excellent repute with not less than ten (10) years' experience in successful operation of superior first class hotels with permanent staff and with resources adequate to assure at all times the fulfillment of all of the Lessee's and operator's obligations under this Agreement and with the capacity to operate the hotel as part of a national reservations system.

## Section 9. Space Leases

### 9.1 Definitions

9.1.1 "Space lease" shall mean a sublease, license, permit, or concession agreement, or any other form of agreement, however denominated, including any renewal, modification or amendment thereof, covering or involving the use or occupancy of a portion of the premises (other than the normal transient rental of guest rooms), for the conduct in such portions of the premises of a permitted consumer service, but not including room service, ballroom facilities and facilities for the on-premises consumption of food and beverages.

9.1.2 "Space lessee" shall mean any person, firm or corporation conducting a permitted consumer service under a space lease.

9.1.3 "Permitted consumer service" shall mean any of the following services: barber shop, beauty salon, newsstand, gift shop, travel, transportation and entertainment

ticket reservation counter, flower shop, drug store (excluding food and beverage sales), jewelry store and such other shops and services as are from time to time consented to in advance in writing by the Port Authority.

9.2 The Lessee shall not, without the Port Authority's prior written consent enter into any space lease for a permitted consumer service without the Port Authority's prior written consent which consent shall not be unreasonably withheld provided:

(i) the proposed space lessee and any officer, director or partner thereof has as of the date of the proposed space lease a good reputation for integrity and financial responsibility and has not been convicted or under current indictment for any crime and is not currently involved in civil anti-trust or fraud litigation;

(ii) the proposed space lessee is qualified by reason of its experience and prior record of performance to provide the service requested;

(iii) the Port Authority has not had any unfavorable experience with the proposed space lessee in its operations at other Port Authority facilities.

9.2.1 The Lessee shall submit to the Port Authority for its approval a written notice specifying the name of the proposed space lessee, the nature and scope of the proposed operations, the space to be occupied in the conduct of such proposed operations, and such evidence as is satisfactory to the Port Authority of the proposed space lessee's experience, integrity and financial responsibility, the scope of its proposed operations, and the standards of service it will provide together with a copy of the form of proposed space lease. The Port Authority shall prepare an agreement consenting to such space lease in the form annexed hereto as "Exhibit Y" and no space lessee shall occupy any portion of the premises or conduct public operations therein until said consent shall have been entered into by and between the Port Authority, the Lessee and the proposed space lessee.

9.3 The Lessee shall enter into all approved space leases in its own name. The Lessee shall administer all space leases and each space lease shall contain provisions, among others, providing that the space lessee shall: (i) take all reasonable measures in every proper manner to maintain, develop and increase the business conducted by it at the premises and not divert or cause or allow to be diverted any business from the premises; (ii) maintain in accordance with accepted accounting practice, records and books of account recording all transactions at, through or in in anywise connected with the premises, which records and books of account shall be kept at all times within the Port of New York District and permit, in ordinary business hours during such time, the examination and audit by the officers, employees and representatives of the Port Authority and of the Lessee of such records and books of account, including but not limited to cash registers, recording tapes and other recording equipment; (iii) furnish on or before the twentieth day of each month following the commencement date of the operation

a sworn statement of gross receipts arising out of the operations of the space lessee for the preceding month; (iv) 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 business and necessary or desirable to keep accurate records of gross receipts; (v) furnish good, prompt and efficient service, adequate to meet all demands therefor at the premises; furnish said service on a fair, equal and non-discriminatory basis to all users thereof; and charge fair, reasonable and non-discriminatory prices for all items and/or services which it is permitted to sell and/or render; (vi) observe, be bound by and comply with all of the terms, provisions, covenants and conditions of this Agreement affecting its operations under or in connection with the space lease and its occupancy of the premises; (vii) use the portion of the premises it occupies for the purpose set forth in the space lease and for no other purpose whatsoever; (viii) pay directly to the Port Authority on demand any rental, fee, charge or other amount due to the Lessee if the Lessee shall be in default under this Agreement; (ix) conduct its operations in a first-class manner in accordance with the best practices in the industry and shall comply with the maximum Port Authority standards with respect to service, health, sanitary and safety measures.

9.3.1 The Lessee covenants that each space lease it enters into pursuant to the provisions of this Section:

(i) Shall be subject and subordinate to the terms, covenants, conditions and provisions of this Agreement and the rights of the Port Authority hereunder;

(ii) Shall not be changed, modified, discharged or extended without the prior written approval of the Port Authority but nothing contained herein shall be deemed to prevent the Lessee from exercising any of its remedies under any space lease following the occurrence of a default by the space lessee;

(iii) Shall terminate and expire, without notice to the space lessee, on the day preceding the date of expiration or earlier termination of this Agreement or on such earlier date as the Lessee and space lessee may agree upon or on the effective date of any revocation of the Port Authority's consent.

(iv) Shall provide for payment by the space lessee of either a basic rental or fee for the space occupied by the space lessee thereunder, based upon the cost to the Lessee of providing such space or where circumstances warrant, for payment of a percentage rental or fee based upon gross receipts of such space lessee from its operations under the space lease, or any combination thereof. Rentals or fees shall be comparable to those customarily paid by similar operations in superior first class hotels comparably located in the Port of New York District.

9.3.2 All rentals or other payments received or receivable by the Lessee or by the permitted operator under any space lease shall be included in Gross Receipts.

9.3.3 If the Lessee enters into any space lease in violation of the provisions of this Section the Port Authority may collect rent from the space lessee thereunder, and no such collection shall be deemed a waiver by the Port Authority of the covenants contained in this Section or any acceptance by the Port Authority of any such space lessee, nor a release of the Lessee by the Port Authority from the further performance by the Lessee of the covenants contained herein. The granting of consent by the Port Authority to any space lease shall not be deemed to operate as a waiver of the requirement for obtaining the express prior written consent of the Port Authority to any other or subsequent space lease.

9.3.4 The Lessee shall not use, or permit any person to use, the premises or any portion thereof, except for a permitted consumer service and in accordance with the provisions of this Section. The Lessee shall not enter into any space lease with respect to the operation of the guest

Section 11. Method of Operation

11.1 Without limiting the provisions of Section 3 and of any other provision of this Agreement, the Lessee shall cause the hotel to be operated throughout the term of the letting as a superior first-class hotel for transient guests and providing all of the services, facilities and conveniences which would be appropriate or desirable in a hotel of such class and character. The Lessee shall cause to be furnished first class, prompt and efficient service hereunder adequate to meet all demands therefor and on a courteous, fair and non-discriminatory basis. The Lessee shall cause to be charged fair and non-discriminatory prices and rates for all accommodations and for all items and services which it is permitted to sell or render hereunder. The Lessee shall not permit discrimination against any person on the grounds of race, creed, color, sex, age or national origin whether in the furnishing of accommodations or service or in the sale of merchandise. Similarly, the Lessee shall not practice nor permit the practice of any discrimination in employment practices or procedures nor in any operations or activities conducted under or in connection with this Agreement.

11.2 Without limiting the provisions of the Section of this Agreement entitled "Development and Construction of Hotel" or of any other provision of this Agreement the Lessee agrees that it will furnish and install in the hotel and the premises at all times all necessary, proper or desirable equipment, fixtures, furnishings, supplies and materials and improvements and replacements therefor all of which shall be of first-class material and design. All fixtures (except trade fixtures) improvements, permanently affixed equipment and replacements therefor shall on installation become a part of the hotel and of the premises and become the property of the City of Newark without the doing of any other act or thing provided, however, that the Port Authority shall have the option, exercisable by notice delivered to the Lessee on or before a date sixty (60) days after the expiration or termination hereof to require the Lessee to remove any and all of such fixtures, improvements and permanently affixed equipment and to restore and repair any damage caused thereby and in the event of a failure on the part of the Lessee so to do, the Port Authority may do so and the Lessee shall pay the cost thereof to the Port Authority on demand.

11.3 The Port Authority shall have the option exercisable by notice delivered to the Lessee on or before the expiration or termination of the letting hereunder to purchase all or such part as the Port Authority elects of the Lessee's removable equipment, trade fixtures and furnishings installed or placed on the premises by the Lessee pursuant to this Agreement. In the event the Port Authority exercises its option to make said purchase the Port Authority shall pay to the Lessee a sum equal to the fair market value of said removable equipment, trade fixtures and furnishings. The Lessee hereby agrees that on the effective date of termination or expiration none of the aforesaid items shall be subject to lien or other encumbrance and upon request of the Port Authority the Lessee will execute a bill of sale or such other document of conveyance as the Port Authority may request to transfer title to the aforesaid items to the Port Authority.

11.4 The Lessee shall at all times during the letting hereunder cause to be maintained a full, adequate, experienced and proficient management staff all of whom (as well as all other employees on the premises) shall be reputable and of good character. No individual shall be knowingly employed or retained by or on behalf of the Lessee if he or she has been convicted of a crime or is under trial or indictment for the same. The Lessee shall cause its operations to be conducted in a first-class orderly manner so as not to annoy, disturb or be offensive to others at the Facility. The Lessee shall control the conduct, demeanor and appearance on the premises of its officers, members, employees, contractors, subtenants, guests, customers, invitees and those doing business with it, and off the premises but elsewhere at the Facility of its officers, members, employees, agents, representatives, subtenants and contractors. Upon objection from the Port Authority concerning the conduct, demeanor or appearance of any such, the Lessee shall immediately take all steps necessary to remove the cause of the objection.

11.5 The Lessee's rentals, prices and rates shall be in accordance with the provisions of Section 11.1 above and shall be comparable to rentals, prices and rates in hotels of comparable class, character and location. The Lessee in accordance with the foregoing sentence shall cause to be established rentals, rates and prices and will make same available to the Port Authority upon request. The Lessee shall submit to the Port Authority a schedule of transient room rental rates. Such transient room rate schedule shall be made available to the public by the Lessee at locations mutually agreed to from time to time by the Lessee and the Port Authority. The Lessee shall adhere to the transient rental rates stated in the said schedule for transient customers and the Lessee shall resubmit to the Port Authority any changes or modifications in any schedule of transient room rental rates previously submitted to the

Port Authority. If the Lessee charges a transient room rental to a transient customer in excess of the scheduled rental, the amount thereof shall constitute an overcharge which will, upon demand of the Lessee's customer or the Port Authority be promptly refunded to the customer. If the Lessee charges a transient room rental to a transient customer which is less than the scheduled rental, the amount thereof shall constitute an undercharge and such amount shall be included in Gross Receipts hereunder. Notwithstanding any repayment of overcharges to a customer by the Lessee or any inclusion of undercharges in Gross Receipts, a consistent pattern of overcharges or undercharges or a breach of Section 11.1 above shall constitute a breach of the Lessee's obligations hereunder and the Port Authority shall have all remedies consequent upon such breach as would otherwise be available to it at law, in equity or by reason of this Agreement. It is understood that the Lessee shall have the right to offer special, package or group rental rates provided that the same shall be made available on a non-discriminatory basis to all persons in the same categories qualifying therefor.

11.6 The Lessee shall cause the hotel to be operated and be open for business twenty-four hours a day every day throughout the year regardless of holidays. With respect to the operation of food and beverage facilities and the furnishing of other sales and services in the hotel the parties hereto shall mutually agree upon the hours and days of operation thereof provided, however, that such hours and days of operation shall not be less than those in other superior first class hotels of comparable character and location and provided, further, however, that some food and beverage service (not necessarily including alcoholic beverages) which may be dispensed by vending machines shall be available for hotel guests twenty-four hours per day, the hours and days that food and beverages will be available solely through vending machines to be mutually agreed upon by the parties.

## Section 12. Lessee's Operations

12.1 The Lessee shall not commit any nuisance on the premises, or do or permit to be done anything which might result in the creation or commission of a nuisance on the premises, and the Lessee shall not cause or permit to be caused or produced upon the premises, to permeate the same or to emanate therefrom, any unusual, noxious or objectionable smoke, gases, vapor, odors, noises or vibrations. The Lessee shall use its best efforts to conduct all its operations at the premises in a safe and careful manner. The Lessee shall not use or connect any equipment or engage in any activity or operation in the premises which will cause an

overloading of the capacity of any existing or future utility, mechanical, electrical, communication or other systems or portions thereof on the premises or elsewhere at the Facility, nor shall the Lessee do or permit to be done anything which may interfere with the effectiveness or accessibility thereof. Overloading of such systems resulting from operations of others at the Facility shall not be deemed to be the responsibility of the Lessee so long as the Lessee's use of said system conforms to the capacity thereof expressly reserved for use or operation of the Lessee. The Lessee shall not overload any floor, roadway, passageway, pavement or other surface or any wall, partition, column or other supporting member, or any elevator or other conveyance in the premises or at the Facility.

12.2 The Lessee, without the prior consent of the Port Authority shall not install any vending machines nor sell or license the sale of lottery tickets or similar chances or devices nor conduct or license the conducting of off-track or other wagering operations or gambling activities of any kind at or from the premises. No souvenir or souvenir type merchandise whether involving Newark International Airport or other Port Authority facilities (or depicting any aspect thereof) or bearing or carrying the Newark International Airport legend or reproduction thereof shall be sold or displayed at or from the premises without the prior written consent of the Port Authority.

12.3 In connection with any preparation, packaging, handling, storage, delivery and dispensing of food and/or beverages, the Lessee shall cause the following to be complied with:

(a) Employees shall wear clean, washable uniforms and female employees shall wear caps or nets. Employees shall be clean in their habits and shall thoroughly wash their hands before beginning work and immediately after each visit to the lavatory and shall keep them clean during the entire work period. No person affected with any disease in a communicable form or who is a carrier of such disease shall work or be permitted to work at the premises;

(b) All food and beverages shall be clean, fresh, pure, of first-class quality and safe for human consumption;

(c) The premises and all fixtures, equipment, and materials used by the Lessee shall at all times be clean, sanitary, and free from rubbish, refuse, dust, dirt, offensive or unclean material, flies and other insects, rodents and vermin. All apparatus, utensils, devices, machines and piping used by the Lessee shall be constructed so as to facilitate the cleaning and inspection thereof and shall be properly cleaned after such period of use with hot water and a suitable soap or detergent and shall be rinsed by flushing with hot water. Where deemed necessary by the Port Authority, final treatment by live steam under pressure or other sanitizing procedure shall be used. All trays, dishes, crockery, glassware, cutlery, and other equipment of such type shall be cleaned and sanitized before using same;

(d) All packing materials, including but not limited to wrappers, stoppers, caps, enclosures and containers, shall be clean and sterile and shall be so stored as to be protected from dust, dirt, flies and other insects, rodents, vermin, unsanitary handling and unclean materials;

(e) It is intended that the standards and obligations imposed by this paragraph shall be maintained or complied with by the Lessee in addition to its compliance with all applicable governmental laws, ordinances and regulations, and in the event that any of said laws, ordinances and regulations shall be more stringent than such standards and obligations, the Lessee agrees that it will comply with such laws, ordinances and regulations in its operations hereunder, provided, however, that nothing herein shall be deemed to preclude the Lessee from pursuing its legal rights or remedies respecting the enforcement of such law, ordinance or regulation.

12.4 The Lessee shall not do or permit to be done any act or thing upon the premises or at the Facility which will invalidate or conflict with any insurance policies

covering the premises or any part thereof, or the Facility, or any part thereof, or 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 the Section of this Agreement entitled "Use of Premises", or will increase the rate of any insurance including fire, extended coverage or rental insurance on the Facility or upon the contents of any structure thereon; and the Lessee shall promptly observe, comply with and execute the provisions of any and all present and future rules and regulations, requirements, orders and directions of the National Board of Fire Underwriters and the Fire Insurance Rating Organization of New Jersey, and 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 or to the buildings, structures, fixtures, furnishings, equipment or improvements thereon; the Lessee shall, subject to and in accordance with the provisions of the Section of this Agreement entitled "Alterations and Improvements by the Lessee", make any and all structural and non-structural improvements, alterations or repairs of the premises that may be required at any time hereafter by any such present or future rule, regulation, requirement, order or direction. If by reason of any failure on the part of the Lessee to comply with the provisions of this Agreement any insurance rate on the premises or any part thereof or on the Facility or any part thereof shall at any time be higher than it otherwise would be, then the Lessee shall absorb the cost thereof and 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, but no such payment shall relieve the Lessee of its other obligations under this paragraph. The Port Authority at its offices shall make available for inspection by the Lessee the appropriate portions of its insurance policies bearing on the Lessee's obligations under this paragraph 12.4.

12.5 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 all persons on the premises. 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.

12.6 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 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.

12.7 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 sprinkler fire-extinguishing system and apparatus which constitute a part of the premises. The Lessee shall keep in proper functioning order all fire-fighting equipment on the premises and the Lessee shall at all times maintain on the premises adequate stocks of fresh, usable chemicals for use in such system 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.

12.8 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 a high 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 high 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. 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.

12.9 The obligations assumed by the Lessee under paragraph 12.8 above 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 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 12.8 above is a special inducement and consideration to the Port Authority in entering into this Lease with the Lessee.

Section 13. Maintenance, Repair and Rebuilding

13.1 The Lessee shall, throughout the term of this Agreement assume the entire responsibility and shall relieve the Port Authority from all responsibility for all

care, maintenance, repair and rebuilding whatsoever in the premises, whether such maintenance, repair or rebuilding be ordinary or extraordinary, partial or entire, foreseen or unforeseen, structural or otherwise; and without limiting the generality of the foregoing the Lessee shall:

(a) At all times keep the premises clean, and in an orderly condition and appearance, together with all the fixtures, improvements, furnishings, equipment and personal property located in or on the premises.

(b) With respect to the premises and all parts thereof, including but without limitation thereto, such of the following as are or may be during the term of the letting located in or on the premises: the exterior and interior of the building walls, the exterior and interior and operating mechanisms of and attachments to windows and skylights, screens, roofs, foundations, steel work, columns, the exterior and interior and operating mechanisms of and attachments to doors, partitions, floors, ceilings, inside and outside paved and unpaved areas, glass of every kind, elevators, escalators, communication and computer systems, exhaust fans and window washing equipment and the utility, mechanical, electrical and other systems; the Lessee shall take the same good care of the premises that would be taken by a prudent owner who desired to keep and maintain the same so that at the expiration or termination of the letting and at all times during the letting, the same (or a reconstruction of all or any part thereof) will be in first class operating order, condition and appearance. To that end, the Lessee shall make frequent periodic inspections and, from time to time as the necessity therefor arises and regardless of the cause of the condition requiring the same, the Lessee shall perform all necessary preventive maintenance including but not limited to painting (in colors for exteriors which have been approved by the Port Authority), and the Lessee shall promptly make all necessary repairs

and replacements, and subject to the applicable provisions of the Section entitled "Development and Construction of Hotel" and the Section entitled "Fire and Other Casualty" hereof do all necessary rebuilding with respect to the premises and all parts of the hotel (including any total destruction) without regard to the cause thereof, and whether or not caused by fire or other casualty, all of which shall be in quality equal to the original in materials and workmanship.

(c) Without limiting its obligation 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 of at least as good appearance and condition as that required by a superior first class hotel as defined in Section 3.2 of this Agreement.

(d) The Lessee shall supply, replace, install, repair, maintain and keep clean all grease traps in all drainage pipes used by it in its operations hereunder whether such pipes are located on the premises or elsewhere at the Facility. The Lessee shall remove all snow and ice and perform all other activities and functions necessary or proper to make the premises available and accessible for use by the Lessee, its guests and invitees. The Lessee shall also keep clean, maintain, repair and replace all heating, ventilating and air conditioning fans, valves, units, motors, kitchen exhaust systems and all ducts therefor (including replacement of all filters therein) when any such fans, valves, units, motors and ducts are used exclusively by or for the Lessee's operations hereunder, whether any of such are located on the premises or elsewhere at the Facility.

(e) The Lessee shall be responsible for the maintenance and repair of all utilities service lines including but not limited to chilled and other water lines, steam, electrical power and telephone conduits and lines and sanitary and storm lines and sewers located on the premises as

well as connection pipes and mains therefor and all other fixtures, machinery, or equipment now or hereafter belonging to or connected with said premises or used in their operation.

(f) 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 law, rule, ordinance, resolution or regulation of the type and nature described in the Sections of this Agreement entitled "Rules and Regulations" and "Compliance with Governmental Requirements" of this Agreement. The Lessee shall enter into and keep in effect through the term of the Lease a contract or contracts with a central station alarm company acceptable to the Port Authority to provide continuous and automatic surveillance of the fire protection system on the premises. The Lessee shall insure that all fire alarm signals with respect to the premises shall also be transmitted to the Airport's police emergency alarm board or to such other location on the Airport as the General Manager of the Airport may direct. The Lessee's obligations hereunder shall in no way create any obligation whatsoever on the part of the Port Authority.

(g) Take such anti-erosion measures and maintain the landscaping at all times in good condition, including but not limited to periodic replanting, as the Port Authority may reasonably 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;

(h) 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.

13.2 In the event the Lessee fails to commence so to maintain, clean, repair, replace, rebuild or paint within a period of thirty (30) days after notice from the Port Authority so to do and the said notice specifies that the required work to be accomplished by the Lessee includes maintenance and/or repair other than preventive maintenance; or within a period of one hundred twenty (120) 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 rights or 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. Nothing herein contained shall be deemed to require the Port Authority to notify the Lessee of needed repairs or replacement of or required maintenance or preventive maintenance and the Lessee shall be solely responsible for any failure to perform needed maintenance, repair or restoration, rebuilding or painting.

Section 14. Insurance

14.1 In addition to any other insurance provided for or required under this Agreement, the Lessee shall secure and maintain in its own name as assured and shall pay the premiums on the following policies of insurance in the limits set forth below, which policies shall be effective during the term of the letting under this Agreement:

14.1.1 Fire casualty and property damage insurance sufficient to insure and keep insured at all times during the letting to the extent of not less than eighty percent (80%) of the then "full insurable value" thereof, the hotel and all structures, improvements, fixtures

and permanently affixed equipment, now or in the future located on or constituting a part of the premises leased to the Lessee, full insurable value being the cost of replacing the hotel and all of said structures, improvements, fixtures and permanently affixed equipment. Full insurable value shall be determined jointly by the Port Authority and the Lessee, from time to time, but not less frequently than once every three (3) years provided, however, that if the Port Authority and the Lessee cannot jointly agree on said value, then said value shall be determined by an appraiser selected jointly by the Port Authority and the Lessee and whose fees shall be paid by the Lessee. No omission on the part of the Port Authority to request any such appraisal shall relieve the Lessee of its obligations to maintain the appropriate insurance under this Section. Such insurance shall cover and insure against such hazards and risks as may now or in the future be included under the Standard Form of Fire Insurance Policy of the State of New Jersey or any successor thereto; coverage thereunder shall also include damage or loss by lightning, vandalism, malicious mischief, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, and smoke, loss of rental or revenue from concessionaires and subtenants under the Standard Form of Fire Insurance Policy of New Jersey and the broadest form of extended coverage endorsement prescribed as of the effective date of said insurance by the rating organization having jurisdiction. The Lessee shall also purchase a Difference In Conditions Policy covering the hotel and all structures, improvements, fixtures, and permanently affixed equipment, now or in the future located on or a part of the premises in a limit not less than \$5,000,000.

14.1.2 Boiler and machinery insurance covering all boilers, pressure-vessels and machines operated by the Lessee or others in or on any buildings or structures located on the premises, the policy to be effective throughout the letting in such amounts as the Port Authority may determine to be reasonable coverage against the hazards and perils occasioned by the existence and operation of such boilers, pressure vessels and machinery; the Lessee shall secure and pay the premium for an "Additional Interest" policy of boiler and machinery insurance covering the same objects

throughout the letting in the same limits and such Additional Interest policy shall include the Port Authority as an additional insured.

14.1.3 Comprehensive General Liability Insurance and comprehensive automobile liability insurance covering the Lessee's operations throughout the effective period of this Agreement; such policy or policies shall include the Port Authority as an additional insured and shall include blanket protective and products liability coverages and shall not contain any exclusion relating to the dispensing of alcoholic beverages at or from the premises (commonly called dram shop liability exclusion). Such insurance shall contain a contractual liability endorsement covering the indemnification obligation assumed by the Lessee pursuant to the Section of this Agreement entitled "Indemnity" and an endorsement providing that the protection 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 said endorsement shall not limit, vary, change or affect the protections afforded the Port Authority as an additional assured. The minimum limits of such coverages shall be not less than the following:

(a) Comprehensive general liability insurance:

- |                                |              |
|--------------------------------|--------------|
| (1) Personal-injury liability: |              |
| For injury or wrongful death   |              |
| from any one occurrence:       | \$20,000,000 |
| Aggregate Products:            | \$ 5,000,000 |
| (2) Property-damage liability: |              |
| For all damages arising out    |              |
| of injury to or destruction    |              |
| of property in any one         |              |
| occurrence:                    | \$ 5,000,000 |
| Aggregate Products:            | \$ 5,000,000 |

(b) Automobile liability insurance:

(1) Bodily-injury liability:

For injury or wrongful death  
to one person: \$ 1,000,000

For injury or wrongful death  
to more than one person from  
any one occurrence: \$ 5,000,000

(2) Property-damage liability:

For all damage arising out  
of injury to or destruction  
of property in any one  
occurrence: \$ 5,000,000

Notwithstanding the foregoing, it is specifically understood and agreed that the Port Authority shall have the right upon notice to the Lessee given from time to time and at any time to require the Lessee to increase any or all of the foregoing limits and the Lessee shall promptly comply therewith and shall promptly submit a certificate or certificates evidencing the same to the Port Authority; the Port Authority agreeing not to act unreasonably hereunder.

14.1.4 Business interruption insurance against certain expenses and costs which the Lessee would continue to bear or incur during a period when the hotel or a portion thereof is out of operation due to fire and the risks now or hereafter embraced by the standard form of fire insurance policy of the State of New Jersey and the broadest form of extended coverage endorsement including without limitation the loss of rent by the Port Authority. If the amount of any of the aforementioned items payable by the Lessee for the ensuing year shall not be ascertainable, the actual amount which shall have been necessary for the payment and discharge of the same for the immediately preceding year may be substituted in arriving at the total amount of such payments. The Lessee shall not be relieved of any liabilities under this Agreement except to the extent that the proceeds of such insurance shall be actually collected by the Port Authority to cover liabilities. Except as such proceeds are made available to the Port Authority to cover the Lessee's liability for rental and real estate taxes, or payments in lieu thereof, if applicable, such proceeds shall be payable to the Lessee for premium costs and other approved expenses.

14.1.5 War risk insurance upon the hotel building, if and when such insurance is obtainable from the United States of America or any agency or instrumentality thereof or from an insurance company qualified to do business in the State of New Jersey which shall have filed rates of premium for such insurance with the Superintendent of Insurance of

the State of New Jersey (and if no such company then from another company approved by the Port Authority) and if and when a state of war or national or public emergency exists, or, in the reasonable judgment of the Port Authority, such state of war or national or public emergency threatens, in an amount not less than the full insurable value thereof, or in the maximum amount of insurance obtainable, whichever is lower.

14.1.6 Innkeepers Liability Insurance.

14.1.7 Elevator Liability Insurance including coverage for escalators.

14.1.8 Worker's Compensation and Employer's Liability Insurance as required by law.

14.1.9 Such other insurance, in such reasonable amounts as may from time to time be reasonably required by the Port Authority against other insurable hazards which at the time are applicable to a first class hotel of the construction and type to be built and operated by the Lessee hereunder.

14.2 The Lessee shall not, on the Lessee's own initiative or pursuant to the request or requirement of any third party, take out separate insurance concurrent in form or contributing in the event of loss with that required in this Section to be furnished by the Lessee.

14.3 All insurance provided for in this Section shall be written by companies authorized to do business in the State of New Jersey and approved in advance by the Lessee and the Port Authority. At any time any policy shall be or become unsatisfactory to the Lessee or the Port Authority as to form, limits or substance or if any of the carriers issuing such policies shall be or become unsatisfactory to the Lessee or the Port Authority, the Lessee shall obtain a new and satisfactory policy in replacement with a carrier approved by the Port Authority. The limits of coverage shall not be reduced without the Port Authority's prior consent.

14.4 Unless otherwise directed by the Port Authority, all policies of insurance required by this Section (except for Comprehensive General Liability, Automotive, Innkeeper's liability and Workmen's Compensation Insurance) shall name the Port Authority, the Lessee and the City of Newark (with insurance clauses consistent with the provisions of this Agreement) as the insureds, as their respective interests may appear. As to any insurance required by this Section, a certified copy of each of the policies, or binders, shall be delivered to the Port Authority within ten (10) days after the execution of this Agreement. In the event any binder is delivered, it shall be replaced within thirty (30) days by a certified copy of the policy. Each such copy or binder shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified, without giving at least thirty (30) days written advance notice thereto to the Port Authority and an endorsement to the effect that the insurance as to the interest of the Port Authority shall not be invalidated by any act or negligence of the Lessee or any other insured. Each policy or binder shall have attached thereto an endorsement that the Port Authority will be given at least thirty (30) days prior notice of any material change in the policy. A renewal policy shall be delivered to the Port Authority at least fifteen (15) days prior to the expiration date of each expiring policy, except for any policy expiring after the date of expiration of the effective period hereof.

14.5 Each policy of insurance required by this Section shall contain a provision that in any action or proceeding under or in connection with such policy, the insurance carrier shall not without obtaining express advance consent from the General Counsel of the Port Authority raise any defense involving in any way the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, the provisions of any statutes respecting suits against the Port Authority, or the jurisdiction of the tribunal over the person of the Port Authority.

14.6 Loss, if any, under any of the policies mentioned and provided for in this Section (except Innkeeper's Liability, Worker's Compensation, Business Interruption and Comprehensive General and Automobile Liability Insurance) shall be adjusted with the insurance company by the Lessee

and the Port Authority and payable to the Lessee except under the circumstances described in paragraphs 15.1.1 and 15.2.1 of Section 15 hereof in which event the proceeds shall be directly deposited in the Insurance Trustee's account described in said Section 15.2.1; all proceeds payable to the Lessee shall be applied by the Lessee strictly and solely as elsewhere required under the provisions of this Agreement.

Section 15. Fire and Other Casualty

15.1 If the premises or the hotel or any part thereof or any structures, improvements, fixtures and permanently affixed equipment, located thereon, or any part thereof, shall be damaged or destroyed by fire, the elements, the public enemy or other casualty, or by reason of any cause whatsoever and whether partial or total the Lessee shall at its sole cost and expense and whether or not such damage or destruction is covered by insurance proceeds sufficient for the purpose, remove all debris resulting from such damage or destruction, and shall rebuild, restore, repair and replace the premises and the hotel and any structures, improvements, fixtures and permanently affixed equipment located thereon in accordance with the plans and specifications for the same as they existed prior to such damage or destruction or with the consent in writing of the Port Authority make such other repairs, replacements, changes or alterations as is mutually agreed to by the Port Authority and the Lessee. Such rebuilding, restoration, repairs, replacements, or alterations shall be commenced promptly and shall proceed with all due diligence subject to the terms and conditions of this Agreement, including, without limitation, the terms and provisions of the Section of this Agreement entitled "Alterations and Improvements by the Lessee".

15.1.1 Notwithstanding the foregoing, if such damage or destruction as is described in paragraph 15.1 above occurs during the last five (5) years of the term of the letting and the cost of rebuilding, restoration, repair or replacement shall exceed twenty-five percent (25%) of the then full insurable value on a replacement cost basis of the hotel and all structures, improvements, fixtures and permanently affixed equipment located on the premises immediately prior to such damage or destruction (as such insurable value shall have been determined in accordance with the provisions of Section 14.1.1 of this Agreement) the Lessee shall have the option of either:

(a) performing all rebuilding, restoration, repairs, replacements or alterations required, in accordance with the provisions of this Agreement, or

(b) terminating the letting under this Agreement in its entirety by written notice to the Port Authority given within thirty (30) days after the occurrence of such damage or destruction provided, there shall be in force and effect the required insurance valid and subsisting and adequate to cover such damage or destruction without any defenses to the payment by the insurance carriers based upon acts or omissions of the Lessee or of any other insureds other than the Port Authority and provided, further, that both at the time of the giving of notice and on the effective date thereof:

(i) the Lessee is not in default under any of the provisions of this Agreement or under notice of termination from the Port Authority, and (ii) this Agreement and the hotel and all structures, improvements, fixtures and permanently affixed equipment structures, located on the premises are unencumbered by any mortgage (including but not limited to the Leasehold Mortgage) security interest, judgments, or other liens (to be evidenced by a search made by a title company acceptable to the Port Authority and to be furnished by the Lessee at its sole cost and expense) and free from any pending matters that might develop into additional rent unless the Lessee shall secure payment and discharge of such mortgages, security interests, judgments or other liens and the payment of such additional rent to the Port Authority in a manner satisfactory to the Port Authority.

15.1.2 In the event of termination pursuant to the provisions of paragraph 15.1.1 the Lessee shall not be entitled to any portion of the proceeds of any insurance, including but not limited to fire insurance, boiler and pressure vessel insurance, war risk insurance and rent or rental value insurance if any, all of which shall become the sole property of the Port Authority. There shall be no apportionment of any items of additional rent paid by the Lessee pursuant to the provisions of Section 31 of this Agreement covering a period of time extending beyond the date of such termination.

15.1.3 Upon the effective date of such termination, the Lessee shall surrender and deliver up the premises, the hotel and all structures, improvements, fixtures and permanently affixed equipment located on the premises into the possession and use of the Port Authority in the manner specified in the Section of this Agreement entitled "Surrender", subject, however, to the physical condition and state of repair thereof. Subject to the foregoing, the Lessee upon such termination, surrender and removal, shall be released and discharged from any and all obligations under this Agreement other than those which shall have accrued prior to the date of such termination or shall mature on such date.

15.1.4 Except as provided in 15.1.1, no destruction of, or damage to the whole or any part of the premises or to any part of the hotel or any structures, improvements, fixtures, and permanently affixed equipment, any other casualty, cause or condition shall permit the Lessee to surrender or terminate this Agreement or shall relieve the Lessee from its liability to make payment of any monies, charges, fees or rentals or additional rentals payable under this Agreement or from any of its other obligations hereunder. The Lessee waives any rights now or hereafter conferred upon the Lessee by statute or otherwise to quit or surrender the premises and terminate this Agreement or any part thereof, or to any suspension, diminution, abatement or reduction of rent on account of any destruction or damage. The parties stipulate that neither the provisions of Title 46:8-6 and 46:8-7 of the revised statutes of New Jersey nor those of any other similar statute shall extend or apply to this Agreement.

15.2 If such damage or destruction as is described in paragraph 15.1 is covered by insurance then subject to the provisions of paragraph 15.2.1 hereof such proceeds shall be made available for and applied to the payment of the cost of the rebuilding, restoration, repair, replacement and alteration work required to be performed by the Lessee under the provisions of this Agreement.

15.2.1 In the event that for any single casualty hereunder the insurance proceeds referred to above do not exceed in the aggregate One Million Dollars and No Cents (\$1,000,000.00) such proceeds shall be made available directly to the Lessee to be applied as set forth in paragraph 15.2. In the event that the insurance proceeds exceed One Million Dollars and No Cents (\$1,000,000.00) the proceeds shall be deposited in an interest bearing account with a bank or trust company selected by the Lessee and approved by the Port Authority (which bank or trust company is hereinafter in this Agreement called "the Insurance Trustee") having its principal office in Newark, New Jersey and having a capital and surplus of at least \$50,000,000 to be disbursed by the Insurance Trustee from time to time as work progresses, upon the written request of the Lessee, to be accompanied by the following:

(1) A certificate signed by a responsible officer of the Lessee, dated not more than thirty (30) days prior to such request, setting forth the following:

(a) That the sum then requested either has been paid by the Lessee, or is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons who have rendered services or furnished materials for the rebuilding or restoration therein specified, the names and addresses of such person, a brief description of such services and materials, the several amounts so paid or due to each of said persons in respect thereof, that no part of such expenditures has been made the basis, in any previous or then pending request, for the withdrawal of insurance money or has been paid out of the proceeds of insurance received by the Lessee, and that the sum then requested does not exceed the value of the services and materials described in the certificate.

(b) That except for the amount, if any, stated in such certificate to be due for services or materials, there is no outstanding indebtedness known to the persons signing such certificate, after due inquiry, then due for labor, wages, materials, supplies or services in connection with such rebuilding or restoration which, if unpaid, might become the basis of a vendor's, mechanic's, laborer's or materialman's statutory or similar lien or alleged lien upon such rebuilding or restoration or upon the premises or any part thereof or upon the Lessee's leasehold interest therein.

(c) That the cost, as estimated by the persons signing such certificate, of the rebuilding or restoration required to be done subsequent to the date of such certificate in order to complete the same, does not exceed the insurance proceeds, plus any amount deposited by the Lessee to defray such cost remaining in the hands of the Insurance Trustee after payment of the sum requested in such certificate.

(d) That there has not been filed with respect to the premises or any part thereof or upon the Lessee's leasehold interest therein any vendor's, mechanic's, laborer's, materialman's or other lien which has not been discharged or removed of record or bonded except such as will be discharged by payment of the amount then requested.

15.2.2 Upon compliance with the foregoing provisions of paragraph 15.2.1 the Insurance Trustee shall, out of such insurance money, pay or cause to be paid to the Lessee or the persons named (pursuant to subclause 1(a) of this paragraph) in such certificate the respective amounts stated therein to have been paid by the Lessee or to be due to them, as the case may be.

Nothing contained herein shall be or be deemed or construed as a submission by the Port Authority to the application to itself of any vendor's, mechanic's, laborer's or materialman's statutory or similar lien.

15.3 If the proceeds of insurance held by the Insurance Trustee or paid to the Lessee in accordance with the provisions of 15.2.1 above shall be insufficient to pay the entire cost of such rebuilding or restoration, the Lessee will pay the deficiency.

15.4 In the event that the proceeds of insurance held by the Insurance Trustee or paid to the Lessee in accordance with the provisions of 15.2.1 above are in excess of the amount necessary to pay the entire cost of such rebuilding or restoration, such excess shall be paid to the Port Authority.

15.5 The proceeds of insurance held by the Insurance Trustee or paid to the Lessee shall include the interest earned by said proceeds prior to distribution by the Insurance Trustee or the Lessee, as the case may be.

#### Section 16. Business Development

The Lessee shall take all reasonable measures in every proper manner to maintain, develop and increase the hotel business and other operations to be conducted by the Lessee hereunder. The Lessee shall not knowingly divert or cause or allow to be diverted any business or operations from the premises or the Facility. The Lessee covenants and agrees that the Lessee (nor any other corporation or business venture owned or controlled by the Lessee or owning or controlling the Lessee) shall not operate a competing hotel with the hotel to be constructed hereunder. For purposes of this Section 16 competing hotel shall mean a superior first class hotel off the Airport of the type the Lessee is required to operate hereunder which is comparable in price, service and accommodations to the hotel the Lessee is to operate hereunder and which off-Airport hotel is of such geographic proximity to the hotel hereunder that it can be used by Newark Airport patrons without substantially greater inconvenience than had they used the hotel on the premises.

#### Section 17. Signs and Names

17.1 Except with the prior consent of the Port Authority, the Lessee shall not erect, maintain or display any signs, lettering, advertising, posters, displays or similar devices in the premises or elsewhere at the Facility provided, however, that on those interior portions of the premises not visible from outside the premises the Lessee may install directional and informational signs necessary for the operation of the hotel. Upon the expiration or earlier termination of this Agreement the Lessee if so directed by the Port Authority, shall remove, obliterate or paint over any and all signs, lettering, advertising, posters or displays whether or not consented to and shall restore the premises and Facility to the same condition as prior to

the installation or such placement and in the event of a failure on the part of the Lessee so to do, the Port Authority may perform the necessary work and the Lessee shall pay the cost thereof to the Port Authority on demand.

17.2 Any name (including the name of the hotel), designation or service mark proposed to be used or displayed at the premises or on any of the furnishings or equipment therein or used in connection with any of the activities of the Lessee under this Agreement shall be approved in advance by the Port Authority, and the Lessee shall have the right to use and display such name, designation or mark only so long as this Agreement is in force and effect. Upon the expiration, termination or cancellation of this Agreement the Lessee's right to use such name, designation or service mark shall immediately cease and come to an end and the Port Authority or its designee shall have the sole right to use such name, designation or service mark. Any filing or registration in connection with such name, designation or service mark shall indicate the Port Authority's interest therein and the form thereof shall be approved in advance by the Port Authority. Notwithstanding the foregoing, nothing herein contained is intended or shall be construed to grant to the Port Authority any rights to use or authorize others to use the Lessee's corporate name or the name "Marriott" or such other name that the Lessee may adopt during the term of the letting as either its corporate name or name for its nationwide system of hotels.

17.3 Except for the purpose of identifying the location of the hotel, the Lessee shall not use or make any reference by advertising or otherwise to the names "Newark International Airport", "The Port Authority of New York and New Jersey", "The Port Authority", or any simulation or abbreviation of any such names or any emblem, picture or reproduction of Newark International Airport unless such use or reference has been approved in writing by the Port Authority in advance.

#### Section 18. Indemnity

18.1 The Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, agents and employees from (and shall reimburse the Port Authority for the Port Authority's costs or expenses including legal expenses incurred in connection with the defense of) all claims and demands of third persons including but not limited to those for death, for 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 others with its consent, or out of the acts or omissions of the Lessee, its officers, members, employees, agents, representatives, contractors, customers, guests, invitees and other persons who are doing business with the Lessee or who are at the premises with its consent where such acts or omissions are on the premises, or arising out of any acts or omissions of the Lessee, its officers, members, employees, agents and representatives where such acts or omissions are elsewhere at the Facility. The Lessee's indemnification obligations under this Section shall extend to and include claims and demands of the City of Newark against the Port Authority pursuant to the provisions of the Basic Lease, whereby the Port Authority has agreed to indemnify the City against claims. \* \* \*

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

Section 19. Alterations and Improvements by the Lessee

19.1 Except as expressly required or permitted in this Agreement or with the prior consent of the Port Authority, the Lessee shall not erect any structures, make any improvements, or permanently affix any equipment or do any other construction work on the premises or elsewhere at the Facility, or 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 (other than trade fixtures removable without injury to the premises) and in the event any such construction, improvement, alteration, modification, addition, repair or replacement 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 on demand.

19.2 In the event that at any time during the term of the letting the Lessee is required (or is permitted) to perform any of the above described work, all the applicable provisions of this Agreement shall apply to the performance of such work as though the same were described in the Section of this Agreement entitled "Development and Construction of Hotel Facility" except for the provisions of said Section governing the time within which preparation and submission of plans and review and comment thereon shall occur.

Section 20. Ingress and Egress

The Lessee, its officers, employees, guests, customers, patrons, invitees and contractors shall have the right of ingress and egress between the premises and the city streets or public ways outside the Facility and over such roadways at the Facility as may be made available from time to time by the Port Authority for use by the public. Such right shall be exercised in common with others having rights of passage within the Facility. The use of any such way 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 Facility. The Port Authority may at any time temporarily or permanently close or consent to or request the closing of, any such way or any other area at, in or near the Facility presently or hereafter used as such, so long as a reasonably equivalent means of ingress and egress remains available to the Lessee. Except as hereinabove provided to the contrary, the Lessee hereby releases and discharges the Port Authority, and all municipalities and other governmental authorities, and their respective successors and assigns, of and from any and all claims, demands or causes of action which the Lessee may now or at any time hereafter have against any of the foregoing, arising or alleged to arise out of the closing of any way or other area, whether within or outside the Facility. The Lessee shall not do or permit anything to be done which will interfere with the free access and passage of others to space adjacent to the premises or in any streets, ways and walks near the premises.

Section 21. Termination

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

(a) 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 its property; or

(b) 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 or vacated within thirty (30) days after the filing thereof; or

(c) 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 the creditors

or, if the Lessee is a corporation, 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; or

(d) By or pursuant to or under authority of any legislative acts, resolution or rule or any order or decree of any court or governmental board, agency or officer, a receiver, trustee or liquidator shall take possession or control of all or substantially all the property of the Lessee, or any execution or attachment shall be issued against the Lessee or any of its property whereupon possession of the premises shall be taken by someone other than the Lessee, and any such possession or control shall continue in effect for a period of fifteen (15) days; or

(e) The letting hereunder or the interest or estate of the Lessee under this Agreement shall be sold, transferred, assigned, subleased, mortgaged, pledged, hypothecated, encumbered, conveyed or shall pass to or devolve upon (by operation of law by statute or otherwise) any other person, firm or corporation, except as provided in the Sections of this Agreement entitled "Leasehold Mortgaging" or "Sale, Assignment or Transfer: Subleasing" or except upon the express written consent of the Port Authority; or

(f) The Lessee, if a corporation, shall without the prior consent of the Port Authority become a survivor or merged corporation in a merger, the constituent corporation in a consolidation, or a corporation in dissolution provided, however, that a merger or consolidation shall not be grounds for termination hereunder if the resulting or surviving corporation has a financial standing as of the date of the merger or consolidation at least as good as the financial standing of the Lessee, by which is meant that its working capital, its ratio of current assets to current liabilities, its ratio of fixed assets to fixed liabilities, and its net worth shall be at least as favorable as that of the Lessee; or

(g) The Lessee, if a partnership, shall be dissolved as a result of any act or omission of its partners or any of them, or by operation of law or by order or decree of any court having jurisdiction or for any other reason whatsoever; or

(h) Any lien is filed against the premises, because of any act or omission of the Lessee and is not removed, discharged or bonded within thirty (30) days, unless such thirty (30) day period is extended with the Port Authority's consent, or

(i) The Lessee shall fail to commence, perform or complete the design, construction and equipping of the hotel as required under Section 4 of this Agreement, or the Lessee shall fail to commence operation of the hotel within fifteen (15) days after the Completion Date; or

(j) The premises are voluntarily abandoned, deserted or vacated or operations therein are discontinued or, after exhausting or abandoning any right of further appeal the Lessee shall be prevented for a period of sixty (60) days by action of any governmental agency (other than condemnation or by action of the Port Authority pursuant to Section 40.2 of this Agreement) from conducting its operations on the premises regardless of the fault of the Lessee; or

(k) The Lessee shall fail duly and punctually to pay the rentals, fees, charges or other monies payable hereunder when due to the Port Authority and such default shall continue for a period of fifteen (15) days after notice thereof from the Port Authority to the Lessee; or

(l) The Lessee shall fail to keep, perform and observe each and every 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 shall diligently continue such performance without interruption); or

(m) If this Agreement shall require a guarantor of one or more of the Lessee's obligations under this Agreement or in the event this Agreement is assigned pursuant to Section 7 of this Agreement and any of the events described in subdivisions (a), (b), (c), (d), (g) or (h) above shall occur with respect to the guarantor or assignor (whether or not they shall also occur to or with respect to the Lessee);

then upon the occurrence of any such event (sometimes herein-after called "event of default") and at any time thereafter during the continuance thereof, the Port Authority may on twenty (20) days notice to the Lessee specifying such event of default terminate the letting, such termination to be effective upon the date specified in the notice. Such right of termination and the exercise thereof shall be and operate as a conditional limitation.

21.2 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 in any of the terms, covenants and conditions 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.

21.3 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.

21.4 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 right 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.

21.5 The Lessee shall not interpose any counter-claim in any summary proceeding or action for non-payment of rental which may be brought by the Port Authority.

Section 22. Right of Re-Entry

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

Section 23. Survival of the Obligation of the Lessee

23.1 In the event that the letting shall have been terminated in accordance with a notice of termination as provided in the Section of this Agreement entitled "Termination", or the interest of the Lessee cancelled pursuant thereto, or in the event that the Port Authority has re-entered, regained or resumed possession of the premises in accordance with the provisions of the Section of this Agreement entitled "Right of Re-entry", all the obligations of the Lessee under this Agreement shall survive such termination or cancellation, re-entry, regaining or resumption of possession and shall remain in full force and effect for the full term of this Agreement, and the amount or amounts of damages or deficiency shall become due and payable, as more specifically stated in paragraph 23.2 below, 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.

23.2 Immediately upon any termination or cancellation pursuant to the Section of this Agreement entitled "Termination", or upon any re-entry, regaining or resumption of possession in accordance with the Section of this Agreement entitled "Right of Re-entry", there shall become due and payable by the Lessee to the Port Authority, in addition to rental which accrued prior to the effective date of termination, without notice or demand and as damages, the sum of the following:

(a) the amount of all unfulfilled monetary obligations of the Lessee under this Agreement, including without limitation thereto, all sums constituting additional rental hereunder and the present value of the total cost to and expenses of the Port Authority for fulfilling all other obligations of the Lessee which would have accrued or matured during the balance of the term or on the expiration date originally fixed or within a stated time after expiration or termination; and

(b) an amount equal to the cost to and the expenses of the Port Authority in connection with the termination, cancellation, regaining possession and restoring and reletting the premises, the Port Authority's legal expenses and cost, and the Port Authority's costs and expenses for the care and maintenance of the premises and the furnishing and equipping thereof during any period of vacancy, and any brokerage fees and commissions in connection with any reletting; and

(c) subject to the provisions of Paragraph 23.3 below, on account of the Lessee's basic rental obligations the greater of the following amounts;

(i) an amount equal to the then present value of the annual fixed rental amount set forth in Section 5.1.4 of the Agreement for the entire term following the effective date of termination as originally fixed in the Section of this Agreement entitled "Term of the Letting"; or

(ii) an amount equal to the then present value of the guaranteed minimum annual basic rental amount which would have been payable during the balance of the term if there had been no termination or cancellation (or any re-entry, regaining or resumption of possession) and for the purpose of calculation hereunder if the percentage rental component of the guaranteed minimum annual basic rental amount is based on a percentage rental payable for an annual period subsequent to termination then the percentage rental for any such annual period shall

be deemed to be the percentage rental resulting from application of the formula set forth in (d) below; and

(d) subject to the provisions of paragraph 23.3 below on account of the Lessee's percentage rental obligation an amount equal to the total of the percentage stated to be paid to the Port Authority in Section 5 of this Agreement applied to the excess over the guaranteed minimum annual basic rental amount of all the gross receipts which would have arisen during the balance of the term if there had been no termination or cancellation (or any re-entry, regaining or resumption of possession) and for the purpose of calculation hereunder, (i) said gross receipts shall be derived by multiplying the number of Annual Periods in the said balance of the term by the Lessee's average annual gross receipts; (ii) the Lessee's average annual gross receipts shall be the total actual amount of such gross receipts arising in the three annual periods immediately preceding the effective date of termination in which no abatement was in effect and the Lessee was operating in the premises except that if less than three annual periods preceded such termination, then the average annual gross receipts shall be the actual number of annual periods preceding termination; (iii) the guaranteed minimum annual basic rental amount for any period of less than a year shall be the product of the original guaranteed minimum annual basic rental amount for such annual period multiplied by a fraction the numerator of which shall be the number of days from the effective date of termination to the end of the annual period and the denominator of which shall be 365.

It is understood and agreed that the statement of damages under the preceding subparagraphs (c) and (d) shall not affect or be construed to affect the Port Authority's right to damages in the event of

termination or cancellation (or re-entry, regaining or resumption of possession) where the Lessee has not received any actual gross receipts under this Agreement; and

(e) an amount equal to the cost to and the expenses of the Port Authority in performing or completing the design, construction and equipping of the hotel (in accordance with the provisions of Section 4) in the event that the Lessee has failed to perform or complete the same on or prior to the effective date of termination under the Section of this Agreement entitled "Termination" regardless of whether or not such termination results from the failure of the Lessee to so perform or complete the same. In any such event the Port Authority may itself perform or contract for the performance or completion thereof or may retain a third party to act as agent or representative in accomplishing the same and the costs and expenses of the agent or representative in addition those of the Port Authority shall likewise be included in the amount of damages under this provision.

23.3 The Port Authority may at any time bring an action to recover all damages as set forth above not previously recovered in separate actions, or it may bring separate actions to recover the items of damages set forth in subparagraphs (a) and (b) of paragraph 23.2 above and separate actions periodically to recover from time to time only such portion of the damages set forth in subparagraphs (c) and (d) above as would have accrued as costs and expenses of the Port Authority as rental up to the time of the action if there has been no termination or cancellation. In any such action under (a), (c) and (d) above the Lessee shall be allowed a credit against its survived damages obligations equal to the amounts which the Port Authority shall have actually received from any tenant, licensee, permittee or other occupier of

the premises or a part thereof during the period for which damages are sought, and if recovery is sought for a period subsequent to the date of suit a credit equal to the market rental value of the premises during such period (discounted to reflect the then present value thereof). If at the time of such action the Port Authority has relet the premises, the rental for the premises obtained through such reletting shall be deemed to be the market rental value of the premises or be deemed to be the basis for computing such market rental value if less than the entire premises were relet. In no event shall any credit allowed to the Lessee against its damages for any period exceed the then present value of the rental which would have been payable under this Agreement during such period if a termination or cancellation had not taken place. In determining present value of rental a proper discount shall be applied.

#### Section 24. Reletting by the Port Authority

The Port Authority, upon termination pursuant to the Section of this Agreement entitled "Termination" or otherwise or upon any re-entry, regaining or resumption of possession pursuant to the Section of this Agreement entitled "Right of Re-entry", may occupy the premises or may relet the premises, and shall have the right to permit any person, firm or corporation to enter upon the premises and use the same. The Port Authority may grant free rental or other concessions and such reletting may be of part only of the premises or 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 and for purposes the same as or different from those set forth in this Agreement. The Port Authority shall also upon such termination or upon its re-entry, regaining or resumption of possession pursuant to the Section of this Agreement entitled "Right of Re-entry", have the right to repair or make structural or other changes in the premises, including changes which alter the character of the premises and the suitability thereof for the 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 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 as the rental or fee for 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 disbursement incurred or paid by the Port Authority in connection therewith. No such reletting or such use and occupancy shall be or be construed to be an acceptance of a surrender.

Section 25. Waiver of Redemption

The Lessee hereby waives any and all rights of redemption, granted by or under any present or future law, arising in the event it is evicted or dispossessed for any cause, or in the event the Port Authority obtains or regains possession of the premises in any lawful manner.

Section 26. Surrender

26.1 The Lessee shall yield and deliver peaceably to the Port Authority possession of the premises and the hotel, structures, improvements, fixtures and permanently affixed equipment thereon on the date of the cessation of the letting under this Agreement whether such cessation be by termination, expiration or otherwise, promptly and in first-class operating order, condition and appearance (except under circumstances described in Section 15.1.1 (b) hereof) and all of such premises and the hotel, structures, improvements, fixtures and permanently affixed equipment shall be free and clear of all liens, encumbrances, security interests and of any rights of any subtenants, concessionaires or occupants of the premises.

26.2 In the event that the Port Authority exercises its option to purchase the Lessee's furnishings, trade fixtures, removable equipment, supplies and other personal property as provided in paragraph 11.3 then on the date of the cessation of the letting under this Agreement, whether such cessation be by termination, expiration or

otherwise, the Lessee shall also yield and deliver peaceably to the Port Authority promptly and in first-class operating order, condition and appearance, all of the furnishings, trade fixtures, removable equipment, supplies and other personal property located in or on the premises which the Port Authority has elected to purchase. The Lessee shall also yield up and deliver to the Port Authority such of the inventory of food and beverage consumable items that the Port Authority elects to purchase, the purchase price to be the fair market value of same. All of the said furnishings, trade fixtures, removable equipment, supplies and other personal property, including all consumables, purchased by the Port Authority shall be free and clear of all liens, encumbrances, conditional bills of sale or chattel mortgages or other security interests and shall upon the date of the cessation of the letting under this Agreement whether such cessation be by termination, expiration or otherwise, no longer be the property of the Lessee without the doing of any further act or thing except that if the Port Authority shall so request, the Lessee shall execute an instrument confirming the transfer and conveyance of said property which instrument shall be signed by an executive officer of the Lessee and shall be in recordable form. The Lessee shall be required to remove all or any portion of said furnishings, trade fixtures, removable equipment, supplies or other personal property not purchased by the Port Authority, and in the event the Lessee shall fail to remove such property by the date of expiration or termination of the letting hereunder the Port Authority may remove the same and store the same in a public warehouse at the Lessee's sole cost and expense or may retain the same in its own possession and sell the same at public auction, the proceeds of which sale 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 27. Rights of Entry Reserved

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

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

27.3 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 reasonably directed by the Port Authority, in order that the access may be had to the system or part thereof for its inspection, maintenance or repair, and, if the Lessee shall fail to so move such property after direction from the Port Authority to do so, the Port Authority may move it and the Lessee hereby agrees to pay the cost of such moving upon demand.

27.4 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 and the Port Authority shall not in any event be liable for any injury or damage to any property or to any person happening on or about the premises nor for any injury or damage to the premises nor to any property of the Lessee or of any other person located in or thereon (other than those occasioned by the affirmative acts of the Port Authority, its employees, agents and representatives).

27.5 At any time and from time to time during ordinary business hours within two (2) years 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.

27.6 If during the last month of the letting, the Lessee shall have removed from the premises, the Port Authority may immediately enter and alter, renovate and redecorate the premises.

27.7 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 28. 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. Without limiting the foregoing, no employee or officer of the Port Authority shall be authorized to accept the keys of the premises prior to the expiration date of the letting as fixed in the Section of this Agreement entitled "Term" and no delivery of keys by the Lessee shall constitute a termination of this Agreement or acceptance of surrender.

Section 29. Quiet Enjoyment

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

Section 30. Limitation of Rights and Privileges Granted

30.1 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.

30.2 The premises are let to the Lessee and the Lessee takes the same subject to all the following, if any, to which the premises may be subject: (i) 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 transportation services and of the City of Newark and State of New Jersey; (iii) permits, licenses, regulations and restrictions, if any, of the United States, the City of Newark or State of New Jersey, or other governmental authority.

Section 31. Additional Rent and Charges

31.1 If the Lessee shall fail or refuse to perform any of its obligations under this Agreement, the Port Authority, in addition to all other remedies available to it, shall have the right to perform any of the same and the Lessee shall pay the Port Authority's cost thereof on demand. If the Port Authority had paid any sum or sums or has incurred any obligations, expense or cost which the Lessee has agreed to pay or reimburse the Port Authority for, or if the Port Authority is required or elects to pay any sum or sums or incurs any obligations, expense or cost 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, including any legal expense or cost in connection with any actions or proceeding brought by the Port Authority against the Lessee or by third parties against the Port Authority, the Lessee agrees to pay the sum or sums so paid or the expense and the Port Authority's cost so incurred, including all interest costs, damages and penalties, and the same may be added to any installment of rent thereafter due hereunder and each

and every part of the same shall be and become additional rent, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the rental as set forth in the Section of this Agreement entitled "Rental".

31.2 "Cost" or "costs" of the Port Authority in this Agreement shall mean and include (1) payroll costs including but not limited to contributions to the retirement system, or the cost of participation in other pension plans or systems, insurance costs, sick leave pay, holiday, vacation, authorized absence pay or other fringe benefits; (2) cost of materials, supplies and equipment used (including rental thereof); (3) payments to contractors; (4) any other direct costs; and (5) 30% of the foregoing.

Section 32. Remedies to be Non-Exclusive

All remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of or exclusive of each other or of any remedy available to the Port Authority at law or in equity. In the event of a breach or threatened breach by the Lessee of any term, covenant, condition or provision of this Agreement, the Port Authority shall have the right of injunction and the right to invoke any other remedy allowed by law or in equity as if termination, re-entry, summary proceedings and any other specific remedies including without limitation thereto, indemnity and reimbursement, were not mentioned herein, and neither the mention thereof nor the pursuance or exercise or failure to pursue or exercise any right or remedy shall preclude the pursuance or exercise of any other right or remedy.

Section 33. Notices

33.1 Notices, requests, permissions, consents and approvals given or required to be given to or by either party under this Agreement, shall not be effective unless they are given in writing, and all such notices shall be (i) personally delivered to the party or a duly designated officer or representative of such party; or (ii) delivered to the office of such party, officer or representative

during regular business hours, or (iii) if directed to the Lessee, delivered at the premises at any time; or (iv) forwarded to such party, officer or representative at the office or residence address by registered or certified mail. The Lessee shall designate an office within the Port of New York District and an officer or representative whose regular place of business is at such office. Until further notice, the Port Authority hereby designates its Executive Director, and the Lessee designates the person named as representative on the first page hereof as their respective officers or representatives upon whom notices and requests may be served, and the Port Authority designates its office at One World Trade Center, New York, New York 10048 and the Lessee designates its office at its address stated on the first page hereof, as their respective offices where notices and requests may be served. The Port Authority for informational purposes only will also send an additional copy of all notices and requests by registered or certified mail addressed to the Lessee's Law Department, Marriott Drive, Washington, D. C., 20058 but receipt by the Lessee of such additional notice shall not be a condition to the effectiveness of the notice nor affect in any way the validity or effectiveness of the notice.

33.2 If any notice is mailed or delivered, the giving of such notice shall be complete upon receipt, or, in the event of a refusal by the addressee, upon the first tender of the notice to the addressee or at the permitted address. If any notice is sent by telegraph, the giving of such notice shall be complete upon receipt or, in the event of a refusal by the addressee, upon the first tender of the notice by the telegraph company to the addressee or at the address thereof.

#### Section 34. Injury and Damage to Person or Property

The Port Authority shall not be liable to the Lessee or others for any personal injury, death or property damage from falling material, water, rain, hail, snow, gas, steam, dampness, explosion, smoke, radiation, and/or electricity whether the same may leak into or fall, issue, or flow from any part of the premises or of the Facility, including without limitation thereto any utility, mechanical, electrical, communication or other systems therein, or from any other place or quarter unless said damage, injury or death shall be due to the negligent acts or affirmative wilful acts of the Port Authority, its employees or agents and unless during such time as the Lessee is constructing the hotel pursuant to Section 4 of this Agreement such damage, injury or death shall be attributable solely to the affirmative wilful acts of the Port Authority.

Section 35. Rules and Regulations

35.1 The Lessee covenants and agrees to observe and obey (and compel its officers, employees, agents, representatives, contractors, customers, guests space lessees and invitees) to observe and obey the existing Rules and Regulations of the Port Authority and such Reasonable Rules and Regulations and amendments and supplements thereto for the government of the conduct and operations of the Lessee and others on the premises as may from time to time be promulgated by the Port Authority for reasons of safety, health, sanitation or good order. 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.

35.2 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 36. Condemnation

36.1 As used in this Section with reference to any premises or facilities leased to the Lessee for its exclusive use the phrase "a material part" shall mean such a part of the said premises or facilities that the Lessee cannot continue to operate the premises for the purposes set forth in the Section of this Agreement entitled "Use of Premises" without using such part.

36.2 Condemnation or Taking of a Permanent Interest in All or Any Part of the Premises

36.2.1 Upon the 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 premises (any such acquisition under this Section 36 hereinafter referred to as a "taking"), the Port Authority shall purchase from the Lessee, and the Lessee shall sell to the Port Authority, the Lessee's leasehold interest (excluding any personal property whatsoever) in the premises and any facilities constructed thereon by the Lessee, in compliance with the provisions of the Section of this Agreement entitled "Development and Construction of Hotel", except that in the event of a taking of less than all of the said premises, the Port Authority shall purchase

and the Lessee sell only so much of the premises and facilities as are taken, for an amount equal to the Unamortized Capital Investment, if any, of the Lessee in so much of the premises and facilities as are taken. However, the Port Authority shall purchase and the Lessee shall sell only if the consideration paid by the Port Authority therefor will constitute "unamortized Port Authority funds other than bond proceeds or Federal or State grants expended for capital improvements at the Newark Marine and Air Terminals," within the meaning of said phrase as used in Section 26 I, D, of the Basic Lease or if an amount not less than such consideration can otherwise be retained by the Port Authority (and not be required to be paid to The City of Newark) out of the damages or award in respect to such taking without violation of any obligation of the Port Authority to The City of Newark under the Basic Lease. Such purchase and sale shall take effect as of the date upon which such body having a superior power of eminent domain obtains possession of any such permanent interest in the premises 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. In the event of a taking of less than all of the premises then there shall be an abatement of basic rental as provided in Section 5.5 of this Agreement.

36.2.2 If, however, the amount to be paid by the Port Authority (the unamortized capital investment, if any, of the Lessee in the premises or facilities) for such leasehold interest will not constitute "unamortized Port Authority funds other than bond proceeds for Federal or State grants, expended for capital improvements at the Newark Marine and Air Terminals," within the meaning of said phrase as used in Section 26, I.D. of the Basic Lease or if an amount not less than such consideration cannot otherwise be retained by the Port Authority (and not be required to be paid to The City of Newark) out of the damages or award in respect to such taking without violation of any obligation of the Port

Authority to The City of Newark under the Basic Lease, then the aforesaid agreement to purchase and sell said leasehold interest 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 or because of its ownership of any facilities erected on the premises by the Lessee at its own cost and expense, up to but not in excess of an amount equal to the Unamortized Capital Investment, if any, of the Lessee in such facilities. The Port Authority and the Lessee hereby agree that as full and final settlement of any sum that may be due as rent or otherwise for so much of the premises and facilities taken for the balance of the term of this Lease, the Lessee will pay to the Port Authority the excess, if any, which the Lessee may be entitled to receive over the foregoing sum. If there be no excess, any sum that may be due as rent or otherwise for so much of the premises and facilities taken for the balance of the term of this Lease shall abate in accordance with the provisions of Section 5.5.

36.2.3 In the event of the taking of all of the premises and if the Lessee has no unamortized investment in the facilities installed or constructed or built by it at the time of the taking, then the aforesaid agreement to purchase and sell said leasehold interest 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 or facilities 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.

36.2.4 In the event that the taking covers only a material part of the premises, then the Lessee and the Port Authority shall each have an option exercisable by

notice given within ten (10) days after the effective date of such taking to terminate the letting hereunder with respect to the premises not taken, as of the date of such taking and such termination shall be effective as if the date of such taking were the original date of expiration hereof. If the Port Authority exercises this option, it shall purchase from the Lessee the Lessee's leasehold interest (excluding any personal property whatsoever) in the premises and facilities not taken for a consideration equal to the unamortized capital investment, if any, of the Lessee in the premises or facilities not taken. If there is a termination of the letting of a portion of the premises only, then the settlement or abatement of rentals after the date possession is taken by the body having a superior power of eminent domain shall be in accordance with Section 5.5 hereof.

36.3 Condemnation or Taking of a Temporary Interest in All or Any Part of the Premises

Upon the acquisition by condemnation or the exercise of the power of eminent domain by a body having a superior power of eminent domain of a temporary interest in all or any part of the premises, there shall be no abatement of any rental payable by the Lessee to the Port Authority under the provisions of this Agreement but the Lessee shall have the right to claim and in the event of an award therefor shall be entitled to retain the amount which may be awarded as damages or paid as a result of the condemnation or other taking of such temporary interest, provided, that the Lessee shall be obligated to pay over to the Port Authority all such payments as may be made to the Lessee as damages or in satisfaction of such claim, after deduction of (i) reasonable expenses incurred by the Lessee in the prosecution of such claim; (ii) an amount equal to the unamortized capital investment, if any, of the Lessee in any facilities installed, constructed or built by the Lessee in compliance with the provisions of the Section of this Agreement entitled "Development and Construction of Hotel", or, in the event of a taking of less than all of the said premises, an amount equal to such unamortized capital investment in the premises as are taken, to the extent in either case that the same is to be amortized over the period of the taking; (iii) an

amount equal to depreciation during the period of the taking on such unamortized capital investment of the Lessee; and (iv) the then present capitalized value of the Lessee's obligation for rentals thereafter payable during the period of the taking in respect to the demised premises, or, in the event of a taking of less than all of the said premises, in respect to the premises so taken.

Section 37. Payments

37.1 All payments required of the Lessee by this Agreement shall be made at the office of the Treasurer of the Port Authority, One World Trade Center, New York, New York 10048 or to such other officer or address as may be substituted therefor.

37.2 No payment by the Lessee or receipt by the Port Authority of a lesser rental amount than that which is due and payable under the provisions of this Agreement at the time of such payment shall be deemed to be other than a payment on account of the earliest rental then due, nor shall any endorsement or statement on any check or in any letter accompanying any check or payment be deemed an accord and satisfaction, and the Port Authority may accept such check or payment without prejudicing in any way its right to recover the balance of such rental or to pursue any other remedy provided in this Agreement or by law.

Section 38. Brokerage

38.1 The Lessee represents and warrants that no broker has been concerned in the negotiation of this Agreement and that there is no broker, finder or similar agent who is or may be entitled to be paid a commission in connection therewith. The Lessee shall indemnify and save harmless the Port Authority from any claims for commission, brokerage or fee made by any person, firm or corporation for services in connection with the negotiation or execution of this Agreement.

38.2 Notwithstanding the provisions of paragraph 38.1 the Lessee's indemnification thereunder shall extend only to claims and demands based on the acts or omissions of the Lessee.

Section 39. Separability

Each and every covenant and agreement contained in this Lease shall for all purposes be construed to be a separate and independent covenant and agreement and the breach of any such covenant or agreement by Lessor shall not to any extent discharge or relieve Lessee from Lessee's obligation to perform each and every covenant and agreement of this Lease to be performed by the Lessee. If any term or provision of this Lease or the application thereof to any person or circumstances shall to any extent be invalid and unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and shall be enforced to the extent permitted by law.

Section 40. Labor Harmony Obligation

40.1 The Lessee shall use its best efforts to assure labor harmony in all operations under this Agreement and to such end the Lessee shall make all reasonable efforts not to retain any contractor or agent or employ or allow employment of any person or use or have or allow the use or possession of any equipment or materials or allow a condition to exist if any such is likely to cause or contribute to labor complaints, troubles, disputes or controversies either at the premises or elsewhere at the Facility. The Lessee shall keep the Port Authority informed as to any impending or existing labor disturbances and shall apprise the Port Authority of the cause for the grievance or disturbance and the steps proposed to be taken by the Lessee to rectify the same.

40.2 If any type of strike, boycott, picketing, work stoppage, slowdown or other labor activity is directed against the Lessee at the Facility or against any of the Lessee's operations pursuant to this Agreement which in the opinion of the Port Authority adversely affects the operation of the Facility or the operations of airlines, transportation services or other transportation related lessees or permittees at the Facility whether or not the same is due to the fault of the Lessee or is caused by the employees or its Operator, if any, or of others, the Port Authority shall have the right at any time

during the continuance thereof by notice to the Lessee to suspend the Lessee's operations hereunder effective at the time specified in the notice and during such suspension the Lessee and its Operator, if any, shall cease activities and operations in the premises and shall take such steps to secure and protect the premises as shall be necessary or desirable. The Lessee shall advise the Port Authority in writing when the cause of the suspension has been cured and if the Port Authority agrees that it has been so cured it shall notify the Lessee in writing and the period of suspension shall end upon receipt by the Lessee of such notification from the Port Authority.

Section 41. No Services by the Port Authority

The Port Authority shall not be obligated to provide any utilities or services whatsoever, including ground transportation services, with respect to the premises nor to police the same or keep the same free from snow, ice or otherwise unobstructed and available for use by the Lessee. Notwithstanding the foregoing the Port Authority may elect to provide extermination service in the enclosed portions of the premises for which the Lessee agrees to pay its pro rata share of the reasonable cost thereof, upon demand.

Section 42. Outside Utility Lines

The Port Authority has brought appropriate service lines for the supply of cold water, electric power, telephone and sanitary and storm sewers to such locations, at the perimeter of the premises or to other locations off the premises as is shown on the sketch annexed hereto, made a part hereof and marked "Exhibit A-2". The Lessee at its sole cost and expense and subject to the provisions of the Section of this Agreement entitled "Development and Construction of Hotel" is hereby obligated to tie its utility lines into such locations where such utility service lines have been brought by the Port Authority as shown on Exhibit A-2. The Port Authority shall have no obligation to make available any service lines to any location prior to receiving certification from a responsible officer of the Lessee that all of the construction work has been completed and that the Lessee is ready to tie its Utility Lines into the service lines furnished by the Port Authority.

Section 43. Federal Airport Aid

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

Section 44. Facilities Non-Discrimination

44.1 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, color, sex, creed, age or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the premises, (2) that in the construction of any improvements on, over, or under the premises and the furnishing of services thereon, no person on the grounds of race, sex, color, creed, age or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected 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.

44.2 The Lessee shall include the provisions of paragraph 44.1 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 provisions.

44.3 The Lessee's noncompliance with the provisions of this Section shall constitute a material breach of this Agreement. In the event of such noncompliance, the Port Authority may take any appropriate action to enforce compliance; or in the event such noncompliance shall continue for a period of twenty (20) days after receipt of written notice from the Port Authority, the Port Authority may terminate this Agreement and the letting hereunder with the same force and effect as a termination under Section 21 of this Agreement; or may pursue such other remedies as may be provided by law; and as to any or all of the foregoing, the Port Authority may take such action as the United States may direct.

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

44.5 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 44.2 hereof, or any right to perform any construction on the premises.

Section 45. Affirmative Action Guidelines -  
Equal Employment Opportunity

45.1 As a matter of policy the Port Authority hereby requires the Lessee and the Lessee shall require the Contractor, as hereinafter defined, to comply with the provisions set forth hereinafter. These provisions are similar to the conditions for bidding on federal government contracts adopted by the Office of Federal Contract Compliance and effective May 8, 1978.

45.2 The Lessee as well as each bidder, contractor or subcontractor of the Lessee (herein collectively referred to as the "Contractor") must fully comply with the following conditions set forth in this Section 45 as to each construction trade to be used on the construction work or any portion thereof (said conditions being herein called "Bid Conditions"). The Lessee hereby commits itself to the goals for minority and female utilization set forth below and all other requirements, terms and conditions of the Bid Conditions. The Lessee shall likewise require the Contractor to commit itself to the said goals for minority and female utilization set forth below and all other requirements, terms and conditions of the Bid Conditions by submitting a properly signed bid.

45.3 The Lessee and the Contractor shall each appoint an executive of its company to assume the responsibility for the implementation of the requirements, terms and conditions of the following Bid Conditions:

(a) The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work are as follows:

- |                             |      |
|-----------------------------|------|
| (1) Minority participation: | 32%  |
| (2) Female participation:   | 6.9% |

These goals are applicable to all the Contractor's construction work performed in the premises.

The Contractor's specific affirmative action obligations required herein of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the

Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract. Compliance with the goals will be measured against the total work hours performed.

(b) The Contractor shall provide written notification to the Lessee and the Lessee shall provide written notification to the Manager of the Equal Opportunity Programs Unit of the Port Authority within 10 working days of award of any construction subcontract in excess of \$75,000 at any tier for construction work. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

(c) As used in these specifications:

- (1) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U. S. Treasury Department Form 941;
- (2) "Minority" includes:
  - (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, Cuban, Central or South American or other Spanish 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 Asian, 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).

(d) Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the construction work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 those provisions which include the applicable goals for minority and female participation.

(e) The Contractor shall implement the specific affirmative action standards provided in subparagraphs (l) through (16) of paragraph (h) hereof. The goals set forth above are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the premises. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

(f) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer to either minorities or women shall excuse the Contractor's obligations hereunder.

(g) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by

Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.

(h) The Contractor shall take specific affirmative actions to ensure equal employment opportunity ("EEO"). The evaluation of the Contractor's compliance with these provisions shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

(1) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all portions of the premises at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each phase of the construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other supervisory personnel at the premises are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at the premises.

(2) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(3) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

(4) Provide immediate written notification to the Lessee when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(5) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (2) above.

(6) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where the construction work is performed.

(7) Review, at least every six months, the company's EEO policy and affirmative action obligations hereunder with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at the premises. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(8) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

(9) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students, to minority and female recruitment and training organizations and to State certified minority referral agencies serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(10) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the premises and in other areas of a Contractor's workforce.

(11) Tests and other selection requirements shall comply with 41 CFR Part 60-3.

(12) Conduct, at least every six months, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

(13) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations hereunder are being carried out.

(14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(15) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(16) Conduct a review, at least every six months, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

(i) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (subparagraphs (1)-(16) of Paragraph (h) above). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under Paragraph (h) hereof provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's non-compliance.

(j) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in

violation hereof if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation hereof if a specific minority group of women is under-utilized).

(k) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

(l) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

(m) The Contractor shall carry out such sanctions and penalties for violation of this clause including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered by the Lessee. Any Contractor who fails to carry out such sanctions and penalties shall be in violation hereof.

(n) The Contractor, in fulfilling its obligations hereunder shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph (h) hereof so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of these provisions, the Lessee shall proceed accordingly.

(o) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g. mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and location at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

(p) 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 (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

Section 45A. Minority Business Enterprises Program

As a matter of policy the Port Authority requires the Lessee and the Lessee shall require the general contractor to use every good faith effort to provide for meaningful participation by Minority Business Enterprises (MBE's) in the construction work. "Meaningful participation" shall mean that at least ten percent (10%) of the firms performing the construction work are MBE's. A Minority Business Enterprise shall mean a company or firm at least 51% of which is owned and controlled by a minority or minorities. A minority shall be as defined in Section 45.3(c). Good faith efforts to include meaningful participation by MBE's shall include at least the following:

- a. Making plans and specifications for prospective construction work available to MBE's in sufficient time for review.
- b. Utilizing the list of eligible MBE's maintained by the Port Authority or seeking minorities from other sources for the purpose of soliciting bids for subcontractors.
- c. Encouraging the formation of joint ventures, partnerships or other similar arrangements among subcontractors, where appropriate, to insure that the Lessee and Contractor will meet their obligations hereunder.
- d. Insuring that provision is made to provide progress payments to MBE's on a timely basis.
- e. Not requiring bonds from and/or providing bonds and insurance for MBE's, where appropriate.

Section 46. Affirmative Action

In addition to and without limiting the provisions of Section 4.17 and Section 45 hereof 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 on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Lessee assures that it will require that its covered suborganizations provide assurances to the Lessee that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect. Without limiting the foregoing obligations of the Lessee and to insure the success of its affirmative action program the Lessee hereby agrees throughout the term of the letting to follow and implement the actions set forth in paragraph 45.3(h) of this Agreement and to assign an official as set forth in paragraph 45.3(o) hereof in its use of the premises.

Section 47. 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 48. Effect of Basic Lease

The letting shall, in any event, terminate with the termination or expiration of the Basic Lease with the City of Newark which covers the premises, such termination to be effective on such date and to have the same effect as if the term of the letting had on that date expired. 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.

The Port Authority covenants that, during the term of this Agreement, the Port Authority will not take any action which would amount to or have the effect of cancelling, surrendering or terminating the Basic Lease prior to the date specified in the Basic Lease for its expiration insofar as such surrender, cancellation or termination would in any manner deprive the Lessee of any of its rights, licenses or privileges under this Agreement.

Nothing herein contained shall prevent the Port Authority from entering into an agreement with the City of Newark pursuant to which the Basic Lease is surrendered, cancelled or terminated provided that the City of Newark, at the time of such agreement, assumes the obligations of the Port Authority under this Agreement.

Nothing contained in this Agreement shall be deemed a waiver by the Lessee of any of its rights, licenses or privileges under this Agreement in the event that the Basic Lease should be surrendered, cancelled or terminated prior to the date specified in the Basic Lease for its expiration.

Section 49. Definitions

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

49.1 "Airport" or "Facility" shall mean the land and premises in the County of Essex and State of New Jersey, which are westerly of the right of way of the Central Railroad of New Jersey and are shown upon the exhibit attached to the agreement between the City of Newark and the Port Authority referred to in paragraph 49.2 below, said exhibit being marked "Exhibit 'A'" as contained within the limits of a line of crosses appearing on said exhibit and designated "Boundary of Terminal Area in City of Newark", and lands contiguous thereto which may have been heretofore or may hereafter be acquired by the Port Authority to use for air terminal purposes.

49.2 "Basic Lease" shall mean the agreement between the City of Newark and the Port Authority dated October 22, 1947 as the same from time to time may have been or may be supplemented or amended. Said Agreement, dated October 22, 1947, has been recorded in the Office of the Register of Deeds for the County of Essex on October 30, 1947, in Book E-110 of Deeds at pages 242, et seq.

49.3 "Agreement" shall mean this agreement of lease.

49.4 "Lease" shall mean this Agreement of lease.

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

49.6 "Premises" shall mean and include the land, the hotel building, structures and other improvements thereon (whether constructed by the Lessee, the Port Authority or others), the equipment permanently affixed or permanently located therein, such as electrical, plumbing, sprinkler, fire protection and fire alarm, heating, steam, sewage,

drainage, refrigerating, communications, gas and other systems, and their pipes, wires, mains, lines, tubes, conduits, equipment and fixtures, and all paving, drains, culverts, ditches and catch-basins.

49.7 "General Manager" or "General Manager of the Airport" shall mean the person or persons from time to time designated by the Port Authority to exercise the powers and functions vested in the said Manager by this Agreement; and until further notice from the Port Authority to the Lessee it shall mean the person holding the office of and designated as General Manager, New Jersey Airports.

49.8 "Unamortized Capital Investment" except as hereinafter specifically provided otherwise in Section 49.8.1 below shall mean for purposes of this Lease, the amount of the Lessee's capital investment in the premises arising out of the performance by the Lessee of the construction work pursuant to and as set forth in the Section of this Agreement entitled "Development and Construction of Hotel" 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 from the date of the completion of the hotel to the end of the Lease.

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 hereunder enacted.

For purposes of this Section, the Lessee's capital investment in the premises shall be equal to the sum of: (i) 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 premises, (ii) the payments made and expenses incurred by the Lessee, in connection with such construction, for engineering, architectural, professional and consulting services, and the supervision of construction, provided, however, that such payments and

expenses pursuant to this item (ii) shall not exceed 12% of the amounts described in item (i), and (iii) construction interest on the amounts set forth in items (i) and (ii) which construction interest shall be determined as follows:

at the end of each calendar month following the month in which the commencement date of the letting occurs pursuant to Section 2 of this Agreement and at the end of each month thereafter up to and including the month in which the Completion Date for the construction work occurs as such term is defined in paragraph 4.14 the cumulative amount actually paid or incurred by the Lessee pursuant to items (i) and (ii) above through the last day of said calendar month together with the cumulative amount of construction interest accrued through the last day of the calendar month immediately preceding said calendar month (said cumulative amount to be averaged for any month in which there are different cumulative amounts outstanding during the month) shall be multiplied by 1/12 of the prime interest rate as established by the Banker's Trust Co. of New York and in effect for such month (said prime interest rate to be averaged for any month in which more than one prime interest rate was in effect); the total of all such monthly computations shall be deemed to be the Lessee's construction interest for purposes of this item (iii).

The above-mentioned amounts, payments and expenses shall be 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 the 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, (c) certify that the amounts, payments

and expenses therein set forth constitute portions of Lessee's investment in the premises for the purposes of this Lease, and (d) specify in detail for each month during the construction period the Lessee's computation of its construction interest. All records of the Lessee with respect to the foregoing shall be kept at all times within the Port of New York District for a period of two (2) years after the final costs of all the construction work have been submitted by the Lessee to the Port Authority and shall be subject to the audit and inspection of the Port Authority, its representatives and employees.

49.8.1 Notwithstanding the foregoing provisions of Section 49.8 above, in the event that this Agreement is assigned pursuant to Section 7.2 of this Agreement or in the event the leasehold interest is mortgaged or refinanced pursuant to Section 8.2.1 and the Port Authority pursuant to Section 8.2.2 of this Agreement has received a percentage of such leasehold mortgage or refinancing then as of the effective date of any such mortgage, refinancing or assignment "Unamortized Capital Investment" shall mean for purposes of this Agreement the total gross sales price for the last assignment made pursuant to Section 7.2 or the original principal amount or Refinanced Amount of said leasehold mortgage or refinancing, if any, in effect on the effective date of condemnation, whichever is greater, after deduction from each of an amount equivalent to an allowance for depreciation and amortization. Such allowance will be computed on a straightline basis from the effective date of such assignment, mortgage or refinancing to the end of the lease.

49.9 The phrase "duct, drain, utility, mechanical, electrical, communication and other systems" shall mean and include (without limitation thereto) the following: machinery, engines, dynamos, fans, boilers, elevators, escalators, incinerators and incinerator flues, systems for the supply of fuel, electricity, water, gas and steam, plumbing, heating, sewerage, drainage, ventilating, air conditioners, communications, fire-alarm, fire-protection, sprinkler, telephone, telegraph and other systems, fire hydrants, fire hoses, and their respective wires, mains, conduits, lines, tubes, pipes, equipment, motors, cables, fixtures and other equipment.

#### Section 50. Headings

The section headings and the paragraph headings, if any, 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.

Section 51. Construction and Application of Terms

51.1 The Lessee's representative, hereinbefore specified in this Agreement (or such substitute as the Lessee may hereafter designate in writing), shall have full authority to act for the Lessee in connection with this

Agreement and any things done or to be done hereunder, and to execute on the Lessee's behalf any amendments or supplements to this Agreement or any extension thereof.

51.2 This Agreement does not constitute the Lessee the agent or representative of the Port Authority for any purpose whatsoever. Neither a partnership nor any joint venture is hereby created, notwithstanding the fact that all or a portion of the rental to be paid hereunder may be determined by gross receipts arising from the operations of the Lessee hereunder.

51.3 All designations of time herein contained shall refer to the time-system then officially in effect in the municipality wherein the premises are located.

51.4 No greater rights or privileges with respect to the use of the premises or any part thereof or with respect to the Facility are granted or intended to be granted to the Lessee by this Agreement, or by any provision thereof, than the rights and privileges expressly granted hereby.

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

51.6 This Agreement shall be governed by, and construed in accordance with, the laws of the State of New Jersey.

51.7 Whenever reference is made in this Agreement to a paragraph number or Section number it is understood that the terms "paragraph" and "Section" have the same meaning and have been used interchangeably.

## Section 52. Non-Liability of Individuals

Neither the Commissioners of the Port Authority nor the directors of the Lessee nor any of them, nor any officer, agent or employee thereof, shall be charged personally by either party hereto with any liability or held personally liable under any term or provision of this Agreement or because of its execution or attempted execution, or because of any breach or attempted or alleged breach thereof.

Section 53. Ground Transportation and Car Rental Services

53.1 The Lessee, in connection with its hotel operations, is hereby given the non-exclusive privilege of using such routes, roads and ways on the Airport as may from time to time be designated by the General Manager of the Airport in connection with providing a transportation service (hereinafter called "the Vehicular Service") for its customers and employees at no charge therefor between the premises and other point or points within the Airport, which routes, roads and ways shall be used in common with others authorized by the Port Authority to use the same. In the conduct of the Vehicular Service stops will be made only at such locations as may be approved by the General Manager of the Airport from time to time and at any time. The Vehicular Service shall not be used in any manner or activity other than in connection with the Lessee's hotel operations and the Lessee shall comply with such procedures and directions as may be given from time to time by the General Manager of the Airport. The Vehicular Service under this paragraph 53.1 shall be used primarily for the purpose of transporting the Lessee's customers to and from various points on the Airport to and from the hotel.

53.1.1 The Port Authority makes no representations as to the condition or availability of any route, road or way within the Airport for the Vehicular Service and does not agree to keep the same unobstructed or fit for use. No closing by the Port Authority of any route, road or way within the Airport, whether temporary or permanent, whether or not such closing involves a route, road or way previously used by the Lessee in its operation of the Vehicular Service, and no such closing by any governmental authority, whether of a route, road or way within or outside the Airport, and whether or not at the request of or with the consent of the Port Authority, shall be grounds for any claim by the Lessee for damages, consequential or otherwise.

53.1.2 Neither the requirements of the Port Authority hereunder, nor any approval by the Port Authority of the methods of the Lessee's operation of the Vehicular Service, nor the failure of the Port Authority to require the Lessee to take any particular precautions or to refrain

from doing any particular thing in relation thereto nor the fact that the Lessee's operation of the Vehicular Service may be in accordance with and pursuant to the procedures or directions of the General Manager of the Airport shall relieve the Lessee of its liability for injuries to persons or damage to property arising out of its operations hereunder.

53.1.3 The conveyances to be used in the Vehicular Service shall all be a type of motor vehicle properly adapted therefor. The Lessee shall maintain all such conveyances in good repair, order and appearance, and shall keep them clean at all times. All such conveyances shall be identified as those of the Lessee by an appropriate sign or marking subject to the prior and continuing approval of the General Manager of the Airport.

53.1.4 Without limiting the generality of any of the provisions of this Agreement, the Vehicular Service hereunder shall be subject to the Rules and Regulations of the Port Authority, as the same may from time to time be supplemented and amended.

53.1.5 The Lessee acknowledges that paragraph 53.1 shall not be deemed to grant to the Lessee the privilege to use any routes, roads or ways on the Airport to carry on or conduct any operations or services at the Airport, including but not limited to, any ground transportation service, other than the Vehicular Service as specifically set forth therein.

53.1.6 The operators of the vehicles used in the Vehicular Service shall either be employees of the Lessee properly experienced and trained in such operations or the Lessee may engage an independent third party contractor to provide the Vehicular Service, and in such event the operations of said contractor shall be deemed to be the operations of the Lessee hereunder.

53.1.7 Without limiting the provisions of Section 6 hereof, the Lessee shall procure and maintain in full force and effect throughout the effective period of the permission granted hereunder all licenses, certificates, permits, franchises or other authorization from all governmental authorities, if any, having jurisdiction over the operations of the Lessee, which may be necessary for the conduct of the Vehicular Service. Neither the issuance of this Agreement nor anything contained therein shall be or be construed to be a grant of any franchise, consent, license, permit, right or privilege of any nature or kind whatsoever to operate omnibuses or any other vehicles or conveyances carrying passengers or property, whether for hire or otherwise, outside the Airport, or over the public streets or roads of or located in any municipality of the State of New Jersey.

53.1.8 The Port Authority shall have the right on thirty (30) days prior written notice to revoke the Lessee's privilege to operate the Vehicular Service described in paragraph 53.1 and the Lessee shall cease such Vehicular Service on or prior to the effective date of revocation stated in the Port Authority's notice. Revocation of the Lessee's privilege to operate the Vehicular Service shall not affect any other terms and conditions of this Agreement or the Lessee's obligations hereunder and this Agreement shall remain in full force and effect.

53.2 The Lessee pursuant to Section 9 of this Agreement shall have the right to enter into space leases or other arrangements (including direct telephone lines) with such ground transportation operators (including car rental companies) who are or who agree to become permittees of the Port Authority. In the event the Lessee does so elect to enter into such space leases or such other arrangements pursuant to the foregoing sentence then the Lessee shall be required to enter into space leases or make such other arrangements with such other ground transportation operators (including car rental companies) as may be designated by the Port Authority. The Lessee will make counter space available to such car and vehicular rental companies or enter into such other arrangements with such car rental companies at reasonable rental rates or fees, such rental rate or fee to be a fixed fee or a basic rental fixed by the Lessee for such space (and no other rental fee or charge it being understood that the Port Authority may impose a percentage rental or fee), such basic rental or fixed fee to represent

the fair and reasonable rental or fee for the space provided, taking into account the cost of providing the space and maintaining it.

Section 54. Late Charges

If the Lessee should fail to pay any amount required under this Agreement when due to the Port Authority, including without limitation any payment of basic, percentage or other rental or any payment of any other charges or if any such amount is found to be due as the result of an audit, then, in such event, the Port Authority may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount for each late charge period (hereinbelow described) during the entirety of which such amount remains unpaid, each such late charge not to exceed an amount equal to eight-tenths of one percent of such unpaid amount for each late charge period. There shall be twenty-four late charge periods on a calendar year basis; each late charge period shall be for a period of at least fifteen (15) calendar days except one late charge period each calendar year may be for a period of less than fifteen (but not less than thirteen) calendar days. Without limiting the generality of the foregoing, late charge periods in the case of amounts found to have been owing to the Port Authority as the result of Port Authority audit findings shall consist of each late charge period following the date the unpaid amount should have been paid under this Agreement. Each late charge shall be payable immediately upon demand made at any time therefor by the Port Authority. No acceptance by the Port Authority of payment of any unpaid amount or of any unpaid late charge amount shall be deemed a waiver of the right of the Port Authority to payment of any late charge or late charges payable under the provisions of this Section with respect to such unpaid amount. Each late charge shall be and become additional rent, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the rental as set forth in the section of this Agreement entitled "Rental". 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 set forth in the section of this Agreement entitled "Termination" or (ii) any obligations of the Lessee under this Agreement. In the event that any late charge imposed pursuant to this Section shall exceed a legal maximum applicable to such late charge, then, in such event, each such late charge payable under this Agreement shall be payable instead at such legal maximum.

Section 55. Entire Agreement

This Agreement consists of the following: pages 1, 1a, 2 through 19 inclusive, 19a, b, c, d, 20 through 38 inclusive, 38a, b, c, 39 through 46 inclusive, 46a, b, c, d, e, f, g, h, i, 47 through 111 inclusive, 111a, 111b, 112, 113, 113a, 113b, 114 through 120 inclusive plus Exhibits A, A-1, A-2, X, Y and Z and Schedule O.

It constitutes the entire agreement of the parties on the subject matter hereof and may not be changed, modified, discharged or extended except by written instrument duly executed by the Port Authority and the Lessee. The Lessee and the Port Authority agree that no representations or warranties shall be binding upon either of them unless expressed in writing in this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed these presents as of the day and year first above written.

ATTEST:

*Paul E. Hudon*  
Secretary

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By *Robert J. Hoover*  
(Title) Director of Aviation  
(Seal)

By *Alan Sagan*  
(Title) CHAIRMAN

WITNESS:

ATTEST:  
*W. S. ...*  
Secretary

MARRIOTT CORPORATION

By *James E. ...*  
(Title) Vice President  
(Corporate Seal)

APPROVED:  
FORM | TERMS  
*Ms. ...*