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THE PORT A[illegible] OF NY & NJ

FOI A[illegible]

June 21, 2013

Mr. Kalev Savi
www.savetheworldport.org
14 Ethel Drive
Little Falls, NJ 07424

Re: Freedom of Information Reference No. 13544

Dear Mr. Savi:

This is a response to your October 25, 2012 request, which has been processed under the Port Authority's Freedom of Information Code (the "Code") for copies of document and/or application the PA has submitted to the Federal Aviation Administration requesting funds collected under the PFC Passenger Facility Charge Program to be used in the JFK Terminal 3 demolition, hazmat abatement and re-paving project; document that shows the current structure of ownership and/or lease terms and conditions for the aforementioned location.

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/13544-LPA.pdf. Paper copies of the available records are available upon request.

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

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

Very truly yours,

Daniel D. Duffy
FOI Administrator

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[illegible]
[illegible]
F: 2[illegible]

Passenger Facility Charge Application

Newark Liberty International Airport
John F. Kennedy International Airport
LaGuardia Airport
Stewart International Airport

Prepared for:
Federal Aviation Administration

Prepared by:
The Port Authority of New York and New Jersey

APRIL 2012

PORT AUTHORITY OF NY & NJ

May 7, 2012

Susan M. Baer
Director

Mr. Otto Suriani
Acting Manager
New York Airports District Office
Federal Aviation Administration
600 Old Country Road, Room 446
Garden City, NY 11530

Dear Mr. Suriani:

I am pleased to enclose the application for the Port Authority of New York and New Jersey (Port Authority) to impose and use Passenger Facility Charges (PFC) at Newark Liberty International Airport (EWR), John F. Kennedy International Airport (JFK), LaGuardia Airport (LGA) and Stewart International Airport (SWF) to implement critically needed airport capital improvement projects for various airside and landside development that will allow the Port Authority to continue its commitment to improve capacity and reduce delays; enhance safety and security; and facilitate airline competition.

The Board of Commissioners of the Port Authority has authorized the Executive Director to submit this application for authority to impose and use PFC's of $4.50 per enplaned passenger at EWR, JFK, LGA and SWF. This application requests PFC revenue for new projects in the amount of approximately $822,500,000.00. A copy of the resolution adopted by the Port Authority Board of Commissioners has been included in the application in Attachment I.

In accordance with 14 CFR Part 158.23, the Port Authority distributed draft PFC applications to each of the 265 air carriers and foreign air carriers currently operating at EWR, JFK, LGA and SWF. The draft application notified each airline of the Port Authority's intent to submit an application to the FAA requesting authority to impose and use PFC's to fund capital development at the Airports. The notification also included the date, time and locations of the meetings at which the Port Authority would consult with the airlines about the proposed PFC funded projects. The letter included:

- Description of the proposed projects;
- PFC dollar level;
- Charge effective date;
- Estimated charge expiration date;
- Estimated PFC revenue; and
- List of exempted air carriers and explanation for exemptions.

Consultation meetings with domestic and foreign air carriers were held on November 29th at EWR and on December 14th at JFK. The meeting at JFK was a combined meeting for LGA and JFK and the meeting was attended by representatives from airlines operating at both LGA and JFK. Although there are no SWF projects for which PFC funding is being pursued as part of this application, the three carriers serving SWF were represented at the EWR and JFK meetings. Each Consultation Meeting consisted of the Port Authority providing project justifications, detailed financial plans and other presentation

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materials to the airline representatives. Representatives of the Port Authority began each presentation with a brief synopsis of the PFC projects. A summary of the financial plan for the project was provided, along with a forecast of the estimated PFC collections for EWR, JFK, LGA and SWF. At each of the meetings attended by the airlines, there was an interactive dialog between the Port Authority representatives and air carrier representatives. There was at least one representative of the FAA present at each of the consultation meetings.

A total of four airlines provided comment letters that included agreements and disagreements with the projects included in the application. Port Authority response on specific comments is provided within the Attachment B for each project.

During the development of this application, the Port Authority has had the pleasure of working closely with Andrew Brooks. His insight and explanation of issues key to the FAA review process were instrumental in assisting the Port Authority in preparing this application; I am most grateful for his assistance and expertise.

Please review the application and provide any questions or comments you may have to Ms. Patty Clark, Senior Advisor of External Affairs. Ms. Clark may be reached by phone at (212) 435-3731, and email at pclark@panynj.gov.

Sincerely,

Susan M. Baer
Director
Aviation Department

SECTION 3

Terminal 3 Site Redevelopment & Capacity Improvements Project

PFC APPLICATION NUMBER:

ATTACHMENT B: PROJECT INFORMATION

1. Project Title: **JFK Terminal 3 Site Redevelopment & Capacity Improvements Project**

2. Project Number:

3. Use Airport of Project: **John F. Kennedy International Airport (JFK), New York, New York**

4. Project Type
[ ] Impose Only:
[X] Concurrent: **IMPOSE AND USE**
[ ] Use Only:
Link to application:

5. Level of Collection:
[ ] $1.00
[ ] $2.00
[ ] $3.00
[ ] $4.00
[X] $4.50

6. Financing Plan

PFC Funds: Pay-as-you-go: **$215,000,000**
Bond Capital: **$0**
Bond Financing & Interest: **$0**

Subtotal PFC Funds*: **$215,000,000**
If amount is over $10 million, include cost details sufficient to identify eligible and ineligible costs.

Existing AIP Funds:
Grant # **N/A** Grant Funds in Project: $ **0**

Subtotal Existing AIP Funds: $ **0**

Anticipated AIP Funds (List Each Year Separately): **N/A**
Fiscal Year: **N/A** Entitlement: $ **0** Discretionary: $ **0** Total: $ **0**

Subtotal Anticipated AIP Funds: $ **0**

Other Funds: **N/A**
State Grants: **$0**

Local Funds: **$0**
Other (please specify): **$0**

Subtotal Other Funds: **$0**

Total Project Cost: **$215,000,000**

For FAA Use
a. Does the project include a proposed LOI?
[ ] YES
[ ] NO
If YES, does the Region support?
[ ] YES
[ ] NO
If YES, list the schedule for implementation:

b. For any proposed AIP discretionary funds, does the Region intend to support?
[ ] YES
[ ] NO

c. For any proposed AIP funds, is the request within the planning levels for the Region's five year CIP?
[ ] YES
[ ] NO

d. For project requesting PFC funding levels of $4.00 and $4.50:
Is there an expectation that AIP funding will be available to pay the project costs.
[ ] YES
[ ] NO
What percentage of the total project cost is funded through AIP?
List the source(s) of data used to make this finding.

e. Terminal and surface transportation projects requesting a PFC funding level of $4.00 and $4.50. The public agency has made adequate provision for financing the airside needs of the airport, including runways, taxiways, aprons, and aircraft gates.
[ ] YES
[ ] NO
[ ] N/A
List the source(s) of data used to make this finding.

f. Reasonableness of cost.
Project Total Cost Analysis

PFC Share of Total Cost Analysis

7. Back-up Financing Plan:

If proposed AIP discretionary funds or a proposed LOI are included in the Financing Plan, provide a Back-up Financing Plan or a project phasing plan in the event the funds are not available for the project.

For FAA Use
If required to use a back-up financing/phasing plan, indicate the need to obtain additional approvals to obtain an alternate source of financing. Indicate the additional PFC duration of collection required if PFC's are to be used to fund the difference. Recap any discussion from previous item regarding likelihood of public agency obtaining the funding it proposes.

8. Project Description:

The Port Authority has recognized an acute need to improve the efficiency of operations in the existing Terminal 3 facility at John F. Kennedy International Airport (JFK), which currently serves as an international hub for Delta Air Lines. Terminal 3 was built in 1960 and is located in the southeast quadrant of JFK, one of the most congested areas of the Central Terminal Area (CTA). The terminal's facilities are outdated and functionally obsolete. The building's irregular shape and aging infrastructure limit modernization efforts, which are needed to accommodate Transportation Security Administration (TSA) functions and staff, and U.S. Customs and Border Protection facilities. Furthermore, the terminal's obsolete design inhibits the movement of connecting passengers and the positioning of modern aircraft, which in many cases are twice the size of the 707 and DC-8 aircraft that the terminal was originally designed to accommodate.

In order to address the joint need for a modern terminal, the Port Authority and Delta have developed a modernization and redevelopment program for Terminals 3 and 4 that would provide the necessary infrastructure to efficiently move passengers through the national air transportation system, accommodate future demand, improve the efficiency of the airfield at JFK, and offer passengers a traveling experience that is consistent with the experience passengers have at the other terminals at JFK. The Terminal 3 and Terminal 4 Modernization and Redevelopment Program includes the following elements:

1. **Expand Concourse B of Terminal 4 by nine gates;**
2. **Develop additional passenger processing facilities at Terminal 4 to accommodate the additional passengers;**
3. **Extend a secure pedestrian walkway/bridge from Terminal 2 to Terminal 4;**
4. **Remediate and demolish Terminal 3 and redevelop the Terminal 3 site to accommodate aircraft parking;**
5. **Install associated water quality treatment devices and modify drainage and utilities as necessary;**

6. **Relocate and improve airfield taxiway connections between the taxiways and the aircraft parking areas**

The Terminal 3 and airfield project elements referenced above are the subject of this application and, hereafter are referred to as the Terminal 3 Site Redevelopment & Capacity Improvements Project (T3 Airfield Project). Specifically, these project elements include:

Terminal 3 Remediation (*Proposed for PFC Funding)*
This project element includes the abatement, containment, and removal of asbestos, lead, mercury, and other hazardous materials prior to demolition activities at the site. The remediation work will follow all Federal, State and local regulations for removal and disposal of the hazardous waste. The cost for the Terminal 3 Remediation work is estimated to be $11 million.

Terminal 3 Airside and Building Demolition (*Proposed for PFC Funding)*
This project element will demolish the terminal building and elevated roadway structure fronting the terminal. This would require all tenants be removed from the facility and relocated to other terminals. The unique cable-supported roof structure of Terminal 3 will require additional scaffolding and temporary work structures to safely dismantle the cantilevered roof piece by piece. Demolition waste will be hauled off site for disposal. An eight-foot tall barbed wire fence will be installed around the work site's perimeter to secure the area in accordance with TSA regulations, and demolition work will be performed in accordance with federal and state regulations. The cost for the Terminal 3 Airside and Building Demolition is estimated to be $45 million.

Terminal 3 Site Work & Paving (*Proposed for PFC Funding)*
This project element includes the design and construction of apron pavement capable of accommodating up to 16 hardstand aircraft parking positions (seven Group IV and nine Group V aircraft positions) that will be used for temporary parking, overnight parking, swing space, or as a hold area during ground metering, Severe Weather Avoidance Plan (SWAP) days, Irregular Operations (IROPs), and other periods of congestion. The project scope includes filling in the basement of the Terminal 3 building footprint, constructing the necessary stormwater drainage infrastructure, and installing new high mast lighting, signage, and pavement markings in accordance with FAA standards. The cost for the Terminal Site Work and Paving is estimated to be $101 million.

Taxi lanes, Throats and Throat Extensions (*Proposed for PFC Funding)*
This project element consists of the relocation of the entrance and exit taxi lanes on the public use airfield between Terminals 3 and 4 further to the northwest along Taxiways A and B. The new taxiway configuration includes dual Group V capable taxi lanes KG and KF, which will provide improved ingress and egress from the Terminal 3 and 4 sites and will relieve traffic congestion for all carriers using the southeast portion of the JFK airfield.

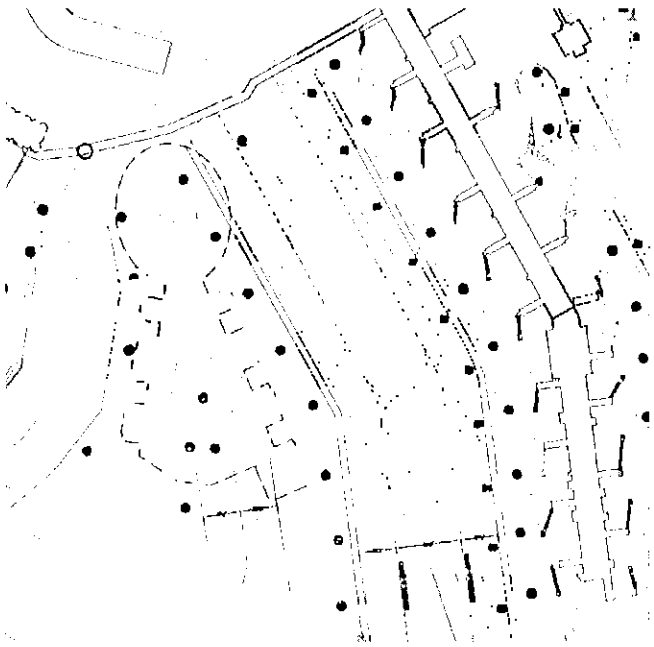
This element includes a new taxi lane HB to provide access to the Terminal 4 aircraft parking areas from Taxiways A and B, and the widening and strengthening of pavement fillets alongside portions of Taxiway A along the Terminal 4 leasehold in order to accommodate larger Group VI aircraft. The cost for the Taxi lanes, Throats and Throat Extensions is estimated to be $36 million.

Terminal 3 Utilities (*Proposed for PFC Funding)*
The utility infrastructure on the Terminal 3 site is over 50 years old, some of which will need to be capped, rebuilt, or relocated during construction. It is also anticipated that certain utilities will need to remain in service during construction. These utilities will require protection to prevent damage due to construction activities which could result in disruptions to airport operations and passenger service. Potentially, new utility infrastructure may need to be constructed to accommodate the new aircraft parking area.

This work also includes the reconstruction and installation of Terminal 3 stormwater and drainage infrastructure, water and sewer infrastructure, and electrical ductbanks. Drainage systems will be designed and installed consistent with the Port Authority's State Pollution Discharge Elimination System (SPDES) Permit and Best Management Practices (BMPs). The cost for the Terminal 3 Utilities is estimated to be $22 million.

The portion of the Program proposed for PFC funding includes the non-exclusive use areas of the apron associated with Terminal 3 and the previously described work related to the public use taxiway system. PFC funds are not being applied to any other portion of the Program.

The following figure presents the proposed configuration of the parking ramp after project implementation.



If applicable for terminal projects,
Prior to implementation of this project,
Number of ticket counters: **N/A**
Number of gates: **N/A**
Number of baggage facilities: **N/A**

At completion of this project,
Number of ticket counters: **N/A**
Number of gates: **N/A**
Number of baggage facilities: **N/A**

Net change due to this project:
Number of ticket counters: **N/A**
Number of gates: **N/A**
Number of baggage facilities: **N/A**

Terminal and surface transportation projects. The public agency has made adequate provision for financing the airside needs of the airport, including runways, taxiways, aprons, and aircraft gates.
[X] YES
[ ] NO
[ ] N/A

FOR FAA USE

Comment upon and/or Clarify Project Description. Include source citation if clarification information is not from PFC application.

If project involves the construction of a new runway or modification of an existing runway, have the requirements of Order 5200.8, with regard to runway safety areas been met? If not, is the runway grandfathered or has a modification been approve, or is there a likelihood the requirements will be met, or should the project be disapproved.

If the project involves terminal work, confirm information regarding ticket counters, gates, and baggage facilities for construction and/or rehabilitation above has been completed.

Terminal and surface transportation projects. The public agency has made adequate provision for financing the airside needs of the airport, including runways, taxiways, aprons, and aircraft gates.
[ ] YES
[ ] NO
[ ] N/A

9. Significant Contribution:

John F. Kennedy International Airport (JFK) is the largest airport in the New York Region, with a reported 47.7 million passengers using the Airport in 2011. The Airport Council International's latest ranking places JFK as #6 nationwide and #14 worldwide for total passengers. Commercial aircraft operations for passenger service represented approximately 97 percent of activity at the Airport, cargo operations were two percent of activity, and general aviation operations were less than one percent of the activity.

The Airport has four air carrier runways, one of which is the longest in the Region at 14,572 feet, and can accommodate the largest aircraft in the fleet serving long-haul destinations throughout the world. The Airport has seven terminals with more than 123 aircraft gates serving the terminals. JFK serves almost two-thirds of the region's international passengers and approximately 135 airlines operate at the Airport.

The Port Authority's forecast used in the *Environmental Assessment Terminals 3 and 4 Redevelopment Project John F. Kennedy International Airport,* projects that the New York/New Jersey Region will experience 2.7 percent annual growth in aircraft movements through 2019, with JFK experiencing 2.8 percent annual growth in aircraft movements. Passenger levels at JFK are expected to reach approximately 62.1 million by 2019. Aircraft operations at JFK are expected to increase to 569,597 in 2019. This growth is forecast to occur with or without the T3 Airfield Project or the larger Modernization and Redevelopment program. To some degree, JFK's forecast growth may be attributable to capacity limitations at other airports in the Region, in particular LaGuardia Airport (LGA). LGA has a perimeter rule

constraining non-stop flights to no more than 1,500 miles and does not have the facilities to process international flights. These limitations at LGA create a unique demand for long-haul and international passenger demand that must be served by JFK.

The T3 Airfield Project makes a Significant Contribution in the following categories:

1. Reduce Congestion/Enhance Capacity:

The new parking positions and improved taxi lanes and throats associated with the T3 Airfield Project will enable carriers at JFK to handle increased passenger demand more efficiently. It will provide new remote aircraft parking positions that are both closer to contact gate positions and capable of handling larger aircraft. This will enhance capacity, reduce congestion on the airfield, and decrease delays.

The aprons associated with Terminal 3 and 4 are currently congested during peak periods. This congestion causes delays and increases controller workload. Moreover, as passenger levels and aircraft movements increase over time (as is projected by the Port Authority and the FAA), periods of congestion will increase in duration and severity, further exacerbating delays and putting greater stress on the safe and efficient operation of the Airport.

The expanded ramp and aircraft parking positions resulting from the demolition of Terminal 3 may be used to hold aircraft for metered taxi and take-off, and to give delayed aircraft a safe and convenient place to hold that does not obstruct taxiways. This allows other aircraft that are not delayed to continue to taxi to the runway for scheduled departures, thereby reducing airside delays/taxi times and associated costs while enhancing operational efficiency. The new aircraft parking positions will provide airlines at the Airport with more centrally located hardstand parking positions, which reduces the need for extended aircraft towing operations and taxiing from remote hardstands between Terminal 1, Terminal 2, Terminal 3, and Terminal 4 to parking positions closer to where passenger loading occurs. The T3 Airfield Project will allow for more efficient aircraft ground operations, translating into less terminal area congestion, less apron congestion, and greater operational flexibility.

The growth in passenger demand expected by the Port Authority and the FAA for the NY Region and at JFK, specifically, will occur with or without the T3 Airfield Project. The Port Authority needs to meet the demand with improved infrastructure to maximize safety and efficiency, reduce congestion, and improve customer service levels. The current Terminal 3 airside layout is limited by the terminal building layout and infrastructure that was designed in 1960 for first generation, narrow-body (707, DC-8) jet aircraft operating at that time. Based on its outmoded design, Terminal 3 is significantly deficient in all aspects necessary to serve modern wide-body aircraft. The current building and available ramp space does not provide the

flexibility to park aircraft of varying size in the same area to support the current flight schedule. As a result, space becomes a restriction that significantly affects the use of gates and wide-body aircraft access, which reduces the operational efficiency of the Terminal 3 apron.

The Terminal 3 Airfield Project will provide the infrastructure capable of handling varying aircraft types in the current JFK fleet, which cannot be accommodated at the existing site. The Project will support Group IV and Group V aircraft operations as needed and will provide for less congestion on the taxi lanes and taxiways around the Terminal 3 site. It is anticipated that the apron will be configured for seven Group IV and nine Group V aircraft, for a total of 16 hardstand positions. As part of the 16 hardstand positions, three positions will be designated as metering positions capable of accommodating Group V aircraft. These three positions will function similar to the existing metering positions currently in use at JFK. The three positions allow departing and arriving aircraft a place to temporarily park while waiting for a departure slot or waiting for a gate position. This allows aircraft to exit the taxiway system and allow non-delayed aircraft to access the runways or terminal area. The benefits of the three new metering positions on the Terminal 3 apron are:

- **Reduction in arrival delays and taxi distances for arrivals without an available gate;**
- **Increase in operational efficiency of the airfield as arrivals without an available gate can access the terminal area and do not have to be staged somewhere on the taxiway or runway system. This can be particularly beneficial during severe weather conditions, when FAA ATCT has to switch between runway operating configurations in order to adapt to the weather changes; and**
- **Reduction in FAA ATCT controller workload as a result of the ability for arrivals without an open gate to access the terminal area more quickly, thus enhancing overall efficiency at the airport.**

In order to accurately project the effect the T3 Airfield Project will have on the Airport once completed, an airfield simulation modeling analysis was constructed. The analysis was performed using Jeppesen's Total Airspace and Airport Modeler (TAAM, Version V2011.2.0, Release 16). Nine different scenarios were produced, representative of different runway operating configurations and weather conditions. These configurations represent approximately 90 percent of all activity at JFK during a typical year. Validation of the models and throughput numbers was done through meetings with JFK ATC, Port Authority Aviation Planning, JFK operations, and local FAA staff. FAA Aviation System Performance Metrics (ASPM) data was used for the purposes of calibrating the model.

The TAAM results show that the airfield improvements of the T3 Airfield project are expected to contribute to a reduction of arrival and departure delays at the

airport, particularly during conditions of limited visibility or high winds when delays are more severe. The TAAM results demonstrate that these improvements will result in a benefit to all carriers as the project mainly contributes to reduced gate hold delays because of the new parking spots at the T3 site.

All Carrier Travel Times (minutes per flight)

	Travel Times (in minutes per flight)		
Configurations	**Existing**	**With Project**	***Project Benefit***
VFR 31L/31R switch to 4L/4R/31L			
Average Departure Time	**30.3**	**28.98**	***1.32***
Average Arrival Time	**6.46**	**5.87**	***0.58***
VFR 31L/31R All Day			
Average Departure Time	**44.63**	**38.35**	***6.29***
Average Arrival Time	**5.84**	**5.49**	***0.35***
VFR 31L/31R, IFR 31L/31R Evening			
Average Departure Time	**49.39**	**43.63**	***5.76***
Average Arrival Time	**6.23**	**5.96**	***0.26***
VFR 31L/31R All Day - With Metering			
Average Departure Time	**43.07**	**40.10**	***2.97***
Average Arrival Time	**5.97**	**5.56**	***0.40***
VFR 31L/31R, IFR 31L/31R Evening -With Metering			
Average Departure Time	**50.15**	**43.85**	***6.3***
Average Arrival Time	**6.26**	**5.72**	***0.55***

2. Improve Safety:

The current number and location of hardstand parking positions in the central terminal area is limited and therefore requires a significant amount of aircraft taxi and tow operations between contact gates and remote parking positions. The T3 Airfield Project improves safety by reducing excess aircraft towing operations on the airfield and reducing the level of ground vehicle activity across and on aprons, taxiways, and taxi lanes around Terminal 4. The project will also allow for more efficient aircraft operations airport-wide since it provides additional parking positions off the active taxiways and taxi lanes closer to the terminals, resulting in improved safety.

The additional aircraft parking positions at Terminal 3 will be closer to most of JFK's terminals than some of the current remote parking positions, allowing for a significant reduction in average tow/taxi time and increasing safety by reducing the chance of an airfield incursion. A reduction in FAA ATCT controller workload is also anticipated as a result of the ability for arrivals without an open gate to access the terminal area more quickly, thus enhancing overall safety at the airport.

The project would reduce the number of towing operations due to the reduction in departure gate hold delays. Gates availability would increase, reducing the need to tow aircraft off the gates and to remote parking areas. The total reduction of daily towing operations for all carriers after project implementation ranges from 6 to 40,

depending on airfield configuration. Total daily towing times for all carriers demonstrate a savings of six to over nine hours a day.

Towing Counts per Day for All Carriers

Configurations	Existing	With Project	*Project Benefit*
VFR 31L/31R switch to 4L/4R/31L	160	120	*40*
VFR 31L/31R all Day	160	146	*14*
VFR 31L/31R, IFR 31L/31R Evening	152	146	*6*
VFR 31L/31R All Day - With Metering	162	148	*14*
VFR 31L/31R, IFR 31L/31R Evening - With Metering	152	146	*6*

Total Daily Towing Time for All Carriers (minutes)

Configurations	Existing	With Project	*Project Benefit*
VFR 31L/31R switch to 4L/4R/31L	1,843.2	1,254.45	*588.75*
VFR 31L/31R all Day	1,502.6	1,115.13	*387.47*
VFR 31L/31R, IFR 31L/31R Evening	1,639.05	1,123.03	*516.02*
VFR 31L/31R All Day - With Metering	1,650.72	1,123.45	*527.27*
VFR 31L/31R, IFR 31L/31R Evening - With Metering	1,696.98	1,125.92	*571.06*

3. **Enhance Competition:**

The T3 Airfield Project provides all carriers with the opportunity to access additional hardstands, thus enhancing competition among JFK airlines. The T3 Site will be available to Delta Air Lines and its affiliate carriers on a preferential use basis in accordance with the terms of the T3 Site Permit between Delta Air Lines and the Port Authority. The Permit requires that any positions not being used by Delta Air Lines or its affiliate carriers under its preferential rights will be made available to other carriers by the Terminal 3 Hardstand Manager (first to Terminal 4 carriers due to proximity of their operations to the site, then to all other carriers). The Project results in a net increase in the total number of parking positions available to carriers on common or preferential use basis. In fact the project will provide for three hardstand positions that are available for use by all carriers and ATC as needed during SWAP days and IROP.

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__ Air safety. Part 139 [ ] Other (explain)

_____

Certification Inspector concur. Yes [ ] No [ ] Date _____

__ Air security. Part 107 [ ] Part 108 [ ] Other (explain)

_____

CASFO concur. Yes [ ] No [ ] Date _____

__ Competition. Competition Plan [ ] Other (explain)

_____

__ Congestion. Current [ ] or Anticipated [ ]

LOI [ ] FAA BCA [ ] FAA Airport Capacity Enhancement Plan [ ]

Other (explain) _____ _____

__ Noise. 65 LDN [ ] Other (explain) _____ _____

__ Project does not qualify under "significant contribution " rules.

Quantitative and qualitative analysis of significant contribution option chosen by public agency. If analysis is based on a source other than this PFC application, list the source(s) of data and attach the relevant documentation used to make this finding.

How does this project address the deficiency sited by the public agency?

If competition is the chosen option, provide the FAA's analysis of any barriers to competition at the airport.

10. Project Objective:

As noted in the Significant Contribution section, the T3 Airfield Project will contribute to three PFC objectives:

1. **Enhance Capacity: TAAM results show that the new parking positions and improved taxi lanes and throats associated with the T3 Airfield Project will enable carriers at JFK to handle increased passenger demand as the project will contribute to reducing of arrival and departure delays at the airport, particularly during conditions of limited visibility or high winds when delays are more severe. The improvements will result in a benefit to all carriers as the new parking spots at the T3 site contribute to reducing gate hold delays across the airport.**

2. **Enhance Safety: The T3 Airfield Project will improve safety by reducing excess aircraft movements on the airfield and reducing the level of ground vehicle activity across and on aprons, taxiways, and taxi lanes around Terminal 4. The project will also enhance safety provide additional parking positions off of active taxiways.**

3. **Furnish Opportunity for Enhanced Competition: The T3 Airfield Project will provide all carriers with the opportunity to access additional hardstands (subject to the preferential use provisions in the T3 Site Permit). The project results in a net increase in the total number of parking positions available to carriers on common or preferential use basis, thus enhancing competition among JFK airlines.**

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__ Safety, Preserve [ ] Enhance [ ]
__ Security, Preserve [ ] Enhance [ ]
__ Capacity, Preserve [ ] Enhance [ ]

__ Furnish opportunity for enhanced competition between or among air carriers at the airport
__ Mitigate noise impacts resulting from aircraft operations at the airport
__ Project does not meet any PFC objectives (explain)

Finding
Current deficiency. List the source(s) of data used to make this finding if it is not a part of the PFC application.

Address adequacy of issues.

11. Project Justification:

FAA statistics for 2011 ranked JFK as the 3rd most delayed airport in the nation in terms of average delay per aircraft operation. Due to the nature of airline activity at JFK, delays originating here tend to propagate throughout the entire NAS. In 2008, as an attempt to limit delays, the U.S. Department of Transportation imposed an hourly operational limitation on operations at JFK to 81-flights-per-hour per 16-hour period. However, as demonstrated above, even with the operational caps, the level of delay at JFK remains significant by all measures. These delay figures show there is significant need to modernize and optimize the Airport, and this project aims to modernize the Terminal 3/Terminal 4 envelope. Terminal 3 has a functionally obsolete layout and the aircraft apron within the envelope is not adequate to meet the demands of the passengers and airlines at JFK.

Terminal 3 at JFK, formerly known as the Pan Am Terminal, was built in 1960 and is functionally obsolete from modern aircraft operation, security, access, and passenger service perspectives. Terminal 3 has 16 aircraft gates and currently serves as a principal international gateway for Delta Air Lines.

Due to its aged infrastructure, Terminal 3 is expensive and difficult to maintain and lacks check-in, security, and other facilities capable of efficiently handling an international hub operation or adequately meeting passenger needs. Local and connecting passengers are inconvenienced by the inefficient layout and dated facilities of the terminal. In order for Terminal 3 to operate at an efficient level and provide adequate capacity, facilities would need to be modernized to increase passenger handling capacity, enhance security and safety, improve passenger level of convenience, and reduce congestion.

Over the years, several attempts have been made to refurbish and modernize Terminal 3. Since 2008, $17 million has been invested on repairs and renovations to maintain Terminal 3 in its current condition. However, because of the building's age, irregular shape, and site constraints, these efforts have only resulted in modest improvements and have largely not been successful in providing the passenger processing capacity or providing the level of customer service expected in a modern international terminal.

Similar to the passenger terminal, Terminal 3's airside layout is constrained by the terminal's apron configuration. The layout was designed in 1960 for the aircraft operating at that time. The apron layout has a gate design intended to accommodate early-generation, narrow-body (707, DC-8) jet aircraft. The existing gates are limited to fewer types of aircraft, with only a few gates capable of handling Group V aircraft. The remaining gates can only serve Group III and smaller Group IV aircraft. This restriction severely limits the airline's ability to match aircraft gauge with passenger demands for a particular route and when larger aircraft are introduced at the terminal, some gates are unusable due to space limitations.

The Terminal 3 apron layout cannot efficiently accommodate modern wide-body aircraft and handling the current demands of the TSA and Customs and Border Patrol without severely compromising passenger circulation through the terminal. Also, the apron between Terminal 3 and Terminal 4 is not adequately sized for simultaneous operation of aircraft and ground vehicle movements. This contributes to ground delays that affect all aircraft movements at the Airport.

As previously described, TAAM analysis was conducted in order to model the effect the T3 Airfield Project will have on the Airport once the project is completed. A summary of the TAAM analysis results are shown in the table below (TAAM analysis utilized Peak Month Average Weekday):

Total Daily Savings (in Hours)

	Delta	IAT	Other	Total
Without Metering				
VFR 31L/31R switch to 4L/4R/31L	15.83	7.22	9.05	32.11
VFR 31L/31R All Day	50.64	12.96	18.05	81.65
VFR 1L/31R, IFR 31L/31R Evening	50.56	-1.66	28.70	77.61
With Metering				
VFR 31L/31R All Day	39.09	1.56	6.88	47.53
VFR 31L/31R, IFR 31L/31R Evening	34.64	6.76	48.10	89.50

These results demonstrate the total daily savings in hours of travel time and towing times. It demonstrates that the benefits of the T3 Airfield Project will be realized by all carriers at JFK. The TAAM analysis shows that the project achieves these reductions in overall congestion at the Airport by reducing aircraft congestion on taxiways and ramps, providing more closely located and easily accessible remote parking positions for long ground time aircraft, providing a large aircraft holding apron for inbound aircraft that do not have an available gate, and providing a more closely located and easily accessible holding apron for outbound aircraft that incur a metering delay off the gate. The T3 Airfield Project also provides additional benefits not quantified by the TAAM analysis. The T3 Airfield Project enhances capacity by creating new aircraft parking positions capable of handling larger aircraft (Group IV and Group V) than T3 can currently accommodate.

The proposed airfield and taxi lane reconfiguration, in addition to improving airfield efficiency and capacity, provides additional safety by eliminating the narrow

taxi lane and apron areas present in the current Terminal 3/Terminal 4 envelope. The reduction in average time of aircraft on the airfield and the addition of extra parking positions and metering positions off of active taxiways will again increase overall airport safety levels by reducing the workload of air traffic control.

FOR FAA USE
Define how the project accomplishes PFC Objective(s)

Explain how project is cost-effective compared to other reasonable and timely means to accomplish this objective(s)

Based on informed opinion or published FAA guidance, specify how the cost of the project is reasonable compared to the capacity, safety, security, noise and/or competition benefits attributable to the project. Include citation for any documents that are not a part of this PFC application.

If analysis is based on a source other than this PFC application, list the source(s) of data and attach the relevant documentation used to make this finding.

Discuss any non-economical benefits which are not captured above.

Project Eligibility:
Indicate project eligibility by checking the appropriate category below.
[ ] Development eligible under AIP criteria (paragraph ___ of Order 5100.38_ or PGL ____);
[ ] Planning eligible under AIP criteria (paragraph ___ of Order 5100.38_ or PGL ____);
[ ] Noise compatibility planning as described in 49 U.S.C. 47505;
[ ] Noise compatibility measures eligible under 49 U.S.C. 47504.
[ ] Project approved in an approved Part 150 noise compatibility plan;
Title and Date of Part 150:
[ ] Project included in a local study.
Title and Date of local study:
[ ] Terminal development as described in 49 U.S.C. 40117(a)(3)(C);
[ ] Shell of a gate as described in 49 U.S.C 40117(a)(3)(F) (air carrier _____, percentage of annual boardings _____);
[ ] PFC Program Update Letter _____
[ ] Project does not meet PFC eligibility (explain).

If analysis is based on a source other than this PFC application, list the source(s) of data and attach the relevant documentation used to make this finding.

Are any work elements or portions of the overall project ineligible? Provide associated costs.

12. Estimated Project Implementation Date (Month and Year): **October 2010**
Estimated Project Completion Date (Month and Year): **May 2015**

For FAA Use
For Impose and Use or Use Only projects, will the project begin within 2 years of PFC application Due date (120-day)?
[ ] Yes
[ ] No

For Impose Only project, will the project begin within 5 years of the charge effective date or PFC application Due date, whichever is first?
[ ] Yes
[ ] No

Is this project dependent upon another action to occur before its implementation or completion. Explain.

13. For an Impose Only project, estimated date Use application will be submitted to the FAA (Month and Year): **N/A**

For FAA Use
Is the date within 3 years of the estimated charge effective date or approval date, whichever is sooner.
[ ] Yes
[ ] No

Which actions are needed before the use application can be submitted? What is the estimated schedule for each action?

14. Project requesting PFC funding levels of $4.00 and $4.50:
a. Can project costs be paid for from funds reasonably expected to be available through AIP funding.
[ ] YES
[X] NO

b. If the FAA determines that the project may qualify for AIP funding, would the public agency prefer that the FAA approve
[X] the amount of the local match to be collected at a $4.50 PFC level, or
[ ] the entire requested amount at a $3.00 PFC level.

c. Terminal and surface transportation projects. The public agency has made adequate provision for financing the airside needs of the airport, including runways, taxiways, aprons, and aircraft gates.
[X] YES
[ ] NO

[ ] N/A

15. List of Carriers Certifying Agreement: **Delta, United/Continental**

List of Carriers Certifying Disagreement: **Japan Airlines (JAL) and Lufthansa**

Recap of Disagreements: **Lufthansa and JAL disagreed on the grounds that Terminal 3 is currently subject to an exclusive long-term lease by Delta Air Lines.**

JAL also disagreed that the project achieves the objective of enhancing competition since the 16 new hard stand positions will be available only when Delta Air Lines (and its affiliates) are not using them. JAL feels the claim is invalid because there is no specific provision allocating the three hard stand positions identified in the application for use by other airlines during SWAP and IROP situations.

Public Agency Reasons for Proceeding:

The disagreements certified by the submitting airlines do not disprove any of the Port Authority's claims regarding the PFC objectives the T3 Airfield project will achieve, nor do they counter the results of the analysis performed in support of these claims. As mentioned above, the Project will satisfy three PFC objectives:

1. **Enhance Capacity: TAAM results show that the new parking positions and improved taxi lanes and throats associated with the T3 Airfield Project will enable carriers at JFK to handle increased passenger demand as the project will contribute to reducing of arrival and departure delays at the airport, particularly during conditions of limited visibility or high winds when delays are more severe. The improvements will result in a benefit to all carriers as the new parking spots at the T3 site contribute to reducing gate hold delays across the airport.**

2. **Enhance Safety: The T3 Airfield Project will improve safety by reducing excess aircraft movements on the airfield and reducing the level of ground vehicle activity across and on aprons, taxiways, and taxi lanes around Terminal 4. The project will also enhance safety provide additional parking positions off of active taxiways.**

3. **Furnish Opportunity for Enhanced Competition: The T3 Airfield Project will provide all carriers with the opportunity to access additional hardstands (subject to the preferential use provisions in the T3 Site Permit). The project results in a net increase in the total number of parking positions available to carriers on common or preferential use basis, thus enhancing competition among JFK airlines.**

As discussed in the draft Attachment B provided to the carriers as well as at the air carrier consultation meetings on November 29th at EWR and December 14th at JFK,

the hardstands on the T3 Site will be available to Delta Air Lines and its affiliate carriers on a preferential use basis in accordance with the terms of the T3 Site Permit between Delta Air Lines and the Port Authority. The Permit requires that any positions not being used by Delta Air Lines or its affiliate carriers under its preferential rights will be made available to other carriers by the Terminal 3 Hardstand Manager (first to Terminal 4 carriers due to proximity of their operations to the site, then to all other carriers). Since neither the T3 Site (nor the hardstand positions thereon) will be "subject to an exclusive long-term lease or use agreement", funding for the Project meets the eligibility requirements found in 49usc40117 and the PFC Program Assurances pertaining to use and lease agreements.

Of the 16 hardstand positions on the T3 site, three positions capable of accommodating Group V aircraft will be designated for common use when the metering program is in effect and during SWAP days or IROPS situations. These three positions will function similar to the existing metering positions currently in use at JFK. The three positions allow departing and arriving aircraft a place to temporarily park while waiting for a departure slot or waiting for a gate position. This allows aircraft to exit the taxiway system and allow non-delayed aircraft to access the runways or terminal area.

The allocation and use of the three hardstand positions will be determined by the T3 Hardstand Manager in cooperation with ATC and airline operations staff at JFK. The Port Authority, the appointed T3 Hardstand Manager and Delta Air Lines are currently developing a management plan that will dictate the specific procedures to be followed in determining how each position will be utilized; as mentioned at the consultation meetings, the working group will provide regular updates to and solicit input from the air carriers on the management plan as it advances.

16. List of Comments Received from the Public Notice: **None**

List of Parties Certifying Agreement: **N/A**
Recap of Disagreements: Public Agency Reasons for Proceeding: **N/A**

For FAA Use
Provide an analysis of each issue/disagreement raised by the air carriers and/or the public. Provide citations for any documents not included in the PFC application that are relied on by the FAA for its analysis.

If a Federal Register notice is published, discuss and analyze any new issues raised. (If the comments from the consultation are repeated, state that.)

ADO/RO Recommendation:
Does the ADO/RO find the total costs of this project to be reasonable? Did the ADO/RO use comparable projects to make this finding? If so, list projects.

If the amount requested if over $10 million, was the level of detail sufficient to identify eligible and ineligible costs. Summarize ineligible costs.

Is the duration of collection adequate for the amount requested?

ADO/RO RECOMMENDATION:
[ ] Approve.

[ ] Partially Approve. Summarize findings from earlier in the Attachment B discussing issues that lead to determination.

[ ] Disapprove. Summarize findings from earlier in the Attachment B discussing issues that lead to determination.

Application Reviewed by:

Name	Routing Symbol	Date
Item(s) reviewed.		
Name	Routing Symbol	Date
Item(s) reviewed		

Terminal 3 Redevelopment & Capacity Improvements Project (PFC-Funded)

Terminal 3/4 Modernization & Redevelopment Program

THE PORT AUTHORITY OF NY & NJ

Passenger Facility Charge Application

Newark Liberty International Airport
John F. Kennedy International Airport
LaGuardia Airport
Stewart International Airport

Supplement to the Passenger Facility Charge Application
Submitted to the Federal Aviation Administration on May 8, 2012

Prepared for:
Federal Aviation Administration

Prepared by:
The Port Authority of New York and New Jersey

July 2012

THE PORT AUTHORITY OF NY & NJ

July 25, 2012

Susan M. Baer
Director

Ms. Patricia Henn
Financial Team Lead (AIP/PFC)
Planning Programming and Capacity Branch
AEA 610 Eastern Region Airports Division
Federal Aviation Administration
1 Aviation Plaza
Jamaica NY 11434

Subject: The Port Authority of New York and New Jersey
12-08-C-00-JFK, LGA, EWR and SWF
Supplement to the PFC Application Submitted to the FAA on May 8, 2012

Dear Ms. Henn:

The Port Authority of New York and New Jersey (Port Authority) has compiled a comprehensive response to the issues the FAA raised as part of the substantially incomplete letter the Port Authority received from the FAA on June 7, 2012. The attached Supplement to the *PFC Application Submitted to the FAA on May 8, 2012* is in a format that was agreed upon through coordination with the FAA.

The attached Supplement addresses FAA comments in three parts:

- Part I: Port Authority Response to FAA Comments
  This written document provides line item responses to FAA comments and makes reference to clarifications made in the Attachment B – Project Information and Attachment C – Airlines Consultation Information.
- Part II: Attachment B (Clarification) – Project Information
  This section presents Port Authority clarifications to Attachment B, based on comments provided by FAA.
- Part III: Attachment C (Clarification) – Airline Consultation Information
  This section presents Port Authority clarifications to Attachment C, based on comments provided by FAA.

We believe that this is responsive to your request for supplemental information, but are available to answer any questions that you might have. Please contact Ms. Patty Clark at 212.435.3731.

Sincerely,

Susan M. Baer
Director
Aviation Department

225 Park Avenue South
New York, NY 10003
T: 212 435 3720 F: 212 435 3833

sbaer@panynj.gov

PFC APPLICATION NUMBER:

ATTACHMENT B: PROJECT INFORMATION

1. Project Title: **JFK Terminal 3 Site Redevelopment & Capacity Improvements Project**

2. Project Number:

3. Use Airport of Project: **John F. Kennedy International Airport (JFK), New York, New York**

4. Project Type
[ ] Impose Only:
[X] Concurrent: **IMPOSE AND USE**
[ ] Use Only:
Link to application:

5. Level of Collection:
[ ] $1.00
[ ] $2.00
[ ] $3.00
[ ] $4.00
[X] $4.50

6. Financing Plan

PFC Funds: Pay-as-you-go: **$215,000,000**
Bond Capital: **$0**
Bond Financing & Interest: **$0**

Subtotal PFC Funds*: **$215,000,000**
If amount is over $10 million, include cost details sufficient to identify eligible and ineligible costs.

Existing AIP Funds:
Grant # **N/A** Grant Funds in Project: $ **0**

Subtotal Existing AIP Funds: $ **0**

Anticipated AIP Funds (List Each Year Separately): **N/A**
Fiscal Year: **N/A** Entitlement: $ **0** Discretionary: $ **0** Total: $ **0**

Subtotal Anticipated AIP Funds: $ **0**

Other Funds: **N/A**
State Grants: **$0**

Local Funds: **$0**
Other (please specify): **$0**

Subtotal Other Funds: **$0**

Total Project Cost: **$215,000,000**

For FAA Use
a. Does the project include a proposed LOI?
[ ] YES
[ ] NO
If YES, does the Region support?
[ ] YES
[ ] NO
If YES, list the schedule for implementation:

b. For any proposed AIP discretionary funds, does the Region intend to support?
[ ] YES
[ ] NO

c. For any proposed AIP funds, is the request within the planning levels for the Region's five year CIP?
[ ] YES
[ ] NO

d. For project requesting PFC funding levels of $4.00 and $4.50:
Is there an expectation that AIP funding will be available to pay the project costs.
[ ] YES
[ ] NO
What percentage of the total project cost is funded through AIP?
List the source(s) of data used to make this finding.

e. Terminal and surface transportation projects requesting a PFC funding level of $4.00 and $4.50. The public agency has made adequate provision for financing the airside needs of the airport, including runways, taxiways, aprons, and aircraft gates.
[ ] YES
[ ] NO
[ ] N/A
List the source(s) of data used to make this finding.

f. Reasonableness of cost.
Project Total Cost Analysis

PFC Share of Total Cost Analysis

7. Back-up Financing Plan:

If proposed AIP discretionary funds or a proposed LOI are included in the Financing Plan, provide a Back-up Financing Plan or a project phasing plan in the event the funds are not available for the project.

For FAA Use
If required to use a back-up financing/phasing plan, indicate the need to obtain additional approvals to obtain an alternate source of financing. Indicate the additional PFC duration of collection required if PFC's are to be used to fund the difference. Recap any discussion from previous item regarding likelihood of public agency obtaining the funding it proposes.

8. Project Description:

The Port Authority has recognized an acute need to improve the efficiency of operations in the existing 804,000 square foot Terminal 3 facility at John F. Kennedy International Airport (JFK), which currently serves as an international hub for Delta Air Lines. Terminal 3 was built in 1960 and is located in the southeast quadrant of JFK, one of the most congested areas of the Central Terminal Area (CTA).

The Port Authority currently leases the Terminal 3 site to Delta Airlines; the term of that lease shall expire upon the completion of the JFK Terminal 3 Site Redevelopment & Capacity Improvements Project or December 31, 2017, whichever occurs earlier. Delta shall continue to have operating and maintenance responsibilities at the site under a Space Permit, already executed, that will become effective the day after the expiry of the lease.

Terminal 3 facilities are outdated and functionally obsolete. The building's irregular shape and aging infrastructure limit modernization efforts, which are needed to accommodate Transportation Security Administration (TSA) functions and staff, and U.S. Customs and Border Protection facilities. Furthermore, the terminal's obsolete design inhibits the movement of connecting passengers and the positioning of modern aircraft, which in many cases are twice the size of the 707 and DC-8 aircraft that the terminal was originally designed to accommodate.

In order to address the joint need for a modern terminal, the Port Authority and Delta have developed a modernization and redevelopment program for Terminals 3 and 4 that would provide the necessary infrastructure to efficiently move passengers through the national air transportation system, accommodate future demand, improve the efficiency of the airfield at JFK, and offer passengers a traveling experience that is consistent with the experience passengers have at the other terminals at JFK. The Terminal 3 and Terminal 4 Modernization and Redevelopment Program includes the following elements:

1. **Expand Concourse B of Terminal 4 by nine gates;**
2. **Develop additional passenger processing facilities at Terminal 4 to accommodate the additional passengers;**
3. **Extend a secure pedestrian walkway/bridge from Terminal 2 to Terminal 4;**
4. **Remediate and demolish Terminal 3 and redevelop the Terminal 3 site to accommodate aircraft parking;**
5. **Install associated water quality treatment devices and modify drainage and utilities as necessary;**
6. **Relocate and improve airfield taxiway connections between the taxiways and the aircraft parking areas**

The Terminal 3 and airfield project elements referenced above are the subject of this application and, hereafter are referred to as the Terminal 3 Site Redevelopment & Capacity Improvements Project (T3 Airfield Project). Specifically, these project elements include:

Terminal 3 Remediation (*Proposed for PFC Funding)*
This project element includes the abatement, containment, and removal of asbestos, lead, mercury, and other hazardous materials prior to demolition activities at the site. The remediation work will follow all Federal, State and local regulations for removal and disposal of the hazardous waste. The cost for the Terminal 3 Remediation work is estimated to be $11 million.

Terminal 3 Airside and Building Demolition (*Proposed for PFC Funding)*
This project element will demolish the terminal building and elevated roadway structure fronting the terminal. This would require all tenants be removed from the facility and relocated to other terminals. The unique cable-supported roof structure of Terminal 3 will require additional scaffolding and temporary work structures to safely dismantle the cantilevered roof piece by piece. Demolition waste will be hauled off site for disposal. An eight-foot tall barbed wire fence will be installed around the work site's perimeter to secure the area in accordance with TSA regulations, and demolition work will be performed in accordance with federal and state regulations. The cost for the Terminal 3 Airside and Building Demolition is estimated to be $45 million.

Terminal 3 Site Work & Paving (*Proposed for PFC Funding)*
This project element includes the design and construction of 15.8 acres of apron pavement capable of accommodating up to 16 hardstand aircraft parking positions (seven Group IV and nine Group V aircraft positions) that will be used for temporary parking, overnight parking, swing space, or as a hold area during ground metering, Severe Weather Avoidance Plan (SWAP) days, Irregular Operations (IROPs), and other periods of congestion. The project scope includes filling in the basement of the Terminal 3 building footprint, constructing the necessary stormwater drainage infrastructure, and installing new high mast lighting, signage, and pavement markings in accordance with FAA standards. The cost for the Terminal Site Work and Paving is estimated to be $101 million.

Taxi lanes, Throats and Throat Extensions (*Proposed for PFC Funding*)
This project element consists of the relocation of the entrance and exit taxi lanes on the public use airfield between Terminals 3 and 4 further to the northwest along Taxiways A and B. The new taxiway configuration includes dual Group V capable taxi lanes KG and KF, which will provide improved ingress and egress from the Terminal 3 and 4 sites and will relieve traffic congestion for all carriers using the southeast portion of the JFK airfield. The work area of both taxiways is approximately 112,500 square feet (s.f) each (300 feet x 375 feet). This element includes a new taxi lane HB (168,750 s.f. of work area) to provide access to the Terminal 4 aircraft parking areas from Taxiways A and B, and the widening and strengthening of pavement fillets alongside portions of Taxiway A along the Terminal 4 leasehold in order to accommodate larger Group VI aircraft. The cost for the Taxi lanes, Throats and Throat Extensions is estimated to be $36 million.

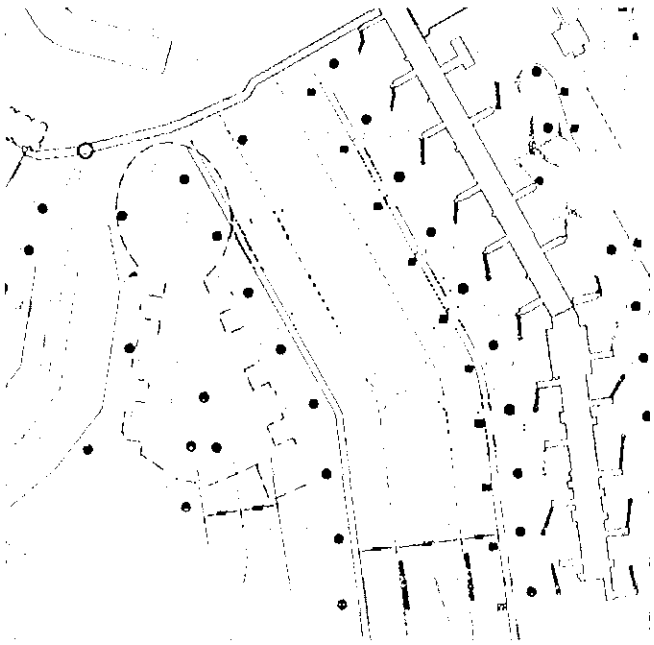
Terminal 3 Utilities (*Proposed for PFC Funding*)
The utility infrastructure on the Terminal 3 site is over 50 years old, some of which will need to be capped, rebuilt, or relocated during construction. It is also anticipated that certain utilities will need to remain in service during construction. These utilities will require protection to prevent damage due to construction activities which could result in disruptions to airport operations and passenger service. Potentially, new utility infrastructure may need to be constructed to accommodate the new aircraft parking area.

This work also includes the reconstruction and installation of Terminal 3 stormwater and drainage infrastructure, water and sewer infrastructure, and electrical ductbanks. Drainage systems will be designed and installed consistent with the Port Authority's State Pollution Discharge Elimination System (SPDES) Permit and Best Management Practices (BMPs). The cost for the Terminal 3 Utilities is estimated to be $22 million.

The Port Authority currently leases the site to Delta Airlines; the term of that lease shall expire upon the completion of the JFK Terminal 3 Site Redevelopment & Capacity Improvements Project or December 31, 2017, whichever occurs earlier. Delta shall continue to have operating and maintenance responsibilities at the site under a Space Permit, already executed, that will become effective the day after the expiration of the lease.

The portion of the Program proposed for PFC funding includes the non-exclusive use areas of the apron associated with Terminal 3 and the previously described work related to the public use taxiway system. PFC funds are not being applied to any other portion of the Program.

The following figure presents the proposed configuration of the parking ramp after project implementation.



If applicable for terminal projects,
Prior to implementation of this project,
Number of ticket counters: **N/A**
Number of gates: **N/A**
Number of baggage facilities: **N/A**

At completion of this project,
Number of ticket counters: **N/A**
Number of gates: **N/A**
Number of baggage facilities: **N/A**

Net change due to this project:
Number of ticket counters: **N/A**
Number of gates: **N/A**
Number of baggage facilities: **N/A**

Terminal and surface transportation projects. The public agency has made adequate provision for financing the airside needs of the airport, including runways, taxiways, aprons, and aircraft gates.
[X] YES
[ ] NO
[ ] N/A

FOR FAA USE
Comment upon and/or Clarify Project Description. Include source citation if clarification information is not from PFC application.

If project involves the construction of a new runway or modification of an existing runway, have the requirements of Order 5200.8, with regard to runway safety areas been met? If not, is the runway grandfathered or has a modification been approve, or is there a likelihood the requirements will be met, or should the project be disapproved.

If the project involves terminal work, confirm information regarding ticket counters, gates, and baggage facilities for construction and/or rehabilitation above has been completed.

Terminal and surface transportation projects. The public agency has made adequate provision for financing the airside needs of the airport, including runways, taxiways, aprons, and aircraft gates.
[ ] YES
[ ] NO
[ ] N/A

9. Significant Contribution:

John F. Kennedy International Airport (JFK) is the largest airport in the New York Region, with a reported 47.7 million passengers using the Airport in 2011 for a total of 409,363 total operations. This represents a 2.5 percent increase in passengers and a 3.1 percent increase in operations over 2010. The Airport Council International's latest ranking places JFK as #6 nationwide and #14 worldwide for total passengers. Commercial aircraft operations for passenger service represented approximately 97 percent of activity at the Airport, cargo operations were two percent of activity, and general aviation operations were less than one percent of the activity.

The Airport has four air carrier runways, one of which is the longest in the Region at 14,572 feet, and can accommodate the largest aircraft in the fleet serving long-haul destinations throughout the world. The Airport has seven terminals with more than 123 aircraft gates serving the terminals. JFK serves almost two-thirds of the region's international passengers and approximately 135 airlines operate at the Airport.

The Port Authority's forecast used in the *Environmental Assessment Terminals 3 and 4 Redevelopment Project John F. Kennedy International Airport,* projects that the New York/New Jersey Region will experience 2.7 percent annual growth in aircraft movements through 2019, with JFK experiencing 2.8 percent annual growth in aircraft movements. Passenger levels at JFK are expected to reach approximately 62.1 million by 2019. Aircraft operations at JFK are expected to increase to 569,597 in 2019. This growth is forecast to occur with or without the T3 Airfield Project or the larger Modernization and Redevelopment program. To some degree, JFK's forecast growth may be attributable to capacity limitations at other airports in the Region, in particular LaGuardia Airport (LGA). LGA has a perimeter rule constraining non-stop flights to no more than 1,500 miles and does not have the

facilities to process international flights. These limitations at LGA create a unique demand for long-haul and international passenger demand that must be served by JFK.

The T3 Airfield Project makes a Significant Contribution in the following categories:

1. **Congestion: The new parking positions and improved taxi lanes and throats associated with the T3 Airfield Project will enable carriers at JFK to handle increased passenger demand more efficiently. It will provide new remote aircraft parking positions that are both closer to contact gate positions and capable of handling larger aircraft. This will enhance capacity, reduce congestion on the airfield, and decrease delays.**

   The aprons associated with Terminal 3 and 4 are currently congested during peak periods. This congestion causes delays and increases controller workload. Moreover, as passenger levels and aircraft movements increase over time (as is projected by the Port Authority and the FAA), periods of congestion will increase in duration and severity, further exacerbating delays and putting greater stress on the safe and efficient operation of the Airport.

   The expanded ramp and aircraft parking positions resulting from the demolition of Terminal 3 may be used to hold aircraft for metered taxi and take-off, and to give delayed aircraft a safe and convenient place to hold that does not obstruct taxiways. This allows other aircraft that are not delayed to continue to taxi to the runway for scheduled departures, thereby reducing airside delays/taxi times and associated costs while enhancing operational efficiency. The new aircraft parking positions will provide airlines at the Airport with more centrally located hardstand parking positions, which reduces the need for extended aircraft towing operations and taxiing from remote hardstands between Terminal 1, Terminal 2, Terminal 3, and Terminal 4 to parking positions closer to where passenger loading occurs. The T3 Airfield Project will allow for more efficient aircraft ground operations, translating into less terminal area congestion, less apron congestion, and greater operational flexibility.

   The growth in passenger demand expected by the Port Authority and the FAA for the NY Region and at JFK, specifically, will occur with or without the T3 Airfield Project. The Port Authority needs to meet the demand with improved infrastructure to maximize safety and efficiency, reduce congestion, and improve customer service levels. The current Terminal 3 airside layout is limited by the terminal building layout and infrastructure that was designed in 1960 for first generation, narrow-body (707, DC-8) jet aircraft operating at that time. Based on its outmoded design, Terminal 3 is significantly deficient in all aspects necessary to serve modern wide-body aircraft. The current building and available ramp space does not provide the flexibility to park aircraft of varying size in the same area to support the current flight schedule. As a result, space

becomes a restriction that significantly affects the use of gates and wide-body aircraft access, which reduces the operational efficiency of the Terminal 3 apron.

The Terminal 3 Airfield Project will provide the infrastructure capable of handling varying aircraft types in the current JFK fleet, which cannot be accommodated at the existing site. The existing site has eight Group IV remote parking positions as currently configured; the positions are currently used for aircraft parking and passenger loading/unloading via a bussing operation. Historically, Delta had frequently offered the parking positions to other carriers during periods when they were not in use. Since 2006, these positions have been used exclusively by Delta and its regional partners. Currently, there are three metering positions at "throat" locations in proximity to the Terminal 3 leasehold (at the throats of Taxilanes KF/KG, LA, & LL).

The Project will provide for the construction of aircraft parking positions that will support Group IV and Group V aircraft operations as needed and will provide for less congestion on the taxi lanes and taxiways around the Terminal 3 site. It is anticipated that the apron will be configured for seven Group IV and nine Group V aircraft, for a total of 16 hardstand positions. As part of the 16 hardstand positions, three of those positions will be designated as metering positions during SWAP days and IROPs, each capable of accommodating Group V aircraft.

These three positions will function similar to the existing metering positions currently in use at JFK. The three positions allow departing and arriving aircraft a place to temporarily park while waiting for a departure slot or waiting for a gate position. This allows aircraft to exit the taxiway system and allow non-delayed aircraft to access the runways or terminal area. The positions will be common use as part of the metering program only during SWAP days and IROPs. When SWAP/IROPs are not in effect, each of the 16 parking positions will be available to carriers in the JFK airport community subject to the preferential use provisions of the T3 Space Permit as described above.

The availability, allocation and use of the three hardstand positions will be determined by the T3 Hardstand Manager in cooperation with ATC and airline operations staff at JFK and subject to the T3 parking permit. The Port Authority, the appointed T3 Hardstand Manager and Delta Air Lines are currently developing a management plan that will dictate the specific procedures to be followed in determining how each of these three positions will be utilized; as mentioned at the consultation meetings, the working group will provide regular updates to and solicit input from the air carriers on the management plan as it advances. Metering is expected to be the primary use of the three designated positions during SWAP days and IROPs; however, to the extent they are not scheduled for use as part of the metering program, it is anticipated that they would be made available for use as aircraft parking positions subject to the

applicable T3 Parking Fee. The benefits of the three new metering positions on the Terminal 3 apron are:

- **Reduction in arrival delays and taxi distances for arrivals without an available gate;**
- **Increase in operational efficiency of the airfield as arrivals without an available gate can access the terminal area and do not have to be staged somewhere on the taxiway or runway system. This can be particularly beneficial during severe weather conditions, when FAA ATCT has to switch between runway operating configurations in order to adapt to the weather changes; and**
- **Reduction in FAA ATCT controller workload as a result of the ability for arrivals without an open gate to access the terminal area more quickly, thus enhancing overall efficiency at the airport.**

In order to accurately project the effect the T3 Airfield Project will have on the Airport once completed, an airfield simulation modeling analysis was constructed. The analysis was performed using Jeppesen's Total Airspace and Airport Modeler (TAAM, Version V2011.2.0, Release 16). Nine different scenarios were produced, representative of different runway operating configurations and weather conditions. These configurations represent approximately 90 percent of all activity at JFK during a typical year. Validation of the models and throughput numbers was done through meetings with JFK ATC, Port Authority Aviation Planning, JFK operations, and local FAA staff. FAA Aviation System Performance Metrics (ASPM) data was used for the purposes of calibrating the model.

The model expects that demand for the T3 hardstands (and at the airport overall) will be somewhat reduced in the future due to the completion of several projects expected to add physical gates at the airport. Regardless, the benefits of the project manifest themselves in 1) the replacement of eight exclusive use positions with sixteen preferential use positions convenient to all carriers at the airport, particularly those in the southern and eastern quadrants and 2) the addition of three common use metering positions during SWAP/IROPs conditions when delay is at its most severe.

The TAAM results show that the airfield improvements of the T3 Airfield project are expected to contribute to a reduction of arrival and departure delays at the airport, particularly during conditions of limited visibility or high winds when delays are more severe. The TAAM results demonstrate that these improvements will result in a benefit to all carriers as the project mainly contributes to reduced gate hold delays because of the new parking spots at the T3 site.

All Carrier Travel Times (minutes per flight)

Configurations	Travel Times (in minutes per flight) Existing	With Project	*Project Benefit*
VFR 31L/31R switch to 4L/4R/31L			
Average Departure Time	**30.3**	**28.98**	***1.32***
Average Arrival Time	**6.46**	**5.87**	***0.58***
VFR 31L/31R All Day			
Average Departure Time	**44.63**	**38.35**	***6.29***
Average Arrival Time	**5.84**	**5.49**	***0.35***
VFR 31L/31R, IFR 31L/31R Evening			
Average Departure Time	**49.39**	**43.63**	***5.76***
Average Arrival Time	**6.23**	**5.96**	***0.26***
VFR 31L/31R All Day - With Metering			
Average Departure Time	**43.07**	**40.10**	***2.97***
Average Arrival Time	**5.97**	**5.56**	***0.40***
VFR 31L/31R, IFR 31L/31R Evening -With Metering			
Average Departure Time	**50.15**	**43.85**	***6.3***
Average Arrival Time	**6.26**	**5.72**	***0.55***

2. Safety:

The current number and location of hardstand parking positions in the central terminal area is limited and therefore requires a significant amount of aircraft taxi and tow operations between contact gates and remote parking positions. The T3 Airfield Project improves safety by reducing excess aircraft towing operations on the airfield and reducing the level of ground vehicle activity across and on aprons, taxiways, and taxi lanes around Terminal 4. The project will also allow for more efficient aircraft operations airport-wide since it provides additional parking positions off the active taxiways and taxi lanes closer to the terminals, resulting in improved safety. There are currently 15 metering positions located in aircraft movement areas at JFK, and 14 of those on taxiways. More than half of these taxiway are continually occupied by aircraft on a typical day at JFK; during SWAPs and IROPs scenarios, it is not uncommon for all of the taxiway metering positions to be continually occupied.

The additional aircraft parking positions at the Terminal 3 site will be closer to most of JFK's terminals than some of the current remote parking positions, allowing for a significant reduction in average tow/taxi time and increasing safety by reducing the chance of an airfield incursion. There has been one runway incursion at JFK that involved an aircraft being towed.

A reduction in FAA ATCT controller workload is also anticipated as a result of the ability for arrivals without an open gate to access the terminal area more quickly, thus enhancing overall safety at the airport.

The project would reduce the number of towing operations due to the reduction in departure gate hold delays. Gates availability would increase, reducing the

need to tow aircraft off the gates and to remote parking areas. The total reduction of daily towing operations for all carriers after project implementation ranges from 6 to 40, depending on airfield configuration. Total daily towing times for all carriers demonstrate a savings of six to over nine hours a day.

Towing Counts per Day for All Carriers

Configurations	Existing	With Project	*Project Benefit*
VFR 31L/31R switch to 4L/4R/31L	160	120	*40*
VFR 31L/31R all Day	160	146	*14*
VFR 31L/31R, IFR 31L/31R Evening	152	146	*6*
VFR 31L/31R All Day - With Metering	162	148	*14*
VFR 31L/31R, IFR 31L/31R Evening - With Metering	152	146	*6*

Total Daily Towing Time for All Carriers (minutes)

Configurations	Existing	With Project	*Project Benefit*
VFR 31L/31R switch to 4L/4R/31L	1,843.2	1,254.45	*588.75*
VFR 31L/31R all Day	1,502.6	1,115.13	*387.47*
VFR 31L/31R, IFR 31L/31R Evening	1,639.05	1,123.03	*516.02*
VFR 31L/31R All Day - With Metering	1,650.72	1,123.45	*527.27*
VFR 31L/31R, IFR 31L/31R Evening - With Metering	1,696.98	1,125.92	*571.06*

3. **Competition:**

The T3 Airfield Project provides all carriers with the opportunity to access additional hardstands, thus enhancing competition among JFK airlines. The T3 Site will be available to Delta Air Lines and its affiliate carriers on a preferential use basis in accordance with the terms of the T3 Site Permit between Delta Air Lines and the Port Authority. The sections of the T3 Site Permit relevant to the use and lease provisions of the parking positions were transmitted to the FAA for its review in the first half of 2011. The Permit requires that any positions not being used by Delta Air Lines or its affiliate carriers under its preferential rights will be made available to other carriers by the Terminal 3 Hardstand Manager (first to Terminal 4 carriers due to proximity of their operations to the site, then to all other carriers). As required by the T3 Site Permit, the Terminal 3 Hardstand Manager will have a responsibility to the Port Authority to allocate the positions at the T3 site, using its expertise in airport and gate management, based on a review of Delta's published flight schedules in comparison with its proposed requirement for T3 parking positions, with the goal of ensuring the maximum and most efficient utilization of the parking positions.

The Project results in a net increase in the total number of parking positions available to carriers on common or preferential use basis. The project will also provide for three hardstand positions that are available for use by all carriers and ATC as needed during SWAP days and IROPs.

The following is a list of the 33 carriers that currently operate out of Terminal 4:

Aer Lingus	**COPA**	**Lacsa Airlines**	**TAM**
Aerosvit	**Delta**	**LOT Polish**	**Transaero**
Air Europa	**Egypt Air**	**Pakistan**	**Uzbekistan**
Air India	**El Al**	**Singapore**	**Virgin America**
Airk Air	**Emirates**	**Sky King**	**Virgin Atlantic**
Asiana Airlines	**Etihad**	**South African**	**XL Airways France**
Avianca	**Jet Blue**	**Sun Country**	
Caribbean Air	**KLM**	**Swiss Air**	
China Airlines	**Kuwait**	**Taca Int'l Air**	

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__ Air safety. Part 139 [ ] Other (explain)

_____

Certification Inspector concur. Yes [ ] No [ ] Date _____

__ Air security. Part 107 [ ] Part 108 [ ] Other (explain)

_____

CASFO concur. Yes [ ] No [ ] Date _____

__ Competition. Competition Plan [ ] Other (explain)

_____

__ Congestion. Current [ ] or Anticipated [ ]

LOI [ ] FAA BCA [ ] FAA Airport Capacity Enhancement Plan [ ]

Other (explain) _____

__ Noise. 65 LDN [ ] Other (explain) _____

__ Project does not qualify under "significant contribution " rules.

Quantitative and qualitative analysis of significant contribution option chosen by public agency. If analysis is based on a source other than this PFC application, list the source(s) of data and attach the relevant documentation used to make this finding.

How does this project address the deficiency sited by the public agency?

If competition is the chosen option, provide the FAA's analysis of any barriers to competition at the airport.

10. Project Objective:

As noted in the Significant Contribution section, the T3 Airfield Project will contribute to three PFC objectives:

1. **Enhance Capacity: TAAM results show that the new parking positions and improved taxi lanes and throats associated with the T3 Airfield Project will enable carriers at JFK to handle increased passenger demand as the project will contribute to reducing of arrival and departure delays at the airport,**

particularly during conditions of limited visibility or high winds when delays are more severe. The improvements will result in a benefit to all carriers as the new parking spots at the T3 site contribute to reducing gate hold delays across the airport.

2. **Enhance Safety: The T3 Airfield Project will improve safety by reducing excess aircraft movements on the airfield and reducing the level of ground vehicle activity across and on aprons, taxiways, and taxi lanes around Terminal 4. The project will also enhance safety by providing additional parking positions off of active taxiways. There are currently 15 metering positions located in aircraft movement areas at JFK, and 14 of those on taxiways. More than half of these taxiway are continually occupied by aircraft on a typical day at JFK; during SWAPs and IROPs scenarios, it is not uncommon for all of the taxiway metering positions to be continually occupied.**

3. **Furnish Opportunity for Enhanced Competition: The T3 Airfield Project will provide all carriers with the opportunity to access additional hardstands (subject to the preferential use provisions in the T3 Site Permit). The project results in a net increase in the total number of parking positions at the airport available to carriers on common or preferential use basis, thus enhancing competition among JFK airlines. The project will also provide for three hardstand positions that are available for use by all carriers and ATC as needed during SWAP days and IROPs.**

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__ Safety, Preserve [ ] Enhance [ ]
__ Security, Preserve [ ] Enhance [ ]
__ Capacity, Preserve [ ] Enhance [ ]
__ Furnish opportunity for enhanced competition between or among air carriers at the airport
__ Mitigate noise impacts resulting from aircraft operations at the airport
__ Project does not meet any PFC objectives (explain)

Finding
Current deficiency. List the source(s) of data used to make this finding if it is not a part of the PFC application.

Address adequacy of issues.

11. Project Justification:

FAA statistics for 2011 ranked JFK as the 3rd most delayed airport in the nation in terms of average delay per aircraft operation. Due to the nature of airline activity at JFK, delays originating here tend to propagate throughout the entire NAS. In 2008, as an attempt to limit delays, the U.S. Department of Transportation imposed an hourly operational limitation on operations at JFK to 81-flights-per-hour per 16-

hour period. However, as demonstrated above, even with the operational caps, the level of delay at JFK remains significant by all measures. These delay figures show there is significant need to modernize and optimize the Airport, and this project aims to modernize the Terminal 3/Terminal 4 envelope. Terminal 3 has a functionally obsolete layout and the aircraft apron within the envelope is not adequate to meet the demands of the passengers and airlines at JFK.

Terminal 3 at JFK, formerly known as the Pan Am Terminal, was built in 1960 and is functionally obsolete from modern aircraft operation, security, access, and passenger service perspectives. Terminal 3 has 16 aircraft gates and currently serves as a principal international gateway for Delta Air Lines.

Due to its aged infrastructure, Terminal 3 is expensive and difficult to maintain and lacks check-in, security, and other facilities capable of efficiently handling an international hub operation or adequately meeting passenger needs. Local and connecting passengers are inconvenienced by the inefficient layout and dated facilities of the terminal. In order for Terminal 3 to operate at an efficient level and provide adequate capacity, facilities would need to be modernized to increase passenger handling capacity, enhance security and safety, improve passenger level of convenience, and reduce congestion.

Over the years, several attempts have been made to refurbish and modernize Terminal 3. Since 2008, $17 million has been invested on repairs and renovations to maintain Terminal 3 in its current condition. However, because of the building's age, irregular shape, and site constraints, these efforts have only resulted in modest improvements and have largely not been successful in providing the passenger processing capacity or providing the level of customer service expected in a modern international terminal.

Similar to the functionally obsolescent passenger terminal, Terminal 3's airside layout is constrained by the terminal's apron configuration. The layout was designed in 1960 for the aircraft operating at that time. The apron layout has a gate design intended to accommodate early-generation, narrow-body (707, DC-8) jet aircraft. The existing gates are limited to fewer types of aircraft, with only a few gates capable of handling Group V aircraft. The remaining gates can only serve Group III and smaller Group IV aircraft. This restriction severely limits the airline's ability to match aircraft gauge with passenger demands for a particular route and when larger aircraft are introduced at the terminal, some gates are unusable due to space limitations.

The Terminal 3 apron layout cannot efficiently accommodate modern wide-body aircraft due to the irregular shape of the existing terminal and and related site constraints. Also, the apron between Terminal 3 and Terminal 4 is not adequately sized for simultaneous operation of aircraft and ground vehicle movements. This contributes to ground delays that affect all aircraft movements at the Airport.

As previously described, TAAM analysis was conducted in order to model the effect the T3 Airfield Project will have on the Airport once the project is completed. A summary of the TAAM analysis results are shown in the table below (TAAM analysis utilized Peak Month Average Weekday):

Total Daily Savings (in Hours)

	Delta	IAT	Other	Total
Without Metering				
VFR 31L/31R switch to 4L/4R/31L	15.83	7.22	9.05	32.11
VFR 31L/31R All Day	50.64	12.96	18.05	81.65
VFR 1L/31R, IFR 31L/31R Evening	50.56	-1.66	28.70	77.61
With Metering				
VFR 31L/31R All Day	39.09	1.56	6.88	47.53
VFR 31L/31R, IFR 31L/31R Evening	34.64	6.76	48.10	89.50

These results demonstrate the total daily savings in hours of travel time and towing times. It demonstrates that the benefits of the T3 Airfield Project will be realized by all carriers at JFK. The TAAM analysis shows that the project achieves these reductions in overall congestion at the Airport by reducing aircraft congestion on taxiways and ramps, providing more closely located and easily accessible remote parking positions for long ground time aircraft, providing a large aircraft holding apron for inbound aircraft that do not have an available gate, and providing a more closely located and easily accessible holding apron for outbound aircraft that incur a metering delay off the gate. The T3 Airfield Project also provides additional benefits not quantified by the TAAM analysis. The T3 Airfield Project enhances capacity by creating new aircraft parking positions capable of handling larger aircraft (Group IV and Group V) than T3 can currently accommodate.

The proposed airfield and taxi lane reconfiguration, in addition to improving airfield efficiency and capacity, provides additional safety by eliminating the narrow taxi lane and apron areas present in the current Terminal 3/Terminal 4 envelope. The reduction in average time of aircraft on the airfield and the addition of extra parking positions and metering positions off of active taxiways will again increase overall airport safety levels by reducing the workload of air traffic control.

The T3 Airfield Project provides all carriers with the opportunity to access additional hardstands, thus enhancing competition among JFK airlines. The T3 Site will be available to Delta Air Lines and its affiliate carriers on a preferential use basis in accordance with the terms of the T3 Site Permit between Delta Air Lines and the Port Authority. The sections of the T3 Site Permit relevant to the use and lease provisions of the parking positions were transmitted to the FAA for its review in the first half of 2011.

The Permit requires that any positions not being used by Delta Air Lines or its affiliate carriers under its preferential rights will be made available to other carriers by the Terminal 3 Hardstand Manager (first to Terminal 4 carriers due to proximity of their operations to the site, then to all other carriers). As required by the T3 Site Permit, the Terminal 3 Hardstand Manager will have a responsibility to

the Port Authority to allocate the positions at the T3 site, using its expertise in airport and gate management, based on a review of Delta's published flight schedules in comparison with its proposed requirement for T3 parking positions, with the goal of ensuring the maximum and most efficient utilization of the parking positions.

The Project results in a net increase in the total number of parking positions available to carriers on common or preferential use basis. The project will also provide for three hardstand positions that are available for use by all carriers and ATC as needed during SWAP days and IROPs.

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Define how the project accomplishes PFC Objective(s)

Explain how project is cost-effective compared to other reasonable and timely means to accomplish this objective(s)

Based on informed opinion or published FAA guidance, specify how the cost of the project is reasonable compared to the capacity, safety, security, noise and/or competition benefits attributable to the project. Include citation for any documents that are not a part of this PFC application.

If analysis is based on a source other than this PFC application, list the source(s) of data and attach the relevant documentation used to make this finding.

Discuss any non-economical benefits which are not captured above.

Project Eligibility:
Indicate project eligibility by checking the appropriate category below.
[ ] Development eligible under AIP criteria (paragraph ___ of Order 5100.38_ or PGL ____);
[ ] Planning eligible under AIP criteria (paragraph ___ of Order 5100.38_ or PGL ____);
[ ] Noise compatibility planning as described in 49 U.S.C. 47505;
[ ] Noise compatibility measures eligible under 49 U.S.C. 47504.
[ ] Project approved in an approved Part 150 noise compatibility plan;
Title and Date of Part 150:
[ ] Project included in a local study.
Title and Date of local study:
[ ] Terminal development as described in 49 U.S.C. 40117(a)(3)(C);
[ ] Shell of a gate as described in 49 U.S.C 40117(a)(3)(F) (air carrier _____, percentage of annual boardings _____);
[ ] PFC Program Update Letter _____
[ ] Project does not meet PFC eligibility (explain).

If analysis is based on a source other than this PFC application, list the source(s) of data and attach the relevant documentation used to make this finding.

Are any work elements or portions of the overall project ineligible? Provide associated costs.

12. Estimated Project Implementation Date (Month and Year): **October 2010**
Estimated Project Completion Date (Month and Year): **May 2015**

Construction of Taxiways "KF", "KG", Taxilane "HB", and the ramp on the former T3 site are nearing completion.

For FAA Use
For Impose and Use or Use Only projects, will the project begin within 2 years of PFC application Due date (120-day)?
[ ] Yes
[ ] No

For Impose Only project, will the project begin within 5 years of the charge effective date or PFC application Due date, whichever is first?
[ ] Yes
[ ] No

Is this project dependent upon another action to occur before its implementation or completion. Explain.

13. For an Impose Only project, estimated date Use application will be submitted to the FAA (Month and Year): **N/A**

For FAA Use
Is the date within 3 years of the estimated charge effective date or approval date, whichever is sooner.
[ ] Yes
[ ] No

Which actions are needed before the use application can be submitted? What is the estimated schedule for each action?

14. Project requesting PFC funding levels of $4.00 and $4.50:
a. Can project costs be paid for from funds reasonably expected to be available through AIP funding.
[ ] YES
[X] NO

b. If the FAA determines that the project may qualify for AIP funding, would the public agency prefer that the FAA approve

[X] the amount of the local match to be collected at a $4.50 PFC level, or
[ ] the entire requested amount at a $3.00 PFC level.

c. Terminal and surface transportation projects. The public agency has made adequate provision for financing the airside needs of the airport, including runways, taxiways, aprons, and aircraft gates.
[X] YES
[ ] NO
[ ] N/A

15. List of Carriers Certifying Agreement: **Delta, United/Continental**

List of Carriers Certifying Disagreement: **Japan Airlines (JAL) and Lufthansa**

Recap of Disagreements: **Lufthansa and JAL disagreed on the grounds that Terminal 3 is currently subject to an exclusive long-term lease by Delta Air Lines.**

JAL also disagreed that the project achieves the objective of enhancing competition since the 16 new hard stand positions will be available only when Delta Air Lines (and its affiliates) are not using them. JAL feels the claim is invalid because there is no specific provision allocating the three hard stand positions identified in the application for use by other airlines during SWAP and IROP situations.

Public Agency Reasons for Proceeding:

The disagreements certified by the submitting airlines do not disprove any of the Port Authority's claims regarding the PFC objectives the T3 Airfield project will achieve, nor do they counter the results of the analysis performed in support of these claims. As mentioned above, the Project will satisfy three PFC objectives:

1. **Enhance Capacity: TAAM results show that the new parking positions and improved taxi lanes and throats associated with the T3 Airfield Project will enable carriers at JFK to handle increased passenger demand as the project will contribute to reducing of arrival and departure delays at the airport, particularly during conditions of limited visibility or high winds when delays are more severe. The improvements will result in a benefit to all carriers as the new parking spots at the T3 site contribute to reducing gate hold delays across the airport.**

2. **Enhance Safety: The T3 Airfield Project will improve safety by reducing excess aircraft movements on the airfield and reducing the level of ground vehicle activity across and on aprons, taxiways, and taxi lanes around Terminal 4. The project will also enhance safety provide additional parking positions off of active taxiways.**

3. **Furnish Opportunity for Enhanced Competition: The T3 Airfield Project will provide all carriers with the opportunity to access additional hardstands**

(subject to the preferential use provisions in the T3 Site Permit). The project results in a net increase in the total number of parking positions available to carriers on common or preferential use basis, thus enhancing competition among JFK airlines.

As discussed in the draft Attachment B provided to the carriers as well as at the air carrier consultation meetings on November 29th at EWR and December 14th at JFK, the hardstands on the T3 Site will be available to Delta Air Lines and its affiliate carriers on a preferential use basis in accordance with the terms of the T3 Site Permit between Delta Air Lines and the Port Authority that becomes effective upon the completion of the JFK Terminal 3 Site Redevelopment & Capacity Improvements Project, replacing the current exclusive use lease Delta currently has for the site. The Permit requires that any positions not being used by Delta Air Lines or its affiliate carriers under its preferential rights will be made available to other carriers by the Terminal 3 Hardstand Manager (first to Terminal 4 carriers due to proximity of their operations to the site, then to all other carriers). Full details on the preferential use provisions can be found in Section 7.I of the Special Endorsements to the Terminal 3 Site Permit (which is not attached to this PFC Application but has been provided to the FAA for its reference). Since neither the T3 Site (nor the hardstand positions thereon) will be "subject to an exclusive long-term lease or use agreement", funding for the Project meets the eligibility requirements found in 49usc40117 and the PFC Program Assurances pertaining to use and lease agreements.

Of the 16 hardstand positions on the T3 site, three positions capable of accommodating Group V aircraft will be designated for common use when the metering program is in effect and during SWAP days or IROPS situations. These three positions will function similar to the existing metering positions currently in use at JFK. The three positions allow departing and arriving aircraft a place to temporarily park while waiting for a departure slot or waiting for a gate position. This allows aircraft to exit the taxiway system and allow non-delayed aircraft to access the runways or terminal area. The three metering positions will be common use only when SWAP/IROPs are in effect. The rest of the positions will be available to all carriers in the JFK airport community subject to the preferential use provisions described above.

The availability, allocation and use of the three hardstand positions will be determined by the T3 Hardstand Manager in cooperation with ATC and airline operations staff at JFK. The Port Authority, the appointed T3 Hardstand Manager and Delta Air Lines are currently developing a management plan that will dictate the specific procedures to be followed in determining how each of these three positions will be utilized; as mentioned at the consultation meetings, the working group will provide regular updates to and solicit input from the air carriers on the management plan as it advances. The primary use of the three designated positions is expected to be temporary aircraft parking as part of the metering program when SWAP or IROPs is in effect.

16. List of Comments Received from the Public Notice: **None**

List of Parties Certifying Agreement: **N/A**
Recap of Disagreements: Public Agency Reasons for Proceeding: **N/A**

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Provide an analysis of each issue/disagreement raised by the air carriers and/or the public. Provide citations for any documents not included in the PFC application that are relied on by the FAA for its analysis.

If a Federal Register notice is published, discuss and analyze any new issues raised. (If the comments from the consultation are repeated, state that.)

ADO/RO Recommendation:
Does the ADO/RO find the total costs of this project to be reasonable? Did the ADO/RO use comparable projects to make this finding? If so, list projects.

If the amount requested if over $10 million, was the level of detail sufficient to identify eligible and ineligible costs. Summarize ineligible costs.

Is the duration of collection adequate for the amount requested?

ADO/RO RECOMMENDATION:
[ ] Approve.

[ ] Partially Approve. Summarize findings from earlier in the Attachment B discussing issues that lead to determination.

[ ] Disapprove. Summarize findings from earlier in the Attachment B discussing issues that lead to determination.

Application Reviewed by:

Name	Routing Symbol	Date
Item(s) reviewed.		
Name	Routing Symbol	Date
Item(s) reviewed		

Terminal 3 Redevelopment & Capacity Improvements Project (PFC-Funded)

Terminal 3/4 Modernization & Redevelopment Program

THE PORT AUTHORITY OF NY & NJ

John F. Kennedy International Airport
PFC Project Cost Estimate Functional Breakdown

Project: JFK Terminal 3 Site Redevelopment & Capacity Improvements Project

Summary Cost Estimate

COST ELEMENT		COSTS
1. TERMINAL 3 SITE WORK & PAVING		$87,300,570
2. TERMINAL 3 AIRSIDE & DEMOLITIONS		$39,222,409
3. TERMINAL 3 UTILITIES		$18,807,147
4. TERMINAL 3 BUILDING DEMOLITION REMEDIATION		$9,527,739
5. THROATS K/KK H AND THROAT EXTENSIONS		$30,406,663
6. PROGRAM MANAGEMENT		$29,735,471
TOTAL PROJECT PFC COST		$215,000,000

Detailed Cost Estimate

COST ELEMENT		COSTS
1. TERMINAL 3 SITE WORK & PAVING		
General Conditions - Allocation		**$6,245,669**
General Conditions - Allocation		$6,245,669
Site Work: T3 Basement Excavations (overburden)		**$605,766**
Excavating, bulk, dozer, open site, bank measure, common earth, compaction, and dewatering		$605,766
T3 Basement Imported Fill		**$3,422,980**
Borrow, common earth, 5 C.Y. bucket, loading, front end loader, wheel-mounted; Includes Material		$619,760
Cycle hauling(wait, load,travel, unload or dump & return) time per cycle, excavated or borrow, loose cubic yards, 25 min load/wait/unload, 12 CY truck, cycle 20 miles, 40 MPH, excludes loading equipment		$2,803,220
T3 Basement Compaction		**$865,855**
Fill, dumped material, spread, by dozer, excludes compaction		$496,305
Compaction, structural, common fill, 8" lifts, sheepsfoot or wobbly wheel roller		$369,550
High Mast Lighting		**$385,106**
High Mast Light poles, incl. roadway area, anchor base, aluminum, 100' high, foundations		$385,106
Refurbishments at Terminal Roadways T-3 Frontage Road		**$745,396**
General Site Improvements		$745,396
Fence, Chain Link Industrial		**$215,997**
Fence, chain link industrial, galvanized steel, 6 ga. wire, 2" posts @ 10' OC, 8' high, gates, concrete security barriers		$215,997
Paving & Surfacing: Type 2 West Taxiway		**$34,376,212**
Process Sub base Course, Bituminous sub base, prime coat, tack coat		$11,760,006
Undercut Excavation and Hauling		$17,861,222
Scarify and Compact		$254,092
30" Crushed Stone Base		$4,500,891
Pavement Markings		**$148,341**
Thermoplastic Striping - Prep/Zipper Road/Lead Up Lines/Apron		$148,341
Saw Cut Grooving		**$26,763**
Saw Cut Grooving		$26,763
Refurbish Remaining Lease Line		**$18,930,850**
Process Sub base Course, Bituminous sub base, prime coat, tack coat		$6,476,191
Undercut Excavation and Hauling		$9,836,108
Scarify and Compact		$139,928
30" Crushed Stone Base		$2,478,624
Drainage & Containment		**$21,331,637**
Storm Drainage Catch Basins, public storm utility drainage piping; footing, excavation, backfill, compaction, frame and cover		$2,688,128
Owners Allowance - unknown underground conditions, building disconnects, and required modifications		$18,643,508
TOTAL TERMINAL 3 SITE WORK & PAVING COST		**$87,300,570**

2. TERMINAL 3 AIRSIDE & DEMOLITIONS		
General Conditions - Allocation		**$4,258,975**
General Conditions - Allocation		$4,258,975
General Construction: Fence, Chain Link Industrial		**$1,084,099**
Fence, chain link industrial, galvanized steel, 8' high, swing gates, security vehicle barriers, jersey barriers		$1,084,099
Site Work: Building Demo		**$28,417,491**
Building demolition, large urban projects, steel, includes 20 mile haul, excludes foundation demolition, dump fees		$4,728,068
Dump Fees and Additional Haul		$18,969,993
Sectional Demo Roof and required scaffolding		$4,719,431
Elevated Roadway Demolition		**$671,564**
Building demolition, large urban projects, steel, includes additional haul, foundation demolition, dump fees		$671,564
Facility Relocation		**$4,790,280**
Facility operations relocations		$2,500,421
Tenantand equipment relocation		$2,289,859
TOTAL TERMINAL 3 AIRSIDE & DEMOLITIONS COST		**$39,222,409**

3. TERMINAL 3 UTILITIES		
General Conditions - Allocation		**$2,267,875**
General Conditions - Allocation		$2,267,875
Site Work: Drainage Structures		**$2,887,235**
Selective demolition, box culvert, drainage structures, and excavations		$2,887,235
Water and Sewer		**$1,871,018**
Selective demolition, water & sewer piping & fittings, fire hydrant extensions, manholes & catch basins, meter pits, excavations and trenching		$1,871,018
Hydrant Fueling		**$2,036,394**
Selective demolition, utility materials, precast utility boxes, up to 8' x 14' x 7'		$432,413
Concrete pressure grouting, cement and sand, 1:1 mix, maximum		$1,603,980
Electrical Ductbanks		**$2,308,330**
Selective demolition, underground electric duct banks, conduit, hand holes, manholes, excavations, trenching, and footings		$2,308,330
Locate Utilities		**$124,466**
Boundary & survey markers, crew for building layout, 3 person crew		$124,466
Cap/Abandon		**$2,437,277**
Cap / Abandon Allowance for existing utility infrastructure		$2,437,277
Other Utilities Allowance		**$4,874,553**
Active utilitiy protection and temp relocations during demolition		$2,437,277
Relocation of Other Utilities (Allowance)		$2,437,277
TOTAL TERMINAL 3 UTILITIES COST		**$18,807,147**

4. TERMINAL 3 BUILDING DEMOLITION REMEDIATION		
General Conditions - Allocation		**$825,685**
General Conditions - Allocation		$825,685
Interior Demolitions: Asbestos Abatement Equipment		**$3,971,663**
Asbestos Abatement Equipment & Supplies		$3,971,663
Preparation of Asbestos Containment Area		**$436,356**
Preparation of asbestos containment area, separation barriers, and decontamination chamber		$436,356
Bulk Asbestos Removal		**$3,370,665**
Bulk Asbestos Removal, duct or AHU insulation, pipe insulation, cementitious material		$3,184,384
Asbestos waste Packaging, Handling & Disposal, collect and bag bulk material, and disposal charges		$186,281
OSHA Testing		$873,860
OSHA Testing, certified technician, personal sampling, sample analysis		$873,860
Decontamination		$49,511
Decontamination of asbestos containment area, spray exposed substrate with surfactant (bridging), remove containment items		$49,511
TOTAL TERMINAL 3 BUILDING DEMOLITION REMEDIATION COST		**$9,527,739**
5. THROATS K/KK H AND THROAT EXTENSIONS		
Taxi-lane HA Extension		**$4,822,003**
Taxi-lane HA Extension Trade Costs		$4,015,059
GC Management Costs		$806,944
Throats K/KK		**$21,166,822**
Throats K/KK Trade Costs		$18,932,450
GC Management Costs		$2,234,372
Construction Contigency		**$4,417,838**
TOTAL THROATS K/KK H AND THROAT EXTENSIONS COST		**$30,406,663**
6. PROGRAM MANAGEMENT		
TOTAL PROGRAM MANAGEMENT COST		**$29,735,471**
TOTAL PROJECT PFC COST		**$215,000,000**

Your reference Our reference/Date
November 23, 2011

VIA FEDERAL EXPRESS
AND EMAIL

Ms. Patty Clark
Senior Advisor for Aviation Policy
225 Park Avenue South, 9th Floor
New York, NY 10003
passengerfacilitycharge@panynj.gov

Re: Draft Application – Passenger Facility Charge Application dated October 28, 2011
Newark Liberty International Airport
John F. Kennedy International Airport
LaGuardia Airport
Stewart International Airport

Dear Ms. Clark:

On behalf of Deutsche Lufthansa AG, we formally acknowledge receipt of the above referenced notice and submit this letter certifying our disagreement and opposition to the Passenger Facility Charge ("PFC") Application as it relates to the Terminal 3 JFK renovations.

The legislatively approved use of a PFC is to "fund FAA-approved projects that enhance safety, security, or capacity; reduce noise; or increase air carrier competition." The PFC as it relates to Terminal 3 seeks to finance the following:

- Asbestos, lead and mercury abatement;
- Terminal 3 demolition;
- New apron paving;
- New taxi lanes and drives; and
- New utility structure, including a new state of the art water treatment facility.

We fail to understand how such projects fall under the purview of the permitted use of PFC funds. Terminal 3 is leased exclusively by an individual air carrier and as such should not be eligible to receive PFC funding. Accordingly, it is respectfully requested that the Passenger Facility Charge Application dated October 28, 2011as it relates to Terminal 3 be denied in all respects.

Thank you for your time on this matter.

Sincerely,

Deutsche Lufthansa AG

David Thomas
Regional Director
Operations and Airport Services
John F Kennedy, Newark, Philadelphia
Boston, Toronto & Montreal

Arthur J. Molins
General Counsel- North America

DELTA

Delta Air Lines, Inc.
Post Office Box 20706
Atlanta, Georgia 30320-6001

1030 Delta Boulevard
Department 877
Atlanta, Georgia 30354
Phone (404) 715-8402
Fax (404) 773-2459
Raymond.J.Moore@delta.com

January 17, 2012

Patty Clark
Senior Advisor for Aviation Policy
Port Authority of New York & New Jersey
233 Park Avenue South, 9th Floor
New York, New York 10003

Dear Ms. Clark:

Pursuant to the provisions of 14 CFR § 158.23, this letter serves as Delta Air Lines, Inc.'s Certification of Agreement or Disagreement with respect to the Port Authority of New York & New Jersey's ("Port Authority") proposed PFC application, as distributed to the Airline Airport Affairs Committee and other airlines serving John F. Kennedy International Airport, LaGuardia Airport, and Newark Liberty International Airport on October 28, 2011 and discussed at the consultation meetings on November 29, 2011 and December 14, 2011.

According to 14 CFR 158, PFC eligible projects must:

(1) Preserve or enhance the safety, security or capacity of the national air transportation system;
(2) Reduce or mitigate noise impacts resulting from an airport; or
(3) Furnish opportunities for increased competition between or among air carriers

In the event specific elements of a proposed project or projects are eliminated or changed prior to the filing by the Port Authority of the PFC application with the FAA, Delta requests that the Port Authority notify Delta of such changes. In addition, please provide Delta with a copy of the Port Authority's PFC application to the FAA.

Delta appreciates the time and efforts by the Port Authority to provide the information necessary in the development of Delta's Certification of Agreement or Disagreement. We appreciate the opportunity to comment on your proposed PFC application.

Sincerely,

Raymond J. Moore

Attachment

cc: File (EWR PFC, JFK PFC, LGA PFC)

DELTA AIR LINES, INC.
COMMENTS AND CERTIFICATION OF AGREEMENT/DISAGREEMENT
PROPOSED PFC
LAGUARDIA AIRPORT

PROJECT: Runway 4 and Runway 31 Safety Area (RSA) Planning, Environmental, and Engineering

Certification: Agreement

PROJECT: Runway 4 and Runway 31 Safety Area (RSA) Construction

Certification: Agreement

PROJECT: Perimeter Intrusion Detection System (PIDS) - Amended

Certification: Agreement

DELTA AIR LINES, INC.
COMMENTS AND CERTIFICATION OF AGREEMENT/DISAGREEMENT
PROPOSED PFC
JOHN F. KENNEDY INTERNATIONAL AIRPORT

PROJECT: Rehabilitation of Runway 4L-22R
Certification: Agreement

PROJECT: Taxiway P Rehabilitation Planning and Engineering

Certification: Agreement

PROJECT: Terminal 3 Site Redevelopment & Capacity Improvements Project

Certification: Agreement

DELTA AIR LINES, INC.
COMMENTS AND CERTIFICATION OF AGREEMENT/DISAGREEMENT
PROPOSED PFC
NEWARK LIBERTY INTERNATIONAL AIRPORT

PROJECT: Delay Reduction Phase II – Planning and Engineering

Certification: Agreement

PROJECT: Delay Reduction Phase II - Construction

Certification: Agreement

PROJECT: Runway 4R-22L Rehabilitation

Certification: Agreement

PROJECT: Taxiway P Rehabilitation Including High-Speed Taxiways

Certification: Agreement

PROJECT: Runway 11 RSA & Relocation of Brewster Road

Certification: Agreement

PROJECT: Electrical Distribution and Substation Improvements

Certification: Agreement

DELTA AIR LINES, INC.
COMMENTS AND CERTIFICATION OF AGREEMENT/DISAGREEMENT
PROPOSED PFC
PFC PLANNING AND PROGRAM ADMINISTRATION

PROJECT: PFC Application for John F. Kennedy, LaGuardia, Newark Liberty, and Stewart Airports

Certification: Agreement

JAPAN AIRLINES

Terminal One, JFK International Airport
Jamaica, NY 11430
Fax: 718-751-1673

January 17, 2012

Ms. Patty Clark
Senior Advisor for Aviation Policy
225 Park Avenue South, 9th Floor
New York, NY 10003
pclark@panynj.gov

RE: Draft Passenger Facility Charge Application and Amendment Dated October 28, 2011
Newark Liberty International Airport
John F. Kennedy International Airport
LaGuardia Airport
Stewart International Airport

Subject: Draft Application for Authority to Impose and Use Passenger Facility Charge Revenue for: Terminal 3 Site Redevelopment & Capacity Improvements Project (CA03-591)

Dear Ms. Clark,

On behalf of Japan Airlines, I formally acknowledge receipt of the above reference Draft Passenger Facility Charge Application and submit this formal certification of disagreement with the proposed project in the above Subject, namely Project CA03-591, for the following reasons.

1. The Terminal 3 Site Redevelopment & Capacity Improvements Project (CA03-591) violates DOT Statute 49usc40117 Passenger Facility Charge, paragraph (f) Limitation on Contracts, Lease, and Use Agreements, subparagraph (2), "A project financed with a passenger facility fee may not be subject to an exclusive long-term lease or use agreement of an air carrier or foreign air carrier, as defined by regulations of the Secretary", as well as the intent of Passenger Facility Charges (PFC) Program Assurances, Paragraph B,
Subparagraph 7.

2. Project CA 03-591 claim of enhanced competition in paragraph 9. Significant Contributions, subparagraph 3, is based solely on hard stand positions which would be made available if/when Delta (and it's affiliates) are not using them. Despite the mention of 3 hard stand positions provided for SWAP and IROPS, there is no specific provision allocating said positions for sole use of other airlines. In fact, Delta's perennial over-allocation of its substantial number of gates must be considered in evaluating the likelihood that any of the hardstands would be available for other airlines.

Thank you for your consideration of this matter.

Yours truly

Joseph Gutierrez
Staff Vice President & Station Manager

UNITED

January 19, 2012

Ms. Patty Clark
Senior Advisor for Aviation Policy
Port Authority of NY & NJ
Aviation Department
225 Park Avenue South, 9th Floor
New York, NY 10003
E-mail: passengerfacilitycharge@panynj.gov

RE: Application to Amend, Impose and Use and Impose Only Passenger Facility Charge PFC Applications:

05-05-C-06 (Proposed Amendment)
12-08-C-00

Dear Ms. Clark:

Pursuant to 14 CFR Part 158, Section 158.123, please accept this letter and the attachment hereto as the written Certification of Agreement and Disagreement from United Air Lines, Inc. and Continental Airlines, Inc. (United/Continental) with respect to the Port Authority of New York and New Jersey's proposed PFC application that was presented at Airline consultation meetings on November 29th and December 14th, 2011.

It is our understanding that PFC eligible projects, by statute, are those projects that preserve or enhance the safety, capacity or security of the national air transportation system, reduce airport noise or mitigate airport noise impacts or enhance competition among air carriers.

In addition, we interpret the requirement that PFC funded projects also qualify as AIP-eligible projects, mandating that PFC - funded projects be limited to those programs for which an immediate and justifiable need can be demonstrated. Projects that cannot be justified based upon substantiated current need should be eliminated from the proposed PFC application and deferred until a time when the need can be substantiated.

As a consequence, United/Continental cannot recommend for approval those projects, which are based on long term projections of growth or projects that do not fit the criteria established by statute.

In the event specific elements of a proposed project or projects are eliminated or changed prior to the filing by the Airport of the PFC application with the FAA, United/Continental request that the Port Authority of New York and New Jersey notify United/Continental of such changes. Additionally, please provide a copy of the final PFC application to the FAA.

We appreciate the opportunity to comment on this application and look forward to continuing our work with the Port Authority in developing and maintaining airport facilities that will meet the need of the traveling public and the carriers serving New York and New Jersey.

Sincerely,

Jeff Kirkham
Director – Corporate Real Estate
United
77 W. Wacker Dr.
Chicago, IL 60601

See Attachment A

UNITED AIR LINES, INC./CONTINENTAL AIRLINES, INC.
RESPONSE TO PROPOSED PFC APPLICATION AT
PORT AUTHORITY OF NEW YORK & NEW JERSEY
ATTACHMENT A
January 16, 2012

AMENDMENTS TO EXISTING AUTHORITY - 05-05-C-06

Project:	CAO2-231 - Amended
Description:	Perimeter Intrusion Detection System (PIDS)
Proposed Increase:	$28,000,000
Amended Authority:	$1,635,286,059
Certification:	Agreement

IMPOSE AND USE PROJECTS

LGA

Project:	CA02-417
Description:	Runway 4 and Runway 31 RSA Planning, Environmental, Engineering
Authority Requested:	$24,000,000
Certification:	Agreement

Project:	CAO2-417
Description:	Runway 4 and Runway 31 RSA Construction
Authority Requested:	$149,000,000
Certification:	Agreement

JFK

Project:	CA03-168
Description:	Rehabilitation of Runway 4L-22R
Authority Requested:	$150,000,000
Certification:	Agreement

Project:	CA03-172
Description:	Taxiway P Rehabilitation Planning and Engineering
Authority Requested:	$2,000,000
Certification:	Agreement

Project: CA03-591
Description: Terminal 3 Site Redevelopment and Capacity Improvements Project
Authority Requested: $215,000,000
Certification: Agreement
Comments: UA/CO is certifying agreement for this project because we recognize that it technically qualifies under PFC requirements. We recognize also that this project will uniquely support DL's terminal project and provide great benefit to DL's operation. In agreeing, we request that similar consideration be given to future projects throughout the PANYNJ airports and the larger system where PFC requirements are met yet the projects, due to either location or functionality, benefit particular carriers more than others.

EWR

Project: CA04-569
Description: Delay Reduction Phase II – Planning and Engineering
Authority Requested: $5,000,000
Certification: Agreement

Project: CA04-580/581
Description: Delay Reduction Phase II - Construction
Authority Requested: $61,000,000
Certification: Agreement

Project: CA04-454
Description: Runway 4R-22L Rehabilitation
Authority Requested: $46,250,000
Certification: Agreement

Project: CA04-525/522
Description: Taxiway P Rehabilitation including High-Speed Taxiways
Authority Requested: $27,500,000
Certification: Agreement

Project: CA04-455
Description: Runway 4L-22R Rehabilitation
Authority Requested: $46,250,000
Certification: Agreement

Project: CAO4-512
Description: Runway 11 RSA & Relocation of Brewster Road
Authority Requested: $25,000,000
Certification: Agreement

Project: CA04-528/579/539
Description: Electrical Distribution & Substation Improvements

Authority Requested: $70,000,000
Certification: Agreement

PFC PLANNING AND PROGRAM ADMINISTRATION

Project: N/A
Description: PFC Planning and Program Administration
Authority Requested: $1,500,000
Certification: Agreement

This concludes United's/Continental's Certification of Agreement/Disagreement.

LEASE AYC 325

JOHN F. KENNEDY INTERNATIONAL AIRPORT

THE PORT AUTHORITY OF NEW YORK & NEW JERSEY

AND

DELTA AIR LINES, INC.
(The Lessee)

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Exhibit C . . . . . Area IB Abatement Area
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SCHEDULES

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

John F. Kennedy International Airport
Lease No. AYC-325

AGREEMENT OF LEASE

THIS AGREEMENT OF LEASE, made effective as of the first day of January, 1993, by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called "the Port Authority"), a body corporate and politic, established by Compact between the States of New Jersey and New York with the consent of the Congress of the United States of America, and having an office at One World Trade Center, in the Borough of Manhattan, City, County and State of New York, and DELTA AIR LINES, INC. (hereinafter called "the Lessee"), a corporation organized and existing under the laws of the State of Delaware, having an office and place of business at Properties Department-880, 1030 Delta Boulevard, Hartsfield Atlanta International Airport, Atlanta, Georgia 30320-6000, whose representative is John Boatright, its Director, Airport and Corporate Affairs.

WITNESSETH, That:

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

Section 1. <u>Letting</u>

(a) The Port Authority hereby lets to the Lessee and the Lessee hereby hires and takes from the Port Authority at John F. Kennedy International Airport (sometimes hereinafter referred to as "the Airport") in the Borough of Queens, City and State of New York, (i) the land shown in stipple hatch and the land shown in diagonal hatch designated as Area No. 2 and Area No. 3 on the sketch attached hereto hereby made a part hereof and marked "Exhibit A" together with all buildings (including without limitation the building known as Building No. 54), improvements and structures located thereon, and together with the fixtures, improvements and other property of the Port Authority, if any, located therein, thereon or thereunder, the foregoing being hereinafter called "Area IA"; which Area IA has been used and occupied by the Lessee immediately prior to the effective date of

this Agreement under that certain separate Permit issued to the Lessee as the permittee thereunder, bearing Port Authority identification number AYC-174 (hereinafter referred to as the "Prior Permit") and (ii) the land shown in stipple and the land shown in diagonal hatch designated as Area No. 4 and Area No. 5 on Exhibit A together with all buildings (including without limitation the building known as Building No. 53), improvements and structures located thereon, and together with the fixtures, improvements, and other property of the Port Authority, if any, located therein, thereon or thereunder, the foregoing being hereinafter called "Area IB"; which Area IB has been used and occupied by the Lessee immediately prior to the effective date of this Agreement as sublessee under the Prior Sublease as defined in Section 86 hereof; and, with respect to both the foregoing (i) and (ii), all structures (including without limitation the elevated, enclosed bridge and its foundations, supports, utility systems, equipment and appurtenance, as shown specifically in hatch and in stipple on the Exhibit attached hereto, hereby made a part hereof and marked "Exhibit B"), improvements, additions, buildings and facilities located, constructed or installed or to be located, constructed or installed therein in Area IA and Area IB, thereon or thereunder, being hereinafter collectively referred to as "the premises". The parties acknowledge that the premises constitute nonresidential real property.

(b) Except to the extent required for the performance of any of the obligations of the Lessee hereunder nothing contained in this Agreement shall grant to the Lessee any rights whatsoever in the air space above the premises in excess of the limitations described on the Exhibit attached hereto, hereby made a part hereof and marked "Exhibit D".

(c) Subject only to the appropriate written concurrence of the tenants or users as set forth below in this paragraph (c), the strip of land lying along and within the westerly (directions set forth in this paragraph (c) are true) boundary line of the premises (which strip is shown in diagonal hatch and designated Area No. 2 on Exhibit A, together with the corresponding contiguous strip of land lying along and within the easterly boundary of space forming a part of the areas collectively known as Terminal No. 1 (Building No. 55) and immediately abutting on the westerly side of the premises (which strip is shown in cross-hatch and designated Area No. 1 on Exhibit A) shall be subject to a joint and mutual easement for a taxiway to be used jointly by the Lessee and the tenants, occupants and permittees of Terminal No. 1 or by any successors in interest of the Lessee or said persons or sublessees or other occupants or users who, pursuant to Port Authority permission, may occupy or use the premises herein or Terminal 1 and such rights of easement for such taxiway purposes shall continue during the effective periods of the respective agreements covering or which may cover the same.

(d) Subject only to the appropriate written concurrence of the tenants or users as set forth below in this paragraph (d), the strip of land lying along and within the easterly (directions set forth in this paragraph (d) are true) boundary line of the premises (which strip is shown in diagonal hatch and designated Area No. 5 on Exhibit A together with the corresponding contiguous strip of land lying along and within the westerly boundary of space forming a part of the areas collectively known as the West Wing Building and immediately abutting on the easterly side of the premises (which strip is shown in cross-hatch and designated Area No. 6 on Exhibit A) shall be subject to a joint and mutual easement for a taxiway to be used jointly by the Lessee and the tenants, occupants and permittees of the East and West Wing Buildings or the International Arrivals Building or by any successors in interest of the Lessee or said persons or sublessees or other occupants or the Lessee or said persons or sublessees or other occupants or users who, pursuant to Port Authority permission, may occupy or use the premises herein or the East and West Wing Buildings or the International Arrivals Building and such rights of easement for such taxiway purposes shall continue during the effective periods of the respective agreements covering or which may cover the same.

Section 2. <u>Construction by the Lessee</u>

(a) (1) The Lessee hereby agrees to design and construct at its sole cost and expense at the premises the "Phase I Construction Work" as hereinafter defined and the "Phase II Construction Work" as hereinafter defined, all of the foregoing, together with all necessary and appropriate work for the removal of all asbestos from the premises (if required by applicable federal, state or local laws, enactments, resolutions, rules or regulations or the Lessee on its own proposes asbestos removal from the premises, subject to this Agreement and the alteration application as approved by the Port Authority and the Port Authority approves the Lessee's alteration application covering such removal) in connection with, related or incidental to the construction work in accordance with, and without limiting, this Section 2 and Section 7 hereof including the handling, transporting to an off-airport site and disposal thereof in a long-term disposal facility all in a manner satisfactory to the Port Authority, and together with all necessary construction and relocation of paved areas, utility lines, pipes, mains, conduits and other improvements being herein collectively called "the construction work". It is expressly understood and agreed that each of the Phase I Construction Work and the Phase II Construction Work, and including without limitation, all of the work described in the foregoing sentence shall be and form a part of the construction work.

(2) The term "Phase I Construction Work" as used herein shall mean (i) the work described in Exhibit E attached hereto and hereby made a part hereof which is consented to by the Port Authority as hereinafter provided and is performed on or after

the effective date of the Lease, provided, however, that the Phase I Construction Work shall be deemed to include the work identified as and defined as "Sublessee's Flight Center Improvement Work" in the the First Supplemental Agreement to Sublease as hereinafter defined which work is sometimes hereinafter referred to as "Lessee's Initial Flight Center Improvement Work" and further, provided, however, that work and labor and those materials which are personal property including without limitation that personal property title to which shall pass to the Port Authority upon the installation thereof as provided in Section 37 and Exhibit E of the Lease and work, labor and materials set forth in Item (iv) of paragraph (e) of Section 88 of the Lease title to which shall remain in the Lessee shall not be a part of the Phase I Construction Work and, (ii) in the event the amount of the Capital Investment (as defined in Section 88 of the Lease) made by the Lessee in connection with the Phase I Construction Work shall be less than (Ex. 2.a) then the Phase I Construction Work shall include such additional work for the construction of such other structures, improvements, additions, buildings and facilities necessary or appropriate to upgrade, modernize and increase the efficiency and utilization of the premises as may be consented to by the Port Authority as hereinafter provided. It is hereby understood that although not included as part of the Phase I Construction Work, the Capital Investment made in connection with the Phase I Construction Work shall include the amounts described in Items (iii) and (iv) of paragraph (e) of Section 88 of the Lease.

(3) Prior to its submission to the Port Authority of the Lessee's plans and specifications for the "Phase II Construction Work" (as hereinafter defined) the Lessee shall by not later than December 31, 2000 submit to the Port Authority for the Port Authority's consent the Lessee's comprehensive plan for a Capital Investment of not less than an amount equal to the difference obtained by subtracting the Phase I Capital Investment (as defined in Section 88) from the amount of , for the construction of such structures, improvements, additions, buildings and facilities necessary or appropriate to upgrade, modernize and increase the efficiency and utilization of the premises. The work which the Lessee includes in such comprehensive plan which is consented to by the Port Authority and is commenced after the effective date of the Lease, is hereinafter called the "Phase II Construction Work", provided, however, that work, labor and materials set forth in Item (iv) of paragraph (e) of Section 88 of the Lease title to which shall remain in the Lessee shall not be a part of the Phase II Construction Work. Without limiting the terms and provisions of paragraph (a) of Section 88 of the Lease, the fact that the Lessee has submitted a comprehensive plan for the Phase II Construction Work which has been approved by the Port Authority shall not mean or be deemed to mean that the Lessee is obligated to perform the work described in such comprehensive plan. Further, it is hereby understood that although not included as part of the Phase II Construction Work, the Capital Investment made in connection with

the effective date of the Lease, provided, however, that the Phase I Construction Work shall be deemed to include the work identified as and defined as "Sublessee's Flight Center Improvement Work" in the the First Supplemental Agreement to Sublease as hereinafter defined which work is sometimes hereinafter referred to as "Lessee's Initial Flight Center Improvement Work" and further, provided, however, that work and labor and those materials which are personal property including without limitation that personal property title to which shall pass to the Port Authority upon the installation thereof as provided in Section 37 and Exhibit E of the Lease and work, labor and materials set forth in Item (iv) of paragraph (e) of Section 88 of the Lease title to which shall remain in the Lessee shall not be a part of the Phase I Construction Work and, (ii) in the event the amount of the Capital Investment (as defined in Section 88 of the Lease) made by the Lessee in connection with the Phase I Construction Work shall be less than then the Phase I Construction Work shall include such additional work for the construction of such other structures, improvements, additions, buildings and facilities necessary or appropriate to upgrade, modernize and increase the efficiency and utilization of the premises as may be consented to by the Port Authority as hereinafter provided. It is hereby understood that although not included as part of the Phase I Construction Work, the Capital Investment made in connection with the Phase I Construction Work shall include the amounts described in Items (iii) and (iv) of paragraph (e) of Section 88 of the Lease.

(3) Prior to its submission to the Port Authority of the Lessee's plans and specifications for the "Phase II Construction Work" (as hereinafter defined) the Lessee shall by not later than December 31, 2000 submit to the Port Authority for the Port Authority's consent the Lessee's comprehensive plan for a Capital Investment of not less than an amount equal to the difference obtained by subtracting the Phase I Capital Investment (as defined in Section 88) from the amount of for the construction of such structures, improvements, additions, buildings and facilities necessary or appropriate to upgrade, modernize and increase the efficiency and utilization of the premises. The work which the Lessee includes in such comprehensive plan which is consented to by the Port Authority and is commenced after the effective date of the Lease, is hereinafter called the "Phase II Construction Work", provided, however, that work, labor and materials set forth in Item (iv) of paragraph (e) of Section 88 of the Lease title to which shall remain in the Lessee shall not be a part of the Phase II Construction Work. Without limiting the terms and provisions of paragraph (a) of Section 88 of the Lease, the fact that the Lessee has submitted a comprehensive plan for the Phase II Construction Work which has been approved by the Port Authority shall not mean or be deemed to mean that the Lessee is obligated to perform the work described in such comprehensive plan. Further, it is hereby understood that although not included as part of the Phase II Construction Work, the Capital Investment made in connection with

the Phase II Construction Work shall include the amounts described in Item (iv) of paragraph (e) of Section 88 of the Lease.

(4) The Lessee shall keep the comprehensive plan for the Phase I Construction Work and the comprehensive plan for the Phase II Construction Work up to date and shall submit to the Port Authority for its prior approval any amendments, revisions or modifications thereto.

(5) Prior to the commencement of the Phase I Construction Work, the Lessee shall submit to the Port Authority for the Port Authority's approval complete plans and specifications therefor and prior to the commencement of the Phase II Construction Work, the Lessee shall submit to the Port Authority for the Port Authority's approval complete plans and specifications therefor. The Port Authority may refuse to grant approval, if, in its opinion, any of the construction work as set forth in said plans and specifications (all of which shall be in such detail as may reasonably permit the Port Authority to make a determination as to whether the requirements hereinafter referred to are met) shall:

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

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

(iii) Not comply with the Port Authority's requirements with respect to external and interior building materials and finishes of similar existing or future improvements at the Airport, or

(iv) Not provide for sufficient clearances for taxiways, runways and apron areas, or

(v) Be designed for use for purposes other than those authorized under the Agreement, or

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

(vii) Not provide adequate and proper roadways and pedestrian circulation areas, or

(viii) Not comply with the building height limitations in connection with sight line requirements between the existing Control Tower and the public aircraft facilities at the Airport, or

(ix) Not comply with the provisions of the Basic Lease, including without limiting the generality thereof, the provisions of Section 21 of the Basic Lease providing that the Port

Authority will conform to the enactments, ordinances, resolutions and regulations of the City of New York and its various departments, boards and bureaus in regard to 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

(x) Permit aircraft to overhang the boundary of the premises, except when entering or leaving the premises, or

(xi) Be in violation or contravention of any other provisions and terms of the Lease, or

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

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

(xiv) Not comply with the Port Authority's requirements with respect to landscaping, or

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

(xvi) Not comply with the construction limitations set forth in Exhibits A, A-1, A-2 and Exhibit D.

(b) All the construction work shall be done in accordance with the following terms and conditions:

(1) The Lessee hereby assumes the risk of loss or damage to all of the construction work prior to the completion thereof and the risk of loss or damage to all property of the Port Authority arising out of or in connection with the performance of the construction work. In the event of such loss or damage, the Lessee shall forthwith repair, replace and make good the construction work and the property of the Port Authority without cost or expense to the Port Authority. The Lessee shall itself and shall also require its contractors to indemnify and hold harmless the Port Authority, its Commissioners, officers, agents and employees from and against all claims and demands, just or unjust, of third persons (including employees, officers, and agents of the Port Authority) arising or alleged to arise out of the performance of the construction work and for all expenses incurred by it and by them in the defense, settlement or satisfaction thereof, including without limitation thereto, claims and demands for death, for personal injury or for property damage, direct or consequential, whether they arise from the acts or omissions of the Lessee, of any contractors of the Lessee, of the Port Authority, or of third

persons, or from acts of God or of the public enemy, or otherwise (including claims of the City of New York against the Port Authority pursuant to the provisions of the Basic Lease whereby the Port Authority has agreed to indemnify the City against claims), excepting only claims and demands which result solely from affirmative wilful acts done by the Port Authority, its Commissioners, officers, agents and employees with respect to the construction work, provided, however, that the Lessee shall not be required to indemnify the Port Authority where indemnity would be precluded pursuant to the provisions of Section 5-322.1 of the General Obligations Law of the State of New York.

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

(2) Prior to engaging or retaining an architect or architects for the construction work, the name or names of said architect or architects shall be submitted to the Port Authority for its approval. The Port Authority shall have the right to disapprove any architect who may be unacceptable to it. All the construction work shall be done in accordance with plans and specifications to be submitted to and approved by the Port Authority prior to the commencement of the construction work, and until such approval has been obtained the Lessee shall continue to resubmit plans and specifications as required. Upon approval of such plans and specifications by the Port Authority, the Lessee shall proceed diligently at its sole cost and expense to perform the construction work. All the construction work, including workmanship and materials, shall be of first class quality. The Lessee shall redo, replace or construct at its own cost and expense, any construction work not done in accordance with the approved plans and specifications, the provisions of this Section 2 or any further requirements of the Port Authority. The Lessee shall make a Capital Investment of not less than (Ex. 2.a.) with respect to the Phase I Construction Work and shall complete the Phase I Construction Work no later than December 31, 2000. Subject to the terms and provisions of Section 88, the Lessee shall make a Capital Investment of not less than an amount equal to the difference obtained by subtracting the Phase I Capital Investment from the amount of One Hundred Fifty Million Dollars and No Cents ($150,000,000.00) with respect to the Phase II Construction Work and shall complete the Phase II Construction Work no later than December 31, 2012.

(3) Prior to entering into a contract for any part of the construction work, the Lessee shall submit to the Port Authority for its approval the names of the contractors to whom the Lessee proposes to award said contracts. The Port Authority shall have the right to disapprove any contractor who may be unacceptable to it. The Lessee shall include in all such contracts such provisions and conditions as may be reasonably required by the Port Authority. Without limiting the generality of the foregoing all of the Lessee's construction contracts shall provide as follows: "If (i) the Contractor fails to perform any of his obligations under the Contract, including his obligation to the Lessee to pay any claims lawfully made against him by any materialman, subcontractor or workman or other third person which arises out of or in connection with the performance of the Contract or (ii) any claim (just or unjust) which arises out of or in connection with the Contract is made against the Lessee or (iii) any subcontractor under the Contract fails to pay any claims lawfully made against him by any materialman, subcontractor, workman or other third persons which arise out of or in connection with the Contract or if in the Lessee's opinion any of the aforesaid contingencies is likely to arise, then the Lessee shall have the right, in its discretion, to withhold out of any payment (final or otherwise and even though such payments have already been certified as due) such sums as the Lessee may deem amply to protect it against delay or loss or to assume the payment of just claims of third persons, and to apply such sums in such manner as the Lessee may deem proper to secure such protection or satisfy such claims. All sums so applied shall be deducted from the Contractor's compensation. Omission by the Lessee to withhold out of any payment, final or otherwise, a sum for any of the above contingencies, even though such contingency has occurred at the time of such payment, shall not be deemed to indicate that the Lessee does not intend to exercise its right with respect to such contingency. Neither the above provisions for rights of the Lessee to withhold and apply monies nor any exercise, or attempted exercise of, or omission to exercise such rights by the Lessee shall create any obligation of any kind to such materialmen, subcontractors, workmen or other third persons. Until actual payment is made to the Contractor, his right to any amount to be paid under the Contract (even though such amount has already been certified as due) shall be subordinate to the rights of the Lessee under this provision." The Lessee shall file with the Port Authority a copy of each of its contracts with its contractors prior to the start of the construction work covered by that contract.

(4) The Lessee shall furnish or require its architect to furnish a full time resident engineer during the construction work. The Lessee shall require certification by a licensed engineer of all pile driving data and of all controlled concrete work and such other certifications as may be requested by the Port Authority from time to time.

(5) As between the Lessee and the Port Authority, the Lessee agrees to be solely responsible for any plans and

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

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

(7) The Lessee agrees that it 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 specifications of the Port Authority (the receipt of a copy of said specifications prior to the execution of this Lease being hereby acknowledged by the Lessee), and the Lessee shall, during the term of this Lease, keep said drawings current showing thereon any changes or modifications which may be made. (No changes or modifications shall be made without prior Port Authority consent.)

(8) The Lessee shall, if requested by the Port Authority, take all reasonable measures to prevent erosion of the soil and the blowing of sand during the performance of the construction work, including but not limited to the fencing of the premises or portions thereof or other areas and the covering of open areas with asphaltic emulsion or similar materials as the Port Authority may direct.

(9) Any soil, dirt, sand or other matter (hereinafter in this subparagraph (9) collectively called "the matter") excavated by the Lessee during the course of the construction work shall be delivered and deposited by the Lessee at its expense to any location

on the Airport or to any location off the Airport within the Port of New York District as may be designated by the Port Authority, subject to and in accordance with the provisions of Section 83 (c)(2) of the Lease. The entire proceeds, if any, of the sale or other disposition of the matter shall belong to the Port Authority. Notwithstanding the foregoing the Port Authority may elect by prior written notice to the Lessee to waive any rights it may have as 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, subject to and in accordance with Section 83 (c)(2) of the Lease.

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

(11) (i) The Lessee in its own name as insured and including the Port Authority as an additional insured shall procure and maintain Comprehensive General Liability Insurance, including but not limited to premises-operations, products liability, completed operations, explosion, collapse and underground property damages, personal injury and independent contractors, with a broad form of property damage endorsement, and with a contractual liability endorsement covering the obligations assumed by the Lessee pursuant to subparagraphs (1) and (5) of this paragraph (b), and Comprehensive Automobile Liability Insurance covering owned, non-owned and hired vehicles. The said Comprehensive General Liability Insurance policy shall have a limit of not less than $25,000,000 combined single limit per occurrence for bodily injury and property damage liability, and said Comprehensive Automobile Liability Insurance policy shall have a limit of not less than $25,000,000 combined single limit per accident for bodily injury and property damage liability.

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

The foregoing 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, whether procured by the Lessee or by a contractor engaged by it as aforesaid, 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 coverage under the contractual liability endorsement. The said policy or policies of insurance shall also provide or contain an endorsement providing that the protections afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third person shall pertain and apply with like effect with respect to any claim or action against the Lessee by the Port Authority, and shall also provide or contain an endorsement providing that the protections afforded the Port Authority thereunder with respect to any claim or action against the Port Authority by the Lessee or its contractor(s) shall be the same as the protections afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third person as if the Port Authority were the named insured thereunder; but such provision or endorsement shall not limit, vary or affect the protections afforded the Port Authority thereunder as an additional insured.

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

(iii) The insurance required hereunder in this subparagraph (11) shall be maintained in effect during the performance of the construction work and shall be in compliance with and subject to the provisions of paragraph (e) of Section 16 of the Lease.

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

accordance with the Port Authority's accounting principles as consistently applied prior to the execution of the Lease.

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

(14) The Lessee shall procure and maintain Builder's Risk (All Risk) Completed Value Insurance covering the construction work during the performance thereof including material delivered to the premises but not attached to the realty. Such insurance shall be in compliance with and subject to the applicable provisions of Section 12 of the Lease and shall name the Port Authority, the City of New York, the Lessee and its contractors and subcontractors as additional insureds and such policy shall provide that the loss shall be adjusted with and payable to the Lessee. Such proceeds shall be used by the Lessee for the repair, replacement or rebuilding of the construction work and any excess shall be paid over to the Port Authority. The policies or certificates representing insurance covered by this subparagraph (14) shall be delivered by the Lessee to the Port Authority at least thirty (30) days prior to the commencement of construction of the construction work, and each policy or certificate delivered shall bear the endorsement of or be accompanied by evidence of payment of the premium thereof and, also, a valid provision obligating the insurance company to furnish the Port Authority and the City of New York fifteen (15) days' advance notice of the cancellation, termination, change or modification of the insurance evidenced by said policy or certificate. Renewal policies or certificates shall be delivered to the Port Authority at least fifteen (15) days before the expiration of the insurance which such policies are to renew.

The insurance covered by this subparagraph (14) shall be written by companies approved by the Port Authority, the Port Authority covenanting and agreeing not to withhold its approval unreasonably. If at any time any of the insurance policies shall be or become unsatisfactory to the Port Authority as to the form or substance or if any of the carriers issuing such policies shall be or become unsatisfactory to the Port Authority, the Lessee shall promptly obtain a new and satisfactory policy in replacement, the Port Authority covenanting and agreeing not to act unreasonably hereunder. If at any time the Port Authority so requests, a certified copy of each of the said policies shall be delivered to the Port Authority.

(15) Upon the request of the Port Authority from time to time, the Lessee shall submit to the Port Authority its forecasts of the number of people who will be working at various times during the term of the Lease at the premises, the expected utility demands, noise profiles and such other information as the Port Authority may require. The Lessee shall continue to submit its latest forecasts

and such other information as may be reasonably required as aforesaid as the Port Authority shall from time to time and at any time request.

(16) The Lessee shall execute and submit for the Port Authority's approval a Construction Application or Applications in the form prescribed by the Port Authority covering the construction work or portions thereof. The Lessee shall comply with all the terms and provisions of the approved Construction Application. In the event of any inconsistency between the terms of any Construction Application and the terms of this Lease, the terms of this Lease shall prevail and control.

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

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

such modifications and additions thereto as may be directed by the Port Authority pursuant to the provisions hereof and said Schedule E to effectuate the goals of affirmative action and MBE and WBE programs.

(ii) In addition to and without limiting any terms and provisions of this Lease, the Lessee shall provide in its contracts and all subcontracts covering the construction work or any portion thereof, that:

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

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

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

(dd) The contractor will include the provisions of subparagraphs (aa) through (cc) of this paragraph in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to its work in connection with the contract;

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

(c) It is understood and agreed that the Phase I Construction Work and the Phase II Construction Work may or may not

be constructed concurrently. Accordingly, the required approval by the Port Authority of the Lessee's plans and specifications under paragraph (a) hereof may be given separately as to the Phase I Construction Work and the Phase II Construction Work. The Lessee may wish to commence construction of portions of the Phase I Construction Work prior to the approval by the Port Authority of its complete plans and specifications for the same as required in this Section 2 and may wish to commence construction of portions of the Phase II Construction Work prior to the approval by the Port Authority of its complete plans and specifications for the same as required in this Section 2 and if the Lessee does it shall submit a written request to the Port Authority setting forth the work it proposes to then 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 of the provisions of the approval letter and subject to and in accordance with the following terms and conditions:

(1) The performance by the Lessee of the work covered by any request as aforesaid will be at its sole risk and if for any reason the plans and specifications for the construction work 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 (c), 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.

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

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

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

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

(6) In the event that the Lessee shall at any time during the construction of any portion of the construction work under the approval granted by the Port Authority pursuant to this paragraph (c) fail, in the opinion of the Resident Engineer of the Port Authority at the Airport, to comply with all of the provisions of the 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 the 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 the 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.

(7) It is hereby expressly understood and agreed that the Resident Engineer mentioned in subparagraph (6) above does not have 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 the Lease, or the Construction Application or the approval letter with respect to the construction work. Notwithstanding the foregoing, should 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 the 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 strict compliance therewith. It is hereby further understood and agreed that the Port Authority has no duty or obligation of any kind whatsoever to inspect or police the performance of the construction work by the Lessee and the rights granted to the Port Authority hereunder shall not create or be deemed to create such a duty or obligation. Accordingly, the fact that the Resident Engineer has not exercised the Port Authority's right to require the Lessee to cease its construction of all or any part of the construction work shall not be or be deemed to be an agreement or acknowledgment on the part of the Port Authority that the Lessee has in fact performed such

portion of the construction work in accordance with the terms of the Lease, the Construction Application or the approval letter nor shall such fact be or be deemed to be a waiver by the Port Authority from the requirement of strict compliance by the Lessee with the provisions of the Lease, the Construction Application and the approval letter with respect to the construction work.

(8) 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.

(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 (c), 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 (c) 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 (c).

(d) The Lessee shall give the Port Authority fifteen (15) days' notice prior to the commencement of construction. The Port Authority will assign to the construction work a full time field engineer or engineers. The Lessee shall pay to the Port Authority for the services of said engineer or engineers, the sum of (Ex. 2.a.) for each day or part thereof that the engineer or engineers are so assigned during the 1993 calendar year; and the sum of (Ex. 2.a.) for each day or part thereof that the engineer or engineers are so assigned during the calendar year 1994; and the sum of (Ex. 2.a.) for each day or part thereof that the engineer or engineers are so assigned during the calendar year 1995; and for each and every calendar year thereafter, the rate that the Port Authority shall charge other Aircraft Operators at the Airport for the services of such engineer or engineers during such calendar year for each day or part thereof that the engineer or engineers are so assigned for such calendar year. In the event the said engineer or engineers are assigned for part of a day the aforesaid payment to be made by the Lessee shall be pro rated by multiplying the applicable dollar amount, as aforesaid, by a fraction the numerator of which shall be the number of hours of the day the engineer or engineers were so assigned and the denominator of which shall be eight. Nothing contained herein shall affect any of the provisions of paragraph (g) hereof or the rights of the Port Authority hereunder. This Agreement for the services of said field engineer may be revoked at any time by either party on thirty (30) days' written notice to the

other, but if revoked by the Lessee it shall continue during the period construction under any partial approvals pursuant to paragraph (c) hereof is performed.

(e) (1) The construction work shall be constructed in such a manner that there will be at all times a minimum of air pollution, water pollution or any other type of pollution and a minimum of noise emanating from, arising out of or resulting from the operation, use or maintenance of the premises by the Lessee and from the operations of the Lessee under this Agreement. Accordingly, and in addition to all other obligations imposed on the Lessee under this Agreement and without diminishing, limiting, modifying or affecting any of the same, the Lessee shall be obligated to construct as part of the construction work hereunder such structures, fences, equipment, devices and other facilities as may be necessary or appropriate to accomplish the foregoing and each of the foregoing shall be and become a part of the construction work hereunder.

(2) Notwithstanding the provisions of subparagraph (1) above and in addition thereto, the Port Authority hereby reserves the right from time to time and at any time during the term of the Lease to require the Lessee, subsequent to the completion of the construction work to design and construct at its sole cost and expense such further reasonable structures, fences, equipment, devices and other facilities as maybe necessary or appropriate to accomplish the objectives as set forth in the first sentence of subparagraph (1) hereof. 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. All other provisions of this Section 2 with respect to the construction work shall apply and pertain with like effect to any work which the Lessee is obligated to perform pursuant to this paragraph (e) and upon completion of each portion of such work it shall be and become a part of the premises.

(f) Title to all the construction work shall pass to the City of New York as the same or any part thereof is erected, constructed or installed and the same except as set forth in paragraphs (i) and (j) hereof shall be and become a part of the premises hereunder.

(g) (1) (i) When the Phase I Construction Work is substantially completed and ready for use, the Lessee shall advise the Port Authority to such effect and shall deliver to the Port Authority a certificate by an authorized officer of the Lessee and also signed by the Lessee's licensed architect or engineer certifying that the Phase I Construction Work has been constructed in accordance with the approved plans and specifications and the provisions of the Lease and in compliance with all applicable laws,

ordinances and governmental rules, regulations and orders. Thereafter the Phase I Construction Work will be inspected by the Port Authority and if the same has been completed as certified by the Lessee and the Lessee's licensed architect or engineer, as aforesaid, a certificate to such effect shall be delivered to the Lessee, subject to the condition that all risks thereafter with respect to the construction and installation of the same and any liability therefor for negligence or other reason shall be borne by the Lessee. The Lessee shall not use or permit the use of the Phase I Construction Work for the purposes set forth in the Lease until such certificate is received from the Port Authority, and the Lessee shall not use or permit the use of the Phase I Construction Work or any portion thereof even if such certificate is received if the Port Authority states in any such certificate that the same cannot be used until other specified portions are completed.

(ii) In addition to and without affecting the obligations of the Lessee under the preceding subparagraph, when an integral and material portion of the Phase I Construction Work is substantially completed or is properly usable the Lessee may advise the Port Authority to such effect and may deliver to the Port Authority a certificate by an authorized officer of the Lessee and also signed by the Lessee's licensed architect or engineer certifying that such portion of the Phase I Construction Work has been constructed in accordance with the approved plans and specifications and the provisions of the Lease and in compliance with all applicable laws, ordinances and governmental rules, regulations and orders, and specifying that such portion of the Phase I Construction Work can be properly used even though the Phase I Construction Work has not been completed and that the Lessee desires such use. The Port Authority may in its sole discretion deliver a certificate to the Lessee with respect to each such portion of the Phase I Construction Work permitting the Lessee to use such portion thereof for the purposes set forth in the Lease. In such event the Lessee may use such portion 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, and subject to the risks as set forth in paragraph (c) hereof in the event that the Port Authority shall not have then approved the complete plans and specifications for the Phase I Construction Work. Moreover, at any time prior to the issuance of the certificate required in subparagraph (i) above for the Phase I Construction Work, the Lessee shall promptly upon receipt of a written notice from the Port Authority cease its use of such portion of the Phase I Construction Work which it had been using pursuant to permission granted in this subparagraph (ii).

(2) (i) When the Phase II Construction Work is substantially completed and ready for use, the Lessee shall advise the Port Authority to such effect and shall deliver to the Port Authority a certificate by an authorized officer of the Lessee and also signed by the Lessee's licensed architect or engineer

certifying that the Phase II Construction Work has been constructed in accordance with the approved plans and specifications and the provisions of this Lease and in compliance with all applicable laws, ordinances and governmental rules, regulations and orders. Thereafter the Phase II Construction Work will be inspected by the Port Authority and if the same has been completed as certified by the Lessee and the Lessee's licensed architect or engineer, as aforesaid, a certificate to such effect shall be delivered to the Lessee, subject to the condition that all risks thereafter with respect to the construction and installation of the same and any liability therefor for negligence or other reason shall be borne by the Lessee. The Lessee shall not use or permit the use of the Phase II Construction Work for the purposes set forth in the Lease until such certificate is received from the Port Authority, and the Lessee shall not use or permit the use of the Phase II Construction Work or any portion thereof even if such certificate is received if the Port Authority states in any such certificate that the same cannot be used until other specified portions are completed.

(ii) In addition to and without affecting the obligations of the Lessee under the preceding subparagraph (i), when an integral and material portion of the Phase II Construction Work is substantially completed or is properly usable the Lessee may advise the Port Authority to such effect and may deliver to the Port Authority a certificate by an authorized officer of the Lessee and also signed by the Lessee's licensed architect or engineer certifying that such portion of the Phase II Construction Work has been constructed in accordance with the approved plans and specifications and the provisions of the Lease and in compliance with all applicable laws, ordinances and governmental rules, regulations and orders, and specifying that such portion of the Phase II Construction Work can be properly used even though the Phase II Construction Work has not been completed and that the Lessee desires such use. The Port Authority may in its sole discretion deliver a certificate to the Lessee with respect to each such portion of the Phase II Construction Work permitting the Lessee to use such portion thereof for the purposes set forth in the Lease. In such event the Lessee may use such portion 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, and subject to the risks as set forth in paragraph (c) hereof in the event that the Port Authority shall not have then approved the complete plans and specifications for the Phase II Construction Work. Moreover, at any time prior to the issuance of the certificate required in subparagraph (i) above for the Phase II Construction Work, the Lessee shall promptly upon receipt of a written notice from the Port Authority cease its use of such portion of the Phase II Construction Work which it had been using pursuant to permission granted in this subparagraph (ii).

(3) The term "Phase I Completion Date" for the purposes of the Lease shall mean the date appearing on the

certificate issued by the Port Authority pursuant to subparagraph (1) (i) of this paragraph (g) after the substantial completion of the Phase I Construction Work and the term "Phase II Completion Date" for the purposes of the Lease shall mean the date appearing on the certificate issued by the Port Authority pursuant to subparagraph (2) (i) of this paragraph (g) after the substantial completion of the Phase II Construction Work.

(h) The Lessee acknowledges that it will be continuing its operations at the existing premises under the Lease during the period of time it is performing the construction work hereunder. The Lessee further acknowledges that this may involve among other things inconvenience, noise, dust, interference and disturbance to the Lessee in its operations at the premises as well as to its customers, patrons, invitees and employees and possibly other risks as well. The Lessee hereby expressly assumes all of the foregoing risks and agrees that there will be no reduction or abatement of any of the rentals, fees or charges payable by the Lessee under the Lease on account of its performance of the construction work and that the performance of the construction work shall not constitute an eviction or constructive eviction of the Lessee nor be grounds for any abatement of rents, fees or charges payable by the Lessee under the Lease nor give rise to or be the basis of any claim or demand by the Lessee against the Port Authority, its Commissioners, officers, employees or agents for damages, consequential or otherwise.

(i) The Lessee understands that there may be communications and utility lines and conduits located on or under the premises which do not, and may not in the future, serve the premises. The Lessee agrees at its sole cost and expense, if directed by the Port Authority so to do as appropriate or necessary to the construction work or arising therefrom, to relocate and reinstall such communications and utility lines and conduits on the premises or off the premises as directed by the Port Authority and to restore all affected areas (such work being hereinafter collectively called "the relocation work"). The Lessee shall perform the relocation work subject to and in accordance with all the terms and provisions of this Section 2 and the relocation work shall be and become a part of the construction work, it being understood, however, that the relocation work shall not be or become a part of the premises hereunder.

(j) The Port Authority shall have no responsibility for bringing to the premises any service lines for the supply of cold water, electric power, and sanitary and storm sewers, or any other utility or service lines, (said service lines and sanitary and storm sewers being hereinafter collectively referred to as the "utility service lines") except for the utility service lines that may be serving the premises at the time of the effective date of the Lease and any lines necessary or appropriate for the cogeneration system as stated in Section 53A. If the Lessee determines that it will require that additional utility service lines be brought to the

premises or that the capacity of one or more of the existing utility service lines serving the premises be greater than the capacity which existed at the effective date of the Lease, the Lessee shall submit to the Port Authority for the Port Authority's approval a Tenant Alteration Application covering the work to provide the additional utility service line capacity to the premises (hereinafter called the "off-site utility service line work") which work when and if approved by the Port Authority shall be performed by the Lessee at the Lessee's sole cost and expense in accordance with all the terms and provisions of Section 2 of the Lease provided, however, that the off-site utility service line work shall not be or become a part of the premises hereunder.

Section 3. Term

(a) The term of the letting under this Agreement shall commence on January 1, 1993.

(b) Unless sooner terminated, the term of the letting under this Agreement shall expire on November 30, 2015.

Section 3A. Effect of Extension of the Basic Lease

(a) Without limiting Sections 3, 36 and 40 hereof or any other term, provision, covenant and condition of this Agreement, the Port Authority, but only in the event there is a Basic Lease Extension Supplement (as hereinafter defined), hereby agrees to extend the term of the letting hereunder from the expiration date set forth in Section 3 hereof (November 30, 2015) to December 31, 2017, said date being herein referred to as the "Extension Date"; subject, however, to the following additional terms and conditions:

(1) The Lease shall immediately prior to the effective date of the Basic Lease Extension Supplement and immediately prior to the date of the Port Authority's execution and delivery of the Lease Supplement be in full force and effect;

(2) The Lessee immediately prior to the effective date of the Basic Lease Extension Supplement and immediately prior to the date of the Port Authority's execution and delivery of the Lease Supplement shall be in full compliance with all of the terms, provisions, covenants and conditions of this Agreement on its part to be kept, performed and observed and not be in default or breach of any of the same; or, to the extent the Lessee has been granted a period to cure such default or breach by paragraph (a) of Section 26 of the Lease prior to such default or breach giving rise to the right of the Port Authority to terminate the Lease, the Lessee shall be in the process of curing such default or breach in compliance with the terms and conditions of said paragraph (a);

(3) There shall not have occurred any event of termination under any term or provision of this Agreement including without limitation Sections 22, 23, 26, 49, 77 or 88 hereof;

(4) There shall not have occurred any assignment of the Lease under Section 24 hereof;

(5) The Lessee shall have completed the construction work and made the Capital Investment Amounts as defined in and in accordance with and at the times stated in Sections 2 and 88 of the Lease.

(6) The Lessee shall submit to the Port Authority such written representations, warranties and certifications, as may be reasonably requested by the Port Authority, which the Lessee shall then make as to each of the matters set forth in subparagraphs (1) through (5) above.

(7) (i) The Port Authority shall have no obligation whatsoever to the Lessee or to any other person or entity to extend the term of the letting hereunder to the Extension Date or to extend the term of the letting of the Basic Lease or to enter into the Lease Supplement unless the Basic Lease Extension Supplement is fully entered into and is in full force and effect prior to November 30, 2015.

(ii) As used herein the term "Basic Lease Extension Supplement" shall mean an agreement fully and duly executed by the Port Authority and the City of New York in a form satisfactory to the Port Authority and the City of New York and which has been fully and duly authorized by the Board of Commissioners of the Port Authority and with the approval of the authorized officials and entities of the City of New York and which supplements and amends the Basic Lease (as defined in Section 81 hereof) whereby the Basic Lease and the term of the letting thereunder is extended from December 31, 2015 to an expiration date occurring not earlier than December 31, 2017;

(8) If the term of the Lease and the letting thereunder is on a month-to-month periodical basis pursuant to Section 24 or Section 77 hereof immediately prior to the effective date of the Basic Lease Extension Supplement or immediately prior to the date of the Port Authority's execution and delivery of the Lease Supplement then the Lease and the term of the letting thereunder shall not be extended on a fixed term basis but shall continue on a month-to-month periodical basis (subject to said Section 24 or said Section 77, as applicable) but shall terminate and expire in any event

without notice to or from either party on the day preceding the expiration date of the Basic Lease as set forth in the Basic Lease Extension Supplement unless sooner terminated;

(9) If and only in the event there is a Basic Lease Extension Supplement, as aforesaid, the Extension Date of the term of the letting hereunder shall be set forth in a supplement to this Agreement prepared by the Port Authority and sent to the Lessee for execution by it; which supplement shall be effective as of the day preceding the expiration date of the term of the letting hereunder, as set forth in Section 3 hereof, and shall include such other additional terms and provisions as the Port Authority may determine appropriate; it being understood that such supplement shall not change the location or size of the premises or the rentals hereunder, provided, however, notwithstanding the foregoing such supplement may require the Lessee to pay to the Port Authority any or all of the Port Authority's increased costs under the Basic Lease Extension Supplement directly attributable or related to the premises hereunder, the Lease or the Lessee. Within thirty (30) days after the Port Authority has sent the said proposed supplement to the Lessee, the Lessee shall properly execute and return the said proposed supplement to the Port Authority for its execution and delivery. In the event the Lessee fails so to properly execute and return the said proposed supplement to the Port Authority then the Port Authority shall have no further obligation with respect to the proposed extension of the letting hereunder and there shall be no Extension Date. If the said supplement is fully executed and delivered by both the Port Authority and the Lessee, the same shall be deemed the "Lease Supplement" as such term is used herein;

(10) (i) Nothing herein shall impose or be deemed to impose any obligation, duty, responsibility or liability whatsoever on the Port Authority to enter into the Basic Lease Extension Supplement or to enter into, hold or continue any discussions or negotiations with the City of New York or any other person or entity with respect thereto or with respect to any extension of the Basic Lease. The Port Authority shall have full, complete and sole right and discretion to discuss, negotiate and to enter into or not enter into any agreement with the City of New York for the extension of the term of the Basic Lease and as to any and all of the terms and conditions of any such extension agreement, and neither this Section nor anything contained herein shall or shall be deemed to impair, limit or affect the said right and discretion of the Port Authority nor to grant to the Lessee or any other person or entity any

right, claim or remedy hereunder or otherwise with respect to the Basic Lease or any extension or non-extension of the term thereof or with respect to the extension of the term of this Agreement, except in accordance with the terms and provisions of this Section 3A in the event there is a Basic Lease Extension Supplement. The Lessee hereby expressly understands, acknowledges, agrees and accepts that the Port Authority hereby makes no promises, representations, assurances, agreements or commitments of any kind whatsoever that it will undertake or enter into any discussions, negotiations, or agreements with the City of New York or any other person or entity with respect to the extension of the Basic Lease.

(ii) This Lease including the Lease Supplement shall at all times be subject and subordinate to the Basic Lease (as the same may be amended, supplemented and extended including without limitation the Basic Lease Extension Supplement) and to any and all terms and provisions thereof which affect or may affect the terms and provisions of this Lease, as the same may be amended, supplemented or extended (including without limitation the Lease Supplement); it being understood and agreed that nothing in this subparagraph (ii) shall alter or affect or be deemed to have altered or affected the terms and conditions of Section 36 of the Lease.

(iii) It is expressly understood and agreed that the Port Authority shall have no obligation hereunder or otherwise to make any payment to the Lessee, including without limitation any payment of the Lessee's Unamortized Phase I Capital Investment or Unamortized Phase II Capital Investment, in the event for any reason there is no extension of the term of the letting hereunder beyond the expiration date set forth in Section 3 hereof, and that neither this Section nor anything contained herein nor any action taken or not taken hereunder or as a result hereof shall or shall be deemed to impose any such obligation on the Port Authority or to constitute any agreement, duty, responsibility or liability of the Port Authority for any such payment.

(b) Neither this Section 3A nor any action taken or not taken hereunder under this Section 3A or as a result hereof shall or shall be deemed to release or relieve the Lessee from any liability or obligation to the Port Authority or to waive, alter, limit or restrict any of the rights or remedies of the Port Authority in law or in equity.

Section 4. <u>Rentals</u>

I. (a) Ground Rentals: Area IA Ground Rental

(1) The term "Rental Commencement Date" shall mean the date of the commencement of the term of the letting under this Agreement as such date is set forth in paragraph (a) of Section 3 hereof.

(2) For the portion of the term of the letting hereunder commencing on the Rental Commencement Date to and including December 31, 1993, the Lessee hereby agrees to and shall pay to the Port Authority ground rental for Area IA (hereinafter referred to as the "Area IA Ground Rental"), at the annual rate of (Ex. 2.a.)

(b) CPI Adjustments:

The following terms as used in this Section 4 shall have the respective meanings given below:

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

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

(3) Effective on January 1, 1994, the Area IA Ground Rental set forth above in paragraph (a) of this subdivision I of this Section 4 shall be increased in accordance with the following computation: (i) the annual rental rate as set forth in said paragraph (a) shall be multiplied by a percentage composed of 1/2 of the annual CPI percentage increase, if any, for the latest twelve month period using the same calendar month in accordance with subparagraph (2) above plus ; and (ii) the annual rental rate as set forth in said paragraph (a) (2) shall be multiplied by ; and the greater of the two products so obtained by the calculations set forth in the foregoing clauses (i) and (ii) shall be and become the annual Area IA Ground Rental in effect for the annual period commencing on January 1, 1994 and ending on December 31, 1994.

(4) Effective on January 1, 1995 and thereafter on the first day of the month in each succeeding year during the term of the letting hereunder the Area IA Ground Rental set forth in paragraph (a) (2) of this subdivision I of this Section 4

shall be increased in accordance with the following computation: (i) the annual rental rate as set forth in said paragraph (a) as the same may have been last adjusted hereunder, shall be multiplied by a percentage composed of 1/2 of the annual CPI percentage increase, if any, as determined for the latest twelve month period using the same calendar month in accordance with subparagraph (2) above plus (ii) and the said annual rental rate as set forth in said paragraph (a) as the same may have been last adjusted hereunder shall be multiplied by ; and the greater of the two products so obtained by the calculations set forth in the foregoing clauses (i) and (ii) shall be and become the Area IA Ground Rental in effect for the annual period ending on the last day of the immediately succeeding twelfth month.

(5) In the event that the Consumer Price Index is not available for any specified month as hereinabove set forth within the time set forth for payment such index for the latest month then published shall be used to constitute the Consumer Price Index. In the event of the change of basis or the discontinuance of the publication by the United States Department of Labor of the Consumer Price Index such other appropriate index or indexes shall be substituted as may be agreed by the parties hereto as properly reflecting changes in the value of the current United States money in a manner similar to that established in the said indexes used in the latest adjustment. In the event of the failure of the parties to so agree, the Port Authority may select and use such index or indexes which have reasonably mirrored the Consumer Price Index for the preceding five years as it deems appropriate, provided, however, that the foregoing shall not preclude the Lessee from contesting the Port Authority's selection.

(6) In no event shall any Area IA Ground Rental rate established under this paragraph (b) be less than the Area IA Ground Rental rate it supersedes.

(c) Ground Rentals: Area IB Ground Rental

(1) For the portion of the term of the letting hereunder commencing on the Rental Commencement Date to and including April 30, 1998, the Lessee hereby agrees to and shall pay to the Port Authority ground rental for Area IB (hereinafter referred to as "Area IB Ground Rental") at the annual rate of

(Ex. 2.a.)

(2) Effective on May 1, 1998 to and including December 31, 1998, the annual rate of the Area IB Ground Rental set forth in subparagraph (1) above shall be increased and shall equal the product produced by multiplying the exact number of acres (including fractional portions) of Area IB as measured by the Port Authority prior to the commencement date of the term of the letting hereunder as such date is set forth in Section 3 (a) hereof (48.3497 acres) times the 1998 Area IA Ground Rental Rate.

For purposes of the foregoing, the "1998 Area IA Ground Rental Rate" shall mean the annual per acre ground rental rate equal to the quotient resulting from dividing the annual Area IA Ground Rental in effect for the 1998 calendar year under and pursuant to subparagraph (4) of paragraph (b) above by the exact number of acres (including fractional portions) of Area IA as measured by the Port Authority prior to the commencement date of the term of the letting hereunder as such date is set forth in Section 3 (a) hereof (22.0652 acres).

(3) Effective on January 1, 1999 and thereafter on the first day of the month in each succeeding year during the term of the letting hereunder (as such term may be extended pursuant to and under Section 3A hereof) the Area IB Ground Rental set forth in paragraph (c)(2) of this Subdivision I of this Section 4 shall be increased in accordance with the following computation: (i) the annual rental rate of the Area IB Ground Rental as set forth in said paragraph (c)(2) as the same may have been last adjusted hereunder, shall be multiplied by a percentage composed of 1/2 of the annual CPI percentage increase, if any, as determined for the latest twelve month period using the same calendar month in accordance with subparagraph (2) of paragraph (b) above plus (2.a.); (ii) and the said annual rental rate as set forth in said paragraph (c)(2) as the same may have been last adjusted hereunder shall be multiplied by (2.a.) and the greater of the two products so obtained by the calculations set forth in the foregoing clauses (i) and (ii) shall be and become the Area IB Ground Rental in effect for the annual period ending on the last day of the immediately succeeding twelfth month.

(4) In the event that the Consumer Price Index is not available for any specified month as hereinabove set forth within the time set forth for payment such index for the latest month then published shall be used to constitute the Consumer Price Index. In the event of the change of basis or the discontinuance of the publication by the United States Department of Labor of the Consumer Price Index such other appropriate index or indexes shall be substituted as may be agreed by the parties hereto as properly reflecting changes in the value of the current United States money in a manner similar to that established in the said indexes used in the latest adjustment. In the event of the failure of the parties to so agree, the Port Authority may select and use such index or indexes which have reasonably mirrored the Consumer Price Index for the preceding five years as it deems appropriate, provided, however, that the foregoing shall not preclude the Lessee from contesting the Port Authority's selection.

(5) In no event shall any Area IB Ground Rental rate established under this paragraph (c) be less than the Area IB Ground Rental rate it supersedes.

(d) Ground Rentals: Time of Payments

The Area IA Ground Rental and the Area IB Ground Rental (collectively the "Ground Rentals") hereunder shall be payable by the Lessee in advance in equal monthly installments on the first day of the term of the letting (the Rental Commencement Date) and on the first day of each and every calendar month thereafter during the balance of the term of the letting. If the commencement date for the payment of Ground Rentals herein be other than the first day of the month, or if any installment of Ground Rentals payable hereunder shall be for less than a full calendar month, then the rental payment for the portion of the month for which said payment is due shall be the monthly installment prorated on a daily basis using the actual number of days in the said month.

(e) Ground Rentals: Abatement

In the event that the Lessee shall at any time by the provisions of this Agreement become entitled to an abatement of Ground Rentals, said abatement shall be computed as follows (it being understood that there shall be no abatement of Ground Rentals under the Lease for any portion of the premises or for any portion of the term except as specifically provided herein):

(i) For each square foot of land of Area IA as shown in stipple hatch and in diagonal hatch designated Area 2 and Area 3 on Exhibit A the use of which is denied to the Lessee as follows:

(1) For the portion of the term from the Rental Commencement Date through December 31, 1993 at the daily rate of $ (2.a.)

(2) For the portion of the term from January 1, 1994 to November 30, 2015 at the daily rate of $ (2.a.) as appropriately adjusted to reflect any and all CPI Adjustments pursuant to paragraph (b) above.

(ii) For each square foot of land of Area IB as shown in stipple and in diagonal hatch designated Area 4 and Area 5 on Exhibit A the use of which is denied to the Lessee as follows:

(1) For the portion of the term from the Rental Commencement Date to April 30, 1998 at the daily rate of $ (2.a.)

(2) For the portion of the term from May 1, 1998 to December 31, 1998 at the daily rate equal to the amount resulting from the following calculation:

$$\text{Daily Rate} = \frac{\dfrac{\text{Area IA Ground Rental Rate}}{365}}{43{,}560}$$

(3) For the portion of the term from January 1, 1999 to November 30, 2015 (as such date may be extended pursuant to and under Section 3A hereof) at the daily rate equal to the amount of the daily rate calculated pursuant to item (2) of this clause (ii) as appropriately adjusted to reflect any and all CPI Adjustments pursuant to paragraph (c) above.

II. Facility Rentals

(a) Area IA Facility Rental

(1) For the portion of the term of the letting hereunder commencing on the Rental Commencement Date (as defined in paragraph (a)(1) of Subdivision I above) to and including December 31, 1997, the Lessee hereby agrees to and shall pay to the Port Authority a facility rental for Area IA (hereinafter referred to as "Area IA Facility Rental") at the annual rate of

(2.a.)

(2) For the portion of the term of the letting hereunder commencing on January 1, 1998 to and including December 31, 2002, the Lessee hereby agrees to and shall pay to the Port Authority Area IA Facility Rental at the annual rate of (2.a.)

);

(3) For the portion of the term of the letting hereunder commencing on January 1, 2003 to and including December 31, 2007, the Lessee hereby agrees to and shall pay to the Port Authority Area IA Facility Rental at the annual rate of (2.a.)

(4) For the portion of the term of the letting hereunder commencing on January 1, 2008 to and including December 31, 2012, the Lessee hereby agrees to and shall pay to the Port Authority Area IA Facility Rental at the annual rate of (2.a.)

(5) For the portion of the term of the letting hereunder commencing on January 1, 2013 to and including the expiration date of the letting hereunder (November 30, 2015 as such date may be extended pursuant to and under Section 3A hereof), the Lessee hereby agrees to and shall pay to the Port Authority Area IA Facility Rental at the annual rate of (2.a.)

(b) Area IB Facility Rental

(1) For the portion of the term of the letting hereunder commencing on the Rental Commencement Date (as defined in paragraph (a) (1) of Subdivision I hereof), to and including April 30, 1998 the Lessee hereby agrees to and shall pay to the Port Authority a facility rental for Area IB (hereinafter called "Area IB Facility Rental") at the annual rate of (2.a.)

it being understood and agreed that during the aforesaid portion of the term the Area IB Facility Rental applies only to that portion of Building 53 in Area IB as shown in stipple on Exhibit C attached hereto and hereby made a part hereof;

(2) For the portion of the term of the letting hereunder commencing on May 1, 1998 to and including December 31, 2002, the Lessee hereby agrees to and shall pay to the Port Authority Area IB Facility Rental at the annual rate of (2.a.)

(3) For the portion of the term of the letting commencing on January 1, 2003 to and including December 31, 2007, the Lessee hereby agrees to and shall pay to the Port Authority Area IB Facility Rental at the annual rate of (2.a.)

(4) For the portion of the term of the letting hereunder commencing on January 1, 2008 to and including December 31, 2012, the Lessee hereby agrees to and shall pay to the Port Authority Area IB Facility Rental at the annual rate of (2.a.)

(5) For the portion of the term of the letting hereunder commencing on January 1, 2013 to and including the expiration date of the term of the letting (November 30, 2015 as such date may be extended pursuant to and under Section 3A hereof), the Lessee hereby agrees to and shall pay to the Port Authority Area IB Facility Rental at the annual rate of (2.a.)

(c) Facility Rentals: Time of Payments

The Area IA Facility Rental and the Area IB Facility Rental (the "Facility Rentals") hereunder shall be payable by the Lessee in advance in equal monthly installments commencing on the Rental Commencement Date and on the first day of each and every calendar month thereafter during the balance of the term of the letting. If the commencement date for the

payment of Facility Rentals herein be other than the first day of the month, or if any installment of Facility Rentals payable hereunder shall be for less than a full calendar month, then the rental payment for the portion of the month for which said payment is due shall be the monthly installment prorated on a daily basis using the actual number of days in the said month.

(d) Facility Rentals: Abatement

In the event that the Lessee shall at any time by the provisions of this Agreement become entitled to an abatement of the Area IA Facility Rental or the Area IB Facility Rental, said abatement shall be computed as follows (it being understood that there shall be no abatement of Facility Rentals under the Lease for any portion of the premises or for any portion of the term except as specifically provided herein):

(i) As to the Area IA Facility Rental: for each square foot of interior building space in Building 54 in Area IA the use of which is denied to the Lessee as follows:

(1) For the portion of the term from the Rental Commencement Date through December 31, 1997 at the daily rate of $ (2.a.)

(2) For the portion of the term from January 1, 1998 through December 31, 2002 at the daily rate of $ (2.a.)

(3) For the portion of the term from January 1, 2003 through December 31, 2007 at the daily rate of $ (2.a.)

(4) For the portion of the term from January 1, 2008 through December 31, 2012 at the daily rate of $ (2.a.)

(5) For the portion of the term from January 1, 2013 through November 30, 2015 (as such date may be extended pursuant to and under Section 3A hereof) at the daily rate of $ (2.a.)

(ii) As to the Area IB Facility Rental: For each square foot of interior building space in Building 53 in Area IB the use of which is denied to the Lessee as follows <u>provided</u>, <u>however</u> that as to the portion of the term described in the following item (1) such abatement shall apply only to each square foot of interior building space in the portion of Building 53 as shown in stipple on Exhibit C:

(1) For the portion of the term from the Rental Commencement Date through April 30, 1998 at the daily rate of $ (2.a.)

(2) For the portion of the term from May 1, 1998 through December 31, 2002 at the daily rate of $ (2.a.)

(3) For the portion of the term from January 1, 2003 through December 31, 2007 at the daily rate of $ (2.a.)

(4) For the portion of the term from January 1, 2008 through December 31, 2012 at the daily rate of $ (2.a.)

(5) For the portion of the term from January 1, 2013 through November 30, 2015 (as such date may be extended pursuant to and under Section 3A hereof) at the daily rate of $

III. Additional Facility Rentals

(A) First Additional Facility Rental: The Lessee shall pay to the Port Authority as First Additional Facility Rental under the Lease the amounts set forth in the Schedule attached hereto, hereby made a part hereof and marked "Schedule R-1R" such amounts to be paid by the Lessee to the Port Authority at the times and rates set forth in said Schedule R-1R.

The Port Authority and the Lessee expressly recognize and agree that the First Additional Facility Rental is based upon the Port Authority's Cost of the PBGC Assignment (as defined in the Prior Sublease as amended and supplemented by the First Supplemental Agreement to Sublease as defined in Section 86 hereof) plus the application of an agreed upon factor applied thereto. For purposes of the foregoing, the "Port Authority's Cost of the PBGC Assignment" shall have the same meaning as that set forth in the definition thereof in the Prior Sublease as amended and supplemented by the First Supplemental Agreement to Sublease (as defined in Section 86 hereof) and said definition is hereby incorporated herein by said reference.

(B) Second Additional Facility Rental: The Lessee shall pay to the Port Authority as Second Additional Facility Rental under the Lease the amounts set forth in the Schedule attached hereto, hereby made a part hereof and marked "Schedule R-2R" such amounts to be paid by the Lessee to the Port Authority at the times and rates set forth in said Schedule R-2R.

The Port Authority and the Lessee expressly recognize and agree that the Second Additional Facility Rental is based upon the "Cost of the Sublessee's Flight Center Improvement Work" as such term is set forth and defined in the Prior Sublease as amended and supplemented by the First Supplemental Agreement to Sublease as defined in Section 86 hereof, and said definition is hereby incorporated herein by said reference (i.e. the sum of $) (referred to in Schedule R-2R as the "Cost of the Lessee's Initial Flight Center Improvement Work) plus the application of an agreed upon factor applied thereto.

(C) Other Additional Facility Rentals

(1) Definitions

The following terms as used herein shall have the respective meanings given below:

(i) "Other Additional Facility Rental" shall mean an Additional Facility Rental payable by the Lessee to the Port Authority, pursuant to and calculated in accordance with the terms hereof, with respect to each Construction Payment Amount (as defined in Section 89 hereof), and each such Other Additional Facility Rental shall be in addition to all other rentals and payments to be paid by the Lessee hereunder, including without limitation the Facility Rentals, the First Additional Facility Rental and the Second Additional Facility Rental hereinabove set forth ; and the term "Other Additional Facility Rentals" shall mean the plural form of Other Additional Facility Rental and include one or more than one such Other Additional Facility Rental.

(ii) "Other Additional Facility Rental Commencement Date" shall mean, with respect to each Other Additional Facility Rental which is established on the basis of each Construction Payment Amount, the first day of the month immediately succeeding the month in which the Construction Payment Date (as defined in Section 89) applicable to such Construction Payment Amount occurs.

(iii) "Other Additional Facility Rental First Payment Period" or "First Payment Period" shall mean with respect to each Other Additional Facility Rental a period of twenty-four consecutive calendar months commencing on the Other Additional Facility Rental Commencement Date applicable to such Other Additional Facility Rental.

(iv) "Other Additional Facility Rental Second Payment Period" or "Second Payment Period" shall mean with respect to each Other Additional Facility Rental the period commencing on the first day of the twenty-fifth consecutive calendar month following the Other Additional Facility Rental Commencement Date applicable to such Other Additional Facility Rental and ending on December 31, 2007.

(v) "Other Additional Facility Rental Third Payment Period" or "Third Payment Period" shall mean with respect to each Other Additional Facility Rental the period commencing on January 1, 2008 and ending on November 30, 2015.

(vi) "Monthly Other Additional Facility Rental First Payment Period Factor" for each First Payment Period of each Other Additional Facility Rental shall mean the factor

or factors equivalent to the quotient resulting from dividing the "Fixed RBI Rate" (as hereinafter defined in item (ix) below) by 12.

(vii) "Monthly Other Additional Facility Rental Second Payment Period Factor" for each Second Payment Period of each Other Additional Facility Rental shall mean the factor or factors equivalent to the monthly percentage rate equal to the quotient resulting from dividing the sum of (x) the Fixed RBI Rate (as hereinafter defined in item (ix) below), and (y) one hundred fifty (150) basis points (that is 1.5%), by 12.

(viii) "Monthly Other Additional Facility Rental Third Payment Period Factor" for each Third Payment Period of each Other Additional Facility Rental shall mean the factor or factors derived in accordance herewith from time to time by the application of the following formula:

$$\frac{1}{\dfrac{1}{\frac{i}{12}} - \dfrac{1}{\frac{i}{12}\left(1 + \frac{i}{12}\right)^{t}}} = \text{Monthly Other Additional Facility Rental Third Payment Period Factor}$$

Where t (a power) equals 120 and where i is an annual percentage rate equal to the sum of (x) the Fixed RBI Rate (as herein defined in item (ix) below), and (y) one hundred fifty (150) basis points (that is 1.5%).

(ix) "Fixed RBI Rate" as applicable to and determined for each Other Additional Facility Rental hereunder shall mean the percentage reported as the weekly index of the Bond Buyer Revenue Bond Index as reported in the publication "The Bond Buyer" during the calendar week immediately preceding the Construction Payment Date of the applicable Other Additional Facility Rental. In the event that the Bond Buyer or its weekly Bond Buyer Revenue Bond Index shall be discontinued during the term of this Agreement, a comparable substitute for such Index shall be mutually agreed upon in writing by the Lessee and the Port Authority within thirty (30) days after such discontinuance. In the event that the Lessee and the Port Authority shall fail to agree upon such a substitute within the time hereinabove specified then upon notice of either party such dispute shall be disposed of by arbitration in accordance with then existing rules of the American Arbitration Association or any successor association. One half of the cost of said arbitration shall be

borne by the Port Authority and the other half of said cost shall be borne by the Lessee.

(2) Computation and Payment of the Other Additional Facility Rentals

(a) With respect to each Construction Payment Amount (as defined in Section 89 hereof) the following shall apply:

Commencing on the Other Facility Rental Commencement Date as determined for each Other Additional Facility Rental as aforesaid, the Lessee shall pay to the Port Authority a rental with respect to each Construction Payment Amount (herein called Other Additional Facility Rental) and each such Other Additional Facility Rental shall be payable as follows:

(i) On the first day of each and every calendar month during each First Payment Period applicable to each Other Additional Facility Rental, the Lessee shall pay to the Port Authority as Other Additional Facility Rental an amount equal to the product obtained by multiplying the Monthly Other Additional Facility Rental First Payment Period Factor by the applicable Construction Payment Amount, as such Construction Payment Amount is determined with respect to the applicable Construction Payment made by the Port Authority to the Lessee in accordance with Section 89 hereof;

(ii) On the first day of each and every calendar month during each Second Payment Period applicable to each Other Additional Facility Rental the Lessee shall pay to the Port Authority as Other Additional Facility Rental an amount equal to the product obtained by (x) first multiplying 1.0304352 by the Construction Payment Amount used in the computation of the Other Additional Facility Rental under the foregoing item (i) of this subparagraph (a) and (y) by multiplying the product obtained under the foregoing clause (x) by the Monthly Other Additional Facility Rental Second Payment Period Factor;

(iii) On the first day of each and every calendar month during each Third Payment Period applicable to each Other Additional Facility Rental (excluding November 1, 2015) the Lessee shall pay to the Port Authority as Other Additional Facility Rental an amount equal to the product obtained by (x) first multiplying 1.0304352 by the Construction Payment Amount used in the computation of the Other Additional Facility Rental under the foregoing item (i) of this subparagraph (a) and (y) by multiplying the product obtained under the foregoing clause (x) by the Monthly Other Additional Facility Rental Third Payment Period Factor;

(iv) On November 1, 2015, the Lessee shall pay to the Port Authority a single final installment of each Other Additional Facility Rental hereunder, in such amount as shall be set forth in the applicable Other Additional Facility Rental Schedule referred to in subparagraph (c) below; it being expressly recognized and agreed that such final installment of each Other Additional Facility Rental shall be determined in the same manner as used to calculate the final payment amount set forth in Schedule R-2R attached hereto. It is recognized that in the event the term of the letting hereunder is extended pursuant to and in accordance with Section 3A hereof the Lease Supplement (as defined in said Section 3A) will contain appropriate provisions with respect to the said final installment payment of each Other Additional Facility Rental.

(b) It is expressly understood and agreed that the provisions of this Subdivision III of this Section 4 are intended to establish an Additional Facility Rental, each of which is denominated herein as an "Other Additional Facility Rental", with respect to each and every Construction Payment Amount (as defined in and determined in accordance with Section 89 hereof) and that each such Other Additional Facility Rental shall be subject to, computed under, and paid by the Lessee in accordance with the terms hereof and that each such Other Additional Facility Rental shall be at an annual rate equal to the product obtained by multiplying the monthly amount thereof by 12.

(c) It is further agreed, in addition to and without limiting any term or provision hereof, that as soon as practicable after each Construction Payment (as defined in Section 89 hereof) is made by the Port Authority, the Port Authority will prepare a Schedule setting forth, the actual dollar amounts of the Other Additional Facility Rental which is based on such Construction Payment, which Schedule shall be in the form of Schedule R-2R attached hereto, in accordance with the foregoing provisions of this Subdivision III of this Section 4 and which Schedule shall set forth the annual rental rates and the monthly installments of each such Other Additional Facility Rental. After the preparation of each such Schedule the Port Authority shall send a copy of the same to the Lessee and the Lessee shall, for identification purposes solely, initial a copy of the same and promptly return it to the Port Authority; provided, however, that nothing in this subparagraph (c) nor any failure of the Port Authority to send such Schedule, nor any failure by the Lessee to initial or return the same to the Port Authority, nor anything contained in such Schedule shall impair, release or relieve the Lessee from any of its obligations hereunder, including without limitation its obligations to pay all Other Additional Facility Rentals at the times, rates and amounts called for under this Subdivision III of this Section 4.

(d) In the event that a Port Authority audit shall disclose that the Lessee has expended in the Cost of the Phase I

Construction Work or the Cost of the Phase II Construction Work under Section 89 hereof amounts which total less than the total of all Construction Payments made to the Lessee hereunder up to the time of such audit then, upon demand of the Port Authority, the Lessee shall immediately pay to the Port Authority an amount equal to the difference between the amounts expended by the Lessee as disclosed by the Port Authority audit and the aforesaid amount of the total of all Construction Payments made to the Lessee and effective from and after such date of payment the Construction Payment Amount(s) shall be reduced by the amount of such payment and the Other Additional Facility Rental(s) applicable thereto and payable by the Lessee shall be adjusted appropriately hereunder.

(e) It is further understood and agreed that notwithstanding the provisions hereof with respect to the formula utilized in the determination of each Other Additional Facility Rental Third Payment Period Factor as set forth in paragraph (C) (1) (viii) above, nothing herein shall impair, alter, vary or affect Sections 3 and 3A hereof or imply or create an implication that there shall be any extension of the term of the letting hereunder beyond the expiration date set forth in Section 3 hereof.

(D) <u>Additional Facility Rentals (other than the First Additional Facility Rental): Abatement</u>

In the event that the Lessee shall at any time by the provisions of paragraph (b) of Section 75 of this Agreement become entitled to an abatement of Additional Facility Rentals (other than the First Additional Facility Rental), said abatement of Additional Facility Rentals (other than the First Additional Facility Rental) shall be made on an equitable basis giving effect to the amount and character of the portions of the premises the use of which is denied to the Lessee (but solely to the extent such portion of the premises used for the PDS as defined in Section 75 hereof does not exclusively serve the premises as described in and in accordance with said Section 75 (b) hereof) as compared with the entire premises, provided, however, that such abatement shall apply in any event only if and to the extent any such portion of the premises formed a part of the Phase I Construction Work or the Phase II Construction Work for which Port Authority Construction Payments were made pursuant to Section 89 hereof or for which Port Authority payments of the "Cost of the Sublessee's Flight Center Improvement Work" were made pursuant to the First Supplemental Agreement to Sublease, as described above; it being understood that there shall be no abatement of Additional Facility Rentals under this Lease for any portion of the premises or for any portion of the term except as specifically provided in this Agreement.

Section 5. Use of Premises

The Lessee, in connection with its business of transportation by aircraft, may use the premises for the following purposes and for activities reasonably required for such purposes and for such purposes and activities only:

(1) For the reservation of space and the sale of tickets for transportation on aircraft operated by the Lessee.

(2) For the reservation of space and the sale of tickets for transportation by other carriers but only as an incident to or in connection with transportation performed or to be performed by the Lessee or as an incident to or in connection with the cancellation of such transportation, or for the accommodation or convenience of the incoming or outbound passengers of the Lessee at the Airport. The occasional reservation of space and the sale of tickets for transportation by other carriers shall not be deemed to be prohibited by this provision.

(3) For the clearance, checking and rendering of service to passengers of the Lessee and for the furnishing of information service to such passengers and the general public.

(4) For providing rooms or space for the special handling of or the furnishing of special services to any of the passengers, guests, or invitees of the Lessee subject to the provisions of Section 66 hereof.

(5) For the handling of baggage of passengers of the Lessee including baggage and parcels such passengers decide to send as air cargo.

(6) For the handling of unclaimed baggage and lost and found articles.

(7) For the conduct of operations, traffic, communications, reservations and administrative office functions and activities in connection with air transportation performed by the Lessee.

(8) For the preparation, packaging and storage of food, beverages and commissary supplies to be consumed on aircraft operated by the Lessee.

(9) For the storage of repair parts, supplies and other personal property owned or leased by the Lessee, and for the performance of minor repairs to personal property of the Lessee.

(10) For the storage of such automotive fuel and lubricants as may be approved by the Port Authority.

(11) For the operation of a cafeteria for over-the-counter sales to officers and employees of the Lessee and their families and to occasional business guests of such officers and employees (other than passengers of the Lessee), of food, beverages and other merchandise normally sold in such an establishment at no profit to the Lessee and either directly by the Lessee or through a subsidiary of the Lessee or by an independent contractor of the Lessee who has received a permit from the Port Authority so to do.

(12) For use as crew quarters to be used by personnel of the Lessee during layovers between flights and for the establishment of lounges for employees of the Lessee.

(13) For the loading and unloading of passengers, baggage, mail, air cargo and commissary supplies, provided, however, that the use of the premises for the unloading and loading of passengers and their baggage from ground transportation vehicles shall be subject to limitation and restriction, from time to time, as set forth in Section 74 hereof.

(14) For the parking and storage of aircraft and ramp equipment operated by the Lessee.

(15) For the fueling and routine servicing of aircraft and ramp equipment operated by the Lessee and for the maintenance of said ramp equipment.

(16) For the performance of emergency or turn-around aircraft maintenance on aircraft operated by the Lessee.

(17) For the training of personnel employed or to be employed by any of the Lessee or other persons engaged in commercial transportation by aircraft, provided, that unless consented to by the Port Authority, the Lessee shall not engage in the training of persons employed by others or to be employed by others if the training of such persons is in competition with any concessionaire, permittee or licensee of the Port Authority at the Airport (other than another person engaged in the business of transportation by aircraft).

(18) For the temporary storage of baggage, mail and air cargo.

(19) For federal inspection services by federal agencies (if the United States Government makes the same available to the Lessee).

(20) With respect to the "Private Parking Facility" only, for the parking of automobiles operated by the Lessee and by the Lessee's employees, guests and in a limited number by its passengers and only in situations where the Lessee feels it must

accommodate such passengers therein. "Private Parking Facility" shall mean the private automobile parking facility located on the roof of Building No. 53 with capacity of not more than 51 automobiles.

(21) For automotive fuel facilities for the receipt, storage and dispensing of automotive fuel for automotive vehicles and equipment used by the Lessee in performing its operations authorized hereunder.

(22) For any other purpose or activity, in addition to those specified in this Section 5, for which the premises are expressly authorized to be used by any other provision of this Agreement.

The loading or unloading on the premises of any aircraft used principally for cargo is expressly prohibited.

Section 6. Ingress and Egress

(a) The Lessee, its officers, employees, customers, patrons, invitees, contractors, suppliers of material and furnishers of services, shall have the right of ingress and egress between the premises and city streets or public ways outside the Airport by means of existing roadways to be used in common with others having rights of passage within the Airport, provided, however, that the Port Authority may from time to time substitute other reasonably equivalent means of ingress and egress and provided, further, however, notwithstanding anything contained in the General Airport Agreement as defined in Section 81 hereof that the Lessee hereby expressly understands and agrees that the Lessee shall have no right of ingress and egress or access hereunder or otherwise for its employees, customers, patrons, invitees and their baggage between the premises and the city streets or public ways outside the Airport by means of any mode of transportation or any vehicle which may be limited or restricted in accordance with Section 74 hereof, it being understood that access to the premises for emergency response for reasons of safety or health shall not be deemed a breach hereof.

(b) The Lessee shall have the right of ingress and egress between the premises and the Public Landing Area at the Airport, by means of existing taxiways to be used in common with others having rights of passage thereon, provided, however, that the Port Authority may from time to time substitute other reasonably equivalent means of ingress and egress.

(c) The use of all roadways and taxiways shall be subject to the Rules and Regulations of the Port Authority which are now in effect or which may hereafter be promulgated for the safe and efficient operation of the Airport. In addition to the rights of closure granted above, the Port Authority may, at any time, temporarily or permanently close, or consent to or request the closing of, any such roadway, taxiway and any other area at

the Airport presently or hereafter used as such, so long as a means of ingress and egress reasonably equivalent to that provided in paragraphs (a) and (b) above remains available to the Lessee. The Lessee hereby releases and discharges the Port Authority its successors and assigns, of and from any and all claims, demands or causes of action which the Lessee may now or at any time hereafter have against any of the foregoing, arising or alleged to arise out of the closing of any street, roadway, taxiway or other area used as such whether within or outside the Airport, provided a reasonably equivalent means of ingress and egress is available. 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 7. Compliance with Governmental Requirements

(a) The Lessee shall comply with all laws and ordinances and governmental rules, regulations and orders now or at any time during the term of this Lease which as a matter of law are applicable to or which affect the operations of the Lessee at the premises hereunder and the Airport, and the Lessee shall, in accordance with and subject to the provisions of Section 45 hereof, make any and all structural and non-structural improvements, alterations or repairs of the premises that may be required at any time hereafter by any such present or future governmental law, rule, regulation, requirement, order or directive.

(b) The Lessee hereby agrees that it shall, at its own cost and expense, procure and obtain from all governmental authorities having jurisdiction over the operations of the Lessee hereunder and shall maintain in full force and effect throughout the term of this Agreement all licenses, certificates, permits or other authorization which may be necessary for the conduct of such operations. "Governmental authority" shall not be construed as intending to include The Port Authority of New York and New Jersey, the lessor under this Agreement.

(c) The obligation of the Lessee to comply with governmental requirements is provided herein for the purpose of assuring proper safeguards for the protection of persons and property on the premises. Such provision is not to be construed as a submission by the Port Authority to the application to itself of such requirements or any of them.

(d) Since the Port Authority has agreed in the Basic Lease to conform to the enactments, ordinances, resolutions and regulations of the City of New York and its various departments, boards and bureaus in regard to the construction and maintenance of buildings and structures and in regard to health and fire protection which would be applicable if the Port Authority were a private corporation to the extent that the Port Authority finds it practicable so to do, the Lessee shall comply with all such

enactments, ordinances, resolutions and regulations which would be applicable to its operations at the premises if the Port Authority were a private corporation except in cases where the Port Authority either notifies the Lessee that it need not comply with or directs it not to comply with any such enactments, ordinances, resolutions or regulations which are applicable only because of the Port Authority's agreement in the Basic Lease. The Lessee shall, for the Port Authority's information, deliver to the Port Authority promptly after receipt of any notice, warning, summons, or other legal process for the enforcement of any such enactment, ordinance, resolution or regulation a true copy of the same. Any direction by the Port Authority to the Lessee not to comply with any such enactment, ordinance, resolution or regulation shall be given only pursuant to a resolution duly adopted by the Board of Commissioners of the Port Authority or by an authorized committee of its Board and if any such direction is given by the Port Authority to the Lessee, the Port Authority to the extent that it may lawfully do so, shall indemnify and hold the Lessee harmless from and against all claims, actions, damages, liabilities, fines, penalties, costs and expenses suffered or incurred by the Lessee as a result of noncompliance with such enactment, ordinance, resolution or regulation.

In the event of compliance with any such enactment, ordinance, resolution or regulation on the part of the 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.

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

Section 8. <u>Rules and Regulations</u>

(a) The Lessee covenants and agrees to observe and obey (and to require its officers, employees, guests, invitees and those doing business with it to observe and obey) the existing Rules and Regulations of the Port Authority in effect as of the execution of this Agreement and such reasonable future Rules and Regulations and amendments and supplements to existing Rules and Regulations for the government of the conduct and operations of the Lessee and others on the premises as may from time to time during the letting be promulgated by the Port Authority for reasons of safety, health, noise, sanitation or good order. The obligation of the Lessee to require such observance and obedience on the part of its guests, invitees, and those doing business with it shall obtain only while such persons are on the premises.

The Port Authority agrees that except in cases of emergency, it will give notice to the Lessee of every such future rule or regulation adopted by it at least ten (10) days before the Lessee shall be required to comply therewith.

(b) The use by the Lessee and its officers, employees, guests, invitees, and those doing business with it, of the public aircraft facilities and any and all other portions of the Airport which it may be entitled to use under this Lease (other than space leased to the Lessee for its exclusive use) shall be subject to the Rules and Regulations of the Port Authority in effect as of the execution of this Agreement, and such reasonable future rules and regulations (including amendments and supplements to existing Rules and Regulations) as the Port Authority may from time to time promulgate in the public interest and in the interest of health, safety, noise, sanitation, good order and the economic and efficient operation of the Airport, including but not limited to, the number and type of aircraft which at any particular time may use the public aircraft facilities and the time or times when such aircraft may use the public aircraft facilities. Without limiting the foregoing, the Port Authority may take into account in adopting such Rules and Regulations the adequacy, capacity and suitability of (i) aircraft using the Airport, (ii) passenger handling facilities at the Airport including, but not limited to the Passenger Distribution System, as hereinafter defined, (iii) the public aircraft facilities at the Airport, (iv) the roadways and (v) the parking facilities. In the event the Port Authority promulgates rules and regulations pursuant to this paragraph (b), the Port Authority may devise and implement reasonable procedures governing the affected use of the public aircraft facilities, including but not limited to, allocations among Aircraft Operators at the Airport.

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

Section 9. <u>Various Obligations of the Lessee</u>

(a) The Lessee shall conduct its operations hereunder in an orderly and proper manner, considering the nature of such operations, so as not to annoy, disturb or be offensive to others at or off the Airport. The Lessee shall take all reasonable measures (1) to eliminate or reduce as low as possible vibrations tending to damage any equipment, structure, building or portion of a building which is on the premises, or is a part thereof, or is located elsewhere on or off the Airport; and (2) to keep the sound level of its operations as low as possible.

(b) The Lessee shall use its best efforts to conduct all operations at the premises in a safe and careful manner,

following in all respects the best practices of the air transportation industry in the United States.

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

(d) The Lessee shall control all vehicular traffic on the roadways or other areas within the premises and shall take all precautions reasonably necessary to promote the safety of all persons. The Lessee shall employ such means as may be necessary to direct the movement of vehicular traffic within the premises to prevent traffic congestion on the public roadways leading to the premises.

(e) The Lessee shall remove from the Airport or otherwise dispose of in a manner approved by the General Manager of the Airport, all garbage, debris and other waste materials (whether liquid or solid) arising out of its occupancy or use of the premises or out of its operations at the Airport. Any such which may be temporarily stored in the open shall be kept in suitable garbage and waste receptacles, the same to be made of metal or other suitable material, and equipped with tightfitting covers, and to be of a design to safely and properly contain whatever material may be placed therein. The Lessee shall use extreme care when effecting removal of all such waste materials, and shall effect such removal at such times and by such means as first approved by the Port Authority. No such garbage, debris, or other waste materials shall be or be permitted to be thrown, discharged or deposited into or upon the waters at or bounding the Airport.

(f) From time to time and as often as reasonably required by the Port Authority, the Lessee shall conduct pressure, waterflow, and other appropriate tests of the fire extinguishing system and apparatus which constitute a part of the premises. The Lessee shall keep in proper functioning order all firefighting 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.

(g) It is the intention of the parties hereto that noise caused by aircraft engine operations shall be held to a minimum considering the nature of the Lessee's operations at the premises. To this end the Lessee will conduct its operations in

such a manner as to keep the noise produced by aircraft engines to a minimum and where appropriate shall employ noise arresting and noise reducing devices that are suitable. Aircraft testing and aircraft runups will be conducted only in such areas as shall meet with the prior and continuing approval of the Port Authority. The obligations assumed by the Lessee under this paragraph (g) shall not diminish, limit, modify or affect all other obligations of the Lessee with respect to noise under this Agreement.

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

(i) The Lessee agrees that it will not erect, construct or maintain or otherwise create or continue any obstacle or so park or store, or permit or allow to be parked or stored, any aircraft or other object on the premises so as to create any obstacle that will hamper or interfere with the free, orderly, unobstructed and uninterrupted passage of vehicles, aircraft or of the wings or other integral part of aircraft of any type, nature or description, while such vehicle is operating or aircraft is taxiing or being transported or towed along any runways, taxiways and roads outside of and adjacent to the premises.

(j) In addition to compliance by the Lessee with all laws, ordinances, governmental rules, regulations and orders now or at any time in effect during the term of the letting hereunder which as a matter of law are applicable to the operation, use or maintenance by the Lessee of the premises or the operations of the Lessee under this Agreement (the foregoing not to be construed as a submission by the Port Authority to the application to itself of such requirements or any of them), the Lessee agrees that it shall exercise the highest degree of safety and care and shall conduct all its operations under the Agreement and shall operate, use and maintain the premises in accordance with the highest reasonable standards and in such manner that there will be at all times a minimum of air pollution, water

pollution or any other type of pollution and a minimum of noise emanating from, arising out of or resulting from the operation, use or maintenance of the premises by the Lessee and from the operations of the Lessee under this Agreement. The Port Authority hereby reserves the right from time to time and at any time during the term of the Lease to require the Lessee, and the Lessee agrees to design and construct at its sole cost and expense such reasonable structures, fences, equipment, devices and other facilities as may be necessary or appropriate to accomplish the objectives as set forth in the first sentence of this paragraph. All locations, the manner, type and method of construction and the size of any of the foregoing shall be determined by the Port Authority. The Lessee shall submit for Port Authority approval its plans and specifications covering the required work and upon receiving such approval shall proceed diligently to construct the same.

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

(k) The Lessee shall periodically inspect, clean out and maintain the oil separators serving the premises which are located on the premises and the oil separators located outside the premises if they exclusively serve the premises.

(l) The Lessee shall at all times during the term of this Agreement on a twenty-four hour basis maintain sufficient qualified personnel at the Airport or on call within 30 minutes, who shall be qualified to perform the maintenance obligations of the Lessee under this Agreement and particularly be able to respond to all emergencies.

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

(a) The Lessee shall commit no nuisance, waste or injury at the Airport, and shall not do or permit to be done anything which may result in the creation or commission or maintenance of such nuisance, waste or injury at the Airport.

(b) The Lessee shall not create nor permit to be caused or created at the Airport any obnoxious odors or smokes, or noxious gases or vapors. The creation of exhaust fumes by the operation of internal combustion engines or aircraft engines of other types, so long as such engines are maintained and are being operated in a proper manner, shall not be a violation of this paragraph (b).

(c) The Lessee shall not do or permit to be done anything which may interfere with the effectiveness or accessibility of the drainage and sewerage system, water system, communications system, electrical, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, if any, or any other part of utility, electrical mechanical or other systems installed or located from time to time at the Airport.

(d) The Lessee shall not do or permit to be done any act or thing at the Airport (1) which will invalidate or conflict with any fire insurance, extended coverage or rental insurance policies covering the premises or any part thereof, or the Airport, or any part thereof, or (2) which may constitute an extra hazardous condition, so as to increase the risks normally attendant upon the operations permitted by this Agreement. 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 Insurance Services Office of New York and the National Fire Protection Association, or of any other board or organization exercising or which may exercise similar functions, which may pertain or apply to the operations of the Lessee at the Airport and the Lessee shall, subject to and in accordance with the provisions of Section 45 hereof, make any and all structural and non-structural improvements, alterations or repairs to the premises required at any time hereafter by any such present or future rule, regulation, requirement, order or direction. If by reason of any failure on the part of the Lessee to comply with the provisions of this paragraph any fire insurance rate, extended coverage or rental insurance rate on the premises or any part thereof, or on the Airport or any part thereof, shall at any time be higher than it would otherwise be if the premises were properly used for the purposes permitted by Section 5 hereof then the Lessee shall pay to the Port Authority, as an item of additional rental, that part of all insurance premiums paid by the Port Authority which shall have been charged because of such violation or failure by the Lessee.

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

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

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

(2) The Lessee shall furnish adequate security and guard service or such comparable means as approved by the Port Authority from time to time, on a 24 hour, seven day-a-week basis for the prevention of access to and control of persons on the aeronautical operations areas of the premises and the prevention of access to the Public Landing Area from the premises or other area(s) controlled by the Lessee. Without limiting the generality of Section 7 hereof, the Lessee acknowledges and agrees that it shall comply with all the requirements of FAR 107 and any succeeding or superseding regulations.

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

(i) The Lessee shall not overload any floor on the premises, and shall repair, replace or rebuild any floor, including supporting members, damaged by overloading. Nothing in this paragraph or elsewhere in this Agreement shall be or be construed to be a representation by the Port Authority of the weight any floor or paved area will bear.

(j) The Lessee shall not use any cleaning materials having a harmful corrosive effect on any part of the premises.

(k) The Lessee shall not fuel or defuel any equipment in the enclosed portions of the premises without prior approval of the General Manager of the Airport.

(l) The Lessee shall not start or operate any engine or any item of automotive equipment in any enclosed space at the Airport unless such space is adequately ventilated and unless such engine is equipped with a proper spark-arresting device which has been approved by the Port Authority.

(m) The Lessee shall not operate or cause to be operated aircraft engines in any areas of the premises other than for the purpose of taxiing or maneuvering aircraft to and from the premises or in connection with authorized aircraft maintenance on the premises. (The Lessee shall not perform any aircraft maintenance on the premises other than emergency or turn-around maintenance.)

(n) The Lessee shall not keep or store aviation fuel on the premises except that fueling equipment may be operated on the unenclosed portions of the premises in accordance with all the provisions of this Agreement and with the Port Authority Rules and Regulations pertaining thereto.

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

(a) The Lessee shall repair, replace, rebuild and paint all or any part of the Airport which may be damaged or destroyed by the acts or omissions of the Lessee or by those of its officers or employees or of other persons on or at the premises with the consent of the Lessee.

(b) The Lessee shall, throughout the term of this Lease, assume the entire responsibility for, shall perform and shall relieve the Port Authority from all responsibility for all repair, replacement, rebuilding and maintenance whatsoever in the premises, whether such repair, replacement, rebuilding or maintenance be ordinary or extraordinary, partial or entire, inside or outside, foreseen or unforeseen, structural or otherwise, and without limiting the generality of the foregoing, the Lessee shall:

(1) Keep at all times in a clean and orderly condition and appearance, the premises and all the Lessee's fixtures, equipment and personal property which are located in any part of the premises which is open to or visible by the general public;

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

(3) Take good care of the premises and maintain the same at all times in good condition, except for reasonable wear and tear which does not adversely affect the efficient or the proper utilization thereof; including but not limited to painting (the exterior of the premises and areas visible to the general public to be painted only in colors which have been approved by the Port Authority); and make all repairs and replacements, and do all rebuilding, inside and outside, ordinary and extraordinary, partial and entire, foreseen and unforeseen, structural or otherwise, which repairs, rebuilding and replacements by the Lessee shall be in quality and class not inferior to the original in materials and workmanship; and to pay promptly the cost and expense of such repairs, replacements and maintenance;

(4) Provide and maintain all obstruction lights and similar devices on the premises, and provide and maintain all fire protection and safety equipment and all other equipment of every kind and nature required by any law, rule, ordinance, resolution or regulation of the type and nature described in Sections 7 and 8 of this Agreement. The Lessee shall enter into and keep in effect throughout 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;

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

(6) Be responsible for the maintenance and repair of all utility service lines, including but not limited to, service lines for the supply of water, electric power and telephone conduits and lines, sanitary sewers and storm sewers, located upon the premises or located adjacent to the premises and serving the premises exclusively.

(7) Be responsible for appropriate lighting of all ramp and apron areas and for the maintenance and repair of all access roadways, taxiways and ramp and apron areas located upon the premises or located adjacent to the premises and used by the Lessee exclusively.

(8) Repair any damage to the paving or other surface of the premises caused by any oil, gasoline, grease,

lubricants or other flammable liquids and substances having a corrosive or detrimental effect thereon.

(c) If the performance of any of the foregoing repair, maintenance, replacement, repainting or rebuilding obligations of the Lessee requires work to be performed near an active taxiway or where safety of operations is involved, the Lessee agrees that it will at its own expense, post guards at such locations to insure the safety of the work performed thereat.

(d) In the event the Lessee fails to commence so to maintain, clean, repair, replace, lamp, relamp, rebuild, paint repaint or to restore as required by this Agreement within a period of twenty (20) days after notice from the Port Authority so to do in the event that the said notice specifies that the required work to be accomplished by the Lessee includes maintenance or repair other than preventive maintenance, or within a period of one hundred eighty (180) 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 cleaning, maintenance, repair, replacement, lamping and relamping, rebuilding, painting, repainting or restoration of all of the premises required to be repaired, replaced, rebuilt, painted, repainted or restored by the Lessee under the terms of this Agreement, the Port Authority may, at its option, and in addition to any other remedies which may be available to it, clean, maintain, repair, replace, lamp or relamp, rebuild, paint, repaint or restore all or any part of the premises included in the said notice, and the cost thereof shall be payable by the Lessee upon demand.

Section 12. <u>Insurance</u>

The Lessee shall, during the term of this Agreement, insure and keep insured to the extent of the full replacement value thereof, all buildings, structures, improvements, installations, facilities and fixtures now or in the future located on the premises against all risks of physical loss or damage (including, but not limited to flood and earthquake risks) if available, and if not available, then against such hazards and risks as may now or in the future be included under the Standard Form of Fire Insurance Policy of the State of New York and also against damage or loss by windstorm, cyclone, tornado, hail, explosion, riot, flood, earthquake, civil commotion, aircraft, vehicles and smoke, under the Standard Form of Fire Insurance Policy of New York and the form of extended coverage endorsement prescribed as of the effective date of the said insurance by the Rating Organization having jurisdiction, and, if the Port Authority so requests, also covering nuclear property losses and contamination hazards and risks if it becomes a reasonably available insurable risk in the commercial market, and boiler and machinery hazards and risks in a separate insurance policy or policies or as an additional coverage endorsement to the aforesaid policies in the form as may now or in the future be

prescribed as of the effective date of said insurance by the Rating Organization having jurisdiction and/or the Superintendent of Insurance of the State of New York and the Lessee shall furthermore provide additional insurance with respect to the premises covering any other peril of loss or damage that the Port Authority may at any time during the term of this Agreement cover by carrier or self-insurance covered by appropriate reserves at other locations at the Airport upon written notice to the Lessee to such effect.

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

In the event the premises or any part thereof shall be damaged by any casualty against which insurance is carried pursuant to this Section 12, the Lessee shall promptly furnish to the Port Authority such information and data as may be necessary to enable the Port Authority to adjust the loss. The Port Authority shall consult with the Lessee in the adjustment of the loss.

The policies or certificates representing insurance covered by this Section shall be delivered by the Lessee to the Port Authority at least thirty (30) days prior to the commencement date of the term of the letting hereunder and each policy or certificate delivered shall bear the endorsement of or be accompanied by evidence of payment of the premium thereon, and also, a valid provision obligating the insurance company to furnish the Port Authority and the City of New York thirty (30) days' advance notice of the cancellation, termination, change or modification of the insurance evidenced by said policy or certificate. Renewal policies or certificates shall be delivered to the Port Authority at least thirty (30) days before the expiration of the insurance which such policies are to renew.

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

The insurance covered by this Section 12 shall be written by companies approved by the Port Authority, the Port Authority covenanting and agreeing not to withhold its approval unreasonably. If at any time any of the insurance policies shall be or become unsatisfactory to the Port Authority as to form or substance or if any of the carriers issuing such policies shall be or become unsatisfactory to the Port Authority, the Lessee shall promptly obtain a new and satisfactory policy in

replacement, the Port Authority covenanting and agreeing not to act unreasonably hereunder. If the Port Authority at any time so requests, the Lessee shall make available to the Port Authority at a location in the Port of New York District, during normal business hours, the original or a certified copy of the entirety of each of the said policies and shall, upon request, deliver to the Port Authority a certified copy of such portions of said policies pertaining to the coverage hereunder as the Port Authority shall request.

Section 13. Damage to or Destruction of the Premises

(a) Removal Of Debris. If the premises, or any part thereof shall be damaged by fire, the elements, the public enemy or other casualty, the Lessee shall promptly remove all debris resulting from such damage from the premises, and to the extent, if any, that the removal of debris under such circumstances is covered by insurance, the proceeds thereof shall be made available to and be used by the Lessee for such purpose.

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

(c) Major Damage to or Destruction of the Premises. If the premises, or any part thereof shall be destroyed or so damaged by fire, the elements, the public enemy or other casualty as to be untenantable or unusable for ninety (90) days, or if within ninety (90) days after such damage or destruction the Lessee notifies the Port Authority in writing that in its opinion said premises will be untenantable or unusable for ninety (90) days then: The Lessee shall proceed with due diligence to make the necessary repairs or replacements to restore such premises in accordance with the plans and specifications for the premises as the same existed prior to such damage or destruction; or with the approval in writing of the Port Authority make such other repairs, replacements or changes as may be desired by the Lessee. If such destruction was covered by insurance, the proceeds thereof shall be made available to and used by the Lessee for such restoration.

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

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

Section 14. Assumption of Maintenance and Repair of the Premises by the Port Authority

Subdivision I. Defined Terms in this Section.

The following terms shall have the meanings stated in this Subdivision I for the purposes of this Section:

(a) "Assumable Maintenance and Repair" shall mean the obligation of the Lessee to clean, maintain, perform janitorial services and perform structural and non-structural improvements, repairs and rebuilding as such obligations are set forth in:

(i) paragraphs (a) and (b) of Section 11 hereof; and

(ii) Section 7 hereof insofar as laws, ordinances and governmental rules, regulations, orders, requirements and directions require structural and non-structural improvements, alterations or repairs of the premises; and

(b) The "Cost of Assumable Maintenance and Repair" shall, for each calendar year, consist of the sum of the Operation and Maintenance Cost and the Annual Capital Cost which shall both be determined as follows:

(i) The Port Authority will determine the total of all costs incurred or accrued during each calendar year in connection with the Assumable Maintenance and Repair in accordance with normal Port Authority accounting practice and as follows:

The Port Authority will apportion Assumable Maintenance and Repair performed between "Operation and Maintenance" and "Capital Work". The cost of Operation and Maintenance is hereinafter called the "Operation and Maintenance Cost" and the cost of the Capital Work is hereinafter called the "Capital Cost".

(ii) Operation and Maintenance Cost for each calendar year shall consist of the following expenditures for, in connection with, or related to Operation and Maintenance:

(1) On-the-job payroll costs of employees and supervisory personnel (including Airport supervisors, foremen and clerks) including, but not limited to, contributions to any retirement system or the cost of or participation in any pension plans or the like, social security, old age, survivor's, disability and unemployment insurance and other insurance costs,

sick leave pay, holiday, vacation, authorized absence and severance pay, other employee fringe benefits and any other payments made or costs incurred whether pursuant to law or by Port Authority policy to or with respect to said employees and personnel;

(2) The cost (including rental charges) of materials, equipment, supplies and utilities (including but not limited to, electricity, water and phone);

(3) Payments to contractors and any other third persons, firms or corporations for work performed or services rendered;

(4) The cost of any performance bond or bonds;

(5) The cost of insurance;

(6) Any other direct costs as charged under the Port Authority's normal accounting practice;

(7) Twenty-five percent (25%) of the sum of all of the foregoing items (1) through (6).

(iii) A. Capital Cost for each calendar year shall consist of the following expenditures, for, in connection with, or related to Capital Work;

(1) On-the-job payroll costs of employees and supervisory personnel (including Airport supervisors, foremen and clerks) including but not limited to, contributions to any retirement system or the cost of or participation in any pension plans or the like, social security, old age, survivor's, disability and unemployment insurance and other insurance costs, sick leave pay, holiday, vacation, authorized absence and severance pay, other employee fringe benefits and any other payments made or costs incurred whether pursuant to law or by Port Authority policy to or with respect to said employees and personnel;

(2) The cost (including rental charges) of materials, supplies, equipment and utilities (including but not limited to electricity, water and phone):

(3) Payments to contractors and any other third persons, firms or corporations for work performed or services rendered;

(4) The cost of any performance bond or bonds;

(5) The cost of any insurance;

(6) Payments to independent consultants, architects and engineers engaged or retained by the Port Authority;

(7) Any other direct costs as charged under the Port Authority's normal accounting practice;

(8) Ten percent (10%) of the sum of all the foregoing items (1) through (7);

(9) Financial Expense on the foregoing computed in accordance with Port Authority accounting practice;

B. "Annual Capital Cost" shall mean the total of all annual amounts based upon the amortization of the Capital Cost for each calendar year over the shorter of the weighted average period of the useful life of the Capital Work for each calendar year, or the remaining term of this Agreement as determined by the Port Authority. Each annual amount shall be determined on the basis of an equal annual payment method. The rate used in determining the Annual Capital Cost for all of the annual amounts shall be for each successive calendar year an annual percentage rate equal to the sum of (i) the average of all the weekly indices of the Bond Buyer Revenue Bond Index as reported in the publication "The Bond Buyer" for the 52-week period in the immediately preceding calendar year and (ii) three (3) percentage points. For purposes of example and illustration only, The Bond Buyer Revenue Bond Index for the week ending January 15, 1988 was 8.31% as set forth in the table entitled "Bond Buyer Indices" on page 30 of The Bond Buyer, Vol. 283 No. 230, New York, N.Y., dated January 15, 1988. In the event that The Bond Buyer or its weekly Bond Buyer Revenue Bond Index shall be discontinued prior to the commencement date of the term of the letting a comparable substitute for such Index shall be mutually agreed upon in writing by the Lessee and the Port Authority within thirty (30) days after discontinuance. In the event that the Port Authority and the Lessee shall fail to agree upon such a substitute within the time hereinabove specified then upon notice of either party such dispute shall be disposed of by arbitration in accordance with the then existing rules of the American Arbitration Association or any successor association. One half of the cost of said arbitration shall be borne by the Port Authority and the other half of said cost shall be borne by the Lessee.

Subdivision II. Commencement of Performance of Assumable Maintenance and Repair

The "Assumable Maintenance and Repair Effective Date" shall be the date, from time to time, determined as follows:

(i) The Port Authority may at any time and from time to time during the term of this Agreement advise the Lessee, by notice, of one or more deficiencies in the performance by the Lessee of the Assumable Maintenance and Repair, or in any portion, or

portions, thereof. Such notice shall specify the aforesaid deficiencies in reasonable detail. In such notice the Port Authority shall also advise the Lessee of what reasonable period of time shall be afforded the Lessee to cure such deficiencies and the Port Authority shall advise the Lessee therein when and where its representatives may meet with representatives of the Port Authority to discuss the foregoing. The Port Authority will consider the response, if any, of representatives of the Lessee, as given at the aforesaid meeting or during such period for a further response from the Lessee, as the Port Authority may, in its sole discretion, afford the Lessee. The Port Authority may, after the occurrence of the above, advise the Lessee, by notice, that it has elected not, at that time, to assume the performance of the Assumable Maintenance and Repair. The Port Authority, in its sole discretion, may condition such an election on such terms as it chooses to include in the notice, including the taking of certain remedial or other actions by the Lessee to the continuing satisfaction of the Port Authority. The fact that the Port Authority may previously have given a notice under this subparagraph but has subsequently elected on one or more occasions not to assume the performance of the Assumable Maintenance and Repair or having on one or more occasions assumed the Assumable Maintenance and Repair and thereafter returned the said obligations to the Lessee pursuant to the provisions hereof, shall not be deemed to limit the right of the Port Authority to, at any time, give another notice of one or more deficiencies pursuant to this subparagraph or notice pursuant to subparagraph (ii) below.

(ii) The Port Authority may at any time and from time to time during the term of this Agreement, but only after the issuance of a notice described above and giving the opportunity to cure as provided above, advise the Lessee, by notice, that commencing on a date to be specified in such notice, which shall be not less than ninety (90) days after the giving thereof, the Port Authority will perform the Assumable Maintenance and Repair. Such date as the same may be established from time to time shall be the "Assumable Maintenance and Repair Effective Date".

Subdivision III. Performance of the Assumable Maintenance and Repair

(a) The Port Authority shall perform the Assumable Maintenance and Repair from and after the Assumable Maintenance and Repair Effective Date with the Cost of Assumable Maintenance and Repair to be paid by the Lessee as provided in Subdivision IV below.

(b) The Lessee and the Port Authority each acknowledge and agree that the rights and obligations of the Port Authority and the Lessee hereunder are limited to the performance of all of the Assumable Maintenance and Repair by the Port Authority and not of particular portions thereof; provided, however, that the Port Authority in its sole and absolute discretion may elect to perform all of or portions of the Assumable Maintenance and Repair, and, if

portions, then such portions will be described in the notice (s) given under Subdivision II (ii) above.

(c) The Lessee shall give its full cooperation to the Port Authority so as to better enable the Port Authority and its contractors to perform the Assumable Maintenance and Repair and the Port Authority and its employees, agents and contractors shall have the right to enter the premises at all reasonable times to perform the Assumable Maintenance and Repair.

Subdivision IV. Payment for the Assumable Maintenance and Repair

The Cost of the Assumable Maintenance and Repair shall be payable by the Lessee from and after the Assumable Maintenance and Repair Effective Date as follows:

(a) The Port Authority shall establish monthly interim billing rates. Such billing rates shall be based upon determinations by the Port Authority of its estimate of the Cost of the Assumable Maintenance and Repair for the calendar year or; for the portion of the calendar year in which the Assumable Maintenance and Repair Effective Date, if less than a calendar year, shall occur or for the portion of the calendar year during which the term of this Agreement shall expire, if less than a calendar year. Such determinations shall be based upon the prior calendar year's experience, if any, and upon other such reasonable basis as the Port Authority shall select. The Port Authority may prospectively revise its billing rates during any calendar year. The Lessee shall pay current billings as they are received.

(b) As soon as practicable after the expiration of each calendar year, the Port Authority shall determine the actual Cost of the Assumable Maintenance and Repair for the preceding calendar year and shall determine the amounts payable by the Lessee. In the event the Assumable Maintenance and Repair Date does not fall on the first day of a calendar year or in the event the term of this Agreement expires on a day other than the last day of a calendar year the Annual Capital Cost for said calendar year shall be prorated based on the number of days during said calendar year during which the Port Authority provides the Assumable Maintenance and Repair. Corrected billings based upon such determination shall thereupon be rendered by the Port Authority to the Lessee and if any monies are due to the Port Authority they shall be promptly paid by the Lessee and if any monies are due to the Lessee they shall be promptly credited to it.

Subdivision V. Limitation of Port Authority Obligations and No Waiver of Rights of Port Authority

(a) The right and obligation of the Port Authority to perform the Assumable Maintenance and Repair shall not release, waive or affect the obligations of the Lessee with respect thereto set forth in any provision of this Agreement, nor limit, waive or affect any rights of termination with respect thereto, including but

not limited to, the right of the Port Authority to terminate this Agreement, whether before or after the occurrence of the Assumable Maintenance and Repair Effective Date pursuant to Section 26 of this Agreement.

(b) The Port Authority shall not be obligated to the Lessee to furnish the Assumable Maintenance and Repair at any time while the Lessee shall be in default under this Agreement.

(c) No failure, delay or interruption in performing the Assumable Maintenance and Repair by the Port Authority shall be or be construed to be an eviction of the Lessee or grounds for the diminution or abatement of rentals, fees, or other charges, or (unless resulting from the negligence or wilful failure of the Port Authority) shall be grounds for termination of this Agreement by the Lessee pursuant to Section 49 hereof or for any claims by the Lessee for damages, consequential or otherwise.

(d) The Port Authority shall be under no obligation to perform the Assumable Maintenance and Repair if and to the extent that during any period such performance shall be prohibited, limited or rationed by any federal, state or municipal law, rule, regulation, requirement, order or direction and if the Port Authority deems it in the public interest to comply therewith, even though such law, rule, regulation, requirement, order or direction may not be mandatory on the Port Authority as a public agency. Furthermore, the obligation of the Port Authority to perform the Assumable Maintenance and Repair shall be deemed limited and modified during any period that repair or rebuilding of the premises is required pursuant to Section 11 or Section 13 hereof.

Subdivision VI. Return of the Assumable Maintenance and Repair to the Lessee

At any time and from time to time after the Port Authority may have exercised its rights under Subdivision II (ii)) to perform the Assumable Maintenance and Repair the Port Authority shall have the right, upon written notice to the Lessee, to return the obligation to perform the Assumable Maintenance and Repair to the Lessee commencing on a date to be specified in such notice which date shall be not less than thirty (30) nor more than ninety (90) days from the giving of such notice. Such date shall be "the Return Date of the Assumable Maintenance and Repair". From and after the Return Date of the Assumable Maintenance and Repair the Lessee shall perform the Assumable Maintenance pursuant to and in accordance with all the terms and provisions of the Lease including, but not limited to, this Section 14.

From and after the Return Date of the Assumable Maintenance and Repair the Lessee shall continue to pay the cost of Assumable Maintenance and Repair, it being understood, that nothing herein shall release or be deemed to release the Lessee from the payment to the Port Authority of the cost of Assumable Maintenance and Repair including that portion thereof consisting of the Annual Capital Cost

in accordance with Subdivision IV hereof arising prior to the Return Date of the Assumable Maintenance and Repair; nor shall anything herein require the Port Authority to make any calculation or determination with respect to the cost of Assumable Maintenance and Repair prior to the time specified therefor in Subdivision IV hereof.

Section 15. Joint Periodic Condition Survey

In addition to and without limiting Sections 7 through 14 and Sections 18, 19, 21, 33, and 83 hereof or any other term, provision, covenant or condition of this Agreement, the Lessee and the Port Authority hereby agree that, in addition to any other inspection of the premises which may be made under any other Section of this Agreement or otherwise, a Condition Survey (as hereinafter defined) of the premises shall be conducted by the Contractor (as hereinafter defined) at each of the time periods specified below subject to and in accordance with the following terms and conditions:

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

(1) "Condition Survey" shall mean an inspection by the Contractor of the premises, including without limitation the then current state of cleaning, maintenance, janitorial services, painting, structural and nonstructural conditions, surface and subsurface conditions, environmental conditions, lighting of building areas, ramp and apron areas, and the condition of utilities and utility systems, fire-fighting and fire protection equipment and systems, communications and communications systems, antipollution systems and devices, fuel facilities and systems, and the Lessee's fixtures, equipment and personal property, and also including the items mentioned or covered by Sections 7 through 14, 18, 21, 33 and 83 hereof;

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

(3) "Contractor" shall mean and refer to the contractor to whom the Contract is awarded by the Port Authority, or with whom the Port Authority enters into a Contract, for a Condition Survey which contractor shall be a reputable engineering firm, licensed or authorized to do business in the State of New York;

(4) "Costs of the Condition Survey" shall mean and include with respect to each Condition Survey all sums paid and expenses incurred by the Port Authority, including all interest, costs, damages and penalties, in accordance with the provisions of Section 19 hereof, and including without limitation, with

respect to each Contract, all amounts paid or to be paid to the Contractor under the terms of its Contract for, relating to or in connection with Condition Survey work to be performed under the Contract;

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

(6) "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 Report prepared by the Contractor after its completion of the Condition Survey under its Contract including without limitation any and all recommendations for repair, maintenance, rebuilding and cleaning of items or areas covered by the Condition Survey; as such Date is set forth in said written notice signed by the Director of the Aviation Department of the Port Authority.

(b) No earlier than sixty (60) days preceding the expiration of each period consisting of five (5) consecutive years occurring during the term of this Lease, beginning with the first such five-year period which commences on the commencement date of the letting hereunder (as set forth in Section 3 hereof), and no earlier than sixty (60) days preceding the last day of the month which constitutes the twelfth month preceding the expiration date of the term of the letting under this Agreement, so that there shall be a Condition Survey (including all or particular portions of the items described in subparagraph (a) (1) above), the Port Authority shall advise the Lessee of the proposed Condition Survey (including all or particular portions of the items described in subparagraph (a) (1) above) and of a proposed contract including the name of the proposed contractor who will perform said Condition Survey and including the proposed scope of the proposed contract (including all or portions of the items described in subparagraph (a) (1) above) and the proposed fee structure of the proposed contract. Within thirty (30) days after the Port Authority's notice to the Lessee, the Lessee shall advise the Port Authority in writing of its concurrence or objection to the proposed contract. In the event the Lessee fails to respond during the said time period said nonresponse shall be deemed a concurrence and the Port Authority shall proceed with the said contract for purposes of performing a Condition Survey (including all or particular portions of the items described in subparagraph (a)(1) above. In the event the Lessee notifies the Port Authority of its objections to the proposed contract or contractor the parties hereby agree to consult with each other in good faith to resolve such dispute. If such resolution is not reached within a reasonable period of time not to exceed 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 Contract and the Contractor shall be final.

(c) It is hereby expressly understood and agreed that the selection of each Contractor for the purposes of a Condition Survey and including the award of any contract to such contractor 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 contract as if the work on such contract were being performed solely for the Port Authority; and further that the Contract shall contain terms and conditions which are standard to Port Authority contracts or consistent with such standard provisions.

(d) (1) With respect to each Condition Survey, all Costs of the Condition Survey 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 Costs of the Condition Survey with respect to each Condition Survey as follows:

The Lessee shall pay to or reimburse the Port Authority for the Costs of the Condition Survey as follows: The Port Authority shall after the completion of the Condition Survey work under a Contract and if it elects, also from time to time during the course of the performance of the Condition Survey work under such Contract, submit to the Lessee a certificate or certificates setting forth the Costs of the Condition Survey 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 said Costs of the Condition Survey as such amount is set forth in said certificate. Each such certificate shall specify whether the amount thereunder has theretofore been paid by the Port Authority or is due and payable to the Contractor and shall also not require payment by the Lessee of amounts previously paid by the Lessee under a prior certificate covering the same Condition Survey work. Upon its final determination of the Costs of the Condition Survey, the Port Authority shall submit to the Lessee a certificate marked "Final" setting forth the final determination of the Costs of the Condition Survey with respect to each Contract, and the Lessee shall and hereby agrees to pay to the Port Authority within thirty (30) days of such certificate an amount representing fifty percent (50%) of said Costs of the Condition Survey as such amount is set forth in said certificate; provided, however, that neither the foregoing nor any certificate delivered by the Port Authority, nor any payment made by the Lessee shall waive, affect, or impair any right of the Port Authority of review and audit with respect to the Costs of the Condition Survey and with respect to each Contract and provided, further, however, that in the event any such review or audit by the Port Authority requires an adjustment of the Costs of the Condition Survey the Lessee shall be promptly credited with or shall promptly pay to the Port Authority all amounts required by such adjustment.

(2) Any and all amounts required to be paid by the Lessee hereunder 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 part of the rent as set forth in Section 4 hereof.

(e) The Lessee hereby agrees to and shall commence within ninety (90) days after the Report Date all items and all action required or recommended to be taken as set forth in each Contract Condition Survey Report that are necessary or required to meet the Lessee's maintenance or repair or any other of its obligations, duties or responsibilities under this Agreement and the written notice of the Port Authority delivering said Report, 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 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 systems shall be promptly commenced.

(f) The Lessee hereby agrees that the 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 Report under the applicable Contract.

(g) It is expressly understood and agreed that neither the provisions hereof nor any of the rights of the Port Authority hereunder nor any of the obligations of the Port Authority hereunder, nor the obligation of the Lessee to so perform and complete such work, nor any failure of the parties to select a contractor for the purposes hereunder, nor any failure of any Contractor to perform and complete a Contract, nor any failure by the Lessee or the Port Authority to pay the Costs of the Condition Survey with respect to any Contract, or any portion thereof, shall or shall be deemed to release, waive, affect, restrict or impair any of the obligations duties, responsibilities or liabilities of the Lessee under any term, provision, covenant or condition of this Agreement nor to limit, waive, affect, restrict or impair any right or remedy of the Port Authority, or any right or rights of termination of the Port Authority with respect thereto, including but not limited to the right of the Port Authority to terminate this Agreement whether before or after the Report Date or any of the rights of the Port Authority under and as set forth in Sections 11 (d), 14, 19 and 21 hereof. Without limiting the foregoing, it is expressly understood and agreed that the Lessee shall not on the basis of the provisions of this Section postpone or delay any action, maintenance, rebuilding or repair or other item or thing required to be taken by the Lessee under any other section of this Agreement.

(h) Notwithstanding anything to the contrary, the Port Authority shall have the right, exercisable in its sole and complete discretion, to exclude from the scope of a Condition Survey with

respect to any Contract those items covered by Section 14 hereof for or during such period or periods, if any, when the Port Authority has elected to exercise its rights under Section 14 hereof to perform the Assumable Maintenance and Repair.

Section 16. Indemnity and Liability Insurance

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

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

(c) In addition to the obligations set forth in paragraph (a) of this Section and all other insurance required under this Agreement, the Lessee during the term of this Agreement in its own name as insured and including the Port Authority as an additional insured shall maintain and pay the premiums on a policy or policies of Comprehensive General Liability insurance, including premises-operations, products liability, liquor liability, completed operations, and covering bodily injury, including death, and property damage liability, broadened to include or equivalent separate policies covering aircraft liability and airport operator's liability under an airport liability policy, none of the foregoing to contain care, custody or control exclusions, and providing for coverage in the limits set forth below, and Comprehensive Automobile Liability Insurance covering owned, non-owned and hired vehicles and automatic coverage for newly acquired vehicles and providing for coverage in the limits set forth below. The said Comprehensive

General Liability insurance policy shall have a limit of not less than $100,000,000 combined single limit per occurrence for bodily injury and property damage liability. The said Comprehensive Automobile Liability insurance shall have a limit of not less than $25,000,000 combined single limit per accident for bodily injury and property damage liability. All of the said policy or policies of insurance shall also provide or contain an endorsement providing that the protections afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third person shall pertain and apply with like effect with respect to any claim or action against the Lessee by the Port Authority and shall also provide or contain an endorsement providing that the protections afforded the Port Authority thereunder and with respect to any claim or action against the Port Authority by the Lessee shall be the same as the protections afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third person as if the Port Authority were the named insured thereunder but such endorsement shall not limit, vary, change, or affect the protection afforded the Port Authority thereunder as an additional insured. The said policy or policies of insurance shall also provide or contain a contractual liability endorsement covering the obligations assumed by the Lessee under paragraph (a) hereof.

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

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

(e) As to the insurance required by the provisions of this Section and as to the insurance covered by the provisions of Section 2, hereof, a certified copy of the policies or a certificate or certificates or binders, evidencing the existence thereof, or binders, shall be delivered by the Lessee to the Port Authority at least thirty (30) days prior to the commencement date of the letting. Each policy, certificate or binder delivered as aforesaid shall bear the endorsement of or be accompanied by evidence of payment of the premium thereon. In the event a binder is delivered, it shall be replaced within thirty (30) days by a certified copy of the policy or a certificate. Each such copy or certificate shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified without giving thirty (30) days' written advance notice thereof to the Port Authority. Each such copy or certificate shall contain an additional endorsement providing that the insurance carrier shall not, without obtaining express advance permission from the General Counsel of the

Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority. Any renewal policy shall be delivered to the Port Authority at least thirty (30) days prior to the expiration of each expiring policy, except for any policy expiring after the date of expiration of the term of this Agreement. The aforesaid insurance shall be written by a company or companies approved by the Port Authority, the Port Authority agreeing not to withhold its approval unreasonably. If at any time any of the insurance policies shall be or become unsatisfactory to the Port Authority as to the form or substance or if any of the carriers issuing such policies shall be or become unsatisfactory to the Port Authority, the Lessee shall promptly obtain a new and satisfactory policy in replacement, the Port Authority covenanting and agreeing not to act unreasonably hereunder. If the Port Authority at any time so requests, the Lessee shall make available to the Port Authority at a location in the Port of New York District, during normal business hours, the original or a certified copy of the entirety of each of the said policies and shall, upon request, deliver to the Port Authority a certified copy of such portions of said policies pertaining to the coverage hereunder as the Port Authority shall request.

Section 17. Signs

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

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

Section 18. Obstruction Lights

The Lessee shall furnish such obstruction lights as the Port Authority shall direct, of the type and design approved by the Port Authority, and shall install said lights in the locations on the premises designated by the Port Authority and shall maintain

them in first class operating condition at all times. The Lessee shall furnish and install the bulbs and furnish the electricity necessary for the operation of said lights, and shall operate the same in accordance with the directions of the Port Authority. The Port Authority hereby directs that all said obstruction lights shall, until further notice be operated 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 periods as may be directed or requested by the control tower at the Airport.

Section 19. Additional Rent and Charges

If the Port Authority is required or elects to pay the sum or sums or incurs any obligations or expense by reason of the failure, neglect or refusal of the Lessee to perform or fulfill any one or more of the conditions, covenants or agreements contained in this Agreement or as a result of an act or omission of the Lessee contrary to the said conditions, covenants and agreements, the Lessee agrees to pay the sum or sums so paid or the expense so incurred including all the interest, costs, damages and penalties, and the same may be added to any installment of rent thereafter due hereunder, and each every part of the same shall be and become additional rent, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the rent as set forth in Section 4 hereof.

Section 20. Late Charges

If the Lessee should fail to pay any amount required to be paid by the Lessee under this Agreement when due to the Port Authority, including without limitation any payment of Ground Rentals, Facility Rentals or Additional Facility Rentals or other rental or other fees or any payment of utility or other charges or if any such amount is found to be due as the result of an audit, then, in such event, the Port Authority may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount for each late charge period (hereinbelow described) during the entirety of which such amount remains unpaid, each such late charge not to exceed an amount equal to eight tenths of one percent of such unpaid amount for each late charge period. There shall be twenty-four 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 of

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 rentals. Nothing in this Section is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) any rights of the Port Authority under this Agreement, including without limitation the Port Authority's rights to terminate set forth in Section 26 of this Agreement 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 such late charges payable under this Agreement shall be payable instead at such legal maximum.

Section 21. Rights of Entry Reserved

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

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

(c) Further, without limiting the generality of this Section, the Port Authority, by its officers, employees, agents, representatives and contractors and furnishers of service 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 the portions of the Distribution Portion of the Underground Fuel Distribution System, as defined in Section 81 hereof, located under or on the premises and to enter upon the premises at all times to make such repairs, replacements or alterations to the Distribution Portion of the Underground Fuel Distribution System as may, in the opinion of the Port Authority, be deemed necessary or desirable and, from time to time to construct or install over, in or under the premises additions or extensions to said Distribution Portion of the

Underground Fuel Distribution System; 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 pursuant to the provisions of this Agreement.

Neither the Distribution Portion of the said Underground Fuel Distribution System nor any part thereof shall be or be deemed to be a part of the premises under the Lease.

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

(e) 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 or 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).

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

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

(h) 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 and shall not be made the grounds for any abatement of rental nor (unless resulting from affirmative acts of

the Port Authority, its employees, agents and representatives) any claim or demand for damages, consequential or otherwise.

Section 22. Condemnation

(a) Definitions

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

As used in this Section with reference to any premises or facilities leased to the Lessee for its exclusive use or with reference to the Public Landing Area, the phrase "a material part" shall mean such a part of the said premises or said Public Landing Area that the Lessee cannot continue to carry on its normal operations at the Airport without using such part.

(b) Condemnation or Taking of a Permanent Interest in All or any part of the premises or All or a Material Part of the Public Landing Area.

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 the premises or of a permanent interest in all or a material part of the Public Landing Area (any such acquisition under this Section 22 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 except that in the event of a taking of less than all of the said premises, the Port Authority shall purchase and the Lessee shall sell only so much of the Lessee's leasehold interest in the premises as are taken. The sole and entire consideration to be paid by the Port Authority to the Lessee shall be an amount equal to the Unamortized Phase I Capital Investment and Unamortized Phase II Capital Investment (as defined in Section 81 hereof), if any, of the Lessee in the premises or, in the event of a taking of less than all of the said premises, an amount equal to the Unamortized Phase I Capital Investment and Unamortized Phase II Capital Investment (as defined in Section 81 hereof), if any, of the Lessee in so much of the premises 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 municipal air terminals," within the meaning of said phrase as used in Section 23, 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 New York) out of the damages or award in respect to such taking without violation of any obligation of the Port Authority to the City of New York under the Basic Lease. Such purchase and sale shall take effect as of the date upon which such body having superior power of eminent domain obtains possession of any such permanent interest in the demised premises or in the Public Landing Area, as the case may be, 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.

If however, the amount to be paid by the Port Authority (the Unamortized Phase I Capital Investment and the Unamortized Phase II Capital Investment, as defined in Section 81 hereof, if any, of the Lessee in the premises) for such leasehold interest will not constitute "unamortized Port Authority funds other than bond proceeds or Federal or State grants, expended for capital improvements at the municipal air terminals," within the meaning of said phrase as used in Section 23, I, D of the Basic Lease or if 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 New York) out of the damages or award in respect to such taking without violation of any obligation of the Port Authority to the City of New York under the Basic Lease, then the aforesaid agreement to 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 the premises, up to but not in excess of an amount equal to the Unamortized Phase I Capital Investment and the Unamortized Phase II Capital Investment (as defined in Section 81 hereof), if any, of the Lessee in the premises. 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 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 the balance of the term of this Lease shall abate.

In the event of the taking of all of the premises and if the Lessee has no Unamortized Phase I Capital Investment or Unamortized Phase II Capital Investment (as defined in Section 81 hereof) in the premises 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 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 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 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 thirty (30) 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 not taken for a consideration equal to the Unamortized Phase I Capital Investment and the Unamortized Phase II Capital Investment (as defined in Section 81 hereof), if any, of the Lessee in the premises not taken. If the letting of the entire premises is not terminated, 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 4 hereof.

(c) Condemnation or Taking of a Permanent Interest in Less Than a Material Part of the Public Landing Area.

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 permanent interest in less than a material part of the Public Landing Area, the Port Authority and the Lessee each shall have the right to appear and file claims for damages, to the extent of their respective interests, in the condemnation or eminent domain proceedings, to participate in any and all hearings, trials and appeals therein, and receive and retain such amount as they may lawfully be entitled to receive as damages or payment as a result of such taking. However, if at the time of such taking the Lessee has no Unamortized Phase I Capital Investment or Unamortized Phase II Capital Investment (as defined in Section 81 hereof) in the premises, 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.

(d) Condemnation or Taking of a Temporary Interest in All or Any Part of the Premises or All or a Material Part of the Public Landing Area.

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 or of a temporary interest in all or a material part of the Public Landing Area, there shall be no abatement of any rental payable by the Lessee to the Port Authority under the provisions of the Agreement but the Lessee shall have the right to claim and in the event of an award thereof 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 (a) reasonable expenses incurred by the Lessee in the prosecution of such claim; (b) an amount equal to the Unamortized Phase I Capital Investment and the Unamortized Phase II Capital Investment (as defined in Section 81 hereof), if any, of the Lessee in the premises, or in the event of a taking of less than all of the said premises, an amount equal to such Unamortized Phase I Capital Investment and Unamortized Phase II 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; and (c) 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.

In the event that the taking covers a material part but less than all of the premises, then the Lessee and the Port Authority shall each have an option, exercisable by notice given within thirty (30) days after the effective date of such taking, to suspend the term of the letting of such of the premises as are not so taken during the period of the taking, and, in that event, the rentals for such premises shall abate for the period of the suspension. If the Port Authority exercises the option, it shall purchase from the Lessee the Lessee's leasehold interest (excluding any personal property whatsoever) in the premises not taken for the period of suspension for a consideration equal to the Unamortized Phase I Capital Investment and Unamortized Phase II Capital Investment (as defined in Section 81 hereof), if any, of the Lessee in such premises which is to be amortized over the period of such suspension.

(e) Condemnation or Taking of a Temporary Interest in Less Than a Material Part of the Public

Landing Area.

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 less than a material part of the Public Landing Area, the Lessee 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 condemnation or taking, and all rights to damages, if any, of the Lessee, including consequential damages, by reason of such condemnation or taking, are hereby assigned to the Port Authority.

Section 23. Right of Termination/Security Deposit Requirements - Securities Ownership

(a) The occurrence of the events in either subparagraph (i) or (ii) of this paragraph shall be and shall be deemed an event of termination (hereinafter a "Change in Control Termination Right Event") under Section 26 of the Lease, and upon the occurrence of any such Change in Control Termination Right Event or at any time thereafter during the continuance thereof (subject to paragraph (h) below) the Port Authority shall have the right to terminate the Lease and the letting hereunder pursuant to the provisions of said Section 26, provided, however, that the provisions of Section 30 hereof shall not apply to such termination (except that this proviso shall not be deemed to release or relieve the Lessee from any of its obligations arising or accruing on or prior to such termination):

(i) After the effective date of this Agreement, any individual, corporation, partnership or other entity (but excluding a Holding Company, as defined in subparagraph (f) below, any Subsidiary or any employee benefit plan sponsored or maintained by any such Holding Company, the Lessee or any Subsidiary, including any trustee of such plan acting as trustee of such plan or other person or entity organized, appointed or established to act as fiduciary for such plan pursuant to the terms of such plan and also excluding a beneficial owner who qualifies to file, and has properly and lawfully filed, a schedule 13G pursuant to and under Rule 13d-1(b)(1) of the Exchange Act (a "Schedule 13G owner") so long as such person continues to qualify under the Exchange Act as a Schedule 13G owner), shall become, directly or indirectly, a beneficial owner (as described below) of more than 50% of the outstanding Voting Securities of the Lessee (hereinafter a "Change in Control Event") which shall result in a detectible decrease in the amount of, and a change in, the nature of the Lessee's scheduled passenger aircraft operations at the Airport; unless the Port Authority shall have given its prior written consent thereto;

(ii) After the effective date of this Agreement, a Holding Company or a Subsidiary shall become the beneficial owner of more than 50% of the outstanding Voting Securities of the Lessee (hereinafter also a "Change in Control Event"), which has the effect of causing this Lease to become the only asset or

a significantly greater portion of the assets of the Lessee than immediately prior to such Change in Control Event; unless the Port Authority shall have given its prior written consent thereto.

(b) The foregoing rights of termination shall be in addition to all other rights of termination the Port Authority has under this Agreement and the failure of the Port Authority to exercise any right of termination under this Section at any time in which it may have such right shall, subject to paragraph (h) below, not affect, waive or limit its right to exercise said right of termination at any subsequent time.

(c) (1) The Lessee represents and warrants to the Port Authority, knowing that the Port Authority is relying on the accuracy of such representations and warranties, that, as of March 31, 1994, it is a corporation organized and existing under the laws of the State of Delaware, and has issued and has outstanding or reserved 87,167,156 Voting Securities which constitute all of its outstanding Voting Securities.

(d) The phrase "beneficial owner" shall have the meaning as defined in Rule 13d-3 of the Securities Exchange Act of 1934, as amended from time to time (herein sometimes referred to as the "Exchange Act").

(e) The term "Voting Security" or "Voting Securities" shall include any stock (other than the Lessee's treasury stock held, owned and controlled by the Lessee), bond or other obligation of a corporation the holder of which has any voting rights including but not limited to the right to vote for the election of members of the board of directors of said corporation and shall include any security convertible into a voting security and any right, option or warrant to purchase a voting security.

(f) For purposes of this Section 23, "Holding Company" shall mean a corporation or other entity properly formed under law of any State or territory of the United States or of the District of Columbia for the lawful purpose of beneficially owning more than 50% of the outstanding Voting Securities of the Lessee if the stockholders of the Lessee immediately prior to such transaction obtain substantially the same proportionate ownership interests in such corporation or other entity immediately after such transaction as they had in the Lessee immediately prior to such transaction.

(g) "Subsidiary" shall mean any corporation (other than a Holding Company, or if none exists, the Lessee) in an unbroken chain of corporations beginning with a Holding Company, or if none exists, the Lessee, if each of the corporations (other than the last corporation in the unbroken chain) owns 50% or more of the total outstanding voting securities in one of the other corporations in the chain.

(h) (1) The Lessee hereby expressly covenants, agrees, represents and warrants to the Port Authority that the Lessee, to enable the Port Authority to exercise its rights under this Section 23, shall act in good faith and shall, within sixty (60) days after occurrence of a Change in Control Event under subparagraphs (a)(i) or (ii) above, provide to the Port Authority all information, documentation and materials, including without limitation, any and all filings with the United States Securities Exchange Commission, necessary or appropriate, or as may be reasonably requested by the Port Authority that are necessary or appropriate for the Port Authority to exercise its right(s) of termination, should it so elect, within the time period specified in subparagraph (3) below of this subparagraph (h). Notwithstanding the foregoing, the Lessee shall have no obligation to provide to the Port Authority any privileged or confidential information, documentation or materials that have not been provided to all of the Lessee's major creditors, except if and to the extent such information is already in or becomes part of the public domain.

(2) Without limiting the foregoing, the Lessee further covenants, agrees, represents and warrants to the Port Authority that the Lessee shall within thirty (30) days after the occurrence of a Change in Control Event, give the Port Authority written notice thereof.

(3) In the event, and upon and subject to the condition, that the Lessee shall have fully complied with subparagraphs (h)(1) and (2) above, the right of termination provided hereunder to the Port Authority with respect to any Change in Control Termination Right Event shall obtain and extend for a period of no longer than one year from the date of the related Change in Control Event; provided, however, that said time limitation shall not apply where the Lessee has, for any reason whatsoever, failed or refused to provide the information and other matters described in subparagraph (1) above or the written notice required under subparagraph (2) above.

(i) The above provisions of this Section 23 shall not limit the Lessee's limited right of assignment provided in paragraph (a) of Section 25 hereof and said limited right of assignment under Section 25(a) exercised in accordance therewith and subject thereto shall not be deemed an event of termination under this Section 23.

(h) (1) For purposes of this Section 23 the term "Section 23 Security Deposit Requirement Event" shall mean:

After the effective date of this Agreement, any individual, corporation, partnership or other entity (but excluding a Holding Company as defined above, any Subsidiary or any employee benefit plan sponsored or maintained by any such Holding Company, the Lessee or any Subsidiary including any trustee of such plan acting as trustee of such plan or other person or entity organized, appointed or established to act as fiduciary for such plan pursuant to the terms of such plans and

also excluding a beneficial owner who qualifies to file, and has properly and lawfully filed, a schedule 13G pursuant to and under Rule 13d-1(b)(1) of the Exchange Act (a "Schedule 13G owner") so long as such person continues to qualify under the Exchange Act as a Schedule 13G owner), shall become, directly or indirectly, a beneficial owner (as described above) of 25% or more of the outstanding Voting Securities of the Lessee.

(2) Upon any occurrence (and as to each such occurrence) of a Section 23 Security Deposit Requirement Event, the following provisions shall automatically, and without any further notice from or action by the Port Authority, become operative and in full force and effect and the Lessee shall and hereby agrees to fully comply thereunder:

"Section 23A. Security Deposit

(a) Upon any occurrence of a Section 23 Security Deposit Requirement Event as defined in Section 23 hereof, the Lessee shall deposit with the Port Authority (and shall keep deposited throughout the term of this Lease) either the sum equivalent to a total of one month's installment of all rentals then payable under Section 4 hereof in cash, or bonds of the United States of America, or of The Port Authority of New York and New Jersey, or of the States of New York or New Jersey having a market value of that amount, as security for the full, faithful and prompt performance of and compliance with, on the part of the Lessee, all of the provisions, terms and conditions of this Lease on its part to be fulfilled, kept, performed or observed. Bonds qualifying for deposit hereunder shall be in bearer form but if bonds of that issue were offered only in registered form, then the Lessee may deposit such bond or bonds in registered form, provided, however, that the Port Authority shall be under no obligation to accept such deposit of a bond in registered form unless such bond has been re-registered in the name of the Port Authority (the expense of such re-registration to be borne by the Lessee) in a manner satisfactory to the Port Authority. The Lessee may request the Port Authority to accept a registered bond in the Lessee's name and if acceptable to the Port Authority the Lessee shall deposit such bond together with a bond power (and such other instruments or other documents as the Port Authority may require) in form and substance satisfactory to the Port Authority. In the event the deposit is returned to the Lessee, any expenses incurred by the Port Authority in re-registering a bond to the name of the Lessee shall be borne by the Lessee. 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 use the said deposit 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 the deposit itself shall cure any default or breach of this Agreement on the part of the Lessee.

In the event that the Port Authority shall at any time or times so use the deposit, or any part thereof, or if bonds shall have been deposited and the market value thereof shall have declined below the above-mentioned amount, the Lessee shall on demand of the Port Authority and within two (2) days thereafter, deposit with the Port Authority additional cash or bonds so as to maintain the deposit at all times to the full amount above stated, and such additional deposits shall be subject to all the conditions of this Section 23A. After the expiration or earlier termination of the letting under this Agreement (or any extension thereof) and upon condition that the Lessee shall then be in no wise in default under any part of this Agreement, and upon written request therefor by the Lessee, the Port Authority will return the said deposit to the Lessee less the amount of any and all unpaid claims and demands (including estimated damages) of the Port Authority by reason of any default or breach by the Lessee of this Agreement or any part thereof. The Lessee agrees that it will not assign or encumber the said deposit and any such assignment or encumbrance shall be void as to the Port Authority. The Lessee may collect or receive annually any interest or income earned on bonds and 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 an 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. Without limiting the foregoing provisions of this Section 23A with respect to any bonds deposited by the Lessee, the Port Authority shall have the right, in order to satisfy any of its claims or demands against the Lessee, to sell the same in whole or in part, at any time and from time to time, with or without prior notice, at public or private sale, all as determined by the Port Authority together with the right to purchase the same at such sale free of any claims, equities or rights of redemption of the Lessee. The Lessee hereby waives any right to participate therein or any right to prior notice or demand of the amount or amounts of the Port Authority's claims or demands against the Lessee. The proceeds of any such sale shall be applied by the Port Authority first to the costs and expenses of the sale (including but not limited to any advertising or commission expenses) and then to the amounts due the Port Authority from the Lessee. Any balance remaining shall be retained in cash toward bringing the security deposit to the sum specified above provided that this shall not relieve the Lessee from maintaining the deposit in the full amount stated above.

(b) In satisfaction of the security deposit required by this Section 23A, the Lessee may, at its option, cause to be delivered to the Port Authority as security for the full, faithful and prompt performance of and compliance with, on the part of the Lessee, all of the provisions, terms and conditions

of this Agreement of Lease on its part to be fulfilled, kept, performed or observed, a clean, irrevocable letter of credit issued to and in favor of the Port Authority, by a banking institution having its main office within the Port of New York District and acceptable to the Port Authority, payable in the Port of New York District, in the amount of the sum equivalent to the total of one month's installment of all rentals then payable under Section 4 hereof and in such form and content which shall have been approved in advance by the Port Authority, and which letter of credit (which may be periodically renewable) shall ultimately expire no later than a date six months after the expiration, termination or revocation of this Agreement. 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 the said 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 shall cure any default or breach of this Agreement on the part of the Lessee. If requested by the Port Authority, the said letter of credit shall be accompanied by a letter expressing the opinion of counsel for the banking institution that the issuance of the said clean, irrevocable letter of credit is an appropriate and valid exercise by the banking institution of the corporate power conferred upon it by law. If at any time and from time to time during the term of this Agreement, including any extension, a payment is made to the Port Authority under any letter of credit running in its favor as provided in this Section 23A, the Lessee shall cause to be delivered to the Port Authority on demand from time to time and at any time made, cash or an additional clean, irrevocable letter of credit satisfactory to and issued in favor of the Port Authority by a banking institution satisfactory to the Port Authority, the form and content of which letter of credit shall have been approved by the Port Authority and which, if required by the Port Authority, shall be accompanied by an opinion of counsel as aforesaid and in such an amount so that at all times during the term of this Agreement, the Port Authority shall have clean, irrevocable letters of credit or cash adding up to a total amount of the sum equivalent to the total of one month's installment of all rentals then payable under Section 4 hereof. If at any time any bank shall fail to make payment to the Port Authority in accordance with any letter of credit issued by any such bank in favor of the Port Authority as herein provided, the Lessee shall cause to be delivered to the Port Authority, on demand, cash or another clean, irrevocable letter of credit satisfactory to the Port Authority and issued by another banking institution in favor of the Port Authority and satisfactory to it, the form and content of which letter of credit shall have been approved by the Port Authority and which, if requested by the Port Authority, shall be accompanied by an opinion of counsel as aforesaid, in an amount equal to the amount of the original letter of credit. Notwithstanding

anything hereinabove provided, any failure of any banking institution issuing a letter of credit in favor of the Port Authority to make payments as provided in the said letter of credit shall, after failure of the Lessee to make such payment upon demand therefor by the Port Authority, be and be deemed a breach of this Agreement by the Lessee. No action by the Port Authority pursuant to the terms of any letter of credit, or receipt by the Port Authority of funds from any bank issuing any such letter of credit, shall be or be deemed to be a waiver of any default by the Lessee under the terms of this Agreement and all remedies of this Agreement and of the Port Authority consequent upon such default shall not be affected by the existence of a recourse to any such letter of credit. In the event more than one form of security shall be available to the Port Authority hereunder, use, in accordance with this Section 23A, of either cash or other security deposited by the Lessee or a letter or letters of credit delivered to the Port Authority hereunder in lieu thereof shall be at the sole and complete discretion of the Port Authority.

(c) For purposes of this Section, the Lessee hereby certifies to the Port Authority that its Federal Employer tax identification number is 58-0218548."

Section 24. Trust Indenture

In the event that the Port Authority is of the opinion that it is advisable due to statutory changes (occurring after the execution of this Agreement) in the laws of the United States of America regarding bankruptcy and insolvency, which changes materially lessen or limit the rights or remedies of a landlord should a tenant under a lease of non-residential real property become a debtor pursuant to the aforesaid laws, (such changes being hereinafter called "Adverse Changes in Landlord Rights"), the Port Authority and the Lessee agree that this Agreement, as the same may have been theretofore amended or supplemented and as then amended by a Supplement to be prepared by the Port Authority and executed promptly by the Lessee and the Trust (described below) and delivered to the Port Authority for its prompt execution, shall be assigned to a Trust, created as provided herein. The Trust shall be created by a Trust Indenture to be prepared by the Port Authority and executed by the Port Authority and the Lessee. The Port Authority and the Lessee hereby agree to each act in good faith with respect to mutually agreeing upon the terms and conditions of said Trust Indenture, said Supplement, any Supplemental Agreement referred to hereinbelow and the Sublease referred to hereinbelow in order to carry out the intent of this provision. The Trust would be under the voting control of the trustee designated by the Lessee, unless and until Triggering Events, as defined in Exhibit X occurred, in which event voting control would shift to the trustee designated by the Port Authority. The occurrence of such Triggering Events would be as certified by the independent trustee jointly designated by the Port Authority and the Lessee. The Port Authority agrees that it will simultaneously with the assignment of this Agreement, as the

same may have been theretofore amended or supplemented, to the Trust, consent to the Trust entering into a sublease with the Trust as landlord and the Lessee, as sublessee, provided however that such sublease shall be a month-to-month periodical tenancy terminable in accordance with law on the basis of the nature of said month-to-month periodical tenancy by the Lessee, sublessee, or the trustee for the Trust, as landlord, and the Trust Indenture shall provide for the same. If four consecutive calendar quarters shall elapse after voting control of the Trust shifted to the trustee designated by the Port Authority and (i) the Trustee designated by the Port Authority shall not have, by notice, advised the Lessee that it may no longer occupy the premises as a month-to-month periodical tenant pursuant to the aforesaid sublease and the Lessee in fact is so occupying and (ii) none of the aforesaid Triggering Events shall have occurred within said four consecutive calendar quarters or continued to occur or shall have again occurred, the Port Authority will, at the request of the Lessee prepare a Supplemental Agreement to be executed by the Trust and the Lessee promptly, and delivered to the Port Authority for its prompt execution reassigning this Agreement to the Lessee. If the Trust becomes the assignee of this agreement as provided above, and there are further changes in Landlord Rights such that the rights and remedies of a landlord, as aforesaid, are restored, the Port Authority shall prepare and tender to the Lessee and the Trust a Supplemental Agreement to be executed and delivered by each of them promptly and returned to the Port Authority for its prompt execution, reassigning this Agreement, as the same may have been theretofore amended or supplemented, to the Lessee.

Section 25. Assignment and Sublease

(a) The Lessee covenants and agrees that it will not sell, convey, transfer, mortgage, pledge or assign this Agreement or any part thereof, or any rights created thereby or the letting thereunder or any part thereof without the prior written consent of the Port Authority; provided, however, that this Agreement may be assigned in its entirety without such consent to any successor in interest of the Lessee which is or is to be a Scheduled Aircraft Operator, and with or into which the Lessee may merge or consolidate, or which may succeed to the assets of the Lessee or the major portion of its assets related to its air transportation system, but in any such event, such assignment shall not take effect before the assignee is actually engaged in the business of scheduled transportation by aircraft; provided, further, that such successor entity or purchaser executes and delivers to the Port Authority an instrument in a form satisfactory to the Port Authority assuming the obligations of the Lessee as if it were the original tenant hereunder.

(b) The Lessee shall not sublet the premises or any part thereof, without the prior written consent of the Port Authority; provided, however, that if any of the events set forth in Section 49 (a)(1) hereof shall occur, the Lessee may sublet the entire premises or assign this Agreement, with the consent of the Port Authority

thereto not to be unreasonably withheld if the sublessee or assignee is a Scheduled Aircraft Operator.

(c) If without the prior written consent of the Port Authority, the Lessee assigns, sells, conveys, transfers, mortgages, pledges or sublets in violation of paragraph (a) or (b) of this Section or if the premises are occupied by anybody other than the Lessee, the Port Authority may collect rent from any assignee, sublessee or anyone who claims a right under this Agreement or letting or who occupies the premises, and the Port Authority shall apply the net amount collected to the rental herein reserved; but no such collection shall be deemed a waiver by the Port Authority of the covenants contained in paragraph (a) and (b) of this Section or an acceptance by the Port Authority of any such assignee, sublessee, claimant or occupant as Lessee, nor a release of the Lessee by the Port Authority from the further performance by the Lessee of the covenants contained herein.

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

(e) The Lessee shall not use or permit any person to use the premises or any portion thereof for any purpose other than the purposes stated in Section 5 hereof. Except as provided in this Agreement or otherwise permitted in writing by the Port Authority, the Lessee shall not permit the premises to be used or occupied by any person other than its own officers, employees, passengers, contractors and representatives.

(f) The Port Authority shall not assign or otherwise transfer this Lease or any of its rights hereunder (i) to any private person unless such private person at the time of such assignment or transfer assumes the obligations of the Port Authority under this Lease; or (ii) to the City of New York unless the City of New York at the time of such assignment or transfer assumes the obligations of the Port Authority under this Lease.

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

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

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

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

(3) By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of the Lessee, and such possession or control shall continue in effect for a period of sixty (60) days; or

(4) The Lessee shall voluntary abandon, desert or vacate the premises or discontinue its operations at the premises, or after exhausting or abandoning any right of further appeal, the Lessee shall be prevented for a period of thirty (30) days by action of any governmental agency other than the Port Authority having jurisdiction thereof, from conducting its operations at the Airport, regardless of the fault of the Lessee; or

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

(6) Except as otherwise provided in Section 24 or paragraph (a) of Section 25 hereof, the letting hereunder or the interest or estate of the Lessee under this Agreement shall be transferred directly by the Lessee or shall pass to or devolve upon, by operation of law or otherwise, any other person, firm or corporation; or

(7) A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Lessee and shall not be dismissed within sixty (60) days after the filing thereof; or

(8) Except as otherwise provided in paragraph (a) of Section 25 hereof, the Lessee, if a corporation, shall, without the prior written approval of the Port Authority, become possessor or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or

(9) The Lessee shall fail duly and punctually to pay the rentals or fees or to make any other payment required hereunder when due to the Port Authority and shall continue in its failure to pay rentals or fees or to make any other payment required hereunder for a period of twenty (20) days after receipt of written notice by it from the Port Authority to make such payment; or

(10) The Lessee shall fail to keep, perform and observe each and every other promise, covenant and agreement set forth in this Agreement on its part to be kept, performed, or observed, within thirty (30) days after receipt of notice of default thereunder from the Port Authority (except where fulfillment of its obligation requires activity over a period of time, and the Lessee shall have commenced to perform whatever may be required for fulfillment within thirty (30) days after receipt of written notice and continues such performance without interruption except for causes beyond its control);

then upon the occurrence of any such event or at any time thereafter during the continuance thereof, the Port Authority may upon twenty (20) days' notice terminate the rights of the Lessee hereunder and the letting, such termination to be effective upon the date specified in such notice. Such right of termination and the exercise thereof shall be and operate as a conditional limitation.

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

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

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

Section 27. Additional Rights of the Port Authority to Direct the Use of Portions of the Premises by Other Scheduled Airlines

(a) It is hereby agreed that for the purpose of this Section 27 the term "the Lessee's Commencement Basic Schedules" shall be and mean a "revenue seats daily average" (as said term is defined in paragraph (e) hereof) for the premises of

(b) Commencing with calendar year 1994 and for each and every calendar year thereafter, the Port Authority may ascertain the revenue seats daily average of the Lessee for the Airport for the preceding calendar year in accordance with the provisions of paragraph (e) hereof, which revenue seats daily average shall be the Lessee's Basic Schedules for the preceding calendar year and shall be referred to as such. Thus, for example, in the case of the first calculation which would be based on the calendar year 1993 experience, said revenue seats daily average for the premises shall be called the "Lessee's Basic Schedules for 1993".

(c) Without limiting or affecting the provisions of Section 25 hereof, as of January 1, 1994 and as of January 1 of each succeeding calendar year (i) in the event that the Lessee's Basic Schedules for the immediately preceding calendar year for the Airport are less than (2.a.) of the Lessee's Commencement Basic Schedules or (ii) in the event that because of reasons beyond the control of the Lessee the Lessee's Basic Schedules for the immediately preceding two calendar years are less than (2.a.) of the Lessee's Commencement Basic Schedules, then in either of such events and without limiting each and every other right the Port Authority has under this Agreement or otherwise, the Port Authority shall have the right, upon six (6) months' written notice to the Lessee, to require the Lessee and the Lessee hereby agrees to make available accommodations (as hereinafter defined) at the premises as directed by the Port Authority in the amount and to the extent set forth in paragraph (f) hereof to Scheduled Aircraft Operators (as said term is defined in Section 81 hereof) and also including Scheduled Commuter Aircraft Operators selected by the Lessee (hereinafter in this Section 27 collectively called "the Scheduled Aircraft Operators"). The Lessee shall make such accommodations available from time to time during the entire period commencing on the effective date set forth in the aforesaid notice and ending on the earlier of: (i) when the Lessee's Basic Schedules for a calendar year, determined in accordance with the foregoing shall have been (2.a.)) or more of the Lessee's Commencement Basic Schedules or (ii) sixty (60) days in advance of the effective date of any published flight schedules that will result in the Lessee's Basic Schedules on the effective date of said published flight schedules equalling or exceeding (2.a.) of the Lessee's Commencement Basic Schedules (hereinafter called "a period of underutilization"). The term "accommodations" as used in this Section 27 shall mean aircraft ramp and gate position capacity and related passenger terminal facilities including, but not limited to passenger ticketing, passenger check-

in, baggage handling and flight information systems, passenger lounge and waiting areas and appropriate signage and public identification. Such accommodations may be accomplished by the Lessee by making available and providing non-exclusive use of gate positions and other related facilities to Scheduled Aircraft Operators pursuant to handling agreements (as defined in Section 81 hereof) between the Lessee and any such Scheduled Aircraft Operator (hereinafter called "the Handled Airline"). Each such handling agreement shall be subject to the prior and continuing approval of the Port Authority and the execution among the Port Authority, the Lessee, and the Handled Airline of a form of consent agreement prepared by the Port Authority. Moreover, and without limiting the foregoing, the Lessee will at all times keep the Port Authority informed and advised and will consult with the Port Authority from time to time as to all aspects of its accommodation of Scheduled Aircraft Operators hereunder.

It is understood furthermore that the accommodation contemplated hereunder may involve the use of subleases of exclusive areas of the premises in addition to or in lieu of handling agreements. Any sublease with a Scheduled Aircraft Operator (hereinafter called a "Sublessee Airline") will similarly be subject to the prior and continuing approval of the Port Authority and the execution of a consent agreement prepared by the Port Authority, and executed by the Port Authority, the Lessee and the Sublessee Airline. Nothing contained herein shall in any way affect the discretion of the Port Authority in granting or withholding its consent to a handling agreement or a sublease with a Sublessee Airline, proposed by the Lessee or directed by the Port Authority whether or not during a period of underutilization, and such consent may contain such terms and conditions including but not limited to such financial or other conditions which may include a fixed charge or a charge based upon a percentage of the Lessee's gross receipts arising therefrom, as the Port Authority may, at that time, elect, and all provisions of the Lease requiring the prior written consent or approval of the Port Authority shall in no way be waived, impaired, limited or affected.

Notwithstanding anything to the contrary contained herein the Lessee understands and agrees that the Lessee shall not perform any services and functions pursuant to any handling agreement or sublease with a Handled Airline or a Sublessee Airline with respect to which the Port Authority has specifically withheld consent and approval in the consent agreement to such handling agreement or sublease. The Handled Airline and the Sublessee Airline may either perform said services and functions themselves or use the services of the authorized service organization, including but not limited to in-flight caterers and ramp handlers performing such services or functions at the Airport. The Lessee however may make the necessary arrangements with the authorized service organization performing such services and functions at the Airport to have such services and functions performed for the Handled Airline or the Sublessee Airline.

Without limiting any term or provision of the Lease, the Lessee shall, with respect to each sublease and ground handling agreement, as aforesaid, maintain in accordance with accepted accounting practice for at least four years and if it expires or terminates during such four year period then at least one year after the applicable expiration or termination date of each handling agreement and of such sublease during the term of the Lease or after the expiration or termination of the Lease, (unless they are material to litigation initiated within that time in which event they shall be preserved until final determination of the controversy) records and books of account recording all transactions, at through or in anywise connected with the handling agreements and subleases and shall use and maintain such systems for recording transactions under or in connection with the handling agreements and subleases all to the end that accurate and complete records of gross receipts be maintained including identification of the gross receipts of the Lessee pertaining to any particular handling agreement, sublease or other agreement, all of the foregoing to be kept at all times in the Port of New York District, or, on the condition that the Lessee shall pay to the Port Authority all travel costs and expenses determined by the Port Authority for Port Authority auditors and other representatives in connection with any audit at locations outside the Port of New York District, the Lessee may maintain said records and books of account and make them available to the Port Authority at the Lessee's offices at 1030 Delta Boulevard, Hartsfield Atlanta International Airport, Atlanta, Georgia 30320-6000.

Without limiting any term, or provision of the Lease, the Lessee shall permit in ordinary business hours during the term of this Agreement and for one year thereafter and during such further period as is mentioned in the preceding paragraph, the examination, inspection and audit by the officers, employees and representatives of the Port Authority of such books of account and systems mentioned above and also any records and books of account, and systems of any company which is owned or controlled by the Lessee if said company performs services, similar to those performed by the Lessee anywhere in the Port of New York District. The Lessee shall furnish to the Port Authority from time to time (but not more often than once a month) statements of the Lessee setting forth its gross receipts as required hereunder, and such further itemization, details and information pertaining to the handling agreements and subleases as the Port Authority may from time to time reasonably request.

The Lessee agrees that all handling agreements and subleases shall be at reasonable and at not discriminatory rates, fees and charges which shall be based upon the recovery by the Lessee of a pro rata share of the Lessee's costs of (i) operation and maintenance of the premises, (ii) the services provided to the Handled Airline or the Sublessee Airline and (iii) the Lessee's investment in the premises not otherwise included in the above and (iv) the Lessee's reasonable overhead (including reasonable charges

for administration) provided, however, that it is understood and agreed that the following shall not be a reason for the Lessee to refuse a sublease or handling agreement or to impose any unreasonable conditions or limitations on operations in connection therewith under this Section 27: (aa) possible or potential labor disharmony with a Handled Airline or sublessee, (bb) compatibility of schedules and operations between the Lessee or another user or occupant of the premises and a Handled Airline or sublessee, or (cc) competitive nature of the routes, schedules or type of air transportation service to be provided by a Handled Airline or sublessee, provided, further, however, that with respect to item (aa) above if, after notice from the Port Authority to provide accommodations to a specific Scheduled Aircraft Operator, the Lessee shall, in good faith, believe that the operations of such specific Scheduled Aircraft Operator on the premises would cause significant, immediate and unremediable labor disharmony which would seriously affect the operations of the Lessee on the premises then, upon request by the Lessee to the Port Authority setting forth in specific detail satisfactory to the Port Authority the nature of the anticipated labor disharmony and requesting that the Lessee not be obligated under this Section to provide accommodations for such specific Scheduled Aircraft Operator, the Port Authority shall, in good faith, consider the Lessee's request and if the Port Authority finds that the labor disharmony described by the Lessee is reasonably likely to result if the Lessee were to provide accommodations to such Scheduled Aircraft Operator on the premises then the Port Authority shall notify the Lessee that the Port Authority's direction to provide accommodations to such Scheduled Aircraft Operator is rescinded. The Lessee's obligation to provide accommodations to Scheduled Aircraft Operators shall be effective on the date set forth in a notice from the Port Authority to such effect, as aforesaid. Upon such notice the Lessee shall use its best efforts to secure an arrangement with a Scheduled Aircraft Operator as directed by the Port Authority for accommodations in the premises and shall in good faith negotiate with any such Scheduled Aircraft Operator as the Port Authority shall direct for accommodations in the premises, all in accordance herewith.

The Port Authority shall give thirty (30) days' prior notice of its intention to give the notice set forth above and it is expressly agreed that the Port Authority shall not exercise the aforesaid right with respect to any portion or portions of the premises if and for which the Lessee has submitted to the Port Authority definite plans for the utilization of said portion or portions of the premises by the Lessee provided the Lessee in fact commences such use of said portion or portions of the premises within thirty (30) days after the submission of the said plans.

(d) The failure of the Port Authority to exercise its rights under this Section during any year in which it may have such a right, shall not affect, waive or limit its right to exercise said rights in any subsequent year.

(e) In the event the Port Authority decides to ascertain the revenue seats daily average for the premises for the preceding calendar year it shall do so as follows: based upon the Official Airline Guide (herein called "the Guide") the Port Authority shall ascertain the total number of revenue seats that can be accommodated on the aircraft equipment scheduled to be used by the Lessee on its published aircraft arrivals at the Airport as set forth in the Guide during two specified calendar weeks (Sunday through Saturday), the first of which weeks is the one during which falls the fifteenth (15th) day of April of the prior calendar year and the second being the one during which falls the fifteenth (15th) day of October of the said prior calendar year, and shall total the said number of revenue seats which are hereinafter called "the total revenue seats" of the Lessee. In determining the total revenue seats of the Lessee, the total revenue seats as defined above of those Handled Airlines and Sublessee Airlines (as defined in Section 81 hereof), if any, of the Lessee who are Handled Airlines and Sublessee Airlines as of the date of such determination shall be included.

In making said determination, the Port Authority shall use the most recent configurations as shall be supplied by the Lessee with respect to the number of revenue seats that can be accommodated on the particular aircraft equipment scheduled to be used by the Lessee at the Airport. The total revenue seats of the Lessee shall then be divided by fourteen, the resulting quotient being herein called "the revenue seats daily average".

In the event the Official Airline Guide shall no longer be published or shall not be available then the parties agree that the Port Authority shall have the right to use any other successor or similar publication or the actual aircraft arrivals at the Airport as determined by reports to the Port Authority and records of the Lessee and other Scheduled Aircraft Operators, tower logs and other suitable records and information.

(f)

Percentage of the Lessee's Schedules as Compared to the Lessee's Commencement Basic Schedules	Daily Turnaround Flights Which May be Required at the Premises	Exclusive Gate Sublease Arrangements Which May be Required at the Premises
		or
		or
		or
		or
(2.a.)		or
		or
		or
		or

Section 28. Right of Re-Entry

The Port Authority shall, as an additional remedy upon the giving of a notice of termination as provided in Section 26 or other Section hereof, have the right to re-enter the premises and every part thereof upon the effective date of termination without further notice of any kind, and may regain and resume possession either with or without the institution of summary or any other legal proceedings or otherwise. Such re-entry, or regaining or resumption of possession, however, shall not in any manner affect, alter or diminish any of the obligations of the Lessee under this Agreement, and shall in no event constitute an acceptance of surrender.

Section 29. Waiver of Redemption

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

Section 30. Survival of the Obligations of the Lessee

(a) In the event that the letting shall have been terminated in accordance with a notice of termination as provided in Section 26 hereof, 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 Section 28 hereof, all the obligations of the Lessee under this Agreement shall survive such termination or cancellation, or re-entry, regaining or resumption of possession and shall remain in full force and effect for the full term of the letting under this Agreement, and the amount or amounts of damages or deficiency shall become due and payable to the Port Authority to the same extent, at the same time or times and in the same manner as if no termination, cancellation, re-entry, regaining or resumption of possession had taken place. The Port Authority may maintain separate actions each month to recover the damage or deficiency then due or at its option and at any time may sue to recover the full deficiency less the proper discount, for the entire unexpired term.

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

(1) On account of the Lessee's annual Ground Rentals obligation, the amount of the total of all annual Ground Rentals, less the amount attributable to the installments of said annual Ground Rentals payable prior to the effective date of termination except that the credit to be allowed for the amount attributable to the installment payable on the first day of the month in which the termination is effective shall be prorated for the part of the month

the letting remains in effect, on the basis of the actual number of days in the month; and

(2) On account of the Lessee's annual Facility Rentals obligation, the amount of the total of all annual Facility Rentals, less the amount attributable to the installments of said annual Facility Rentals payable prior to the effective date of termination except that the credit to be allowed for the amount attributable to the installment payable on the first day of the month in which the termination is effective shall be prorated for the part of the month the letting remains in effect, on the basis of the actual number of days in the month; and

(3) On account of the Lessee's annual Additional Facility Rentals obligation, the amount of the total of all annual Additional Facility Rentals, less the amount attributable to the installments of said annual Additional Facility Rentals payable prior to the effective date of termination except that the credit to be allowed for the amount attributable to the installment payable on the first day of the month in which the termination is effective shall be prorated for the part of the month the letting remains in effect, on the basis of the actual number of days in the month; and

(4) On account of the Lessee's obligations to pay the Cost of Assumable Maintenance and Repair set forth in Section 14 hereof, an amount equal to the total sum of the Capital Cost under Section 14 hereof less the amount thereof payable prior to the effective date of termination, except that the credit to be allowed for the amount attributable to the installment payable on the first day of the month in which the termination is effective shall be prorated for the part of the month the letting remains in effect or the actual number of days in such month.

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

(c) Without limiting any of the foregoing, the Port Authority may at any time bring an action to recover all the 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 (1) through (5) of paragraph (b) above and separate actions periodically to recover from time to time only such portion of the damages set forth in subparagraphs (1), (2) and (3) of paragraph (b) above as would have accrued as rentals up to the time of the action if there had been no termination or cancellation. In any such action 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 used and occupied or relet the premises, the rental for the premises obtained through such use and occupancy or 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 used or occupied or relet. In no event shall any credit allowed to the Lessee against its damages for any period exceed the then present value of the annual rentals which would have been payable under this Agreement during such period if a termination or cancellation had not taken place.

(d) In addition to and without limiting the foregoing or any other right, claim or remedy of the Port Authority, in the event this Lease shall be terminated pursuant to Section 26 hereof and the Lessee shall not have completed the construction work, as defined in Section 2 hereof, or any portion thereof within the time period specified in Section 2 (b) (2) hereof, the Lessee shall and hereby agrees to pay to the Port Authority any and all amounts, costs or expenses, of any type whatsoever, paid or incurred by the Port Authority by reason of the failure of the Lessee so to complete the construction work, or any portion thereof, including all interest costs, damages, losses, and penalties, and all of the same shall also be deemed treated as survived damages hereunder in addition to the foregoing.

Section 31. <u>Reletting by the Port Authority</u>

The Port Authority upon termination or cancellation pursuant to Section 26 hereof, or upon any re-entry, regaining or resumption of possession pursuant to Section 28 hereof, may occupy the premises or may relet the premises, and shall have the right to permit any person, firm or corporation to enter upon the premises and use the same. Such reletting may be of part only of the premises or a part thereof together with other space, and for a period of time the same as or different from the balance of the term hereunder remaining, and on the terms and conditions the same as or different from those set forth in this Agreement. The Port Authority shall also, upon termination or cancellation pursuant to the said Section 26, or upon its re-entry, regaining or resumption of possession pursuant to the said Section 28, have the right to repair or to make structural or other changes in the premises including changes which alter the character of the premises and the suitability thereof for the purpose of the Lessee under this Agreement, without affecting, altering or diminishing the obligations of the Lessee hereunder. In the event either of any reletting or of any actual use and occupancy by the Port Authority (the mere right of the Port Authority to use and occupy not being sufficient however) there shall be credited to the account of the Lessee against its survived obligations under Section 30 hereof any net amount remaining after deducting from the amount actually received from any lessee, licensee, permittee or other occupier in

connection with the use of the said premises or portion thereof during the balance of the letting as the same is originally stated in this Agreement, or from the market value of the occupancy of such portion of the premises as the Port Authority may during such period actually use and occupy, all expenses, costs and disbursements incurred or paid by the Port Authority in connection therewith. No such reletting shall be or be construed to be an acceptance of a surrender.

Section 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 other remedy available to the Port Authority or to the Lessee at law or in equity, and the exercise of any remedy, or the existence herein of other remedies or indemnities shall not prevent the exercise of any other remedy.

Section 33. Surrender

The Lessee covenants and agrees to yield and deliver peaceably to the Port Authority possession of the premises on the date of cessation of the letting, whether such cessation be by termination, expiration or otherwise, promptly and in good condition, reasonable wear arising from the use of the premises to the extent such use is permitted elsewhere in this Agreement, excepted.

Section 34. Acceptance of Surrender of Lease

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

Section 35. Books and Records

(a) In addition to and without limiting any other term or provision of this Agreement, the Lessee shall keep in an office or offices in the Port of New York District, appropriate books and records showing (i) all matters with respect to the costs of the construction work (ii) the date and hour of each take-off or departure from the Airport of each aircraft operated by the Lessee and the date and hour of the landing by such aircraft next preceding each take-off or departure, (iii) all matters which it is required to certify to the Port Authority pursuant to this Lease and (iv) any other matter concerning the Lessee's operations at the Airport with respect to which the Port Authority may reasonably need information to fulfill its obligations or exercise its rights under this Lease whether or not of the type enumerated above in this Section 35 and

whether or not an express obligation to keep books and records with regard thereto is expressly set forth elsewhere in this Lease; provided, however, on the condition that the Lessee shall pay to the Port Authority all travel costs and expenses as determined by the Port Authority for Port Authority auditors and other representatives in connection with any audit at locations outside the Port of New York District, the Lessee may maintain said records and books and make them available to the Port Authority at the Lessee's office at 1030 Delta Boulevard, Hartsfield Atlanta International Airport, Atlanta, Georgia 30320. The Lessee shall not be obligated to preserve any such records for more than four (4) years unless they are material to litigation initiated within that time, in which event they shall be preserved until the final determination of the controversy. The Port Authority shall have the right upon prior notice to inspect such books and records during regular business hours.

(b) Without limiting the foregoing, the Lessee shall maintain, for a period in accordance with accepted accounting practice, for at least four (4) years during the term of the letting hereunder and for one (1) year after the expiration or earlier termination of this Lease unless they are material to litigation initiated within that time in which event they shall be preserved until the final determination of the controversy, records and books of account recording all transactions of the Lessee at, through, or in anywise connected with in-flight meals and ramp service including without limitation all payments by the Lessee to its independent contractors which furnish in-flight meals or any portion thereof, or ramp service, to the Lessee at or in connection with the Airport, which records and books of account shall be kept at all times within the Port of New York District and the Lessee shall permit during ordinary business hours during the term of the letting, for one year thereafter, and during such further period as mentioned above, the examination and audit by officers, employees and representatives of the Port Authority of such records and books of account; provided, however, on the condition that the Lessee shall pay to the Port Authority all travel costs and expenses as determined by the Port Authority for Port Authority auditors and other representatives in connection with any audit at locations outside the Port of New York District, the Lessee may maintain said records and books and make them available to the Port Authority at the Lessee's office at 1030 Delta Boulevard, Hartsfield Atlanta International Airport, Atlanta, Georgia 30320.

(c) If and when service segment data now or formerly supplied by the Lessee to the Department of Transportation pursuant to Economic Regulation 586 or schedule T-9 traffic data, are no longer available to the Port Authority from a government source, the Lessee will provide the following data to the Port Authority, on request, for each of its non-stop city-pair markets involving the Port District: total scheduled flights operated, seats available, revenue passengers carried and similar data for charter flights. The Lessee shall see that such data shall be provided to the Port Authority, on request, by its sublessees and Handled Airlines, if

any. The Lessee and its Handled Airlines, if any, shall furnish said data for each month of operations within thirty (30) days after the end of such month.

Section 36. Effect of Basic Lease

(a) This Agreement and the letting hereunder shall, in any event, terminate with the termination or expiration of the Basic Lease with the City of New York 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.

(b) 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.

(c) Nothing herein contained shall prevent the Port Authority from entering into an agreement with The City of New York pursuant to which the Basic Lease is surrendered, cancelled or terminated provided that The City of New York, at the time of such agreement, assumes the obligations of the Port Authority under this Agreement.

(d) 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 City Lease should be surrendered, cancelled or terminated prior to the date specified in the City Lease for its expiration.

Section 37. Removal of Property

All personal property (including trade fixtures) removable without material damage to the premises, which are installed by the Lessee in or on the premises leased to the Lessee pursuant to the Agreement, shall be deemed to be and remain the property of the Lessee. All such property, provided the Lessee shall install suitable replacements therefor if such personal property is necessary to operate the premises in accordance with the terms and provisions hereof in accordance with the best practices of the air transportation industry, may at the Lessee's option be removed by the Lessee from the premises at any time during the term of this Lease. Furthermore, all such property of the Lessee shall, unless otherwise agreed in writing by the parties hereto, be removed by the Lessee on or before the expiration or other termination of the term of the Lease. If the Lessee shall fail to remove its property on or before the termination or expiration of this Agreement, the Port

Authority may remove such property to a public warehouse for deposit or retain the same in its own possession, and sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage and sale, second to any sums owed by the 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. Notwithstanding the foregoing, the Lessee shall not remove the personal property starred and underlined in Exhibit E attached hereto and installed in connection with the Phase I Construction Work performed pursuant to Section 2 hereof title to which, as hereby agreed, shall pass to the Port Authority upon the installation thereof.

Section 38. Purchase of Property

The Port Authority shall have the option from time to time exercisable by notice to the Lessee effective on the expiration or earlier termination of the letting of the premises hereunder, or any part thereof, to purchase all, or such part as the Port Authority elects, of the Lessee's personal property (including trade fixtures but excluding ground vehicles and aircraft) including without limiting the generality of the foregoing any system for handling baggage, any counters, and any passenger loading bridges, as and to the extent any of the foregoing are personal property, which may at the time of the giving of such notice have been installed or placed on the premises. In the event the Port Authority exercises its option to make a purchase, the Port Authority shall pay to the Lessee a sum equal to the reasonable market value of the personal property (including trade fixtures) purchased. The Lessee hereby agrees that on the effective date of the purchase and sale none of the aforesaid items shall be subject to any lien, security interest or other encumbrance, and upon request of the Port Authority the Lessee will execute a bill of sale or such other document of conveyance as the Port Authority may request to transfer title to the aforesaid items to the Port Authority (including a warranty of title to the Port Authority) and the Port Authority shall pay the purchase price. The Lessee shall not be obligated to give any warranty other than the aforesaid warranty of title; provided, however, that the Lessee shall transfer or cause to be transferred to the Port Authority any and all third party warranties (including without limitation manufacturer's warranty) with respect to such property. Further, the Lessee shall from time to time execute such other documentation as the Port Authority may reasonably require and prepare evidencing the option of the Port Authority, as herein provided, to purchase the aforesaid personal property; the Port Authority and the Lessee hereby agreeing to act in good faith with respect to said documentation.

Section 39. 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 who is or may be entitled to be paid a

commission in connection therewith. The Lessee shall indemnify and save harmless the Port Authority of and from any claim for commission or brokerage made by any and all persons, firms or corporations whatsoever for services rendered to the Lessee in connection with the negotiation and execution of this Agreement. The foregoing representations, warranties and provisions of this Section shall not apply to any broker employed by the Port Authority.

Section 40. Limitation of Rights and Privileges Granted

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

(b) The premises are let to the Lessee and the Lessee takes the same subject to all the following: (i) easements, restrictions, reservations, covenants and agreements, if any, to which the premises may be subject, and rights of the public in and to any public street; (ii) rights, if any, of any enterprise, public or private which is engaged in furnishing heating, lighting, power, telegraph, telephone, steam, or transportation services and of the City and State of New York; (iii) permits, licenses, regulations and restrictions, if any, of the United States, the City of New York or State of New York, or other governmental authority; (iv) all of the rights, liabilities, obligations, occupancies and encumbrances, if any, arising out of the Prior Agreements (as defined in Section 86 hereof).

(c) The Lessee acknowledges that it has not relied upon any representation or statement of the Port Authority or its Commissioners, officers, employees or agents as to the condition of the premises or the suitability thereof for the operations permitted on the premises by this Agreement. Without limiting any obligation of the Lessee to commence operations hereunder at the time and in the manner stated elsewhere in this Agreement, the Lessee agrees that no portion of the premises will be used initially or at any time during the letting which is in a condition unsafe or improper for the conduct of the operations permitted hereunder so that there is possibility of injury or damage to life or property. The Lessee shall take possession of the premises in the condition they are in as of the commencement of the term of the letting hereunder. The Lessee hereby further acknowledges that it has during the term of the Prior Sublease and during the period of the permission of the Prior Permit performed repairs and construction and installed improvements on the premises, title to all of which (other than the Lessee's personal property) it is hereby agreed has vested in the City of New York. In the event that as of the commencement of the term of the letting under this Lease, the Lessee shall not have kept any or all of the foregoing in good condition as required of the Lessee in its capacity as sublessee under the Prior Sublease and as

permittee under the Prior Permit, the Lessee shall place and keep the same in good condition as required under this Lease.

Any liabilities or obligations of the Lessee which by the terms of the Prior Lease or the Prior Sublease or the Prior Permit, or letter agreements or permits thereunder to make alterations, mature at the expiration or termination of said lease, sublease or permit shall be deemed to survive and mature at the expiration or earlier termination of this Lease.

Section 41. Notices

Except where expressly required or permitted herein to be oral, all notices, directions, requests, consents and approvals required to be given to or by either party shall be in writing, and all such notices and requests shall be personally delivered to the duly designated officer or representative of such party or delivered to the offices of such officer or representative during regular business hours, or forwarded to him or to the party at such address by registered or certified mail. The Lessee shall from time to time designate in writing an office within the Port of New York District and an officer or representative whose regular place of business is at such office upon whom notices and requests may be served. Until further notice, the Port Authority hereby designates its Executive Director as its representative 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 as its office where notices and requests may be served; and the Lessee hereby designates its Manager, JFK Station as its representative upon whom notices and requests may be served, and the Lessee hereby designates its office at Delta Flight Center, Building No. 53, John F. Kennedy International Airport, Jamaica New York 11430 as its office where notices and requests may be served. If mailed, the notices herein required to be served shall be deemed effective and served as of the date of the registered or certified mailing thereof. The Port Authority shall, for informational purposes only, send a copy of such notices to the Lessee's offices at 1030 Delta Boulevard, Hartsfield Atlanta International Airport, Atlanta, Georgia 30320 att: Director, Airport and Corporate Affairs, provided, however, that any failure on the part of the Port Authority to send the informational copy shall not be and shall not be deemed to be a breach of this Agreement nor shall any such failure impair or affect the validity of the notice actually given.

Section 42. Facilities Non-Discrimination

(a) Without limiting the generality of any of the provisions of the Agreement, the Lessee, for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the grounds of race, color, sex, creed, 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, and the exercise of any privilege under this Agreement, (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, color, creed, national origin, or sex 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.

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

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

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

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

Section 43. Affirmative Action

In addition to and without limiting the provisions of Section 42 and Schedule E hereof or any other term or provision of this Agreement, 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 will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

Section 44. The Lessee's Ongoing Affirmative Action Equal Opportunity Commitment

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

(b) In addition to and without limiting the foregoing, and without limiting the provisions of Sections 42 and 43 and Schedule E hereof or any other term or provision of 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 of the letting hereunder commit itself to and use good faith efforts to implement an extensive program of Affirmative Action, including specific affirmative action steps to be taken by the Lessee, to ensure maximum opportunities for employment and contracting by minorities and women. In meeting the said commitment the Lessee agrees to submit its said extensive Affirmative Action program, including the specific affirmative action steps to be taken by the Lessee to meet its aforesaid commitment, within six (6) months after the execution of this Agreement to the Port Authority for its review and approval. The Lessee shall incorporate in its said program such revisions and changes which the Port Authority initially or from time to time may reasonably require. The Lessee throughout the term of the letting hereunder shall document its efforts in implementing the said program, shall keep the Port

Authority fully advised of the Lessee's progress in implementing the said program and shall supply to the Port Authority such information, data and documentation with respect thereto as the Port Authority may from time to time and at any time request, including but not limited to annual reports.

(c) (1) "Minority" as used herein shall be as defined in paragraph II(c) of Part I of Schedule E.

(2) "Minority Business Enterprise" (MBE) as used herein shall have the meaning as defined in the first paragraph of Part II of Schedule E.

(3) "Women-owned Business Enterprise" (WBE) as used herein shall have the meaning as defined in the first paragraph of Part II of Schedule E.

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

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

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

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

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

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

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

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

(d) The Lessee's non-compliance with the provisions of this Section shall constitute a material breach of this Agreement. In the event of the breach by the Lessee of any of the above provisions the Port Authority may take any appropriate action to enforce compliance; or in the event such non-compliance shall continue for a period of twenty (20) days after receipt of written notice from the Port Authority (except where fulfillment of its obligations hereunder requires activity over a period of time and the Lessee shall commence to perform whatever may be required for fulfillment within twenty (20) days after the receipt of notice and continues such performance without interruption, except for causes beyond its control), the Port Authority shall have the right to terminate this Agreement and the letting hereunder with the same force and effect as a termination under the Section of this Agreement providing for termination for default by the Lessee in the performance or observance of any other term or provision of this Agreement, or may pursue such other remedies as may be provided by law.

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

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

(g) Nothing in this Section 44 shall grant or be deemed to grant to the Lessee the right to make any agreement or award for concessions or consumer services at the Airport.

Section 45. <u>Other Construction by the Lessee</u>

(a) Except as otherwise expressly provided in Section 2 hereof, the Lessee shall not erect any structures, make any improvements or do any construction on the premises or alter, modify, or make additions, improvements or repairs to or replacements of any structure existing at the commencement of the term of the letting hereunder or built at any time during the letting, or install any fixture (other than trade fixtures, removable without material damage to the premises, any such damage to be immediately repaired by the Lessee) without the prior written approval of the Port Authority and in the event any construction, improvement, alteration, modification, repair, replacement or addition is made without such approval, then upon reasonable notice

so to do, the Lessee will remove the same, or at the option of the Port Authority cause the same to be changed to the satisfaction of the Port Authority. In case of any failure on the part of the Lessee to comply with such notice, the Port Authority may effect the removal or change and the Lessee shall pay the cost thereof to the Port Authority.

(b) Without limiting the generality of the foregoing paragraph the Lessee acknowledges and agrees that any Notes and associated reference lines set forth on Exhibit A, A-1 or A-2 to the Lease shall not constitute or be deemed to constitute or imply that approval of the Port Authority will be granted to any proposed construction by the Lessee nor shall the same grant or be deemed to grant any right or permission to the Lessee now or in the future to erect any structures, make any improvements or do any other construction work in the premises, including but not limited to repairs to or replacements of, any structure now existing or built at any time during the letting or install any fixtures on the premises, including but not limited to paving, and that the provisions of the foregoing paragraph of this Section shall be read and construed as if there were no Notes and associated reference lines on said Exhibits and that any which were placed on such Exhibits are solely and exclusively for the benefit of the Port Authority.

(c) Notwithstanding the obligation of maintenance imposed upon the Lessee by the provisions of Section 14 hereof, the Lessee shall not make any repairs or replacements (except emergency repairs or replacements) unless and until it has first obtained an approved Port Authority Alteration Application for such repairs or replacements which shall then be performed in full accordance with the terms of said Alteration Application.

Section 46. Place of Payments

All payments required of the Lessee by this Agreement shall be made to the Port Authority, P.O. Box 17309, Newark, New Jersey 07194, or to such other address, office or location as may be substituted therefor by the Port Authority by notice to the Lessee from time to time.

Section 47. Construction and Application of Terms

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

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

Section 48. 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 or alleged breach thereof, or because of its or their execution or attempted execution.

Section 49. Termination by the Lessee

(a) If any one or more of the following events shall occur:

(1) If the Lessee shall be prevented from operating its air transportation system to and from the Airport by reason of its inability to use a substantial part or all of the runways and taxiways, as hereinafter defined:

(i) for a period of longer than thirty (30) consecutive days, resulting from any condition of the Airport not due to the fault of the Lessee; or

(ii) for a period of longer than ninety (90) consecutive days, resulting from a permanent injunction issued by any court of competent jurisdiction; or

(iii) for a period of longer than ninety (90) consecutive days, resulting from any order, rule or regulation of the Federal Aviation Administration, or other governmental agency having jurisdiction over the operations of the Lessee with which the Lessee is unable to comply at reasonable cost or expense; or

(2) The Port Authority shall fail to perform any of its obligations under this Lease within twenty (20) days after receipt of notice of default thereunder from the Lessee (except where fulfillment of its obligation requires activity over a period of time and the Port Authority shall commence to perform whatever may be required for fulfillment within twenty (20) days after the receipt of notice and continues such performance without interruption, except for causes beyond its control);

then upon the occurrence of any such event or at any time thereafter during the continuance of the condition, the Lessee may by twenty (20) days' notice terminate the letting, such termination to be effective upon the date set forth in such notice and to have the same effect as if the term of the letting had on that date expired. No waiver by the Lessee of any default on the part of the Port Authority in performance of any of the terms, covenants or conditions hereof to be performed, kept or observed by the Port Authority shall be or be construed to be a waiver by the Lessee of any other or subsequent default in performance of any of the said terms, covenants and conditions.

(b) The payment of rentals fees, charges or other payments by the Lessee for the period or periods after the Lessee shall have a right to terminate under this Section but before any such default of the Port Authority has been cured, shall not be or be construed to be a waiver by the Lessee of any such right of termination.

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

Section 50. Effect of Termination by the Lessee

(a) If the Lessee terminates the letting pursuant to the provisions of Section 49 (a) (1) then the Port Authority may at its option, pay to the Lessee the Unamortized Phase I Capital Investment and Unamortized Phase II Capital Investment (as defined in Section 81 hereof), if any, of the Lessee in the premises. Such option shall be evidenced by notice in writing to the Lessee by the Port Authority within sixty (60) days after the Lessee has given notice of termination. The failure of the Port Authority to exercise the said option will impose no obligation upon it to relet the premises.

(b) If the Lessee terminates the letting pursuant to the provisions of Section 49 (a) (2) then the Port Authority may, at its option, pay to the Lessee the sum of the Unamortized Phase I Capital Investment and the Unamortized Phase II Capital Investment (as defined in Section 81 hereof), if any, of the Lessee in the premises. Such option shall be evidenced by notice in writing to the Lessee by the Port Authority within sixty (60) days after the Lessee has given notice of termination. If the Port Authority fails to exercise such option, then the Port Authority shall use its best efforts to relet the premises.

(c) If the Port Authority relets the premises prior to the date upon which this Lease would have expired but for such termination, then the net rent paid by the new tenant to the Port Authority (after deducting any costs or expenses incurred by the Port Authority in securing said new tenant and in complying with the terms of the lease to such tenant, including but not limited to costs of alteration and decoration of such premises, in the event of termination pursuant to the provisions of Section 49 (a) (1), and after deducting any costs or expenses incurred by the Port Authority for the maintenance of said premises or for services furnished to the new tenant and after deducting the amounts which would have been payable as rent by the Lessee but for such termination) shall be paid over by the Port Authority to the Lessee until said amounts paid over equal the Unamortized Phase I Capital Investment and the Unamortized Phase II Capital Investment (as defined in Section 81

hereof) of the Lessee in the premises as of the date of termination. The obligation of the Port Authority to pay over to the Lessee any net rent received from such new tenant shall endure only while such new tenant continues to pay rent and occupy such premises, and only until the Unamortized Phase I Capital Investment and the Unamortized Phase II Capital Investment (as defined in Section 81 hereof) of the Lessee in such premises is amortized, and in no event is such obligation to pay over to endure beyond the date upon which this Lease would have expired but for such termination.

Section 51. Abatement

If the Port Authority shall, for safety or other reasons, prohibit the use of the Public Landing Area at the Airport or of any substantial part thereof for foreign or domestic scheduled air transport operations for a period covering more than sixty (60) consecutive days and the Lessee shall thereby be prevented from conducting those operations at the Airport enumerated in Section 5 hereof, then upon the occurrence of such event, the Lessee at its option shall be entitled to abatement of rental during such period of prohibition and prevention. In the event that the Lessee shall exercise such option the Lessee shall be deemed to have released and discharged the Port Authority of and from all claims and rights which the Lessee may have hereunder arising out of or consequent upon such closing and the subsequent interrupted use of such Public Landing Area or part thereof during the period of prohibition.

Section 52. Services to the Lessee

(a) The Port Authority shall sell, furnish and supply to the Lessee for use on the premises and the Lessee agrees to take from the Port Authority and pay for electricity of the same voltage, phase and cycle as supplied to the premises by the public utility in the vicinity, but limited, however, to serve (i) with respect to Area IA of the premises a maximum of 3,000 KVA installed transformer capacity, (ii) and with respect to Area IB of the premises a maximum of 12,000 KVA installed transformer capacity, and as to (i) and (ii) at the same charge which would be made by such public utility for the same quantity under the same conditions and in the same service classification but in no event less than an amount that would reimburse the Port Authority for its costs of obtaining and supplying electricity to the Lessee hereunder; charges shall be payable by the Lessee when billed and the quantity of electricity consumed shall be measured by the meter or meters installed for the purpose; provided, however, that if for any reason, any meter or meters fail to record the consumption of electricity, the consumption during the period such meter or meters are out of service will be considered to be the same as the consumption for a like period either immediately before or after the interruption as elected by the Port Authority. The Port Authority shall not discontinue the supply of electricity except upon fifteen (15) days' notice to the Lessee and unless a supply of electricity of the same voltage, phase and cycle (subject to the KVA limitation aforesaid) shall be available from another supplier and upon any such

discontinuance the Lessee shall be at liberty to contract or otherwise arrange for the supply of such current after the expiration of said fifteen (15) days from any other person, firm or corporation. The Port Authority shall install the appropriate meters.

(b) The Port Authority agrees to sell, furnish and supply to the Lessee for use on the premises cold water (of the character furnished by the City of New York) in reasonable quantities through existing pipes, mains and fittings and the Lessee agrees to take such water from the Port Authority and to pay the Port Authority therefor an amount equal to that which would be charged by the municipality or other supplier of the same (whether or not representing a charge for water or other services measured by water consumption) for the same quantity, used under the same conditions and in the same service classification plus the cost to the Port Authority of supplying such water which shall not be less than ten percent (10%) nor in excess of fifty percent (50%) of the amount charged, but in no event less than an amount that would reimburse the Port Authority for its costs of obtaining and supplying water to the Lessee hereunder. The charge therefor shall be payable by the Lessee when billed and the quantity of water consumed shall be measured by the meter or meters installed for the purpose; provided, however, that if for any reason, any meter or meters fail to record the consumption of water, the consumption during the period such meter or meters are out of service will be considered to be the same as the consumption for a like period immediately before or after the interruption, as elected by the Port Authority. The Port Authority shall install the appropriate meters. In the event meters are not installed to measure the consumption of water under high pressure, the quantity of such water used by the Lessee will be based upon equitable estimates of consumption, which estimates shall be deemed binding on the Lessee.

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

(d) If and in the event the Port Authority shall provide extermination service for the enclosed areas of the premises, the Lessee agrees to utilize the same and to pay its pro rata share of the reasonable cost thereof upon demand. This paragraph does not impose any obligation on the Port Authority to furnish such service.

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

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

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

Section 53. <u>The Central Heating and Refrigeration Facility</u>

(a) The Port Authority heretofore designed, constructed and installed at the Airport certain installations consisting of an L" shaped one story building, two fuel storage spheres, an eleven cell cooling tower array, sixteen absorption refrigeration units, six high temperature hot water generators, a closed loop distribution system including underground lines, meters, heat exchangers and appropriate and related lines, pipes, mains, motors, pumps, ducts, fixtures, transformers, cables, manholes, wires, conduits, machinery, devices, equipment, structures and facilities and such utility, mechanical, pump, sewer, telephone, water, electrical, fire alarm, fire protection, gas and other systems, all as are appropriate or necessary for the manufacture, production and distribution of high temperature hot water and chilled water. The Port Authority thereafter embarked on a program for the expansion and rehabilitation of the foregoing which program consisted generally of the design, construction and installation of an expansion of the existing building, two additional new cells to the existing cooling tower cell array and a complete upgrading of the existing cells, the installation of a centrifugal refrigeration unit, the construction of new and the replacement of existing high temperature hot water lines and chilled water lines with lines of greater capacity, the enlargement of the fire alarm and telephone systems, the extension of the pump system, together with such appropriate meters, heat exchangers, lines, pipes, mains, motors, pumps, devices, fixtures, transformers, cables, manholes, wires, conduits, machinery, devices, equipment, structures and facilities as were necessary or appropriate, as well as necessary and appropriate changes to the utility, mechanical, sewer, telephone, water, electrical, fire alarm, fire protection, gas and other

systems now part of the Facility, all of the foregoing being sometimes herein collectively in this Section and for the purposes of this Section only called "The Central Heating and Refrigeration Facility" or the "Facility".

(b) The Port Authority has entered into agreements consisting of an Energy Purchase Agreement, dated as of April 28, 1993, of a Construction and Operations Agreement dated as of April 28, 1993, and an Agreement of Lease, dated as of April 28, 1993, (hereinafter as the same may be supplemented, amended and extended from time to time collectively and individually called the "*Cogeneration Agreement*") with KIAC Partners, a New York General Partnership (hereinafter called "KIAC"), for the construction, installation and operation of a cogeneration facility at the Airport which will include portions of the Central Heating and Refrigeration Facility, as set forth above, now operated at the Airport, which cogeneration facility will, from and after the date of its "Commercial Operation" as such term is defined in the Cogeneration Agreement, produce electricity, hot water and chilled water, as the terms hot water and chilled water are defined below, and which cogeneration facility is hereinafter called the "Cogeneration Facility". Effective May 4, 1993, and while the construction of the Cogeneration Facility proceeds, KIAC will operate the Facility on behalf of the Port Authority to produce hot water and chilled water, as such terms are defined below, and the following shall be and continue in effect with respect to the sale, furnishing and supply of hot water and chilled water by the Port Authority to the Lessee.

(c) The Port Authority agrees to sell, furnish and supply to the Lessee in reasonable quantities for use on the premises, high temperature hot water (hereinafter called "hot water") by a closed loop system to be converted for heating use, for kitchen service, for snow melting and for heating aircraft, and chilled water (hereinafter called "chilled water") for air conditioning (excluding use for air conditioning aircraft, said exclusion not to imply any broadening of permitted uses), and the Lessee agrees to take such hot water and chilled water from the Port Authority and to pay the Port Authority therefor at the times and in the manner hereinafter provided. The Lessee shall pay to the Port Authority for hot water its pro rata share of the Annual Hot Water Facility Cost as hereinafter defined and the Lessee shall pay to the Port Authority for chilled water its pro rata share of the Annual Chilled Water Facility Cost as hereinafter defined. The Lessee's pro rata share of the Annual Hot Water Facility Cost shall be determined by multiplying the Annual Hot Water Facility Cost for each calendar year by a fraction, the numerator of which shall be the total number of BTUs of heat drawn from the hot water lines serving the premises during said calendar year, and the denominator of which shall be the Annual Total Hot Water Reading as hereinafter defined for said calendar year. The Lessee's pro rata share of the Annual Chilled Water Facility Cost shall be determined by multiplying the Annual Chilled Water Facility Cost for each calendar year by a fraction, the numerator of which shall be the total number of BTUs absorbed by the chilled water lines serving the premises during said calendar

year, and the denominator of which shall be the Annual Total Chilled Water Reading as hereinafter defined for said calendar year.

(d) (i) The Annual Total Facility Cost for the portion of the calendar year commencing on May 4, 1993, and ending on December 31, 1993, shall consist of the sum of the following:

(1) The amount of interest payable by the Port Authority to KIAC pursuant to the Cogeneration Agreement and determined at the rate or rates provided for in the Cogeneration Agreement on a principal amount of (2.a.)

(2) The amount of interest payable by the Port Authority from and after June 15, 1992, to KIAC pursuant to the Cogeneration Agreement for expenditures for capital improvements that are useable and useful and that have the potential to provide both an immediate benefit to the operation of the Facility prior to Commercial Operation and would provide a continuing and significant benefit to the operation of the Cogeneration Facility after Commercial Operation;

(3) The Annual Facility Operating and Maintenance Charge as defined in paragraph (g) hereof, appropriately prorated.

(ii) The Annual Total Facility Cost for the calendar year commencing on January 1, 1994, and ending on December 31, 1994, shall consist of the sum of the following:

(1) The amount of interest payable by the Port Authority to KIAC pursuant to the Cogeneration Agreement and determined at the rate or rates provided for in the Cogeneration Agreement on (A) a principal amount of (2.a.) for the portion of such calendar year commencing on January 1, 1994, and ending on Mav 3, 1994, plus (B) a principal amount of (2.a.) for the portion of such calendar year commencing on May 4, 1994, and ending on December 31, 1994;

(2) The amount of interest payable by the Port Authority to KIAC pursuant to the Cogeneration Agreement for expenditures for capital improvements that are useable and useful and that have the potential to provide both an immediate benefit to the operation of the Facility prior to Commercial Operation and would provide a continuing and significant benefit to the operation of the Cogeneration Facility after Commercial Operation;

(3) The Annual Facility Operating and Maintenance Charge as defined in paragraph (g) hereof.

(iii) The Annual Total Facility Cost for the calendar year commencing on January 1, 1995, and ending on December 31, 1995, shall consist of the sum of the following:

(1) The amount of interest payable by the Port Authority to KIAC pursuant to the Cogeneration Agreement and determined at the rate or rates provided for in the Cogeneration Agreement on (A) a principal amount of for the portion of such calendar year commencing on January 1, 1995, and ending on May 3, 1995, plus (B) a principal amount of for the portion of such calendar year commencing on May 4, 1995, and ending on December 31, 1995;

(2) The amount of interest payable by the Port Authority to KIAC pursuant to the Cogeneration Agreement for expenditures for capital improvements that are useable and useful and that have the potential to provide both an immediate benefit to the operation of the Facility prior to Commercial Operation and would provide a continuing and significant benefit to the operation of the Cogeneration Facility after Commercial Operation;

(3) The Annual Facility Operating and Maintenance Charge as defined in paragraph (g) hereof.

(iv) The Annual Total Facility Cost for each year commencing on and after January 1, 1996, shall consist of the sum of the following:

(1) The amount of interest payable by the Port Authority to KIAC pursuant to the Cogeneration Agreement and determined at the rate or rates provided for in the Cogeneration Agreement on a principal amount of

(2) The amount of interest payable by the Port Authority to KIAC pursuant to the Cogeneration Agreement for expenditures for capital improvements that are useable and useful and that have the potential to provide both an immediate benefit to the operation of the Facility prior to Commercial Operation and would provide a continuing and significant benefit to the operation of the Cogeneration Facility after Commercial Operation;

(3) The Annual Facility Operating and Maintenance Charge as defined in paragraph (g) hereof.

(e) (i) The Annual Hot Water Facility Cost shall be 27.8% of the Annual Total Facility Cost.

(ii) The Annual Chilled Water Facility Cost shall be 72.2% of the Annual Total Facility Cost.

(f) (i) The total amount of BTUs of heat drawn during each calendar year from the hot water lines emanating from the Facility as measured by the meters installed at all the terminals, facilities, structures and buildings at the Airport, but only within the Central Terminal Area as defined in Section 74 hereof, including the premises but excluding Buildings 181, 182 and 184, receiving such hot water from the Facility shall be ascertained for each calendar year and is hereinafter called the "Annual Total Hot Water Reading" and the total amount of BTUs absorbed during each calendar year by the chilled water lines emanating from the Facility as measured by the meters installed at all the terminals, facilities, structures and buildings at the Airport, but only within the Central Terminal Area as defined in Section 74 hereof, including the premises but excluding Buildings 181, 182 and 184, receiving such chilled water from the Facility shall be ascertained for each calendar year and is hereinafter called the "Annual Total Chilled Water Reading". The Port Authority has installed or will install and maintain all appropriate meters and heat exchangers including those in the premises.

(ii) If any meter or meters fail to record the amount of consumption, the amount of consumption during the period such meter or meters are out of service will be considered to be the same as the consumption for a like period either immediately before or after the interruption, as elected by the Port Authority. In making meter readings and ascertaining consumption for each calendar year, in addition to all readings to be taken during the calendar year, readings shall be taken as soon as practicable to the beginning of each calendar year or at the end of each calendar year.

(g) The service of the Port Authority in furnishing, supplying, activating, cleaning, testing, providing, maintaining, repairing, servicing and operating the Facility and the hot water and chilled water emanating therefrom is hereinafter called the "Facility Service". The Cogeneration Agreement provides that KIAC shall furnish most aspects of the Facility Service to the Port Authority. The Annual Facility Operating and Maintenance Charge shall mean the cost to the Port Authority of the Facility Service for each calendar year. Without limiting the generality of the provisions of this paragraph the said cost to the Port Authority shall include, but not be limited to, the Port Authority's payments to KIAC for the provision of the Facility Service. Said Cost shall be determined in accordance with the Port Authority's normal accounting practice and shall consist of the following:

(i) The cost of all fuel, water, electricity and any other utilities and components used, consumed or employed. The cost of water shall include the cost to the Port Authority of sewage and other services based upon water charges or consumption. In the event furthermore that the City or State of New York is now furnishing services with or without charge therefor which in any way affect the Facility Service, and shall hereinafter impose charges or increase existing charges for such services, the said charges or

increase in charges as may be imposed or assessed against the Port Authority shall be deemed a part of the cost under this item (i);

(ii) On-the-job payroll costs of employees and supervisory personnel (including Facility supervisors, foremen and clerks) working in the Facility Service, including but not limited to contributions to any retirement system or the cost of or participation in any pension plans or the like, social security, old age, survivors, disability and unemployment insurance and other insurance costs, sick leave pay, holiday, vacation, authorized absence and severance pay, other employee fringe benefits and any other payments made or costs incurred whether pursuant to law or by Port Authority policy to or with respect to said employees and personnel;

(iii) The cost (including rental charges) of materials, equipment, machinery and supplies used and the cost of maintaining, cleaning, repairing and servicing the same;

(iv) (1) Payments to contractors and any other third persons, firms or corporations for the performance of services;

(2) Payments to KIAC by the Port Authority under the Cogeneration Agreement in connection with the Facility Service;

(v) Payments of premiums (or to the extent of self-insurance an amount equivalent to what the premiums would have been) for insurance on the Facility and the Facility Service, including without limitation thereto, fire and extended coverage, workmen's compensation and comprehensive general liability;

(vi) Any other direct costs as charged under the Port Authority's normal accounting practice;

(vii) Fifteen percent of the sum of all of the foregoing items (i) through (vi);

(viii) (1) There shall be deducted from item (vii) hereof an amount as hereinafter defined and herein called the "utility credit".

(2) The utility credit shall mean the amount of or fifteen percent (15%) of the sum of the "electricity credit", the "gas credit" and the "fuel oil credit" all as hereinafter defined, whichever is less.

(3) The electricity credit shall be an amount determined by dividing the amount paid by the Port Authority for the fuel adjustment factor portion of electricity covered by item (i) hereof by the total number of kilowatt hours (KWH) of electricity covered by said item (i) hereof, and subtracting from the quotient obtained thereby the amount of per KWH, and multiplying the

resulting difference or $0.01710 per KWH, whichever is less, by the total KWH of electricity covered by item (i) hereof.

(4) The gas credit shall be an amount determined by dividing the amount paid by the Port Authority for illuminating gas covered by item (i) hereof by the total number of thousands of cubic feet (MCF) of illuminating gas covered by said item (i) hereof, and subtracting from the quotient obtained thereby the amount of , and multiplying the resulting difference or , whichever is less, by the total MCF of illuminating gas covered by item (i) hereof.

(5) The fuel oil credit shall be an amount determined by dividing the amount paid by the Port Authority for fuel oil covered by item (i) hereof by the total number of gallons of fuel oil covered by said item (i) hereof, and subtracting from the quotient obtained thereby the amount of er gallon, and multiplying the resulting difference or per gallon, whichever is less, by the total gallons of fuel oil covered by item (i) hereof.

(h) The Port Authority shall not be obligated to the Lessee to furnish the services covered by paragraph (c) hereof at any time while the Lessee shall be in default hereunder after the period, if any, herein granted to cure such default shall have expired. The Port Authority shall be under no obligation to provide said services, if and to the extent and during any period that the supplying of such services or the use of any component necessary therefore shall be prohibited or rationed by any federal, state or municipal, law, rule, regulation, requirement, order or direction and if the Port Authority deems it in the public interest to comply therewith, even though such law, rule, regulation, requirement, order or direction may not be mandatory on the Port Authority as a public agency, nor shall the Port Authority be under any obligation to provide such services if and to the extent and during any period that the same are curtailed or stopped because of the need to repair, replace, rebuild or alter the Facility. The services covered by paragraph (c) with respect to the construction work shall commence as of the time the Lessee performs the necessary portion of the said work pertaining thereto and has received the certificate of the Port Authority pertaining to each such portion of the said work pursuant to Section 2 hereof.

(i) No failure, delay or interruption in supplying said services shall be or be construed to be an eviction of the Lessee or grounds for the diminution or abatement of rentals, fees or other charges, or (unless resulting from the negligence or wilful failure of the Port Authority) shall be grounds for any claims by the Lessee for damages, consequential or otherwise.

(j) The amounts payable to the Port Authority pursuant to paragraph (c) hereof are for each calendar year, but in the event the term of this Agreement expires on a day other than the last day of a calendar year, then in each such event the amounts payable to

the Port Authority pursuant to paragraph (c) hereof shall, for the year during which each such event occurs, be for such portion of said year during which the Port Authority provides hot water and chilled water pursuant to paragraph (c) hereof. In determining said amounts, the Annual Total Facility Cost, the Annual Hot Water Facility Cost, the Annual Chilled Water Facility Cost, the Annual Total Hot Water Reading, the Annual Total Chilled Water Reading and the readings of BTUs of heat drawn and of BTUs absorbed in the premises shall be computed, determined and ascertained for each calendar year (or portion thereof in the event mentioned in the first sentence hereof) of the term of this Agreement. Notwithstanding the foregoing and for current monthly or other periodic billing purposes as shall from time to time be selected by the Port Authority, the Port Authority shall establish for each calendar year estimated interim rates for hot water based upon BTUs of heat drawn from the hot water lines emanating from the Facility and estimated interim rates for chilled water based upon BTUs absorbed by the chilled water lines emanating from the Facility. Such estimated rates shall be based upon the Annual Chilled Water Facility Cost, the Annual Hot Water Facility Cost, the Annual Total Hot Water Reading and the Annual Total Chilled Water Reading for the previous calendar year and upon estimated changes in the same or upon such other reasonable basis as the Port Authority may determine. The Lessee shall pay current billings as they are received. Said billings shall be based upon the interim rates and upon the total number of BTUs of heat drawn from the hot water lines serving the premises and the total number of BTUs absorbed by the chilled water lines serving the premises. Said readings shall be measured by the meters serving the premises as described in paragraph (f) hereof. The provisions of subparagraph (ii) of said paragraph (f) shall apply and pertain as well for current billing purposes.

(k) As soon as practicable after the expiration of each calendar year, the Port Authority shall determine the Annual Hot Water Facility Cost and the Annual Chilled Water Facility Cost for the preceding calendar year and shall determine the amounts payable by the Lessee in accordance with the provisions of paragraph (c) hereof. Corrected billings based upon such determination shall thereupon be rendered by the Port Authority to the Lessee and if any monies are due to the Port Authority they shall be promptly paid by the Lessee and if any monies are due to the Lessee they shall be promptly credited to it. In the event the term of this Agreement expires or is sooner terminated on a date other than the last day of a calendar year, the Port Authority shall have no obligation to immediately make the computations as hereinabove provided which would determine the amounts payable by the Lessee in accordance with paragraph (c) hereof for the period during said year when this Agreement was in effect. Said computation shall be made subsequent to the end of the calendar year as hereinabove provided, and if any monies are due to the Port Authority they shall be paid by the Lessee promptly and if any monies are due to the Lessee they shall be promptly paid to it by the Port Authority less such amounts, if any, then owing and due to the Port Authority from the Lessee.

(l) Notwithstanding anything contained in this Section, the Port Authority's obligation to provide hot water and chilled water to the premises shall be limited by the safe and efficient operating capacity of the Facility.

(m) The Lessee has installed or shall install all machinery, equipment and facilities required to be installed in the premises in order to utilize said high temperature hot water and chilled water and has tied into or shall tie into the Facility at the mechanical equipment rooms on the premises. The Lessee hereby agrees that the Port Authority and KIAC and the contractors or suppliers of either of them shall have the right to enter upon the premises to install, operate and maintain the facilities to bring hot water and chilled water to the rooms.

(n) The Port Authority shall keep in an office or offices within the Port of New York District such books, records and accounts as may be necessary or appropriate to record the items and transactions affecting the computation of payments to be made by the Lessee under this Section. The Lessee or its designated representative shall have the right to examine the books and records of the Port Authority during regular business hours in connection with or in respect to any cost incurred, charged, allocated or prorated to the construction, operation or maintenance of the Central Heating and Refrigeration Facility to the extent that such affect the computation of such payments by the Lessee, it being understood that the Lessee shall have no right to inspect such parts thereof as pertain to any cost or expense which is part of the cost of administration and overhead which is covered by item (vii) of paragraph (g) of this Section.

(o) In the event of the termination of the Cogeneration Agreement, if the facilities at the Airport therefor are, in the opinion of the Port Authority, economically operable, the Port Authority, itself or pursuant to agreement with a contractor or permittee, shall supply hot water and chilled water to the premises and the Lessee shall take and pay therefor with the Annual Facility Operating and Maintenance Charge therefor to be the amount that would reimburse the Port Authority for its capital and operating costs in connection therewith determined in accordance with the Port Authority's normal accounting practice.

Section 53A. <u>Cogeneration Facility</u>

Effective on a date to be stated in a notice from the Port Authority to the Lessee, the foregoing provisions of Section 53 of this Agreement shall be deemed deleted therefrom (this deletion not to affect or limit the obligation of the Lessee to pay all sums due under the said superseded Section 53 prior to the aforesaid effective date) and the following shall be deemed inserted in lieu thereof:

"Section 53. <u>Hot Water and Chilled Water Requirements</u>

(a) (i) The Port Authority has entered into agreements consisting of an Energy Purchase Agreement dated as of April 28, 1993, a Construction and Operations Agreement, dated as of April 28, 1993, and an Agreement of Lease, dated as of April 28, 1993, (hereinafter as the same may be supplemented, amended and extended from time to time collectively and individually called the "Cogeneration Agreement") with KIAC Partners, a New York General Partnership (hereinafter called "KIAC"), for the construction, installation and operation of a cogeneration facility at the Airport which will include portions of the Central Heating and Refrigeration Facility previously operated by the Port Authority at the Airport and which cogeneration facility will produce electricity, hot water (hereinafter called "Hot Water") and chilled water (hereinafter called "Chilled Water") and which cogeneration facility is hereinafter called the "Cogeneration Facility". The Cogeneration Facility shall include a thermal distribution system (the "TDS") including distribution lines extending to the premises as provided in paragraph (f) below.

(ii) The Lessee acknowledges that it has received a copy of the Cogeneration Agreement and agrees that the supply by KIAC of Hot Water and Chilled Water to the premises is subject to all of the terms and provisions of the Cogeneration Agreement. The Lessee agrees that the Port Authority may grant waivers, consents and approvals to KIAC from time to time and the Port Authority and KIAC may supplement, amend or extend the Cogeneration Agreement, except to the extent provided in paragraph (i) below, from time to time and that the Lessee shall be subject to any such waivers, consents and approvals and supplements, amendments, and extensions as part of the Cogeneration Agreement. Copies of any such supplements, amendments and extensions will be made available to the Lessee upon request by the Lessee therefor.

(b) (i) The Cogeneration Agreement provides, among other things, that the Port Authority will purchase from KIAC for resale to the Lessee, and the Lessee hereby agrees that it will accept and purchase from the Port Authority from and after the date stated in a notice from the Port Authority (the "Cogeneration Effective Date"), subject to all of the terms and conditions of the Cogeneration Agreement, for use on the premises, to the extent the same is delivered by KIAC to the Port Authority and by the Port Authority to the Lessee, all of the Lessee's requirements at the premises for Hot Water and Chilled Water (excluding requirements exclusively for aircraft and loading bridges leading to aircraft); and the Lessee hereby agrees to pay the Port Authority therefor as follows:

(1) The Lessee acknowledges and agrees that the charge to the Lessee by the Port Authority for the Lessee's consumption of Hot Water and Chilled Water at the premises and Chilled Water makeup water and chemical treatment of makeup water (due to system leakage at the premises or otherwise) shall be the sum of (A) the amount payable by the Port Authority to KIAC therefor

pursuant to the Cogeneration Agreement, plus (B) Five Percent (5%) of the foregoing and plus (C) all applicable taxes.

(2) The Lessee acknowledges that pursuant to the Cogeneration Agreement KIAC will furnish the Port Authority with measurements of the Lessee's consumption of (A) Hot Water based upon energy drawn by the Lessee from KIAC's Hot Water distribution lines, (B) Chilled Water based upon the energy absorbed from the Lessee by KIAC's Chilled Water distribution lines and (C) Chilled Water makeup water and chemical treatment of makeup water consumed on the premises, and the Lessee agrees that the provisions of the Cogeneration Agreement with respect to the accuracy of such measurements, the redetermination of such measurements in the event of inaccurate registration by metering devices, and the use of estimates in the event of the failure of such metering devices shall all be applicable to the Lessee under this Agreement as though set forth in full herein.

(3) The Lessee acknowledges that the Cogeneration Agreement provides that KIAC shall provide estimated bills to the Port Authority for consumption of Hot Water and Chilled Water on a monthly basis commencing approximately ten (10) days after the Cogeneration Effective Date for the first calendar month or portion thereof and on or about the tenth day of the month for each calendar month thereafter. KIAC is then to render a final bill with respect to each estimated bill approximately ten (10) days after the conclusion of the said month together with the estimated bill for the then current month.

(4) Notwithstanding such arrangement between KIAC and the Port Authority, the Port Authority shall, with respect to each calendar year or fraction thereof, establish estimated unit rates, subject to change from time to time by the Port Authority, for the consumption on the premises of Hot Water and Chilled Water and shall render an estimated bill to the Lessee for the Lessee's consumption at such estimated rates monthly on the last day of the calendar month following each full or partial calendar month during the term hereof after the Cogeneration Effective Date which bill shall be payable on receipt.

(5) As soon as practicable after the expiration of each calendar year, the Port Authority shall determine the amounts payable by the Lessee in accordance with the provisions of subparagraphs (1), (2) and (3) of this paragraph (b). A corrected billing based upon such determination shall thereupon be rendered by the Port Authority to the Lessee and if any monies are due to the Port Authority they shall be promptly paid by the Lessee and if any monies are due to the Lessee they shall be credited to it. In the event the term of this Agreement expires or is sooner terminated on a date other than the last day of a calendar year, the Port Authority shall have no obligation to immediately make the computations as hereinabove provided which would determine the amounts payable by the Lessee in accordance with subparagraphs (1), (2) and (3) of this paragraph (b) for the period during said year

when this Agreement was in effect. In the event this Agreement expires on a day other than the last day of a calendar month and the actual consumption of and charges to the Lessee for such portion of the calendar month are not available, the charge to the Lessee shall be equitably prorated. Said computations shall be made subsequent to the end of the calendar year as hereinabove provided, and if any monies are due to the Port Authority they shall be paid by the Lessee and if any monies are due to the Lessee they shall be paid to it by the Port Authority less such amounts, if any, then due and owing to the Port Authority from the Lessee.

(6) The Port Authority shall render a bill to the Lessee from time to time for the Lessee's Chilled Water distribution gallonage which shall be payable upon receipt. The charge therefor shall be based on KIAC's charge to the Port Authority for makeup water and chemical treatment of makeup water and shall be determined in accordance with subparagraphs (1) and (2) of this paragraph (b).

(7) In the event that the Lessee disputes any item of an estimated or final bill, the Lessee shall promptly pay the bill in full and the Port Authority shall make any necessary adjustments only after resolution of such dispute.

(ii) The Lessee agrees that in order that KIAC or any successor thereto may maintain the status of the Cogeneration Facility as a "qualifying cogeneration facility" under applicable Federal laws, rules and regulations ("QF Status") including the Public Utility Regulatory Policies Act of 1978 as the same may be amended and any successor statute thereto, the Lessee shall, at all times it is operating the premises for the purposes permitted in this Agreement, purchase from the Port Authority and use on an annual basis a minimum amount of thermal energy contained in Hot Water and Chilled Water produced by use of steam from the Cogeneration Facility equivalent to the lesser of (1) an amount that, together with all thermal energy contained in Hot Water and Chilled Water purchased and used by the Port Authority and all other lessees of premises in the Central Terminal Area, is sufficient to maintain the QF status of the Cogeneration Facility and (2) the product of (x) 167,379 mmBTUs of thermal energy, which is one-third of the use of thermal energy contained in Hot Water and Chilled Water in the Central Terminal Area of the Port Authority and the lessees of premises in the Central Terminal Area in the year ended December 31, 1989, and (y) a fraction, the numerator of which is the amount of the Lessee's use of thermal energy contained in Hot Water and Chilled Water at the premises in the most recent complete calendar year preceding the applicable date of determination and the denominator of which is the amount of all use in the Central Terminal Area of thermal energy contained in Hot Water and Chilled Water in such calendar year.

(iii) It is agreed that during or subsequent to the expiration of this Agreement no charge to or payment by the Lessee with respect to Hot Water, Chilled Water or Chilled Water distribution gallonage shall be included in, affect, or change in

any way the calculation and determination of Port Authority costs or charges under any other agreement between the Lessee and the Port Authority at the Airport and any such Port Authority cost or charge shall be calculated and determined as if no charge to or payment by the Lessee with respect to Hot Water or Chilled Water had been incurred.

(c) THE LESSEE HEREBY WAIVES AND RELINQUISHES for itself, its successors and assigns any right it may have, and further agrees that it, its successors and assigns shall have no right, to manufacture or produce, to cause to be manufactured or produced, or to purchase or receive from any third party, Hot Water or Chilled Water for use on the premises or to use any other manner of air cooling or air heating at the premises (except for space heating or air conditioning of aircraft and loading bridges leading to aircraft) except to purchase, receive and use Hot Water and Chilled Water from the Port Authority pursuant to this Agreement.

(d) There shall be no obligation to the Lessee by either KIAC or the Port Authority to furnish the goods and services covered by this Section at any time (i) while any component necessary therefor shall be prohibited or rationed by any federal, state or municipal, law, rule, regulation, requirement, order or direction or while the Port Authority deems it in the public interest to comply therewith even though such law, rule, regulation, requirement, order or direction may not be mandatory on the Port Authority as a public agency, (ii) while the same are curtailed or stopped because of the need to repair, replace, rebuild or alter the Cogeneration Facility, (iii) during the continuance of any event of Force Majeure, as such term is defined in the Cogeneration Agreement or (iv) that the Lessee shall be in default under this Agreement after the period, if any, herein granted to cure such default shall have expired. No failure, delay or interruption in supplying said goods and services shall be or be construed to be an eviction of the Lessee or grounds for the diminution or abatement of rentals, fees or other charges, nor shall any such failure, delay or interruption be grounds for any claim, direct or indirect, by the Lessee for damages, consequential or otherwise, against the Port Authority. In the event of the failure of KIAC to supply Hot Water or Chilled Water to the premises as provided in the Cogeneration Agreement, which failure KIAC shall not either correct or be diligently pursuing the correction of, within the period provided for the same in the Cogeneration Agreement, the Port Authority shall direct KIAC to take corrective action as provided in the Cogeneration Agreement.

(e) Without limiting any other provision of this Section, any supply of Hot Water or Chilled Water to the premises from the Cogeneration Facility shall be limited by the safe and efficient operating capacity of the Cogeneration Facility as determined by KIAC and as approved by the Port Authority.

(f) (i) The Lessee has installed or shall install all machinery, equipment and facilities required to be installed in the premises in order to utilize Hot Water and Chilled Water to be

distributed and has tied into or shall tie into the TDS at the heat exchangers, heretofore installed by the Port Authority or to be installed by KIAC, in the mechanical equipment rooms constructed by the Lessee on the premises.

(ii) The Lessee hereby agrees that the Port Authority, KIAC and the contractors or suppliers of either of them each shall have the right, subject to and as provided in Section 21 hereof, to enter upon the premises to install, operate and maintain any part of the Cogeneration Facility located thereon including but not limited to the aforesaid TDS and heat exchangers.

(g) In the event the Cogeneration Agreement is terminated and the facilities for the production of Hot Water and Chilled Water at the Airport exist and are, in the opinion of the Port Authority, economically operable, the Port Authority itself or pursuant to agreement with a contractor or permittee shall supply Hot Water and Chilled Water to the premises and the Lessee shall take and pay therefor at the same charge to the Lessee which would be applicable as if the Cogeneration Agreement had been in full force and effect, provided, however, that notwithstanding any other provision of this Section, the charge therefor to the Lessee shall in no event be less than an amount that would reimburse the Port Authority for its capital and operating costs in connection therewith determined in accordance with the Port Authority's normal accounting practice and provided, further, that if the Port Authority should itself supply, or enter into any agreement with a contractor or permittee to supply, Hot Water and Chilled Water to the premises at a lower capital and operating cost to the Port Authority than that equivalent to the charges to the Lessee which would have been applicable under the Cogeneration Agreement, such charges therefore to the Lessee shall be appropriately adjusted. In addition, the Port Authority may, in its discretion, make or consent to arrangements on one or more occasions with a third party or parties to succeed to KIAC's operation of all or any part of the Cogeneration Facility and the Lessee shall continue to be obligated to purchase Hot Water and Chilled Water from the Port Authority pursuant to this Agreement, at the rates provided for in the Cogeneration Agreement.

(h) Neither the Port Authority nor KIAC shall have any liability to the Lessee for any facilities installed by the Lessee on the premises in connection with the use of Hot Water and Chilled Water hereunder or for any investment made in connection with the use of Hot Water and Chilled Water.

(i) The Port Authority shall have the right to grant waivers, consents and approvals with respect to the Cogeneration Agreement and to enter into amendments, supplements or extensions of the Cogeneration Agreement with KIAC or any similar agreement with any successor operator of the Cogeneration Facility or other provider of Hot Water and Chilled Water at the Airport provided, however, that, except as otherwise provided by law, the Port Authority will not enter into any amendment, supplement or extension

of the Cogeneration Agreement which will result in a change in the formula used to calculate the Hot Water and Chilled Water rates payable by the Lessee which change results (i) in Hot Water and Chilled Water rates per unit consumed payable by users, including the Lessee, which vary depending on the volume of Hot Water or Chilled Water consumed by users, including the Lessee, or (ii), in an increase in the rates payable by users, including the Lessee, pursuant to such formula (the Lessee hereby acknowledging that such formula may, according to its terms, provide for such rates to be adjusted from time to time) without (x) providing the lessees of premises in the central Terminal Area that purchased and used Hot Water and Chilled Water during the last full calendar year preceding the effective date of such amendment, supplement or extension with detailed information respecting the proposed amendment, supplement or extension and discussing the same with such lessees and (y) the consent of the lessees (including the Port Authority as and to the extent that the Port Authority uses Hot Water and Chilled Water) of premises that purchased and used at least Fifty-one percent (51%) of the aggregate Hot Water and Chilled Water purchased and used in the Central Terminal Area during the last full calendar year preceding the effective date of such amendment, supplement or extension and (z), in the event the Port Authority itself purchased and used at least Fifty-one percent (51%) of the aggregate Hot Water and Chilled Water, as aforesaid, obtaining the consent of one or more other such Central Terminal Area lessees."

Section 54. <u>Public Parking Facility</u>

(a) The Public Parking Facility (hereinafter in this Section called ("the Facility") shall include only the portion of the surface of the roof of Building No. 53 in Area IB (hereinafter in this Section the "Area IB Terminal Building") upon which the actual public parking area is located, the vehicular ramps between the roof of the Area IB Terminal Building and the next lower level, the stairway and stairwell between the roof of the Area IB Terminal Building and the next lower level, all roadways and pedestrian circulation areas on said roof excluding any which may be in the Private Parking Facility, the structure housing the elevator serving said roof, other structures erected on said roof for use in connection with the operation of the Facility, and appropriate fencing, lighting and such other equipment, installations and improvements (other than those to be provided by the Port Authority pursuant to paragraph (c) hereof). The structural supporting frame of the Area IB Terminal Building, the roof (other than outer surface thereof) and all other structural members of the Area IB Terminal Building shall not be or be deemed to be a part of the Facility and shall be deemed to be a part of the Area IB Terminal Building.

(b) The Facility shall be operated as a motor vehicle parking facility to be made available to the general public and others. The Lessee, its passengers, patrons, employees and business guests shall have no priority of any kind and no rights of any kind to the use of the Facility greater than those of the general public. The Facility shall be operated by a contractor, selected from time

to time and at any time, by the Port Authority (hereinafter called "the Parking Contractor"). The Port Authority reserves the right, but shall have no obligation of any kind, to operate the Facility itself. The Port Authority shall have full, sole and absolute determination as to the rates to be charged at the Facility, the operation of the Facility, the number and size of spaces, the location and number of the entrances and of the exit lanes, the hours and times of operation, the security procedures therefor, the need or desirability of installing new or additional equipment or new construction, and any and all other matters pertaining to the Facility and the operation thereof. The Port Authority agrees that the rates to be charged for parking at the Facility shall be structured so as to encourage short term parking and to discourage long term parking at the Facility. As of the effective date of this Agreement, long term parking shall be deemed to mean consecutive parking in excess of four hours. The Port Authority reserves the right from time to time during the term of the Agreement to change the definition of long term parking. All revenues of whatever kind or nature arising out of or in any way connected with the Facility or the operation thereof shall belong to and be retained by the Port Authority.

The Port Authority shall endeavor to keep the Facility open and available for use by the general public. It is, however, hereby expressly agreed to by the Lessee that the Port Authority shall not be obligated or liable to the Lessee in any manner whatsoever in the event the Facility for any reason whatsoever is not open for such use for any period or periods during the term of this Agreement, unless the same shall be due to a deliberate, affirmative policy of the Port Authority and the Port Authority has not rectified such policy within a reasonable time after receipt of notice so to do from the Lessee, except for causes or conditions or circumstances beyond the control of the Port Authority.

(c) The Port Authority shall have the right to install or cause to be installed at the Facility all equipment, machinery and devices pertaining to the collection of charges from patrons of the Facility, any and all equipment located in the structure or structures at the Facility where personnel of the Parking Contractor and/or the Port Authority may be stationed, and any and all other equipment, machinery and devices which the Port Authority shall from time to time during the term of the Lease deem necessary or desirable for or in connection with the operation of the Facility, other than those required to be furnished or supplied by the Lessee. The Port Authority shall have the right to install and maintain all appropriate lines and conduits over, in or under the premises if connections to any of the foregoing are necessary and desirable to locations off the premises. All of the foregoing is in this Section referred to as "the Equipment". Notwithstanding anything contained in this Lease, the Equipment shall not be or be deemed to be a part of the premises and the Lessee shall have no rights of any kind with respect to the same.

(d) The Lessee hereby grants to the Port Authority, its employees, representatives, agents, contractors, suppliers of material and furnishers of services, and to all members of the general public and others who wish to use the Facility, the full and absolute right at any and all times, during the hours of operation to use such portions of the circulation areas of Area IB, the elevators in Area IB serving the Facility, and any other portions of the premises as may be necessary or appropriate for the purpose of ingress to and egress from the Facility. The Lessee hereby agrees at its sole cost and expense to promptly remove all snow, ice and sleet and to promptly perform all other activities and functions as may be necessary or proper to keep said portions of the said circulation areas, said elevators and other parts of the premises open and available at all times for such purpose of ingress and egress.

(e) The Lessee shall:

(1) Keep the Facility at all times in a clean and orderly condition and appearance;

(2) Remove all snow, ice and sleet from the Facility;

(3) Take good care of the Facility and maintain the same at all times in good condition, perform all necessary preventive maintenance, including but not limited to painting (only in colors which have been approved by the Port Authority); and make all repairs and replacements, and do all rebuilding and repaving, which repairs, rebuilding, repaving and replacements by the Lessee shall be in quality and class not inferior to the original in materials and workmanship;

(4) Remove from the Airport or otherwise dispose of a 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 obligations hereunder at the Facility;

(5) Perform such other operations and provide such other services with respect to the Facility not otherwise required of the Lessee under other provisions of this Lease as the Port Authority from time to time may direct;

(6) Supply such quantities of electricity, water, heat and any other utility to the Facility as the Port Authority may from time to time direct, and

(7) Perform such security operations as shall be necessary or appropriate for the Lessee and/or its contractor to comply with all Port Authority requirements for the security of the Facility including without limitation providing security personnel to secure and patrol the Facility and security equipment, including the operation and maintenance thereof as the Port Authority may from time to time direct.

All obligations as set forth in this paragraph (e) to be performed by the Lessee at the Facility shall be hereinafter referred to in this Section as "the Lessee's Facility Obligations". All other obligations the Lessee has with respect to the Facility under any other term, condition, covenant or provision of the Lease shall not be a part of the Lessee's Facility Obligations, but nothing herein contained shall be deemed to limit, affect or release the Lessee from the performance of such obligations.

(f) The Lessee's Facility Obligations shall be performed in such manner, to such standards and at such times as the Port Authority at any time and from time to time during the term of the Lease shall determine. In the event the Lessee fails to perform any part of the Lessee's Facility Obligations or fails to perform the same in a manner satisfactory to the Port Authority, the Port Authority may, at its option, and in addition to any other remedies which may be available to it, perform itself or cause to be performed by third parties all or any portion of the Lessee's Facility Obligations, and the cost thereof as determined by the Port Authority's normal accounting practice shall be payable by the Lessee to the Port Authority on demand. The Port Authority may at any time and from time to time reimpose upon the Lessee its obligation to perform all or such portion of the Lessee's Facility Obligations which the Port Authority had at any time itself undertaken or caused to be performed by third parties.

(g) (1) The term "Lessee's Annual Operating Cost" shall mean an agreed upon sum determined as hereinafter provided and shall represent the Lessee's cost for performing all of the Lessee's Facility Obligations for an annual period, (as hereinafter defined) except those covered by subparagraphs (5), (6) and (7) of paragraph (e) hereof and except for Major Maintenance as hereinafter defined. The Lessee's Annual Operating Cost for the first annual period shall mean the sum of $40,000. Before the commencement of the second annual period and before the commencement of the fifth, eighth, eleventh, fourteenth, seventeenth, and twentieth year annual periods and before the twenty third annual period if there is an extension of the term hereunder pursuant to Section 3A hereof, the Port Authority and the Lessee shall determine the amount which shall constitute Lessee's Annual Operating Cost for the next three annual periods. It is hereby understood and agreed that it is the intention of the parties hereto that the Lessee shall perform the Lessee's Facility Obligations hereunder during the term of this Lease and that the only reason for providing for mutual determination of the Lessee's Annual Operating Cost as aforesaid for each three-year period is the uncertainty at the commencement of the term of the Lease of the amount which would properly constitute the Lessee's actual cost for performing the Lessee's Facility Obligations for the entire term of the Lease. In determining the Lessee's Annual Operating Cost for each three year period, the parties shall seek to determine the Lessee's actual cost of performing the Lessee's Facility Obligations for such three year period, which cost shall be deemed to mean only the Lessee's on-the-job payroll cost, the cost of materials, equipment and supplies

and/or payments to independent third party contractors in the performance of the Lessee's Facility Obligations. There shall also be taken into account the fact that some of the Lessees's Facility Obligations serve and benefit the Private Parking Facility as well. The Lessee shall initially submit a proposal as to what it believes the Lessee's Annual Operating Cost should be. This proposal shall be based upon the audited and verified costs the Lessee has incurred for the preceding three annual periods (or the first annual period only in the case of the first proposal), and true and valid projections of the same shall be the basis of the mutual determination of the Lessee's Annual Operating Cost for the next three annual periods.

The Lessee and the Port Authority hereby agree to negotiate in good faith in arriving upon a mutually agreed upon amount to constitute the Lessee's Annual Operating Cost for each such three year period and also hereby agree that such agreed upon amount of the Lessee's Annual Operating Cost for each such three year period shall be set forth in writing signed by the Lessee and the Port Authority.

In the event the parties shall have failed to arrive upon agreement on the amount which should be the Lessee's Annual Operating Cost prior to the commencement of the annual period to which it would be applicable, the Lessee shall continue to perform the Lessee's Facility Obligations hereunder, unless and until the Port Authority exercises its rights under paragraph (i) hereof and the Lessee shall continue to be paid for the performance of the Lessee's Facility Obligations on the basis of the Lessee's Annual Operating Cost for the preceding annual period, which payments shall be retroactively adjusted at such time as the parties shall have agreed on the amount of the applicable Lessee's Annual Operating Cost, but if no such agreement is reached, no adjustment will be made.

(2) Major Maintenance shall be deemed to mean an instance where the Lessee is required to perform an item of repair, of replacement, of painting, or repaving or of rebuilding on the Facility pursuant to the provisions of subparagraph (3) of paragraph (e) hereof, where the Lessee's cost of such item shall exceed $700.00. The Lessee's cost as used herein shall be deemed to mean only the Lessee's on-the-job payroll cost, the cost of material, equipment and supplies and payments to independent third party contractors, and taking into account the fact that the item of Major Maintenance may serve or benefit the Private Parking Facility as well. In the event that the performance of an item of Major Maintenance is required of the Lessee pursuant to subparagraph (3) of paragraph (e) hereof, or in the event operations or services are required of the Lessee pursuant to subparagraph (5) of paragraph (e) hereof, the same shall not be performed by the Lessee unless prior to the commencement of performance the Port Authority and the Lessee have agreed upon the amount to be paid by the Port Authority to the Lessee for the same. The Lessee and the Port Authority hereby agree

to negotiate in good faith in arriving upon such mutually agreed upon price.

The Port Authority may, at its option and without any obligation so to do, from time to time during the term of the Agreement, perform itself or cause to be performed by third parties any item of Major Maintenance and any operation or service of the type covered by subparagraph (5) of paragraph (e) hereof.

(3) The term "Major Maintenance Price" shall mean the amount agreed upon between the Port Authority and the Lessee to be paid by the Port Authority for an item of Major Maintenance.

(4) The term "Subparagraph (5) Price" shall mean the amount agreed upon by the Port Authority and the Lessee to be paid to the Lessee for a service or operation to be provided by the Lessee under subparagraph (5) of paragraph (e) hereof.

(5) The term "Utility Cost" shall mean the cost to be determined by agreement from time to time of the parties during the term hereof with respect to any utility actually supplied and paid for by the Lessee to the Facility based on estimates of consumption and cost, and taking into account the fact that the utility may serve or benefit the Private Parking Facility as well.

All of the amounts payable by the Port Authority to the Lessee under this paragraph (g) are hereinafter collectively called "the Lessee's Charges". They shall be set forth in the statement of the Lessee covered by subparagraph (1) of paragraph (h) as incurred for the preceding month, and with respect to the Lessee's Annual Operating Cost, one-twelfth of the same shall be so included and shall be called the "Lessee's Monthly Operating Cost".

(h) (1) On or before the twentieth day of the month following the effective date of this Agreement and on or before twentieth day of each and every month thereafter during the term of this Agreement, including the month following the expiration or earlier termination of said term, the Lessee shall submit to the Port Authority a detailed statement setting forth the Lessee's Charges for the preceding calendar month and such other additional information the Port Authority may from time to time require pertaining to the Lessee's Facility Obligations for the preceding calendar month.

(2) The Lessee shall submit to the Port Authority not later than thirty (30) days after the end of each annual period a cumulative detailed statement setting forth the matters required to be set forth under subparagraph (1) above for said annual period.

(3) The Lessee shall submit to the Port Authority not later than thirty (30) days after the end of each annual period and not later than three months before the end of an annual period when the Lessee's Annual Operating Cost for the succeeding annual period is to be determined in accordance with paragraph (g) hereof a

cumulative detailed statement setting forth the amount of the Lessee's actual cost in performing the Lessee's Facility Obligations as defined in paragraph (g) (1) for the preceding annual period or the preceding nine months as the case may be.

(4) All statements required hereunder shall be prepared in accordance with sound accounting practice acceptable to the Port Authority. In addition the annual statements required under subparagraphs (2) and (3) hereof shall be certified by a fiscal officer of the Lessee. Each statement shall be subject to verification and audit by the Port Authority. No payments or credits made or given by the Port Authority shall be deemed to be final until the statement upon which the payment or credit is based has been approved by the Port Authority. However, no payment or credit, final or otherwise, shall operate to release the Lessee from any of its obligations under this Lease. The Lessee shall permit, in ordinary business hours for a period of 4 years during the term of this Agreement, and for one year thereafter, the examination and audit by the officers, employees and representatives of the Port Authority or such records and books of account and also any records and books of account of any company which is owned or controlled by the Lessee or which owns or controls the Lessee, if said company performs services similar to those performed by the Lessee anywhere in the Port of New York District.

(i) In the event and for whatever reason the parties have failed to agree upon the amount to constitute the Lessee's Annual Operating Cost prior to the commencement of an annual period where agreement on the amount is applicable, the Port Authority shall have the right upon at least 30 days' prior written notice to the Lessee to terminate the performance by the Lessee of the Lessee's Facility Obligations under this Section 54 and from and after the effective date stated in said notice the Lessee shall no longer perform the Lessee's Facility Obligations. If the parties have not reached agreement by the expiration of six months after the commencement of an annual period in which a determination of the Lessee's Annual Operating Cost is applicable, and if the Port Authority had not terminated the Lessee's Facility Obligations as hereinabove provided, then the provisions of this Section 54 covering the performance by the Lessee of the Lessee's Facility Obligations shall cease and terminate as of such date.

In the event of termination or cessation as aforesaid the Port Authority shall have the right by itself or by a third party contractor to perform any and all services including but not limited to the Lessee's Facility Obligations which it shall deem necessary or desirable in connection with the operation of the Facility. Termination or cessation of the Lessee's Facility Obligations shall not release or relieve the Lessee from any other obligations it has under the Lease which may affect or pertain to the Facility. Notwithstanding the foregoing the Lessee shall continue to provide to the Port Authority the utilities covered by subparagraph (5) of paragraph (e) hereof, to be paid for as provided in subparagraph (5) of paragraph (g) hereof.

Termination or cessation hereunder shall not be deemed to waive any other rights or remedies which may be available to the Port Authority either at law or in equity arising out of the fact that the parties failed to agree on the amount of the Lessee's Annual Operating Cost.

Payments to the Lessee for the portion of the annual period in which termination or cessation takes place as aforesaid shall be made on the basis of the Lessee's Annual Operating Cost for the preceding annual period. Thereafter the Lessee shall pay to the Port Authority its proper share of the cost to the Port Authority of performing the Lessee Facility Obligations and any other operations and services it may perform or provide as and to the extent that the same serve or benefit the Private Parking Facility. The cost to the Port Authority shall be determined in accordance with its normal accounting practice and payments shall be paid by the Lessee as billed by the Port Authority.

(j) The Port Authority shall pay to the Lessee or at its option credit against the rental obligations of the Lessee hereunder within fifteen (15) days after the receipt of the Lessee's statement submitted in accordance with subparagraph (1) of paragraph (h) hereof, an amount equal to the Lessee's Charges for the month for which said statement is rendered.

(k) The term "Annual Period" as used in this Section shall mean the period of twelve months commencing upon the effective date of this Agreement and each period of twelve months thereafter commencing on the anniversaries of said effective date, provided, however, that if the effective date is other than the first day of a month the first annual period following the effective date shall include the portion of the month subsequent to the effective date plus the succeeding twelve months and each succeeding "annual period" shall commence on the anniversaries of the beginning of the first full 12-month period. In the event the term of the Lease expires on a date other than the date of the expiration of an annual period, the number of months in said annual period shall constitute the full annual period.

(l) In the event that the Lessee does not perform the Lessee's Facility Obligations for any period or periods during the term of this Agreement and for any reason whatsoever including without limitation thereto the performance of the same by the Port Authority or the fact that the Facility shall not be open or available for use by the public, then and without limiting any other remedies which may be available to the Port Authority the Lessee's Monthly Operating Cost shall not be payable for the period of the failure of performance. If such failure to perform is for a period less than a month, the Lessee's Monthly Operating Cost shall be reduced by applying thereto a fraction, the numerator of which shall be the number of days in said calendar month during which the Lessee performed the Lessee's Facility Obligations and the denominator of which shall be the actual number of days in said month. The Lessee

shall not perform the Lessee's Facility Obligations during any period the Facility is not open for use, unless and to the extent that it is directed so to do by the Port Authority, and in such event if all the Lessee's Facility Obligations are performed the total of the Lessee's Monthly Operating Cost shall be payable and if less than all are performed the amount to be paid by the Port Authority to the Lessee shall be subject to agreement of the parties taking into account the provisions of paragraph (g) hereof. It is hereby recognized that the Facility was closed during the period commencing February 26, 1993 through September 28, 1993 and that the Facility was re-opened for use on September 29, 1993.

(m) The Lessee shall not enter into any contract with any independent third party for the performance of any of the Lessee's Facility Obligations without the prior written consent of the Port Authority.

(n) The Lessee shall not assign to any third party the Lessee's rights to the payment of any monies under this Section 54 and any such assignment shall be void as to the Port Authority.

Section 55. Consumer Services

The Lessee acknowledges that various portions of the premises have been and will be utilized for consumer services and said portions which have received and will receive the concurrence of the Lessee and the Port Authority, as hereinafter provided, are herein referred to as "the concession areas". Without limiting the provisions of Section 44 hereof, the Lessee shall develop a comprehensive plan for consumer services, including but not limited to the locations of existing and future concession areas, the amount of services to be provided of the types hereinafter set forth in Sections 56, 57, 58, 59, 60, 61 and 62 hereof, and the types and amounts of any consumer services proposed under Section 63, and the Lessee agrees that it will at all times throughout the term of the Lease keep said comprehensive plan updated and that said updated plan shall be submitted to and be subject to the continuing approval of the Port Authority. The Port Authority shall furnish to the Lessee guidelines to be utilized by the Lessee with respect to all matters affecting consumer services in the concession areas including the Lessee's comprehensive plan.

After approval by the Port Authority of the Lessee's comprehensive plan for consumer services the Lessee shall enter into negotiations or go out for bid, as the circumstances dictate, with respect to the selection of proposed new operators and new agreements with the same. At all times during the negotiation and award procedure the Lessee shall consult with the Port Authority as to all aspects of the proposed arrangements including but not limited to the proposed operators and the financial terms thereof. As hereinafter provided the Lessee will be entering into a direct contract with each new operator but said operator must also enter into an appropriate agreement with the Port Authority. The Lessee shall not finalize negotiations with any operator and shall not

execute any agreement with any proposed operator until it has received notification from the Port Authority that said arrangement is acceptable to the Port Authority and until said operator has indicated that it is prepared to enter into the appropriate contractual agreement with the Port Authority. The foregoing procedure will be followed throughout the term of the Lease. It is expressly understood and agreed that the provisions of this Section shall not limit or be deemed to limit the provisions of Section 44 hereof and the Lessee's on-going affirmative action commitment with respect to the consumer services awards and agreements provided for herein. Without limiting any of the foregoing or any other term or provision of this Agreement, the Lessee understands and agrees that the Lessee's comprehensive plan for consumer services shall comply with the Disadvantaged Business Enterprises requirements of the Federal Aviation Administration and also the requirements of the Port Authority with respect to making contract opportunities available to Disadvantaged Business Enterprises.

Section 56. Restaurants and Bars

The Lessee may select and thereafter enter into an agreement with one or more qualified Restaurant Operators (each such Restaurant Operator being hereinafter referred to in this Section as "the Restaurant Operator") authorizing the Restaurant Operator to operate in the premises facilities for the sale of food, alcoholic and non-alcoholic beverages and similar items for consumption in the premises (hereinafter called "the Restaurant Service") provided, however, that prior to any such selection and prior to the entering by the Lessee into any such agreement with the Restaurant Operator, said Restaurant Operator shall obtain a permit from the Port Authority authorizing such Restaurant Operator to operate the Restaurant Service in a portion of the premises hereunder. Prior to the issuance of any such permit, the proposed Restaurant Operator may be required to submit to the Port Authority evidence satisfactory to the Port Authority of its qualifications, the scope of its proposed operations and the standards of service it will provide. Any such permit will provide that the Restaurant Operator will conduct its operations at the premises in a first-class manner in accordance with the best practices in the industry and shall comply with maximum Port Authority standards with respect to service, health, sanitary and safety measures. The permit will not be revoked without cause by the Port Authority without the prior consent of the Lessee. In the event of any inconsistencies between the terms of the permit and the terms of the agreement between the Lessee and the Restaurant Operator, the terms of the permit shall control and prevail. Without limiting the foregoing, it is agreed that prior to the issuance of the permit the Port Authority shall make a copy of the same available to the Lessee and that upon the execution of the permit by the proposed Restaurant Operator the same shall be consented to in writing by the Lessee.

The agreement between the Lessee and the Restaurant Operator shall cover the arrangements for the space to be used in the Restaurant Service within the premises including the amount,

type and location of the space. The Lessee will bring to the perimeter of the space to be occupied by the Restaurant Operator pipes, wires and conduits for the supply of electricity, gas and water, together with the necessary steam and waste lines for use in connection with the Restaurant Service and shall provide said utilities to the Restaurant Operator. Said agreement will also provide that the Restaurant Operator will furnish and install at its own expense all necessary fixtures, furniture and personal property required in connection with the Restaurant Service and that the Restaurant Operator may be required to perform all work necessary or required to finish off the space, including the finishing of the floors and ceilings from the structural slab and the walls from the rough partitions.

The agreement between the Restaurant Operator and the Port Authority will contain appropriate provisions permitting cancellation of such agreement on short notice in the event the service of the Restaurant Operator is unsatisfactory to the Lessee. In the event of such cancellation the Lessee agrees to reimburse the Restaurant Operator for its unamortized investment in the fixtures, equipment, furniture and personal property furnished in connection with the operation, and the unamortized cost of the work performed in finishing off the space and title to such fixtures, equipment, furniture and personal property shall thereupon vest in the Lessee, provided, however, that where such agreement is cancelled expressly on the basis of the failure of the Restaurant Operator to keep, perform or observe any of the terms and provisions of said agreement in its part to be kept, performed or observed or on the basis of one or more event or events of default of the Restaurant Operator as specified in said agreement such provision for Lessee reimbursement is not to obtain or apply.

The agreement between the Lessee and the Restaurant Operator shall not call for any fixed rental or fee but shall provide that the Restaurant Operator shall pay a percentage fee based upon the gross receipts of the Restaurant Operator from the sale of food, alcoholic and non-alcoholic beverages, which fee shall be subject to the prior written approval of the Port Authority and shall be incorporated into the permit to be issued by the Port Authority. There shall be no other payments by the Restaurant Operator to the Lessee except for appropriate payments for any utilities which may be furnished to the Restaurant Operator by the Lessee, it being understood, however, that the foregoing shall not preclude the Lessee from furnishing services to the Restaurant Operator, such as janitorial and garbage removal services, and from receiving payments from the Restaurant Operator for such services provided the same are covered by appropriate written agreements duly entered into between the Lessee and the Restaurant Operator including the charges therefor, and that the Lessee hereby agrees to provide the Port Authority with any and all agreements covering any such services promptly and upon the receipt of a request therefor from the Port Authority. It is hereby understood and agreed that 80% of the percentage fee payable by the Restaurant Operator shall be paid by the Restaurant Operator to the Lessee and 20% of the percentage fee

DL can bill for utilities

food vendor pays directly to Port Auth

construction cost of the premises, and an appropriate allocation of the cost of providing and maintaining public areas within the premises. For the purpose of determining the aforesaid costs the premises shall be considered as a single entity and a single rental rate shall be established for all areas of the premises based thereon. The amount of the basic rental to be paid by the vendor shall be agreed upon between the Port Authority and the Lessee, when the costs aforementioned are determined or can be reasonably estimated provided, however, in no event shall such basic rental be computed at a rate in excess of the Consumer Service Maximum Basic Rental Rate as defined in Section 81 hereof.

The contract shall further provide that the vendor shall pay an amount equal to a percentage of the vendor's gross premiums from the sale of such insurance, less the amount of any basic rental paid by the vendor.

It is hereby understood and agreed that all of the basic rental and 50% of the percentage fee payable by the insurance vendor shall be paid by the insurance vendor to the Lessee and 50% of the percentage fee payable by the insurance vendor shall be paid by the insurance vendor to the Port Authority. The rental and fees payable hereunder shall be paid in the manner, under the conditions, and at the times provided in Section 65 hereof.

all rental & 50% fee paid to DC 50% to Port fee

The contract with the insurance vendor will provide that: (a) if the Lessee so requests, the vendor shall provide a general information service to the public; and (b) the vendor shall not be required to provide a counter for the sale of insurance if, in its opinion, there will be insufficient patronage to support such a counter; and (c) the vendor shall not be required to continue to provide at any designated location vending machines for the sale of insurance when the gross premiums from any such machines at any such location is less than $200 per month, provided, however, if twenty-four (24) hour counter coverage is not provided there shall be at least one machine in the premises; and (d) the provisions of insurance policies and the minimum coverage offered shall be acceptable to the Lessee.

The location of insurance counters and insurance vending machines shall be determined by the Lessee. The vendor will furnish and install at its expense all necessary fixtures, machines, counters and equipment required in connection with its operation. The Lessee shall provide the necessary wires and conduits for the supply of electricity for use in connection with the vendor's operation. The Lessee shall not require unreasonably frequent moves of insurance counters and insurance vending machines hereunder.

Section 59. Newsstands

(a) The Lessee may select and thereafter enter into an agreement or agreements with a qualified newsstand operator or operators authorizing such operators to operate newsstands in the premises for the sale at retail of such of the following items as

may be approved by the Port Authority: newspapers, magazines, cigarettes, cigars and other tobacco supplies, candy, chewing gum, playing cards and paperbound books, small novelty gift items, and such other items as may be approved by the Port Authority from time to time, provided, however, that prior to any selection and prior to the entering by the Lessee into any such agreement with any such newsstand operator, each such newsstand operator obtains a permit from the Port Authority authorizing said newsstand operator to operate the newsstand in a portion of the premises hereunder. Prior to the issuance of any such permit, the proposed newsstand operator may be required to submit to the Port Authority evidence satisfactory to the Port Authority of its qualifications, the scope of its proposed operations and the standards of service it will provide. Any such permit will provide that the newsstand operator will conduct its operations at the premises in a first-class manner in accordance with the best practices in the industry and shall comply with maximum Port Authority standards with respect to service, health, sanitary and safety measures. The permit will not be revoked without cause by the Port Authority without the prior consent of the Lessee. In the event of any inconsistencies between the terms of the permit and the terms of the agreement between the Lessee and the newsstand operator, the terms of the permit shall control and be prevailing. Without limiting the foregoing, it is agreed that prior to the issuance of the permit the Port Authority shall make a copy of the same available to the Lessee and that upon the execution of the permit by the proposed newsstand operator the same shall be subscribed to by the Lessee. The Port Authority shall require such operator or operators to sell at retail from its or their locations, such other items or furnish such other services as may be approved by the Port Authority and as are requested by the Lessee.

(b) The agreement between the newsstand operator or operators and the Port Authority shall provide that each such operator shall pay to the Lessee a basic rental for the space occupied by such operator in the premises in connection with the operation of the newsstand. The basic rental will be based upon the cost to the Lessee of providing such space to the operator. In determining the cost to the Lessee there shall be considered the construction cost of the premises and an appropriate allocation of the cost of providing and maintaining public areas within the premises. For the purpose of determining the aforesaid costs the premises shall be considered as a single entity and a single basic rental rate shall be established for all areas of the premises based thereon. The amount of the basic rental to be paid by the operator shall be agreed upon between the Port Authority and the Lessee, when the costs aforementioned are determined or can be reasonably estimated, provided, however, in no event shall such basic rental be computed at a rate in excess of the Consumer Service Maximum Basic Rental Rate as defined in Section 81 hereof. The Lessee shall furnish without additional charge, a reasonable amount of storage space for the use of the newsstand operator.

DL gets basic rental

DL furnishes storage space free

(c) The agreement with the newsstand operator or operators shall further provide that the operator will pay to the Port Authority a percentage fee of the gross receipts derived by the newsstand operator from all sales made by the newsstand operator less the amount of the basic rental paid by the newsstand operator to the Lessee, the amount of said percentage fee payable to the Port Authority up to the amount of the basic rental being herein called "the basic rental equivalent".

Port gets equiv. of basic rental next

(d) The agreement with the newsstand operator shall provide furthermore that the newsstand operator shall pay directly to the Port Authority and to the Lessee the excess, if any, of the percentage fee remaining after the newsstand operator has paid to the Port Authority the basic rental equivalent, said excess to be divided equally between the Lessee and the Port Authority. Both the agreement between the Lessee and the newsstand operator and the permit to be issued by the Port Authority shall have provisions covering the percentage fee in accordance with this Section and without limiting the generality of any other provision of this Section, the permit shall control as to the manner, conditions and terms of payment.

Port & DC split overage

(e) The agreement with the newsstand operator or operators will further provide that the newsstand operator will be permitted to sell at retail only such merchandise as is normally sold at newsstands in operation at Port Authority Airports together with such other merchandise as may be requested by the Lessee, if authorized by the Port Authority. The contract shall further provide that no merchandise objectionable to the Lessee or the Port Authority shall be sold.

(f) The location of newsstands for the use of the newsstand operators shall be determined by the Lessee subject to the approval of the Port Authority and in accordance with the Lessee's comprehensive plan. The said agreement between the newsstand operator and the Lessee shall provide that the newsstand operator will furnish and install at its expense all necessary trade fixtures, stands, counters and equipment required in connection with its operation. The Lessee shall perform all construction work necessary to accommodate such installations including the necessary wires and conduits for the supply of electricity and shall supply the same including the supply of electricity for use in connection with the operation of the newsstand or newsstands at no cost to the newsstand operator or to the Port Authority. In addition to other rights of termination or revocation that may be contained in said agreement between the newsstand operator and the Lessee, the said agreement may contain appropriate provisions permitting cancellation of the agreement by the Lessee on short notice in the event the newsstand service provided by the newsstand operator is unsatisfactory to the Lessee. In the event of such termination or revocation, the Lessee agrees to reimburse the newsstand operator for its unamortized investment in the fixtures, equipment, stands, counters and equipment furnished in connection with the operation, and the unamortized cost of the construction work performed to

Supplies electricity free

accommodate such installations, and title to such fixtures, stands, counters and equipment furnished in connection with the newsstand operation shall thereupon vest in the Lessee; provided, however, that where such agreement is cancelled expressly on the basis of the failure of the newsstand operator to keep, perform or observe any of the terms and provisions of said agreement in its part to be kept, performed or observed or on the basis of one or more event or events of default of the newsstand operator as specified in said agreement such provision for Lessee reimbursement is not to obtain or apply.

Section 60. Duty-Free Shops

(a) The Lessee may select and thereafter enter into an agreement with one or more qualified persons, firms or corporations (each such person, firm or corporation being hereinafter referred to as "the Duty-Free Shop Operator") authorizing such Duty-Free Shop Operator to operate a shop in the premises for the sale at retail of in-bond liquors, in-bond cigarettes, cigars and other in-bond tobacco products, and other in-bond items, (hereinafter called "the Duty-Free Shop"), provided, however, that prior to any such selection and prior to the entering by the Lessee into any such agreement with the Duty-Free Shop Operator, said Duty-Free Shop Operator obtains a permit from the Port Authority authorizing such Duty-Free Shop Operator to operate the Duty-Free Shop in a portion of the premises hereunder. Prior to the issuance of any such permit, the proposed Duty-Free Shop Operator may be required to submit to the Port Authority evidence satisfactory to the Port Authority of its qualifications, the scope of its proposed operations and the standards of service it will provide. Any such permit will provide that the Duty-Free Shop Operator will conduct its operations at the premises in a first-class manner in accordance with the best practices in the industry and shall comply with maximum Port Authority standards with respect to service, health, sanitary and safety measures. The permit will not be revoked without cause by the Port Authority without the prior consent of the Lessee. In the event of any inconsistencies between the terms of the permit and the terms of the agreement between the Lessee and the Duty-Free Shop Operator, the terms of the permit shall control and be prevailing. Without limiting the foregoing, it is agreed that prior to the issuance of the permit the Port Authority shall make a copy of the same available to the Lessee and that upon the execution of the permit by the proposed Duty-Free Shop Operator the same shall be subscribed to by the Lessee.

(b) The Lessee agrees and the agreement between the Lessee and the Duty-Free Shop Operator shall provide that the Lessee will furnish to the Duty-Free Shop Operator sufficient and suitable space for conducting and carrying on its aforesaid operation. The Lessee agrees that it shall perform all work necessary or required to finish off the space, including the finishing of the floors and ceilings from the structural slab and the walls from the rough partitions, the decor and color scheme to be subject to the approval of the Port Authority. In addition, the Lessee shall construct in the portion of the premises designated by the Port Authority a

storage area for the storage of the aforesaid in-bond items to be sold by the Duty-Free Shop Operator (said storage area being herein called "the Duty-Free Distribution Center"). The Lessee shall proceed diligently to construct and install those portion of pipes wires and conduits in the manner and to the locations as shall be shown in detail on the Lessee's plans and specifications to be submitted to and approved by the Port Authority for the supply of such utilities and services including without limitation thereto those portions of the electrical, heating and air-conditioning equipment required by the Duty-Free Shop Operator in its operations in the Duty-Free Shop and the Duty-Free Distribution Center. The Lessee shall supply said utilities and services to the Duty-Free Shop Operator without charge to the Duty-Free Shop Operator or the Port Authority.

Lessee supplies utilities w/o charge

(c) The agreement between the Lessee and the Duty-Free Shop Operator shall not call for any fixed rental or fee but shall provide that the Duty-Free Shop Operator shall pay a percentage fee subject to appropriate minimum amounts based upon the gross receipts of the Duty-Free Shop Operator from the sale of in-bond liquors, in-bond cigarettes, cigars and other in-bond tobacco products and other in-bond items, which fee shall be subject to the prior written approval of the Port Authority and shall be incorporated into the permit to be issued by the Port Authority. There shall be no other payments by the Duty-Free Shop Operator to the Lessee except other than as provided herein. It is hereby understood and agreed that 50% of the percentage fee payable by the Duty-Free Shop Operator shall be paid by the Duty-Free Shop Operator to the Lessee and 50% of the percentage fee payable by the Duty-Free Shop Operator shall be paid by the Duty-Free Shop Operator to the Port Authority. Both the agreement between the Lessee and the Duty-Free Shop Operator and the permit to be issued by the Port Authority shall have provisions covering the fee in accordance with this Section and, without limiting the generality of any other provision of this Section, the permit shall control as to the manner, conditions and terms of payment.

(d) The agreement between the Duty-Free Shop Operator and the Lessee will provide that the Duty-Free Shop Operator will furnish at its expense all necessary trade fixtures, equipment furniture and personal property required in connection with the efficient and satisfactory operation of the Duty-Free Shop and the Duty-Free Distribution Center. The decor and color scheme of the facilities to be operated by the Duty-Free Shop Operator and the location of fixtures therein shall be subject to the prior and continuing approval of the Port Authority. In addition to other rights of termination or revocation that may be contained in said agreement between the Duty-Free Shop Operator and the Lessee, said agreement may contain appropriate provisions permitting cancellation of the agreement by the Lessee on short notice in the event the Duty-Free Shop provided by the Duty-Free Shop Operator is unsatisfactory to the Lessee.

Section 61. Foreign Currency Exchange

(a) The Lessee may select and thereafter enter into agreements with qualified persons, firms or corporations (which persons, firms or corporations are hereinafter referred to as "the Currency Exchange Operator") authorizing the Currency Exchange Operator to operate an establishment in the premises for the exchange, purchase and sale of domestic and foreign currencies (hereinafter called "the Foreign Currency Exchange Service") provided, however, that prior to any such selection and prior to the entering by the Lessee into any such agreement with the Currency Exchange Operator, said Currency Exchange Operator obtains a permit from the Port Authority authorizing such Currency Exchange Operator to operate the Foreign Currency Exchange Service in a portion of the premises hereunder. Prior to the issuance of any such permit, the proposed Currency Exchange Operator may be required to submit to the Port Authority evidence satisfactory to the Port Authority of its qualifications, the scope of its proposed operations and the standards of service it will provide. Any such permit will provide that the Currency Exchange Operator will conduct its operations at the premises in a first-class manner in accordance with the best practices in the industry and shall comply with maximum Port Authority standards with respect to service. The permit will not be revoked without cause by the Port Authority without the prior consent of the Lessee. In the event of any inconsistencies between the terms of the permit and the terms of the agreement between the Lessee and the Currency Exchange Operator, the terms of the permit shall control and be prevailing. Without limiting the foregoing, it is agreed that prior to the issuance of the permit the Port Authority shall make a copy of the same available to the Lessee and that upon the execution of the permit by the proposed Currency Exchange Operator the same shall be subscribed to by the Lessee.

(b) The Lessee agrees and the agreement between the Lessee and the Currency Exchange Operator shall provide that the Lessee will furnish to the Currency Exchange Operator sufficient and suitable space for conducting and carrying on its aforesaid operation. The Lessee agrees that it shall perform all work necessary or required to finish off the space, including the finishing of the floors and ceilings from the structural slab and the walls from the rough partitions, the decor and color scheme to be subject to the approval of the Port Authority. The Lessee shall supply said utilities and services to the Currency Exchange Operator without charge to the Currency Exchange Operator or the Port Authority.

(c) The agreement between the Lessee and the Currency Exchange Operator shall not call for any fixed rental or fee but shall provide that the Currency Exchange Operator shall pay a percentage fee based upon the gross receipts of the Currency Exchange Operator, which fee shall be subject to the prior written approval of the Port Authority and shall be incorporated into the permit to be issued by the Port Authority. There shall be no other payments by the Currency Exchange Operator to the Lessee except

other than as provided herein. It is hereby understood and agreed that 50% of the percentage fee payable by the Currency Exchange Operator shall be paid by the Currency Exchange Operator to the Lessee and 50% of the percentage fee payable by the Currency Exchange Operator shall be paid by the Currency Exchange Operator to the Port Authority. Both the agreement between the Lessee and the Currency Exchange Operator and the permit to be issued by the Port Authority shall have provisions covering the fee in accordance with this Section and, without limiting the generality of any other provision of this Section, the permit shall control as to the manner, conditions and terms of payment.

(d) The agreement between the Currency Exchange Operator and the Lessee will provide that the Currency Exchange Operator will furnish at its expense all necessary trade fixtures, equipment furniture and personal property required in connection with the efficient and satisfactory operation of the Foreign Currency Exchange Service. The decor and color scheme of the facilities to be operated by the Currency Exchange Operator and the location of fixtures therein shall be subject to the prior and continuing approval of the Port Authority. In addition to other rights of termination or revocation that may be contained in said agreement between the Currency Exchange Operator and the Lessee, said agreement may contain appropriate provisions permitting cancellation of the agreement by the Lessee on short notice in the event the Foreign Currency Exchange Service provided by the Currency Exchange Operator is unsatisfactory to the Lessee.

Section 62. Retail Banking

(a) The Lessee may select and thereafter enter into agreements with qualified persons, firms or corporations (which persons, firms or corporations are hereinafter referred to as "the Retail Bank Operator") authorizing such Retail Bank Operator to operate a service consisting of the maintaining of accounts, receipt and disbursement of funds and including automatic teller machine service and foreign currency exchange, sale and purchase (hereinafter called "the Retail Banking Service") in the premises, provided, however, that prior to any such selection and prior to the entering by the Lessee into any such agreement with the Retail Bank Operator, said Retail Bank Operator obtains a permit from the Port Authority authorizing such Retail Bank Operator to operate the Retail Banking Service in a portion of the premises hereunder. Prior to the issuance of any such permit, the proposed Retail Bank Operator may be required to submit to the Port Authority evidence satisfactory to the Port Authority of its qualifications, the scope of its proposed operations and the standards of service it will provide. Any such permit will provide that the Retail Bank Operator will conduct its operations at the premises in a first-class manner in accordance with the best practices in the industry and shall comply with maximum Port Authority standards with respect to service. The permit will not be revoked without cause by the Port Authority without the prior consent of the Lessee. In the event of any inconsistencies between the terms of the permit and the terms of

payable by the Restaurant Operator shall be paid by the Restaurant Operator to the Port Authority. Both the agreement between the Lessee and the Restaurant Operator and the permit to be issued by the Port Authority shall have provisions covering the fee in accordance with this Section and, without limiting the generality of any other provision of this Section, the permit shall control as to the manner, conditions and terms of payment.

In the event the Restaurant Operator is the same person providing in-flight meal and employee food service to the Lessee and is a wholly owned subsidiary of the Lessee, the fees to be paid by the Restaurant Operator shall apply only to the gross receipts of the Restaurant Operator from the sale of food, alcoholic and non-alcoholic beverages at retail for consumption on the premises, and the Port Authority shall determine the percentage fee to be paid by the Restaurant Operator.

Section 57. Vending Machines, Public Telephones, Advertising Displays

If requested by the Lessee the Port Authority, by itself or through contractors, lessees, or permittees, shall install and maintain in the premises vending machines, public telephones, and advertising displays, at such locations and to such extent as requested by the Lessee. The Lessee shall provide the necessary wires and conduits for the supply of electricity for such machines and displays.

The Port Authority shall require its contractors, lessees, or permittees to pay a fee, which may be a percentage fee subject to a minimum amount, based upon the gross receipts received from such vending machines, public telephones, and advertising displays or a fixed fee.

The Port Authority shall pay the Lessee an annual fee equivalent to 80% of the fee collected by the Port Authority from its contractors, lessees, or permittees aforementioned. The fees payable hereunder shall be paid in the same manner, under the conditions and at the times, provided in Section 65 hereof.

This vendor pays to PA who pays Delta share

Section 58. Insurance Covering Air Transportation

The Port Authority may enter into contracts or agreements with qualified insurance vendors requiring such vendors to sell or arrange for the sale, at the premises, of insurance covering air transportation, of such types and coverages as may be required by the Lessee.

The contract between the insurance vendor and the Port Authority shall provide that such vendor shall pay a basic rental for the space occupied by such vendor in the premises in connection with the sale of such insurance. The basic rental will be based upon the cost to the Lessee of providing such space to the vendor. In determining the cost to the Lessee there shall be considered the

the agreement between the Lessee and the Retail Bank Operator, the terms of the permit shall control and be prevailing. Without limiting the foregoing, it is agreed that prior to the issuance of the permit the Port Authority shall make a copy of the same available to the Lessee and that upon the execution of the permit by the proposed Retail Bank Operator the same shall be subscribed to by the Lessee.

(b) The Lessee agrees and the agreement between the Lessee and the Retail Bank Operator shall provide that the Lessee will furnish to the Retail Bank Operator sufficient and suitable space for conducting and carrying on its aforesaid operation. The Lessee agrees that it shall perform all work necessary or required to finish off the space, including the finishing of the floors and ceilings from the structural slab and the walls from the rough partitions, the decor and color scheme to be subject to the approval of the Port Authority. The Lessee shall supply said utilities and services to the Retail Bank Operator without charge to the Retail Bank Operator or the Port Authority.

(c) The agreement between the Lessee and the Retail Bank Operator shall provide that the Retail Bank Operator shall pay a basic fixed rental for the space occupied by such operator, which rental shall be subject to the prior written approval of the Port Authority and shall be incorporated into the permit to be issued by the Port Authority. There shall be no other payments by the Retail Bank Operator to the Lessee except as provided herein. It is hereby understood and agreed that 50% of the rental payable by the Retail Bank Operator shall be paid by the Retail Bank Operator to the Lessee and 50% of the rental payable by the Retail Bank Operator shall be paid by the Retail Bank Operator to the Port Authority. Both the agreement between the Lessee and the Retail Bank Operator and the agreement to be issued by the Port Authority shall have provisions covering the rental in accordance with this Section and, without limiting the generality of any other provision of this Section, the agreement shall control as to the manner, conditions and terms of payment.

(d) The agreement between the Retail Bank Operator and the Lessee will provide that the Retail Bank Operator will furnish at its expense all necessary trade fixtures, equipment furniture and personal property required in connection with the efficient and satisfactory operation of the Retail Banking Service. The decor and color scheme of the facilities to be operated by the Retail Bank Operator and the location of fixtures therein shall be subject to the prior and continuing approval of the Port Authority.

Section 63. <u>Other Consumer Services</u>

(a) If the Lessee requests that additional consumer services be provided in the premises for the sale of other items or the furnishing of other services the Port Authority will endeavor to secure a qualified tenant, permittee or licensee (hereinafter referred to as the "Operator"), to furnish such consumer services

and shall enter into contracts or agreements with such Operator requiring it to furnish the items or services to the extent required by the Lessee.

(b) The contract between the Operator and the Port Authority shall provide that such Operator shall pay a basic rental for the space occupied by such Operator in the premises in connection with the furnishing of the consumer services. The basic rental will be based upon the cost to the Lessee of providing such space to the Operator. In determining the cost to the Lessee there shall be considered the construction cost of the premises and the cost of operation and maintenance of the premises. The amount of the basic rental to be paid by the Operator shall be agreed upon between the Port Authority and the Lessee.

(c) The contract shall further provide that the Operator shall pay to the Port Authority a percentage fee based upon the gross receipts of such Operator from the operation of such consumer service, less the amount of any basic rental paid by the Operator.

(d) The Operator shall pay to the Lessee the amount of the basic rental. If the percentage fee actually paid to the Port Authority exceeds the amount of the basic rental, the Port Authority shall retain the percentage fee up to the amount of the basic rental. The excess, if any, remaining shall be divided equally between the Port Authority and the Lessee. The rental and fees payable hereunder shall be paid in the same manner, under the conditions, and at the times provided in Section 65 hereof.

(e) The Operator will furnish and install at its expense all necessary fixtures, stands, counters and equipment required in connection with its operation and all construction work necessary to accommodate such installations.

(f) In the event the Port Authority is unable to secure a qualified tenant, permittee or licensee to provide the consumer services requested by the Lessee, in accordance with the terms and conditions set forth in this Section, the Lessee may make its own arrangements with a tenant, permittee or licensee of its own choice, subject to the Port Authority's approval of such tenant, permittee or licensee. Such approval may include limitations as to the scope of the activities of such tenant, permittee or licensee in the light of the availability of similar services in the Central Terminal Area.

(g) The Lessee understands and agrees that it may not itself nor will the Port Authority install or cause to be installed coin-operated lockers on the premises.

Section 64. <u>Subletting of the Premises for Consumer Services</u>

Irrespective of whether the Persons selected in accordance with this Agreement to furnish the Consumer Services set forth in Sections 56, 57, 58, 59, 60, 61, 62 and 63 hereof have contracts

with or are contractors or permittees of the Port Authority, the Lessee may require that such Persons enter into separate agreements or subleases with the Lessee as a condition precedent to the occupancy of space within and the operation of such establishments upon the Lessee's premises, provided, however, that all such Persons must have first obtained a permit from the Port Authority authorizing them to operate such establishments. The terms and provisions of the said agreements or subleases shall not be inconsistent with the terms of this Agreement except that the same may provide for cancellation by the Lessee on short notice in the event the services furnished by such Persons are unsatisfactory to the Lessee.

Prior to the issuance of any of the aforementioned permits, such Persons may be required to submit to the Port Authority evidence satisfactory to the Port Authority of their qualifications, the scope of their proposed operations and the standards of service they will provide. Any such permits will provide that such Persons will conduct their operations thereunder 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. Such Persons shall be required to pay to the Port Authority a fee but such fee shall not in any event exceed the fees or charges that would be retained by the Port Authority if their respective establishments were operated by regular Operators of the Port Authority.

Section 65. <u>Obligations in Connection with Consumer Services Agreements</u>

The Port Authority shall administer all contracts and agreements with its tenants, licensees or permittees furnishing consumer services at the premises. All such contracts and agreements shall contain provisions, among others, providing that such tenant, licensee or permittee shall:

(a) Take all reasonable measures in every proper manner to maintain, develop and increase the business conducted by it at the premises;

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

(c) Maintain in accordance with accepted accounting practice, records and books of account recording all transactions at, through or 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 of such records and books of account;

Area IA and within Area IB (each such counter being hereinafter called "the Consolidated Counter") to be operated by the Port Authority or its contractors.

(2) The Lessee agrees to provide access to and from the public ways outside the premises to the Port Authority, its employees and its contractors and the ground transportation patrons and other users of the Consolidated Counter; to permit use of such portions of the public pedestrian circulation areas of the premises as may reasonably be required for the operation of the counter and the accommodation of the users thereof; and to permit the installation of such telephone and other communication lines, cables and conduits on and across the premises as may be required for the operation of the Consolidated Counter. The Lessee acknowledges and agrees that the Consolidated Counter shall at all times be a part of the premises under the Lease and subject to all the terms and provisions thereof including, but not limited to indemnity, the payment of rentals, repair and maintenance. The Lessee shall, at its sole cost and expense, supply all utilities necessary for the operation of the Consolidated Counter including but not limited to heat, light, ventilation, air conditioning and electricity on a 24 hour 7 day a week basis. The Lessee shall not be required to provide telephone service to the Consolidated Counter hereunder.

(3) The Port Authority shall have the right at any time, without cause, on 180 days notice to the Lessee to terminate and discontinue the operation of the Consolidated Counter and from and after the effective date stated in said notice the operation of the Consolidated Counter shall terminate and cease and the provisions of this paragraph (b) shall be null, void and of no further force and effect and the provisions of paragraph (a) of the Lease and the Lessee's obligations as set forth therein with respect to limousine, bus, car rental and other ground transportation operators shall be deemed reinstated and in full force and effect.

Section 68. Observation Deck

In the event the Lessee provides an Observation Deck in connection with the Lessee's operations under the Lease at the premises and such Deck is open to the public generally the Lessee shall charge a fee for admission upon such Observation Deck. Such fee shall be established by the Port Authority which shall be uniform throughout the Airport. The Lessee shall pay to the Port Authority a percentage fee equal to 30% of the gross receipts received by the Lessee from the operation of the Observation Deck.

Section 69. Force Majeure

Neither the Port Authority nor the Lessee shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, tides, riots, rebellion, sabotage or

any other circumstances for which it is not responsible and which are not within its control; provided, however, that this provision shall not apply to failures by the Lessee to pay the rentals specified in Section 4 and shall not apply to any other charges or money payments; and, provided, further, that this provision shall not prevent either party from exercising its right of termination under Sections 23, 26, 49, 75 and 77 hereof, and shall not prevent the Lessee from exercising its right to an abatement of basic rental under Sections 4 and 51 hereof.

Section 70. Federal Inspection

The Lessee has advised the Port Authority that it intends to make available to the United States a portion or portions of the premises for the inspection of the Lessee's passengers and their baggage by the United States for United States customs, immigration, public health and other governmental purposes, if the United States will accept and use the same. The Port Authority shall have no obligation or responsibility of any kind with respect to the foregoing or the arrangements that must be made by the Lessee with the United States and any agencies thereof having jurisdiction.

Section 71. Rotary Wing and Tilt-Rotor Operations

The Lessee hereby acknowledges that the Lease does not grant to it any right and the Lessee does not have any right to use or permit the use of any portion of the premises for the landing or taking off of helicopters, rotary wing, tilt-rotor or other similar aircraft. In the event that the Port Authority determines that approval for such use will be given at any time hereafter, the same shall be granted only in accordance with such terms and conditions, including but not limited to fees, charges and rights of user, as the Port Authority may set forth in a supplement to the Lease, which is duly executed by the Lessee and the Port Authority.

Section 72. Ground Transportation

(a) The Lessee may arrange for the transportation to and from the Airport of its employees and their baggage (and such employees and baggage only) either directly or by contract with a surface carrier or carriers (hereinafter called "the Employee Surface Carrier or Carriers") of its choice, provided, that such Employee Surface Carrier or Carriers are at all times Ground Carrier Permittees of the Port Authority as defined in paragraph (b) hereof and provided, further, that ten percent (10%) or such lesser percentage as may be set pursuant to paragraph (e) hereof of the gross receipts received from the ground transportation of employees and their baggage by the Employee Surface Carrier providing such service, or by the Lessee, including all advertising and any other revenues of any type arising out of or in connection with said service (excluding only local, state and federal transportation taxes which are separately stated to and paid by the passengers and are directly payable to the taxing authority by the Lessee or by the Employee Surface Carrier) shall be paid to the Port Authority. No

fee shall be paid by the Lessee to the Port Authority in connection with the ground transportation of employees and their baggage if the Lessee operates the service itself and if the Lessee makes no charge to its employees and their baggage therefor.

(b) As of the Commencement Date as defined in paragraph (c) hereof, the Port Authority shall endeavor to issue permits to at least 12 qualified surface carriers (herein called "the Ground Carrier Permittees") which Permits shall grant to said Ground Carrier Permittees the privilege of providing a service for the transportation to and from the Airport of employees and their baggage of all Aircraft Operators at the Airport. Each Permit shall provide that the Port Authority shall have the right at any time to revoke the Permit granted to any Ground Carrier Permittee with or without cause and regardless of whether any such Permittee is an Employee Surface Carrier of the Lessee and regardless of any agreement between the Lessee and its Employee Surface Carrier. Without limiting the foregoing right, if the Ground Carrier Permittee selected by the Lessee shall at any time fail to pay the Port Authority ten percent (10%) or such other percentage of its gross receipts as established pursuant to paragraph (e) hereof as required under the Permit, the Port Authority shall have the right in addition to all other rights and remedies, to deny such Permittee entrance upon the Airport for the purpose of transporting employees and their baggage as aforesaid to and from the Airport and the Lessee shall no longer use the same.

In the event that there should at any time during the term of this Lease be less than 12 Ground Carrier Permittees in operation at the Airport the Lessee shall have the right to engage an Employee Surface Carrier of its choice to provide the service set forth in paragraph (a) hereof, subject, however, to the prior and continuing approval of the Port Authority, and provided that such Employee Surface Carrier agrees to become a Permittee of the Port Authority and to pay a percentage of its gross receipts to the Port Authority in accordance with paragraphs (a) and (e) hereof and only for so long as such Permittee observes and complies with the terms of its Permit, it being understood that said Employee Surface Carrier may be restricted to serving the Lessee at the Airport. At such time thereafter as there is in operation at the Airport at least 12 Ground Carrier Permittees, the Permit with the said Employee Surface Carrier may be revoked by the Port Authority and the Lessee shall thereupon select an Employee Surface Carrier from the Ground Carrier Permittees of the Port Authority. Nothing contained hereunder shall be deemed to preclude the Port Authority from issuing from time to time during the term of the Lease Permits to more than 12 Ground Carrier Permittees. The Permits with the Ground Carrier Permittees may contain privileges other than those set forth in the first subparagraph of this paragraph (b), including but not limited to the privilege to transport passengers and baggage of Aircraft Operators. All Permits shall contain such terms or provisions as the Port Authority may deem from time to time necessary or desirable.

(c) The Port Authority hereby states its intention to attempt to incorporate, into all existing leases and into all new leases with all Scheduled Aircraft Operators covering passenger terminal facilities within the Central Terminal Area, provisions having the same effect as the provisions of paragraphs (a) and (b) hereof. The term "Commencement Date" as used in this Section shall mean the date specified in a written notice from the Port Authority served upon the Lessee and upon all Scheduled Aircraft Operators who are lessees of passenger terminal facilities within the Central Terminal Area, it being understood that such notice shall not be served unless and until all said Scheduled Aircraft Operators have executed agreements with the Port Authority incorporating provisions having the same effect as the provisions of paragraphs (a) and (b) hereof into their leases with the Port Authority covering passenger terminal facilities within the Central Terminal Area. The provisions of this Section other than the foregoing provisions of this paragraph (c) shall be applicable as well to Aircraft Operators who may be occupying space within the Central Terminal Area pursuant to a sublease, subuse or handling agreement with any Unit Terminal Lessee or with any East or West Wing Building Lessee (the foregoing not to waive the requirement for Port Authority consent) as said lessees are defined in Section 74 of the Lease.

(d) For the period prior to the Commencement Date hereunder, the following provisions of this paragraph (d) shall be in effect in lieu of the provisions of paragraph (a) hereof:

The Lessee may arrange for the transportation to and from the Airport of passengers, employees and baggage (and such passengers, employees and baggage only) either directly or by contract with a surface carrier or carriers (hereinafter called "Passenger Surface Carrier or Carriers") of its choice, <u>subject, however,</u> to the prior and continuing approval of the Port Authority and <u>provided</u>, that such Passenger Surface Carrier or Carriers agree to become Permittees of the Port Authority and <u>provided, further,</u> that ten percent (10%) or such lesser percentage as may be set pursuant to paragraph (e) hereof of the gross receipts received from the ground transportation of passengers, employees and baggage by the Passenger Surface Carrier providing such service or by the Lessee, including all advertising and any other revenues of any type arising out of or in connection with said service (excluding only local, state and federal transportation taxes which are separately stated to and paid by and are directly payable to the taxing authority by the Lessee or by the Passenger Surface Carrier) shall be paid to the Port Authority. If the Passenger Surface Carrier designated by the Lessee shall at any time fail to pay to the Port Authority ten percent (10%) or such lesser percentage as may be set pursuant to paragraph (e) hereof of its gross receipts as aforesaid when billed therefor by the Port Authority, the Port Authority shall have the right to deny such carrier entrance upon the Airport for the purpose of transporting passengers, employees and baggage as aforesaid to and from the Airport and the Lessee shall no longer use the same. No fee shall be paid by the Lessee to the Port Authority in connection with the ground transportation of officers and

employees of the Lessee if the Lessee operates the service itself and if the Lessee makes no charge to its employees and officers therefor. The occasional non-recurring employment by the Lessee of a surface carrier who is not a Permittee of the Port Authority shall not be deemed to be a breach of this Section by the Lessee; the foregoing, however, shall not affect the right of the Port Authority to the percentage fee with respect to such surface carrier.

For the period subsequent to the Commencement Date hereunder, the foregoing provisions of this paragraph (d) shall continue in effect with respect to passengers and their baggage only of the Lessee and wherever the phrase "passengers, employees and baggage" appears in the foregoing provisions it shall be deemed amended to read "passengers and their baggage".

(e) It is recognized that the Port Authority has established a five percent fee with respect to the service covered by paragraphs (a) and (d) hereof in lieu of the ten percent fee therein stated. It is hereby specifically understood and agreed that the fact that said fee is presently five percent shall not constitute a waiver by the Port Authority of its right to impose a percentage fee of ten percent as provided in paragraphs (a) and (d). It is hereby specifically agreed that the Port Authority shall have the right at any time and from time to time during the term of this Lease to revise the percentage fee it shall charge the Ground Carrier Permittees, other permittees and the Lessee as provided in paragraphs (a) and (d) hereof but in no event shall said fee be greater than ten percent. The Port Authority shall notify the Lessee of any such revision.

(f) The Lessee may arrange for the transportation to and from the Airport of freight and other cargo of the Lessee either directly or by contract with the surface carrier or carriers of its choice. No Permit or fee shall be required of the Lessee or its contractor for the picking up from or the delivery to of freight or other cargo from or to the Lessee. No fee shall be paid to the Port Authority by the Lessee or its contractor for the privilege of transporting freight or cargo of the Lessee on the surface as aforesaid. If such contractor of the Lessee enters into a Lease or other agreement with the Port Authority for space and/or privileges at the Airport, the rent or other compensation payable to the Port Authority shall not be measured by the amount of freight or other cargo of the Lessee transported on the surface by such contractor.

(g) The right of the Lessee to arrange transportation to and from the Airport of airline passengers as hereinabove provided shall not be construed as being applicable to any establishment or operation by the Lessee of facilities outside the Airport for the handling of airline passengers of the Lessee arriving at or departing from the Airport.

As used in this Section 72, reference to passengers, baggage, freight or other cargo of the Lessee shall be construed to

mean persons, baggage, freight or cargo transported or to be transported on aircraft of the Lessee.

The Ground Carrier Permittee of the Lessee's choice, its Passengers Surface Carrier or any other contractor used by it shall not solicit business on the public areas of the Airport and the Lessee shall prohibit any such activity on the premises or on any other area at the Airport occupied by the Lessee. The use, at any time, either on the premises or elsewhere on the Airport of hand or standard megaphones, loudspeakers or any electric, electronic or other amplifying devices is hereby expressly prohibited and any advertising or signs shall be subject to continuing Port Authority approval.

(h) Effective as of January 1, 1972, the provisions of this Section 72 superseded the provisions of Section 4.11 of Title IV of the General Airport Agreement, as defined elsewhere in this Agreement and from and after said date said provisions of said Section 4.11 of Title IV were no longer of any force or effect.

Section 73. <u>The Original Premises Use Agreements</u>

It is recognized that the Lessee has entered into certain various agreements with subtenants, licensees and other persons covering the occupancy of the space or providing for the furnishing of services in the premises pursuant to the provisions of the Prior Sublease and of the Prior Permit, as applicable, and that the Port Authority has approved or consented to the same, all of the foregoing as to which Port Authority approval or consent has been given, being hereinafter called "the Lessee's use agreements". The Port Authority has no objection to the continuance in effect under the Lease of all of the Lessee's use agreements.

The parties agree that appropriate documents will be prepared and executed, if the same are deemed by the Port Authority to be necessary or desirable, recognizing the continuance under this Lease of the Lessee's use agreements, subject to the existing terms of such agreements and the Port Authority's consent to or approval thereof including but not limited to termination and revocation rights as provided therein.

Section 74. <u>Ground Transportation Within the Central Terminal Area</u>

(a) The Port Authority has established at the Airport a Central Terminal Area generally as described in Exhibit S, attached hereto and hereby made a part hereof. If at any time and from time to time during the term of the Lease, the Port Authority substantially revises the Central Terminal Area, it shall thereafter forward to the Lessee a revised Exhibit showing the revised Central Terminal Area which revised Exhibit shall replace Exhibit S and shall become a part of the Lease.

(b) The Lessee hereby agrees that it will not directly, indirectly or by arrangement with any independent third party, operate any surface vehicles for the transportation of its airline passengers to or from the premises and the various other passenger terminal facilities or other locations within the Central Terminal Area. The prohibition hereinabove set forth in this paragraph (b) shall be effective as of the commencement date of the Lease and shall continue thereafter during the term of the Lease, but such prohibition shall be in effect only during such periods as there is in operation at the Airport a CTA ground transportation service as hereinafter defined to be provided by an independent third party contractor. The CTA ground transportation service shall consist of the following: a ground transportation service for the transportation of airline passengers and other persons between the various passenger terminal facilities, including the premises, within the Central Terminal Area including the service of transporting a group of passengers where the Aircraft Operator must accommodate the group as a whole (hereinafter called "the CTA omnibus service") and a ground transportation service for the transportation of passengers of Aircraft Operators within the Central Terminal Area, but only when a passenger is disabled, the passenger must take a direct connection and where time is critical, and in the very limited instance where an Aircraft Operator must accommodate a particular passenger, the foregoing service being hereinafter called "the CTA supplementary service". It is understood furthermore that, notwithstanding the prohibition hereinabove set forth in this paragraph (b), the Lessee may directly, indirectly or by arrangement with an independent third party, operate surface vehicles for the transportation of its passengers to or from the premises and such passenger terminal facility of the Lessee, if any, located outside the Central Terminal Area, provided, that the Lessee has the prior and continuing approval of the Port Authority to operate such passenger terminal facility outside the Central Terminal Area, that the aforesaid service shall not serve any passenger terminal facility or location within the Central Terminal Area other than the premises and that if the Lessee utilizes a third party to provide the service, said third party shall be subject to the prior and continuing approval of the Port Authority, shall agree to become a permittee of the Port Authority and shall pay the percentage of its gross receipts to the Port Authority with respect to said service as specified in said permit and shall comply with all the terms and conditions of its permit.

Nothing contained in this paragraph (b) or paragraph (c) hereof shall impose or be construed as imposing an obligation on the Port Authority to operate or cause to be operated the CTA ground transportation service for the transportation of passengers and other persons between the various passenger terminal facilities, including the premises, within the Central Terminal Area.

(c) (1) (i) It is hereby agreed that it is in the best interests of the Port Authority and all Participants as hereinafter defined that the CTA omnibus service be a good, proper and efficient

service, able to adequately, timely and properly handle the ground transportation needs of airline passengers and other persons between the various passenger terminal facilities including the premises within the Central Terminal Area. The parties recognize furthermore that the CTA supplementary service should be a service that would transport those persons authorized to be carried thereon in an adequate, proper and timely manner so as to meet their flight connections.

(ii) The Port Authority agrees that it shall meet and consult from time to time with the Participants with respect to the procedures, schedules, fares, prices and operations of the CTA omnibus service and shall, except in case of emergency, give the Participants prior written notice of any substantive changes with respect thereto. Notwithstanding the foregoing, it is hereby understood and agreed that the procedures, schedules, fares, prices, operations and other matters affecting the CTA omnibus service shall be determined by the Port Authority.

(iii) The Port Authority agrees that it shall meet and consult from time to time with the Participants with respect to the procedures, schedules, fares, prices and operations of the CTA supplementary service. Before adopting any initial procedures or schedules covering the operation of the CTA supplementary service and before putting into effect any modifications to any procedures or schedules then in effect with respect to the CTA supplementary service, except in case of emergency, the Port Authority shall submit the initial or the changed procedures and schedules (hereinafter called the "submissions") to the Participants for their approval. If Participants representing more than fifty percent (50%) of the effective published passenger flight schedules to and from the Airport of all Participants for the calendar year prior to the year in which the submissions are made to the Participants for their approval, approve the same, the submissions shall be deemed to be approved for all purposes hereunder and said approval shall be deemed binding as well upon all other Aircraft Operators who may use or pay for the CTA supplementary service, notwithstanding the fact that said submissions had not been submitted to them for their approval. Notwithstanding anything herein provided and without limiting the provisions of paragraph (b) hereof, it is hereby understood and agreed that the Port Authority shall have no obligation hereunder to itself operate the CTA ground transportation service nor any obligation to operate said service through an independent contractor unless and until the submissions with respect to the CTA supplementary service submitted as aforesaid to the Participants have been approved by the Participants in accordance with the foregoing provisions. The failure of any Participant to disapprove the submission within twenty (20) days after its submission to it for approval shall constitute such Participant's approval hereunder to said submissions.

(iv) It is hereby understood and agreed that the amount to be charged for the CTA supplementary service shall

consist of an initial price and, if the Port Authority so elects from time to time during the term of the Lease, an excess price. The initial price shall be based upon the cost of the CTA supplementary service. The Lessee shall pay to the Port Authority as and representing the initial price its pro rata share of the cost to the Port Authority of providing the CTA supplementary service. The Lessee's pro rata share of the cost to the Port Authority of providing the CTA supplementary service shall be that proportion of said cost as the number of passengers of the Lessee who actually used the CTA supplementary service bears to the total number of passengers using the CTA supplementary service. Except as provided in the last subparagraph of subparagraph (v) hereof, there will be no charge to the Lessee of either an initial price or an excess price if the Lessee does not have any passengers using the CTA supplementary service.

(v) The initial price payable to the Port Authority pursuant to subparagraph (iv) hereof is for each calendar year, but in the event the Commencement Date as defined in paragraph (d) hereof falls on a day other than the first day of a calendar year or in the event the term of the Lease expires or the provisions covering the CTA transportation services are terminated on a day other than the last day of a calendar year, then in any such event the initial price payable to the Port Authority pursuant to subparagraph (iv) hereof shall, for the year during which such event occurs, be for such portion of said year during which the Port Authority provides the CTA supplementary service. In determining the initial price, the cost of the CTA supplementary service shall be computed, determined and ascertained for each calendar year (or portion thereof upon the occurrence of any of the events mentioned in the first sentence hereof) of the term of this Lease subsequent to the aforesaid Commencement Date.

Notwithstanding the foregoing and for current monthly or other periodical billing purposes as may from time to time be selected by the Port Authority, the Port Authority shall establish interim billing rates to cover the initial price for the CTA supplementary service. Such billing rates shall be based on determinations by the Port Authority of its estimate of the cost of the CTA supplementary service for the calendar year and the number of passengers to be using the CTA supplementary service for said calendar year. Such determinations shall be based upon the prior calendar year's experience, if any, and upon such other reasonable basis as the Port Authority may determine. The Port Authority may prospectively revise its billing rates during any calendar year. On the 20th day of each calendar month following the month upon which the Commencement Date hereunder falls and on the 20th day of each and every calendar month thereafter the Lessee shall pay to the Port Authority the amount due as the initial price for the preceding calendar month, which shall be determined by multiplying the interim billing rate per passenger for the initial price established by the Port Authority as aforesaid by the number of passengers of the Lessee carried on the CTA supplementary service for the previous calendar month.

As soon as practicable after the expiration of each calendar year, the Port Authority shall determine the cost of the CTA supplementary service and the initial price payable therefore. Corrected billings based upon such determination shall thereupon be rendered by the Port Authority and if any monies are due to the Port Authority they shall be promptly paid by the Lessee and if any monies are due to the Lessee they shall be promptly credited to it.

In the event and only in the event that the CTA supplementary service for all or any portion of a calendar year has been provided by the Port Authority but there has been no use thereof by any of the Participants, then the initial price and the excess price shall be payable by all Participants and each Participant's share shall be based on the number of passengers on its outbound and inbound aircraft at the Airport compared to the total number of passengers on all inbound and outbound aircraft using the Airport of all Participants. The Port Authority agrees that, if as of the commencement of any calendar year there appears to be no use by the Participants of the CTA supplementary service, it will use all reasonable efforts to limit its payments to the contractor for the CTA supplementary service for such period where there appears to be no use.

(vi) The Port Authority shall have full discretion in awarding a contract for the CTA ground transportation service and may award the same to a contractor who has not proposed the lowest price for the CTA supplementary service or the CTA omnibus service. As stated in subparagraph (iv) hereof the Port Authority shall have the right to charge the Lessee, in addition to the initial price for the CTA supplementary service, an additional amount herein called "the excess price", which amount shall be applied to offset any deficit in the CTA omnibus service.

The amount representing the excess price shall be an amount payable only by the Lessee if it uses the CTA supplementary service and shall be an amount fixed for each passenger using the CTA supplementary service. The Port Authority shall advise the Participants prior to the beginning of each calendar year of the amount per passenger which shall constitute the excess price for said calendar year. On the 20th day of the calendar month following the month upon which the Commencement Date hereunder falls and on the 20th day of each and every calendar month thereafter the Lessee shall pay to the Port Authority the amount due as the excess price for the preceding calendar month, which shall be determined by multiplying the amount per passenger for the excess price established by the Port Authority as aforesaid by the number of the Lessee's passengers carried on the CTA supplementary service for the previous calendar month. As soon as practicable after the expiration of each calendar year, the Port Authority shall determine the cost of the CTA omnibus service for said calendar year. If there is no deficit or if the deficit is less than the amount received by the Port Authority from users of the CTA omnibus

service, then the total amount of the excess price if there is no deficit or the amount of the excess price which is over and above any deficit on the CTA omnibus service shall be refunded or credited to the Participants based on the portion of each Participant's payments of the excess price for said calendar year as compared to the total amount received as the excess price from all Participants. In determining whether or not there is a deficit or in determining the amount of the deficit, revenues from the CTA omnibus service shall be deemed to be 87.5% of the cost of the CTA omnibus service whether or not the revenues actually received add up to 87.5%, but if said revenues exceed 87.5% of the cost, the actual amount of revenues received shall be used.

(vii) The Port Authority shall determine for each calendar year (or portion thereof, where applicable) the cost to the Port Authority of providing the CTA omnibus service and the cost to the Port Authority of providing the CTA supplementary service. Each such cost shall be determined in accordance with the Port Authority's normal accounting practice and shall consist of those of the following items, which are applicable to each such service:

(a) All payments made by the Port Authority to the independent contractor for providing the CTA supplementary service or the CTA omnibus service, as the case may be (it being understood that the Port Authority shall not impose any percentage charge or fee on the contractor for such services);

(b) On-the-job payroll costs of Port Authority employees working in any aspect of the CTA supplementary service or the CTA omnibus service, as the case may be, including but not limited to contributions to any retirement system or the cost of participation in any pension plans or the like, social security, old age, survivors, disability and employment insurance and other insurance costs, sick leave pay, holiday, vacation, authorized absence and severance pay, other employee fringe benefits and any other payments made or costs incurred whether pursuant to law or by Port Authority policy to or with respect to said employees;

(c) The cost (including rental charges) to the Port Authority of providing space, equipment, materials, facilities or services to or in connection with the CTA omnibus service or the CTA supplementary service, as the case may be;

(d) Payments or premiums (or to the extent of self-insurance an amount equivalent to what the premiums would have been) for insurance with respect to the CTA omnibus service or the CTA supplementary service, as the case may be, including without limitation thereto, fire and extended coverage, workmen's compensation and comprehensive general liability;

(e) Other direct costs as charged under the Port Authority's normal accounting practice;

(f) With respect to the CTA omnibus service, ten percent (10%) of the amounts paid to the contractor providing said service under item (a) hereof and with respect to the CTA supplementary service, twenty percent (20%) of the amount paid to the contractor providing said service under item (a) hereof.

In the event that any specific cost incurred or any specific amount expended for any of the items hereinabove set forth covers both the CTA omnibus service and the CTA supplementary service, then the Port Authority shall divide and allocate any such cost or amount as between the CTA omnibus service and the CTA supplementary service in accordance with its normal accounting principles.

(2) If at any time during the term of the Lease the Port Authority receives a written notice from the East and West Wing Building Lessees (as hereinafter defined) representing more than thirty percent (30%) of the effective published passenger flight schedules to and from the Airport of all the East and West Wing Building Lessees for the calendar year prior to the year during which the notice was given, or if the Port Authority receives a written notice from Unit Terminal Lessees (as hereinafter defined) representing more than thirty percent (30%) of the effective published passenger flight schedules to and from the Airport of all Unit Terminal Lessees for the calendar year prior to the year during which the notice is given, which notice shall be either (i) to the effect that the service being provided by the contractor furnishing the CTA ground transportation service does not satisfy the standards set forth in item (i) of subparagraph (1) hereof and specifying whether it is the CTA omnibus service or the CTA supplementary service, or both, which is at fault, and further specifying the nature and extent of the failure or (ii) to the effect that the Participants serving the notice are dissatisfied for any reason with the service, the Port Authority shall endeavor in the case of item (i) above to rectify the conditions complained of either by the existing contractor doing so or by engaging a new contractor to provide the CTA ground transportation service or by a combination of both.

(3) If the Port Authority receives, by a date no earlier than one hundred twenty (120) days and no later than one hundred eighty (180) days after its receipt of either notice covered by subparagraph (2) hereof, a written notice from the East and West Wing Building Lessees representing more than fifty percent (50%) of the effective published passenger flight schedules to and from the Airport of all East and West Wing Building Lessees for the year prior to the year during which the notice is given or if the Port Authority receives a written notice during the period described above from Unit Terminal Lessees representing more than fifty percent (50%) of the effective published passenger flight schedules

to and from the Airport of all the Unit Terminal Lessees for the year prior to the year during which the notice is given, which notice is to the effect that the Participants sending the notice continue to be dissatisfied with the CTA ground transportation service whether provided by the old contractor, or if said contractor has been replaced, by the new contractor, then the Port Authority agrees that, effective no later than sixty (60) days after its receipt of said notice (said date to be established by written notice to the Participants) the provisions of this Section covering the CTA ground transportation service shall be terminated and shall no longer be in effect and from and after said date the Lessee shall have the right directly or by arrangement with an independent third party to operate surface vehicles for the transportation of its passengers to and from the premises and the various other passenger terminal facilities or other locations within the Central Terminal Area, provided, however, that the same shall be used exclusively for the transportation of the Lessee's disabled passengers, passengers who must make a direct connection and where time is critical, in the very limited instances where the Lessee must accommodate particular passengers, and for the transportation of passengers travelling as a group where the Lessee must accommodate the group as a whole, it being understood that the foregoing limitation on the right of the Lessee shall be in effect only during such periods as there is in operation at the Airport a CTA omnibus service as defined in paragraph (b) hereof (the Port Authority having no obligation so to do), excluding the transportation of passengers travelling as a group, and provided, however, that if the Lessee utilizes a third party to provide said service, that said third party shall be subject to the prior and continuing approval of the Port Authority, shall agree to become a permittee of the Port Authority and shall pay the percentage of its gross receipts to the Port Authority with respect to its service as specified in said permit and shall comply with all the terms and conditions of its permit.

(d) (1) The Port Authority hereby states its intention to attempt to incorporate into all new leases and into all existing leases which may not already include the same with all Scheduled Aircraft Operators covering passenger terminal facilities within the Central Terminal Area provisions having the same effect as the provisions of this Section. The term "the Participants" shall mean all Scheduled Aircraft Operators (including the Lessee) who have executed leases with the Port Authority covering passenger terminal facilities within the Central Terminal Area which contain provisions having the same effect as the provisions of this Section or who have executed agreements with the Port Authority incorporating into their leases with the Port Authority covering passenger terminal facilities within the Central Terminal Area premises having the same effect as the provisions of this Section.

For the purposes of this Section, the term "Unit Terminal Lessees" shall mean all Participants other than the East and West Wing Building Lessees. The term "East and West Wing Building Lessees" shall mean those foreign flag Scheduled Aircraft Operators

who shall have entered into long term leases with the Port Authority covering space in the East or West Wing Buildings.

(2) All Aircraft Operators who may be occupying space within the Central Terminal Area pursuant to a sublease, subuse or handling agreement with any Unit Terminal Lessee or with any East or West Wing Building Lessee (the foregoing not to waive the requirement for Port Authority consent) shall be obligated to comply with all obligations of this Section which are applicable to the Participants, but said Aircraft Operators shall not be or be deemed to be Participants within the meaning of subparagraph (1) of this paragraph (d) or be or be deemed to be an East or West Wing Building Lessee or a Unit Terminal Lessee within the meaning of subparagraphs (2) and (3) of paragraph (c) hereof, but their activities, operations and payments hereunder shall be deemed to be those of the Participants whose space they are using.

(e) The agreement by the Lessee under paragraph (b) hereof as well as the agreement by the Lessee under paragraph (c)(3) hereof, in the event the provisions covering the CTA transportation service are terminated and are no longer in effect, are of the essence of this Section and the Lessee agrees that the Port Authority shall be entitled to a decree against the Lessee requiring the specific performance thereof in any court of equity having jurisdiction. The aforesaid remedy shall not constitute the exclusive or sole remedy which may be available to the Port Authority hereunder in the event the Lessee breaches its agreement.

The Lessee understands and acknowledges that the provisions of this Section 74 have been in effect in the Central Terminal Area of the Airport under the Prior Lease and the Prior Sublease and the Prior Permit as defined in Section 1 and Section 86 hereof. The Lessee and the Port Authority understand and agree that the foregoing provisions of this Section represent the agreement reached under the Prior Lease and the Prior Sublease and the Prior Permit between the parties thereto and each acknowledges that in actual operation the ground transportation services actually provided at the Airport pursuant thereto have, by mutual agreement and request of the parties, from time to time, not conformed in particular respects to the provisions hereof. Nothing contained herein, nor the execution of this Agreement, shall grant or be deemed to grant or confer on either party a retroactive right or claim that any provision hereof, or of the Prior Lease and the Prior Sublease and the Prior Permit, has been breached, nor shall either party claim the inclusion of these provisions herein, nor the execution of this Agreement, has created or affirmed such right, nor shall any rights of the parties hereunder be deemed waived or limited thereby.

Section 75. <u>Future Airport Transportation Facilities and Operations - Use of Portions of the Premises</u>

(a) The Lessee understands that the Port Authority presently is planning to construct certain ground transportation facilities at the Airport including, but not limited to, a Passenger

Distribution System ("PDS"). It is presently contemplated that the PDS will generally consist of a transportation system circulating around the Central Terminal Area of the Airport (as generally shown on Exhibit S of the Lease and herein called "the CTA"), generally aligned along the roadway frontage of the passenger terminal buildings and with stations to serve the passenger terminal buildings in the CTA at various locations. At the discretion of the Port Authority, stations may be located to serve one or more passenger terminal buildings in the CTA or an area of the CTA. The PDS may be linked to another transit system or other transit systems serving Airport parking areas, rent-a-car facilities, other areas of the Airport and an Airport access transit system. Pedestrian access between the PDS stations and the passenger terminal buildings will be provided as part of the PDS. Vertical circulation areas, if needed, including stairs, escalators, ramps and elevators at the passenger terminal building on the premises will be the responsibility of the Lessee and shall be appropriate to the operation of the PDS. The Port Authority expects to commence planning and design for the PDS and upon completion of such planning and design, to implement the construction of the PDS and after the completion of such construction, to maintain and operate the PDS for the accommodation and transportation of persons desiring to use the same, and their baggage. The Port Authority will keep the Lessee advised from time to time of the progress of the planning, design and construction of the PDS, particularly as it relates to the premises hereunder. The Lessee acknowledges and agrees that the PDS will be a benefit and enhancement to the Airport and to the Lessee's operations thereon; the foregoing not to be construed or imply that the Lessee hereby agrees to the cost, method of financing or repayment of the costs associated with the construction and operation of the PDS.

(b) The Lessee understands that the construction and operation of the PDS may require the location on the premises of a passenger station in Area IA or Area IB or both (including pedestrian access between it and each passenger terminal building) and, in addition, may require the use of a portion or portions of the premises for and in connection with the construction, maintenance or operation of other portions of the PDS. The Lessee agrees that it shall make available to the Port Authority upon demand such portion or portions of the premises for use for or in connection with the construction, maintenance and operation of the PDS for such purposes as may be reasonably required or be appropriate therefor and, where such portion of the PDS exclusively serves the premises, the same shall be made available by the Lessee without abatement of rental or charges hereunder or any payments by the Port Authority to the Lessee therefor. Where such portion of the PDS does not exclusively serve the premises then the applicable Facility Rental (the Area IA Facility Rental, the Area IB Facility Rental and the Additional Facility Rentals (other than the First Additional Facility Rental), as the case may be) hereunder shall be abated in accordance with the rental abatement provisions of Section 4 of this Lease.

(c) The Lessee understands that the Port Authority considers the construction, operation and maintenance of the PDS of the utmost importance to the efficient operation of the Airport and to the fulfillment of the Port Authority's governmental function to provide, maintain, develop and operate the Airport; that the efficient use and operation of the PDS will require that the Lessee in the operation and use of its passenger terminal facilities under this Lease shall utilize and cooperate in the operation of the PDS to the end that the PDS shall be utilized to the fullest extent possible so that its advantages and efficiencies can be fully realized; and that the Port Authority does not by this Lease Agreement intend to enter into any agreement, understanding or commitment which will interfere with, limit, restrict, hinder or prevent in any way the development construction, maintenance, operation or efficient use of the PDS.

(d) The Lessee also understands and acknowledges that the cost of planning, design, construction, maintenance and operation of the PDS will be accorded the same cost recovery treatment as the similar elements of the Air Terminal Highway System is accorded in the General Airport Agreement (as defined in Section 81 of the Lease) for calculation of the flight fees under the General Airport agreement and the same cost recovery treatment as the Air Terminal Highway System is accorded for the calculation of other fees and charges under other existing agreements and policies at the Airport, and under any agreements which may be entered into in the future including agreements to replace such existing agreement(s) or the General Airport Agreement.

(e) The Port Authority has also advised the Lessee that it is the intention of the Port Authority that with respect to the maintenance, operation, use and payment for the PDS all aircraft operators at the Airport which are similarly situated will be treated in a similar manner including the treatment of the cost, if any, of each in connecting its airport terminal facility to the PDS.

(f) Without limiting any other provisions of this Section the Lessee understands and agrees that changes and modifications to certain provisions of the Lease including, but not limited to, Section 6 (Ingress and Egress), and Section 74 (Ground Transportation Within the Central Terminal Area) and Section 76 (Restrictions on Use of Passenger Terminal Frontage Roadways - Use of Airport Taxi Dispatchers - addition of Roadway Area to the Premises) may be required or appropriate to conform the provisions of these Sections to the operation of the PDS and the Lessee agrees upon the presentation to it of a form of supplemental agreement to this Lease which includes such modifications it will execute and return the same to the Port Authority. The Port Authority and the Lessee agree that each will consult with the other, from time to time, and will provide information to the other in good faith, from time to time, with respect to the study, planning, design, construction, maintenance and operation of the PDS and its interconnection with the Lessee's passenger terminal facilities at the premises. Notwithstanding anything in this Agreement to the

contrary, the Lessee does not consent or otherwise agree to, and does not waive any right it may have to challenge, the use of passenger facility charges or any other charge or fee directly or indirectly to Lessee or Lessee's passengers to pay for any costs of any transit system, or portion thereof, which is off the Airport.

Section 76. Restrictions on Use of Passenger Terminal Frontage Roadways - Use of Airport Taxi Dispatchers - Addition of Roadway Area to the Premises

(a) The Lessee understands that the Port Authority presently has in effect and has planned various physical improvements and policies concerning and affecting the use of vehicular roadways in the Central Terminal Area of the Airport (as generally shown on Exhibit S) for the limitation and control of traffic thereon including the limitation and control of vehicular traffic on the premises and vehicular traffic moving between the Air Terminal Highways, as designated from time to time by the Port Authority in the Central Terminal Area of the Airport, and the vehicular roadways on the premises connecting to the said Air Terminal Highways. These improvements and policies, both in existence and planned, generally include the following:

(1) Restrictions on the use of roadways in the Central Terminal Area as set forth in Section 74 (Ground Transportation In The Central Terminal Area) and Section 72 (Ground Transportation) of the Lease.

(2) The use of Airport Taxi Dispatching Services (as generally set forth in paragraph (b) hereof) where the Port Authority, either itself or through its contractor, utilizes at passenger terminals under the control of the Port Authority and makes available to passenger terminals at the Airport operated by others, the services of a Taxi Dispatcher to assist in the expeditious and orderly flow of taxicabs to and from passenger terminals at the Airport.

(3) The planning, development and implementation of a central taxi holding and dispatching system for the Airport to be used in conjunction with the use of Taxi Dispatchers at the passenger terminals at the Airport.

(4) The designation of specified portions of the vehicular roadways on the premises for limited use exclusively by certain types of ground transportation vehicles and/or certain types of ground transportation carriers for the loading and unloading of passengers and their baggage.

(b) The Lessee agrees to restrict from the premises during the time period or time periods, as may be specified by the Port Authority from time to time (each such period being herein referred to as a "Taxi Dispatcher Period" or "TDP"), all taxicabs except those taxicabs which are discharging passengers at the premises and those taxicabs which are requested by a Taxi Dispatcher stationed on

the premises and dispatched through the airport central taxi holding and dispatching facility (herein called "the Airport Central Taxi Stack") to the premises. Further, during any TDP the Lessee agrees to take and accept from the Port Authority, and permit the stationing at an appropriate location or locations on the premises, of a Taxi Dispatcher or Taxi Dispatchers and the establishment of a taxicab waiting line on the premises of such number of vehicles as shall be specified by the Port Authority from time to time. A Taxi Dispatcher or Taxi Dispatchers when located on the premises shall provide the sole and exclusive dispatch of taxicabs to the Lessee's passengers and others desiring the use of a taxicab from the premises and shall perform such other duties and functions in connection therewith as may be specified by the Port Authority from time to time. The Lessee agrees to permit the installation on the premises by the Port Authority of such fixtures, equipment and improvements including, but not limited to, a taxi dispatcher shelter, telephone, radio transceiver and transponder receiving device as may be necessary or reasonably desired by the Port Authority in connection with the activities and operations of the Taxi Dispatchers. The Lessee understands and agrees that all expenses of the Port Authority associated with the implementation and operation of the Taxi Dispatchers on the Airport including, but not limited to, the Taxi Dispatchers on the premises and the construction, maintenance and operation of the Airport Central Taxi Stack shall be included in and payable through the aircraft flight fees at the Airport and will be accorded the same cost recovery treatment as the Air Terminal Highway System is accorded for such purposes under the General Airport Agreement and the calculation of other fees and charges under other existing agreements and policies at the Airport, and under any agreements which may be entered into and any policies which may be implemented, in the future, including agreements and policies to replace such existing agreements and policies or the General Airport Agreement.

(c) In connection with and furtherance of the Port Authority's policies concerning ground transportation on the Airport, the operation of the Ground Transportation Counter as set forth in Section 67, the operation of Taxi Dispatchers and the Airport Central Taxi Stack as set forth in this Section 76, and the provisions governing Ground Transportation Within The Central Terminal Area as set forth in Section 74, the Lessee hereby agrees that, from time to time, the Port Authority may designate and specify areas of roadways and curbs located on the premises, for the purpose of segregated and exclusive use by separate categories of vehicles, including but not limited to buses, taxicabs, private automobiles and other vehicles, and use by separate categories of ground transportation carriers, (including but not limited to Port Authority permittees), as may be designated by the Port Authority, from time to time, for the purpose of loading and unloading passengers and their baggage. The Lessee shall prohibit the operation of all other types of vehicular traffic on the roadways on the premises used for the loading and unloading of passengers and their baggage and shall prohibit parking or stopping except in the areas designated as aforesaid. Designated areas shall be clearly

indicated by the Lessee by appropriate signing and marking on the premises as shall be directed or approved from time to time by the Port Authority. The Lessee shall permit the installation on the premises by the Port Authority of such fixtures, equipment and improvements, including, but not limited to transponder receiving devices and other vehicular tracking and monitoring devices; and the Lessee shall, through the use of appropriate and sufficient means including, but not limited to, removing unauthorized parked vehicles from the premises, security guards and other personnel stationed on the premises in the area of the said roadways, require that the limitations and restrictions established hereunder by the Port Authority on the use of the said roadways are complied with and enforced on a 24-hour basis, during any TDP and at other times as may be directed by the Port Authority.

(d) The Lessee understands that the Port Authority considers the provisions of this Section 76 and the use of the Lessee's passenger terminal roadway areas of the utmost importance to the efficient operation of the Air Terminal Highway System on the Airport and to the fulfillment of the Port Authority's governmental function to provide, maintain, develop, and operate the Airport; that the efficient use and operation of the Air Terminal Highway System requires that the Lessee, in the operation and use of its passenger terminal facilities under this Lease shall utilize and cooperate fully in all respects in the operation and implementation of the provisions of this Section 76 to the end that the Air Terminal Highway System, including ingress thereto and egress therefrom, will operate in the most efficient manner; and that the Port Authority does not by this Lease Agreement intend to enter into any agreement, understanding, or commitment which will interfere with, limit, restrict, hinder, or prevent in any way, the efficient development, implementation and operation of the Air Terminal Highway System and the rights and discretion of the Port Authority with respect thereto.

(e) (1) Effective as of the date to be set forth in a notice from the Port Authority to the Lessee the Lessee shall lease from the Port Authority and the Port Authority shall lease to the Lessee the portion of the Air Terminal Highway System as shall be generally shown on a sketch attached to said notice together with such structures, buildings, additions, fixtures, improvements and other property of the Port Authority, if any, located therein, thereon or thereunder (all of the foregoing being sometimes herein referred to as the "Additional Roadway Frontage") which portion of the Air Terminal Highway System effective from and after the effective date set forth in the aforesaid notice to be given by the Port Authority to the Lessee, shall cease to be a portion of the Air Terminal Highway System and shall be and become a part of the premises under the Lease subject to and in accordance with all of the terms, conditions and provisions thereof.

(2) The notice referred to in subparagraph (1) above may also have a sketch or other description attached thereto which shall show the specific dimensions of the Additional Roadway

Frontage and said notice shall also set forth the increase in rental under the Lease (herein called the "Additional Roadway Frontage Rental") which the Lessee hereby agrees to pay to the Port Authority on account of the addition of the Additional Roadway Frontage. The Additional Roadway Frontage Rental shall be calculated by multiplying the acreage (as determined to the nearest 100 place decimal) of the Additional Roadway Frontage by the annual rental rates then in effect for the Area IA Ground Rental and the Area IB Ground Rental; and the Additional Roadway Frontage Rental shall be subject to the same increases at the times and using the same method set forth in Section 4 I (b) hereof covering CPI adjustments.

The Lessee understands and agrees that the Additional Roadway Frontage shall be improved with roadways and other improvements when made a part of the premises and that the cost of the Port Authority in performing such roadway construction and improvement work, notwithstanding its addition to the premises, shall be treated as work done on the Air Terminal Highway System and will be accorded the same accounting cost recovery treatment as if such work were done on and continued to be a part of the Air Terminal Highway System for the calculation of flight fees under the General Airport Agreement and other agreements and policies at the Airport, and under any agreements which may be entered into or policies which may be implemented in the future including agreements and policies to replace such existing agreements and policies or the General Airport Agreement.

Section 77. <u>Lessee's Financial Condition - Limitation of Lease Term - Triggering Events</u>

I. If any one or more of the Triggering Events listed in Exhibit X, annexed hereto and hereby made a part hereof, shall occur, then, ten (10) days following the occurrence of any such Triggering Event, the term of this Agreement and the letting hereunder shall be deemed terminated, and the Lessee shall thereafter be a hold-over tenant, on a month-to-month periodical basis, of the Port Authority. Termination hereunder shall be and operate as a conditional limitation. In the event any court of competent jurisdiction shall not give full and complete effect to this termination provision and its operation as a conditional limitation, the Lessee and the Port Authority agree, as a condition of this Agreement, and not merely as a covenant, that this Agreement and the stated term of the letting hereunder shall nonetheless, from and after the effective date of termination provided above, be deemed to have expired.

II. (a) The Lessee agrees that:

(1) There shall be an annual meeting (from time to time such meeting may be held at a greater time interval at the sole discretion of the Port Authority) between representatives of the Port Authority and the Chief Financial Officer of the Lessee or, at the election of the Lessee, a responsible corporate financial officer of the Lessee to review the financial performance of the

Lessee including, but not limited to, the information supplied in accordance with paragraph (2) below.

(2) The Lessee shall deliver to the Port Authority, as soon as available, but not later than ninety (90) days after the close of each fiscal quarter copies of all material and information provided or made available to shareholders generally and/or all major creditors of the Lessee, including but not limited to the following:

(i) Financial data including monthly operating statements, changes in bank credit lines and debt obligations, cash flow projections compared with required debt service payments and United States Securities and Exchange Commission filings (including without limitation 8K, 10K and 10-Q filings) and shareholder reports.

(ii) Traffic data including passengers, aircraft movements, available seat miles and revenue passenger miles.

(iii) Performance indicators including load factors, break-even load factors, yield per revenue passenger mile and cost per available seat mile.

Notwithstanding the foregoing, the Lessee shall have no obligation hereunder to provide to the Port Authority any privileged or confidential information, documentation or material that has been provided to any person who has an obligation not to disclose such information, documentation or material pursuant to a confidential agreement or applicable law, except if and to the extent such information is already in or becomes part of the public domain.

(b) The Lessee shall submit to the Port Authority a statement at any time during the term of the letting signed by a responsible financial officer of the Lessee notifying the Port Authority that a Triggering Event or Triggering Events listed in Exhibit X has or have occurred as of the date of such notice and the date of the occurrence thereof, provided, however, that failure to give any such notice shall not affect the occurrence of any Triggering Event or the consequences thereof hereunder.

III. If the Lessee has, by notice, advised the Port Authority that it reasonably believes that any of the Triggering Events which are listed in Exhibit X hereof and constitute events which would result in termination (if the Port Authority were to activate the same by the giving of the notice or notices as specified in Exhibit X) pursuant to this Section 77 either are anticipated to occur within forty-five (45) days of said notice, or has or have already occurred, or if in fact any Triggering Event or Triggering Events has or have occurred, or the Port Authority believes that the same has or have occurred without receipt of any notice from the Lessee, as aforesaid, then:

(a) the Lessee may, at any time prior to the termination of the letting, by notice, request that the Port Authority waive the occurrence of one or more of the Triggering Events, and the effect thereof hereunder, for a period of time to be determined by the Port Authority and to be contained in a letter agreement to be prepared by the Port Authority and executed by the Port Authority, which shall be effective upon its execution by the Lessee; or

(b) the Port Authority may, at any time prior to the termination of the letting, in its sole discretion and without a prior request from the Lessee, waive the occurrence of one or more of the Triggering Events, and the effect thereof hereunder, for a period of time to be determined by the Port Authority and to be set forth in a notice from the Port Authority to the Lessee. Service of a notice hereunder shall not in and of itself imply or be deemed to imply that a Triggering Event has occurred.

The Port Authority shall have no obligation to take either of the above two actions in this Part III.

IV. Although it is hereby specifically acknowledged and agreed that the aforesaid month-to-month periodical tenancy, if any should occur hereunder, is terminable by either party in accordance with law and that the following provision shall have no effect whatsoever on the right of either party to so terminate, it is further understood that if 4 consecutive calendar quarters have elapsed after a Triggering Event has occurred during which time the Lessee is in occupancy of the premises as a month-to-month tenant, and during such period none of the Triggering Events listed in Exhibit X have occurred or continue to occur, the Lessee is not in default in the payment of rental or any other provision of its month-to-month tenancy and neither the Port Authority nor the Lessee has terminated the month-to-month tenancy by notice to the other, then upon request by either party to the other, the parties will enter into a Supplementary Agreement to be prepared by the Port Authority and to be promptly executed by the parties hereto which would provide for the re-establishment of a tenancy between the Port Authority and the Lessee on a fixed term basis in accordance with all of the terms and provisions of this Lease, and upon said execution the Lease, as the same may theretofore have been supplemented and amended, shall have the fixed term stated in Section 3 hereof.

Section 78. <u>Requesting Airlines at the Airport</u>

(a) If a Scheduled Aircraft Operator (hereinafter called a "Requesting Airline") advises the Lessee that it would like to be accommodated by the Lessee at the premises, the Lessee in furtherance of the public interest of having the premises fully and most effectively utilized shall use its best efforts to accommodate the request of said Requesting Airline. If the Lessee fails to reach agreement with said Requesting Airline for its accommodation, the Lessee shall advise the Port Authority to such effect. Thereafter, the Port Authority shall make a determination as to whether the Lessee should accommodate the Requesting Airline as

Section 81. Definitions

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

(a) "Agreement" shall mean this agreement of lease.

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

(c) "Airport" shall mean the land and premises in the City of New York, in the County of Queens and State of New York, which are shown in green upon the Exhibit attached to the Basic Lease between The City of New York and the Port Authority referred to in subdivision (b) below, said Exhibit being marked "Map II", and lands contiguous thereto which may have been heretofore or may hereafter be acquired by the Port Authority to use for air terminal purposes.

(d) "Basic Lease" shall mean the agreement between The City of New York and the Port Authority dated April 17, 1947, as the same from time to time may have been or may be supplemented or amended. Said agreement dated April 17, 1947, has been recorded in the Office of the Register of The City of New York, County of Queens, on May 22, 1947, in Liber 5402 of Conveyances, at pages 319, et seq.

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

(f) "Consumer Service Maximum Basic Rental" shall mean the amount of per square foot subject to adjustment based upon changes in the Consumer Price Index as set forth in paragraph (b) of Subdivision I of Section 4 in the same manner as adjustments are made to the Lessee's rental obligations in said Subdivision I of Section 4 in said paragraph (b).

(g) "Distribution Portion of the Underground Fuel System" shall have the meaning set forth in the General Airport Agreement.

(h) "General Airport Agreement" shall mean those certain agreements each entitled "John F. Kennedy International Airport Airline Lease" dated as of January 1, 1953 (as the same has been extended, supplemented and amended) between the Port Authority and various airlines and which govern the rights, privilege, duties and obligations of and between the parties thereto with respect to the Airport.

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

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

(k) "gross receipts" shall mean and include all monies paid or payable to the Operator for sales made and for services rendered at or from the premises, regardless of when or where the order therefor is received, and outside the premises, if the order therefor is received at the premises, and any other revenues of any type arising out of or in connection with the Operator's operations at the premises, provided, however, that any taxes or other governmental charges imposed by law which are separately stated to and paid by a customer and directly payable to the taxing authority by the Operator, shall be excluded therefrom.

(l) "Handled Airlines" shall mean the Requesting Airlines, as defined in Section 78 hereof, or any other Scheduled Aircraft Operator who is operating at the Airport pursuant to accommodations provided by a Lessee, whether by sublease, handling agreement, or a combination of both, which agreement has been consented to by the Port Authority and in which consent the Port Authority has designated said Operator a Handled Airline.

(m) "In-flight meals" as used in the air transportation industry and in this Lease is a word of art and includes food, beverages, snacks, non-reusable supplies, materials, dry goods and all services rendered in connection therewith.

(n) "Lease" or "this Agreement of Lease" shall mean this agreement of lease.

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

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

(q) "Premises" shall mean and include the land, the buildings, structures and other improvements located or to be located or to be constructed therein or thereon, 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 catchbasins.

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

(s) "Public Ramp and Apron Area" shall mean the area adjacent to the Public Landing Area designated and made available from time to time by the Port Authority for common use for the loading or unloading of passengers or cargo to or from aircraft using the Public Landing Area.

(t) "Runways" (including approaches thereto) shall mean the portion of the Airport used for the purpose of the landing and taking off of aircraft.

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

(v) "Taxiways" shall mean the portion of the Airport used for the purpose of the ground movement of aircraft to, from and between the runways, the public ramp and apron area, the aircraft parking and storage space and other portions of the Airport (not including, however, any taxiways, the exclusive use of which is granted to the Lessee or any other person by lease, permit or otherwise.)

(w) (1) "Unamortized Phase I Capital Investment" shall mean for purposes of this Lease, the amount of the Lessee's investment in the premises arising out of the performance by the

Lessee of the Phase I Construction Work (as more fully described below) pursuant to and as set forth in and defined in Section 2 after deduction therefrom of an amount equivalent to an allowance for depreciation and amortization; such allowance to be computed on a straight-line basis from the earlier of the Phase I Completion Date (as defined in Section 2 (g) (3) of the Lease) to the end of the average useful life thereof (as determined under generally accepted United States accounting principles) or November 30, 2015, whichever is the shorter. For purposes hereof, the calculation of the Unamortized Phase I Capital Investment of the Lessee shall be based on, and shall not exceed, the amount of

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

For purposes of this subparagraph (w) (1) the Lessee's Phase I Cost shall be the lesser of (2.a.) or an amount 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, inclusive of sales, use and like taxes where applicable with respect to the completed Phase I Construction Work; (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, <u>provided, however</u>, that such payments and expenses pursuant to this subdivision (ii) shall not exceed twelve per cent (12%) of the amounts described in subdivision (i); and (iii) the amounts paid by the Lessee to independent contractors for the personal property starred and underlined in Exhibit E and installed in connection with the Phase I Construction Work and to which title has passed to the Port Authority inclusive of sales, use and like taxes where applicable; in each case, as the above-mentioned amounts, payments and expenses are evidenced, from time to time, by certificates of a responsible fiscal officer of the Lessee, sworn to before a notary public and delivered to the Port Authority, which certificates shall (a) set forth, in reasonable detail, the amounts paid to specified independent contractors, the payments made to other specified persons and 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, and (c) certify that the amounts, payments and expenses therein set forth constitute portions of the Lessee's Phase I Cost for the purposes of this Lease; all of the foregoing items being herein called "the Lessee's Phase I Cost".

For purposes of this Agreement, the Lessee's investment in the premises arising out of the performance by the Lessee of the

Phase I Construction Work shall mean such amount, if any, by which the Lessee's Phase I Cost exceeds the sum of (i) the total of all Construction Payments (as defined in Section 89 hereof) made by the Port Authority to the Lessee under said Section 89 for Phase I Construction Work plus (ii) the total of all Area IA Restoration Work Payments (as defined in Section 90 hereof) made by the Port Authority under said Section 90. In no event shall the Lessee's Phase I Cost or the Lessee's Unamortized Phase I Capital Investment include any amounts paid for or in connection with any equipment, trade fixtures or other personal property of the Lessee.

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 Phase I Construction Work have been submitted by the Lessee to the Port Authority or the end of the term of the letting under the Agreement, whichever is later, and shall be subject to the audit and inspection of the Port Authority, its representatives and employees; provided, however, on the condition that the Lessee shall pay to the Port Authority all travel costs and expenses as determined by the Port Authority for Port Authority auditors and other representatives in connection with any audit at locations outside the Port of New York District, the Lessee may maintain said records and books and make them available to the Port Authority at the Lessee's office at 1030 Delta Boulevard, Hartsfield Atlanta International Airport, Atlanta, Georgia 30320.

(2) "Unamortized Phase II Capital Investment" shall mean for purposes of this Lease, the amount of the Lessee's investment in the premises arising out of the performance by the Lessee of the Phase II Construction Work (as more fully described below) pursuant to and as set forth in and defined in Section 2 after deduction therefrom of an amount equivalent to an allowance for depreciation and amortization; such allowance to be computed on a straight-line basis from the earlier of the Phase II Completion Date (as defined in Section 2 (g) (3) of the Lease) to the end of the average useful life thereof (as determined under generally accepted United States accounting principles) or November 30, 2015, whichever is the shorter. For purposes hereof, the calculation of the Unamortized Phase II Capital Investment of the Lessee shall be based on, and shall not exceed, the amount of (2.a.)

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

For purposes of this subparagraph (w) (2) the Lessee's Phase II Cost shall be the lesser of (2.a.) or an amount 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,

inclusive of sales, use and like taxes where applicable with respect to the completed Phase II Construction Work; (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 subdivision (ii) shall not exceed of the amounts described in subdivision (i); in each case, as the above-mentioned amounts, payments and expenses are evidenced, from time to time, by certificates of a responsible fiscal officer of the Lessee, sworn to before a notary public and delivered to the Port Authority, which certificates shall (a) set forth, in reasonable detail, the amounts paid to specified independent contractors, the payments made to other specified persons and 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, and (c) certify that the amounts, payments and expenses therein set forth constitute portions of the Lessee's Phase II Cost for the purposes of this Lease; all of the foregoing items being herein called "the Lessee's Phase II Cost".

For purposes of this Agreement, the Lessee's investment in the premises arising out of the performance by the Lessee of the Phase II Construction Work shall mean such amount, if any, by which the Lessee's Phase II Cost exceeds the sum of (i) the total of all Construction Payments (as defined in Section 89 hereof) made by the Port Authority to the Lessee under said Section 89 for Phase II Construction Work plus (ii) the total of all Area IA Restoration Work Payments (as defined in Section 90 hereof) made by the Port Authority under said Section 90. In no event shall the Lessee's Phase II Cost or the Lessee's Unamortized Phase II Capital Investment include any amounts paid for or in connection with any equipment, trade fixtures or other personal property of the Lessee.

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 Phase II Construction Work have been submitted by the Lessee to the Port Authority or the end of the term of the letting under the Agreement, whichever is later, and shall be subject to the audit and inspection of the Port Authority, its representatives and employees; provided, however, on the condition that the Lessee shall pay to the Port Authority all travel costs and expenses as determined by the Port Authority for Port Authority auditors and other representatives in connection with any audit at locations outside the Port of New York District, the Lessee may maintain said records and books and make them available to the Port Authority at the Lessee's office at 1030 Delta Boulevard, Hartsfield Atlanta International Airport, Atlanta, Georgia 30320.

Section 82. In-Flight Meals

(1) If the Lessee desires to prepare, for its exclusive use, in-flight meals (as defined in Section 81 hereof) for consumption by passengers and crew on board aircraft operated by the Lessee and to deliver such meals to such aircraft it shall have the right to do so, individually or through a contractor of its own choice (which contractor shall not be another person engaged in the business of transportation by aircraft). If the Lessee does so directly, it shall do so only on space located outside the Central Terminal Area (as defined in Section 81 hereof). The foregoing, however, shall create no obligation of the part of the Port Authority to provide such space and shall in no way be deemed a commitment by the Port Authority that any such space shall be available. If the Lessee chooses to use an independent contractor, such contractor shall be a regular In-Flight Meal Operator by which is meant an operator authorized by the Port Authority to provide in-flight meals to Aircraft Operators at the Airport unless, in the opinion of the Lessee, all regular In-Flight Meal Operators are unsatisfactory to the Lessee, in which case the Lessee may employ any other contractor (other than another person engaged in the business of transportation by aircraft), satisfactory to the Port Authority, who will accept a permit from the Port Authority on the same terms and conditions including the same rates, fees or charges as imposed upon and required of the Port Authority's In-Flight Meal Operators.

(2) The Lessee shall have the further right, either directly or through an independent contractor of its choice, satisfactory to the Port Authority, or by arrangements, jointly with one or more other users at the Airport, to employ a contractor, satisfactory to the Port Authority, to prepare outside the Airport and to deliver at the Airport to aircraft operated by the Lessee, in-flight meals for consumption by passengers and crew on board such aircraft, provided, however, that if the Lessee employs a contractor either alone, or, by arrangement, jointly with one or more other users at the Airport for the preparation, outside the Airport, of in-flight meals, then the Lessee shall cause such contractor to pay to the Port Authority the rate or rates which would be payable to the Port Authority by a regular Port Authority permittee for the off-Airport preparation or delivery, or both, of such in-flight meals to aircraft for consumption by passengers and crews on board such aircraft.

(3) (i) The Lessee has advised that it may use more that one independent contractor to furnish its "in-flight meals" at the Airport but may not wish to have all of said contractors become permittees of the Port Authority under permits which require, as aforesaid, the permittees to pay fees at the rates imposed on the Port Authority's In-Flight Meal Operators upon gross receipts based on amounts the Lessee pays said contractors.

(ii) Should the Lessee elect not to have all its independent contractors be Port Authority permittees as aforesaid, it shall serve a written notice on the Port Authority to such effect which notice shall state that it elects the method of additional payment as hereinafter set forth and thereupon the Port Authority shall consent thereto provided that, in addition to the amounts payable to the Port Authority under paragraphs (1) and (2) above, the Lessee shall pay and the Lessee hereby agrees to pay to the Port Authority an amount determined by applying the rates referred to in subparagraph (i) above to the amounts payable by the Lessee to said independent contractors for "in-flight meals" or any part thereof delivered to the Lessee's aircraft at the Airport (whether such delivery be by said independent contractor, the Lessee or another). The foregoing payments by the Lessee shall be made monthly on the 20th day of the month commencing with the first month immediately following the Lessee's notice and continuing each month thereafter up to an including the 20th day of the month following the expiration date hereof. The Lessee at any time on at least thirty (30) days' prior written notice to the Port Authority may change from its selection above and the Lessee may at any time advise the Port Authority that this paragraph (3) no longer applies to it based upon its representation, that it then shall make, that all payments made by it for in-flight meals as said term is defined above shall be made to its contractors who are permittees of the Port Authority as "*In-Flight Meal Operators*".

(iii) It is hereby expressly recognized that the procedures allowed under this paragraph (3) are not included within the contemplation of the provisions of paragraphs (1) and (2) above and that the inclusion of the same within this paragraph (3) shall not constitute or be deemed to constitute any concession or agreement by the Port Authority that said procedures are not in violation of paragraphs (1) and (2) hereof.

Section 83. <u>Certain Environmental Testing and Clean-Up Obligations</u>

(a) (1) Attached hereto, hereby made a part hereof is an exhibit marked "Exhibit Y" which consists of (i) a "Terminal 1-A Environmental Investigation-Summary Report-December 1992" and including its appendices and its compilation of reports and tests results of soil and water samples taken on various dates in September 1992 and October 1992 (as set forth in Exhibit Y) from a total of seventeen (17) borings including seventeen (17) wells made on Area IA setting forth the levels of specified chemicals and chemical compounds in the soil and aquifer of Area IA all as more specifically named and set forth in Exhibit Y, (ii) a "Terminal 1-A Environmental Investigation Summary October 1993" including its compilation of reports and tests results of soil samples taken on various dates in February 1993, March 1993 and April 1993 from various locations on Area IA, and of water samples taken from hydropunches at various locations on Area IA on various dates in March, 1993, April, 1993 and June, 1993 and of water samples taken on various dates in June 1993 and July 1993 from a total of 26 wells at various locations on Area IA, and, as to the said soil and water

samples setting forth levels of specified chemicals and chemical compounds in the soil and aquifer of Area IA all as more specifically named and set forth in Exhibit Y, and (iii) a "Terminal 1A Environmental Investigation Summary June, 1994" including individual data tables (marked as: "Terminal 1A Site Investigation Groundwater Sampling Results (PPB) Monitoring Wells"; "Terminal 1A Site Investigation Groundwater Sampling Results (PPB) 'B' Aquifer Hydropunches"; "Terminal 1A Site Investigation Groundwater Sampling Results (PPB) 'A' Aquifer Hydropunches"); "Terminal 1A Site Investigation Free Product Summary"); "Groundwater Analyses-Hydropunch-Delta-JFK Airport-Building 1A"; and "Groundwater Analyses-Monitoring Wells-Delta-JFK Airport-Building 1A"; all with respect to specified chemicals and chemical compounds comprising the test results of groundwater samples from monitoring wells, and from hydropunches, and test results of free product thickness sampling from monitoring wells, with such testing and sampling taken on various dates in February, 1994 March, 1994 and in April, 1994 at various locations from Area IA and with said chemicals and chemical compounds and the said monitoring wells, hydropunches and locations as more fully set forth in said Terminal 1A Environmental Investigation Summary June, 1994 and the sketch attached thereto, forming a part thereof and marked "Terminal 1A Site Map"; all of the aforesaid items mentioned in the foregoing (i), (ii) and (iii) for which the said samples were tested as set forth in Exhibit Y are hereinafter collectively referred to as the "Analyzed Items".

(2) The said reports and test results described in subparagraph (1) above and as applied by the methodology set forth in paragraph (b) below for the establishment of the levels of the Analyzed Items for all portions of the premises are hereinafter called the "Initial Existing Condition".

(3) Without limiting or impairing any of the terms and provisions hereof, it is recognized that the testing and sampling procedures utilized by the Port Authority and the Lessee in obtaining the results set forth in the Terminal 1A Environmental Investigation Summary June, 1994 included (i)giving the Lessee at least 48 hours prior notice of all testing and sampling; (ii) giving the Lessee and its representatives the right to attend all testing and sampling; (iii) splitting all samples as taken at Area 1A and providing one half of each sample to the Lessee. In addition, the Port Authority and the Lessee each selected one or more independent laboratories to perform analytical services in connection with the investigations reflected therein with the following arrangement: (v) all costs, expenses and fees incurred by any laboratory chosen by a party hereto have and shall be borne by that party; (w) among other services, the Port Authority and the Lessee each had its samples analyzed by one or more of the laboratories selected by it as provided herein; (x) if the results of the laboratory analysis of a particular split sample was not substantially the same, a new split sample was taken, split and analyzed in accordance with the provisions in this Section; and (y) if the results of the new split sample were not substantially the same, and the parties hereto could not agree on which result was correct, the highest chemical

constituent value of the three with the closest chemical constituent values were used for the purposes of establishing the Initial Existing Condition and an average of the chemical constituent values of the three samples shall be used for all other purposes.

The foregoing procedures specified herein shall be used in all future testing and sampling with the respect to Area 1A to the extent the parties hereto have hereby agreed or are required by federal or state regulatory authorities having juristiction over such matters.

(4) (i) If after any remediation performed on Area IA, whether by the Lessee, the Port Authority or a third party(ies), the Port Authority shall sample and test the soil and aquifer of Area IA or portions thereof and shall set forth the results of such tests in a report (it being understood however that the Port Authority shall not have any obligation hereunder to perform such sampling and testing or to set forth the results thereof in a report), upon delivery of such report and test results to the Lessee, such report and test results shall supersede Exhibit Y or the applicable portions thereof if the test results and report are of Analyzed Items which have been previously tested and the results thereof reported in Exhibit Y and the existing and new test results are from samples taken from the same well or a new well or boring which is immediately adjacent to such well or boring and shall supplement Exhibit Y or the applicable portions thereof if the test results and report would not supersede any test results and reports in Exhibit Y as aforesaid, and the results of such report setting forth the levels of the Analyzed Items in the soil and aquifer of Area IA together with those portions of Exhibit Y which have not been superseded, as applied by the methodology set forth in paragraph (b) below for the establishment of the level of the Analyzed Items for all portions of Area IA shall thereafter upon such delivery to the Lessee be and be deemed to be a "Succeeding Existing Condition" under this Section 83; provided, however, and notwithstanding the foregoing, in no event shall the level of any Analyzed Items in any Succeeding Existing Condition be above the lower of the level for such Analyzed Item as set forth in the Initial Existing Condition or (ii) the lowest level to which such Analyzed Item has been remediated as shown in a Succeeding Existing Condition.

(ii) With respect to such post-remediation testing and sampling of Area IA, the Port Authority will provide to the Lessee a copy of any report of such post-remediation testing and sampling required by the New York State Department of Environmental Protection (the "NYSDEC") and submitted to the NYSDEC by the Port Authority.

(iii) The Initial Existing Condition as superseded and supplemented by each Succeeding Existing Condition is hereinafter called the "Existing Condition". The Existing Condition shall be, for the purposes of this Lease, the level of the Analyzed Items in

the soil and aquifer in Area IA provided, however, and notwithstanding the foregoing, in no event shall the level of any Analyzed Item in any Existing Condition be above the lower of (i) the level for such Analyzed Item as set forth in the Initial Existing Condition or (ii) the lowest level to which such Analyzed Item has been remediated as shown in a Succeeding Existing Condition.

(b) The level of an Analyzed Item for any Existing Condition at any location in Area IA shall be the level of that Analyzed Item as shown in the reports and test results constituting such Existing Condition taken from samples at the well or boring located on Area IA nearest to such location.

(c) (1) The Lessee and the Port Authority agree as between themselves, and notwithstanding any other evidence to the contrary, that the levels of the Analyzed Items in the soil and aquifer of the premises as the date of the execution of this Agreement by the Lessee, shall be and shall be deemed as set forth in Exhibit Y and only as set forth in Exhibit Y. Without limiting the generality of Section 40 (c) of the Lease, the Lessee agrees to accept Area IA with the Initial Existing Condition.

(2) In addition to and without limiting the foregoing or any other term or provision of this Lease, including without limitation Sections 2, 7, 8, 9, 10, 11 and 90 hereof, it is expressly understood and agreed that the proper handling, delivery, treatment, storage, transportation, disposal, and depositing (all of the foregoing being hereinafter collectively referred to as "Disposal"), whether on or off the Airport, of any matter (as defined in Section 2 (b)(9) hereof) excavated, disturbed or removed by the Lessee (or by any contractor or contractors of the Lessee) at or from the premises including without limitation Area IA (or other area of the Airport) at any time or times, including without limitation any and all remediation and Disposal of said matter and any and all other remediation, Disposal and clean up (whether soil, 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 claims, penalties or other expenses relating thereto. The foregoing obligations of the Lessee shall obtain and apply with full force and effect irrespective of the nature or source of any contaminant, pollutant, chemical, waste or other substance or whether any of the same is an Analyzed Item or whether any of the same is at a level or levels above or below the level or levels of the Existing Condition or whether there has or has not been any increase in such level or levels. The Lessee shall perform all of the foregoing in accordance with and subject to all the terms, provisions, covenants and conditions of this Lease including without limitation Sections 2, 7, 8, 9, 10, 11 and 90 hereof. All of the foregoing responsibilities

and obligations of the Lessee set forth in this subparagraph (2) are herein called "the Lessee's Disturbed Matter Obligations".

(3) The Lessee's Disturbed Matter Obligations shall not include the following:

(i) Contamination of soil and ground water, if any, caused by the acts or omissions of the Port Authority subsequent to the execution date of this Agreement;

(ii) Contamination of soil and ground water, if any, caused by the flow of ground water from outside the premises or the leaching of contaminants from outside the premises.

(4) The Lessee shall have no obligation under this Lease with respect to the Existing Condition (other than the obligations described in the foregoing subparagraph (2) and the other obligations described herein in this Section and except as provided in subparagraph (5) below) including but not limited to any obligation to remediate the Existing Condition, or to pay any claim, penalty or expense with respect thereto (including any which relate to other premises allegedly affected by the Existing Condition or the spread of such contaminants from the premises), provided, however, if any of the levels of the Analyzed Items, or any of them, in the soil or the aquifer of Area IA shall increase above the Existing Condition then the Lessee shall have such obligations with respect to such increase to the extent required by and in accordance with the terms and conditions of the Lease, provided, further, however, if such increase is caused by the flow of ground water from outside the premises or the leaching of contaminants from outside the premises or by the acts or omissions of the Port Authority, then the Lessee shall have no such additional obligations with respect to such increase.

(5) The Lessee acknowledges that it has been in occupancy of Area IA under the Prior Permit prior to the execution of this Lease, and in addition to and without limiting any term or provision hereof or of the Prior Permit, it is expressly understood and agreed that, notwithstanding anything to the contrary herein, the Lessee shall be responsible for remediation of the Initial Existing Condition to the extent that the Initial Existing Condition was caused by the acts or omissions of the Lessee or by the acts or omissions of any subusers or others who occupied Area IA or any other portion of the premises with the permission of the Lessee and which acts or omissions of such subusers or others occurred during the period which such subusers or others occupied Area IA or any other portion of the premises with the permission of the Lessee and provided, further, neither any remediation of the Initial Existing Condition by the Port Authority nor the establishment of a Succeeding Existing Condition as a result of any such remediation, as above provided, shall release or relieve the Lessee from its said responsibility. The Lessee hereby represents to the Port Authority that none of the activities the Lessee conducted on Area IA prior to

the execution of this Lease contributed to the Initial Existing Condition and that to its knowledge during such period the Lessee did not cause or contribute to the Initial Existing Condition.

(d) It is hereby recognized by the parties hereto that as a result of the reporting of the Initial Existing Condition to the NYSDEC, the NYSDEC will require remediation of the Initial Existing Condition including all appropriate borings and wells required for said remediation, and further that the Lessee shall not be responsible hereunder for such remediation of the Initial Existing Condition (other than as expressly provided herein including without limitation in paragraph (e) below, so required by the NYSDEC including any further remediation required by the NYSDEC as a result of the NYSDEC's lowering the clean-up level for any Analyzed Item below the clean-up level required by the NYSDEC for the remediation of the Initial Existing Condition.

(e) The Port Authority and the Lessee acknowledge and agree that prior to the execution of this Lease the nine (9) underground storage tanks in Area IA were removed therefrom by the Port Authority. Without limiting the generality of the provisions of Section 24 of the Lease 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 the existing wells made by the borings referred to in paragraph (a) above, to make additional wells and borings and to conduct testing and related activities therefrom and to perform such activities as shall be necessary to remediate the Existing Condition including but not limited to conducting pumping operations from the wells made by borings referred to in paragraph (a) above and this paragraph (e). In the exercise of the foregoing rights the Port Authority and its designees shall not unreasonably interfere with the use and occupancy of the premises by the Lessee.

(f) Without limiting the generality of the provisions of Section 11 of the Lease, the Lessee agrees to protect and maintain the wells made by the borings referred to in paragraphs (a) and (e) above and shall repair any damage thereto not caused by the activities of the Port Authority or its designee(s), if any, pursuant to paragraphs (a), (d) and (e) above.

(g) The Port Authority acknowledges to the Lessee that the Lessee shall have no responsibilities or obligations whatsoever with respect to the tanks mentioned in paragraph (e) above (other than as provided in subparagraphs (2) and (5) of paragraph (c) hereof) and agrees with the Lessee that the Port Authority will comply with applicable laws, ordinances and regulations, if any, with respect to said tanks.

(h) The Lessee's duties, responsibilities, liabilities and obligations and the Port Authority's rights and remedies with respect to Area IB (as defined in Section 1 of the Lease) of the

premises shall not be or be deemed to have been affected by this Section 83.

(i) Nothing in this Section 83 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.

Section 84. [Section 84 is Intentionally Omitted]

Section 85. Quiet Enjoyment

The Port Authority covenants and agrees that as long as it remains the lessee of the Airport under the Basic Lease the Lessee, upon paying of all rentals hereunder and performing all the terms, covenants, conditions and provisions of this Agreement on its part to be kept, performed or observed, 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 86. Area IB Prior Agreements

(a) It is recognized, as aforesaid in Section 1 hereof, that the Lessee immediately prior to the effective date of this Agreement was in possession and use of the premises under the Prior Lease (Area IB hereunder) as sublessee under the Prior Sublease and, further, (i) that the Prior Lease (i.e. that certain agreement of lease dated January 1, 1970 as supplemented and amended and identified by Port Authority lease No. AYA-385) was entered into originally between the Port Authority and Pan American World Airways, Inc. ("Pan Am"); and (ii) that pursuant to an Assignment and Assumption of Lease dated as of August 11, 1989 Pan Am with the consent of the Port Authority assigned all of its right, title and interest in the Prior Lease to Mellon Bank, N.A. (hereinafter in this Section called "the Trustee") as trustee for certain Pan Am pension plans; (iii) that the Trustee, as sublessor subleased the premises under the Prior Lease to Pan Am pursuant to a sublease agreement dated as of August 11, 1989 ("the Sublease"); (iv) that the Assignment and the Sublease were consented to by the Port Authority in an Acknowledgment and Consent to Assignment and Sublease dated August 11, 1989; (v) that a certain letter agreement dated November 19, 1991 was entered into by and among the Trustee, Pan Am, the Port Authority and the Lessee ("the November 19, 1991 letter agreement") which has attached thereto an Exhibit A consisting of that certain stipulation filed with the United States Bankruptcy Court of the Southern District of New York ("the Bankruptcy Court") on November 4, 1991, and approved by the Bankruptcy Court on November 19, 1991 whereby the Bankruptcy Court approved the simultaneous assumption by Pan Am of the Sublease and the assignment thereof to the Lessee as sublessee under the said Sublease and an Exhibit B consisting of a certain letter agreement dated November 1, 1991 by and among Bear Sterns Fiduciary Services, Inc. and the Lessee (referred to as "the Delta Letter Agreement); (vi) that Pan Am simultaneously assumed and, with the consent of the

Port Authority, assigned the Sublease to the Lessee (as sublessee under the said Sublease) in the November 19, 1991 letter agreement and the Lessee accepted said assignment of the Sublease (to the extent said Sublease was amended by the said stipulation, the said consent, the November 19, 1991 letter agreement and the Delta Letter Agreement) and assumed Pan Am's obligations thereunder; (vii) that pursuant to an Assignment and Assumption of Lease made as of December 31, 1992 the Trustee, as assignor, quitclaimed, remised, released, assigned and transferred the Prior Lease and all its right, title and interest in and to the Prior Lease and the Sublease, as amended, to the Pension Benefit Guaranty Corporation (herein referred to as the "PBGC") as therein more fully described; (viii) that pursuant to an Assignment and Assumption of Lease made as of December 31, 1992 the PBGC, as assignor, assigned, conveyed and transferred the Prior Lease and the sublessor's interest under the Sublease, as amended, to the Port Authority (the "PBGC Assignment") as therein more fully described; (ix) that notwithstanding the PBGC Assignment and the transfer thereunder of the Prior Lease and the lessee's interest under the Prior Lease to the Port Authority, there occurred, and shall occur, no merger of the Port Authority's interest as lessor under the Prior Lease and as lessee under the Prior Lease by virtue of said PBGC Assignment or otherwise, and the Prior Lease remained in effect and the Sublease also remained in effect with the Port Authority as sublessor thereunder and the Lessee hereunder as sublessee thereunder; and (x) that the Port Authority and the Lessee as sublessee under the Sublease, as amended, simultaneously entered into a document entitled "First Supplemental Agreement to Sublease with Delta Air Lines, Inc." made as of December 31, 1992, whereby the Sublease, as amended, was further amended pursuant to the provisions thereof. The term "Prior Sublease" as used in this Agreement shall mean the Sublease including all amendments thereto as aforesaid.

For purposes hereof the term "Area IB Prior Agreements" shall mean and include the agreements and documents mentioned in this paragraph (a), all as more fully described in the aforesaid "First Supplemental Agreement to Sublease with Delta Air Lines, Inc."; it being understood that the foregoing recital and definition of the Area IB Prior Agreements is intended solely as a general description of the same and not to restrict, impair or affect the scope, validity or effectiveness of the same or any of them.

(b) Without limiting Sections 40 or 54 hereof or any other term or provision of this Agreement, it is hereby recognized that the Lessee, effective as of the effective date of this Agreement, shall, in accordance with and subject to the terms, provisions, covenants and conditions hereof, have its right, title and interest in and to the Lease and the premises hereunder under this Agreement, and that the Prior Lease and the Prior Sublease and the Prior Permit shall be deemed terminated by this Agreement; it being understood and agreed, without limiting any other term or provision of this Agreement, that said termination of the Prior Lease and the Prior Sublease and the Prior Permit shall not release or relieve the Lessee of any of its obligations, duties and liabilities thereunder

with respect to matters arising or accruing on or prior to effective date of this Agreement; and further, that that said termination shall not affect or impair the definitions of the terms "Cost of the Sublessee Flight Center Improvement Work" and "Port Authority's Cost of the PBGC Assignment" as incorporated into this Agreement pursuant to Section 4 III (A) and (B) hereof. Further, it is specifically acknowledged and agreed that, except as expressly provided herein, neither this Agreement nor anything contained herein nor said termination of the Prior Lease and the Prior Sublease shall or shall be deemed to impair, limit or reduce the obligations of the Lessee or any other person, entity or party under the Prior Agreements, including without limitation the obligation to indemnify and hold the Port Authority harmless, or to release or relieve the Lessee from any of the same; and, it is further acknowledged and agreed that the obligations of the Lessee to bear, assume, defend, pay, protect, indemnify and hold the Port Authority harmless from "Losses" as defined and more fully described and set forth in Paragraph 4 of the aforesaid "First Supplemental Agreement to Sublease with Delta Air Lines, Inc." shall in any event be deemed to survive and to continue to apply and obtain with full force and effect with respect to the matters specifically covered thereunder after the execution, delivery and effectiveness of this Agreement and separately and independently of this Agreement. Neither this Agreement nor anything contained herein shall be deemed to grant to the Lessee or to any other party or person or entity any rights or claims, legal or equitable, under the Area IB Prior Agreements to the premises or the Lease or against the Port Authority. The Lessee acknowledges and agrees that, effective on the effective date of this Agreement, it does not and shall not have any rights to use or occupy Area IB or the premises hereunder other than as granted hereunder under, and pursuant and subject to, this Agreement, notwithstanding anything in the Prior Agreements to the contrary.

(c) The term "Prior Agreements" as used in this Agreement shall mean the Area IB Prior Agreements and the Prior Permit (as defined in Section 1(a) hereof).

Section 87. <u>Lessee's Service Standards</u>

Subject to and without limiting or affecting any other term or provision of the Lease, the Lessee agrees to provide services at the premises for the benefit of the traveling public in a manner consistent with generally accepted airline industry standards for airport terminals and will cooperate with the Port Authority and other airlines serving the traveling public at the Airport in maintaining these standards through organized airport service improvement working groups.

Section 88. <u>Lessee's Capital Investment and Port Authority's Additional Rights of Termination</u>

(a) As part of the consideration to the Port Authority in entering into the Lease the Lessee agrees (i) to make a Capital Investment, as hereinafter defined, at the premises by December 31, 2000 (including without limitation submitting to the Port Authority

the certifications and supporting materials therefor as set forth in paragraph (e) below) of not less than (which Capital Investment is hereinafter called "the Phase I Capital Investment") and to complete the Phase I Construction Work by December 31, 2000 unless otherwise expressly agreed to by the Port Authority and the Lessee in writing signed by the Director of Aviation of the Port Authority and the authorized representative of the Lessee and (ii) to make an additional total Capital Investment (hereinafter called "the Phase II Capital Investment") at the premises of not less than an amount equal to the difference obtained by subtracting the amount of the Phase I Capital Investment from the amount of (2.a.) (including without limitation submitting to the Port Authority the certifications and supporting materials therefor as set forth in paragraph (e) below) by December 31, 2012 and to complete the Phase II Construction Work by December 31, 2012 unless otherwise expressly agreed to by the Port Authority and the Lessee in writing signed by the Director of Aviation of the Port Authority and the Lessee's authorized representative.

(b) In the event that (i) the Lessee shall not have completed the Phase I Capital Investment, including without limitation submitting to the Port Authority the certifications and supporting materials therefor as set forth in paragraph (e) below, by December 31, 2000 or (ii) the Lessee shall not have completed the Phase I Construction Work by December 31, 2000, then upon the occurrence of either or both of the foregoing events in (i) and (ii) above or at any time thereafter for so long as the Lessee shall not have completed the Phase I Capital Investment and shall not have completed the Phase I Construction Work, the Port Authority may, in addition to and without limiting any other right or remedy of the Port Authority, upon thirty (30) days' notice to the Lessee terminate the term of the Lease and the letting thereunder with respect (i) all or such portion or portions of Area IA or (ii) with respect to all or such portions of Area IB, or both (i) and (ii), as shall be set forth in the Port Authority's said notice of termination to the Lessee, the letting as to all or such portions of Area IA and Area IB shall be deemed terminated and the Lessee shall thereafter be a holdover tenant, on a month to month periodical basis of the Port Authority of such portion or portions of Area IA and Area IB.

(c) Without limiting and in addition to any other right or remedy of the Port Authority, including without limitation the termination rights of the Port Authority in paragraph (b) above, in the event that (i) the Lessee shall not have completed both the Phase II Construction Work and the Phase II Capital Investment, including without limitation submitting to the Port Authority the certifications and supporting materials therefor as set forth in paragraph (e) below, by December 31, 2012; and (ii) thereafter the Port Authority shall have notified the Lessee that it shall terminate the term of the letting with respect to all or a portion or portions of Area IA and Area IB of the premises; and (iii) the Lessee, within 365 days after receipt of notice given by the Port

Authority to the Lessee pursuant to (ii) above, shall not have made a total Capital Investment at the premises of at least (2.a.) (which shall include the Phase I Capital Investment) and shall not have completed the Phase II Construction Work, then upon the occurrence of all the foregoing events in (i), (ii) and (iii) from time to time and at any time thereafter for so long as the Lessee shall not have made a total Capital Investment of at least (2.a.) at the premises and shall not have completed the Phase II Construction Work, the Port Authority may upon thirty (30) days' notice to the Lessee terminate the term of the Lease and the letting thereunder with respect to all or such portion or portions of Area IA and Area IB as shall be set forth in the Port Authority's said notice(s) of termination to the Lessee, the letting as to all or such portion or portions of Area IA and Area IB shall be deemed terminated and the Lessee shall thereafter be a holdover tenant, on a month-to-month periodical basis, of the Port Authority of such portion or portions of Area IA and Area IB.

(d) In the event that the month-to-month periodical tenancy of all or a portion or portions of Area IA or Area IB described in paragraph (c) above shall be terminated, this Agreement and the letting as to all other portions of the premises shall continue in full force and effect. In the event that the month-to-month periodical tenancy of all or a portion or portions of Area IA and Area IB described in paragraph (c) above shall be terminated, the rentals payable by the Lessee to the Port Authority shall, from and after the effective date of such termination, be abated in accordance with Section 4 of the Lease.

(e) As used in this Lease the Lessee's "Capital Investment" shall mean:

(i) the amounts paid by the Lessee to independent contractors for work actually performed and labor and materials actually furnished inclusive of sales, use and like taxes where applicable, from and after the effective date of this Lease, in connection with the construction work (as defined in Section 2 of the Lease);

(ii) the payments made and expenses incurred by the Lessee, in connection with such construction work, for engineering, architectural, professional and consulting services, and the supervision of construction, inclusive of sales, use and like taxes where applicable, it being understood that payments under this Item (ii) shall not exceed of the sum of the amounts described in Item (i) above and Item (iii) below;

(iii) with respect to the Phase I Construction Work only, the amounts paid by the Lessee to independent contractors for the personal property starred and underlined on Exhibit E of the Lease and installed in connection with the Phase I Construction Work and to which title has passed to the Port Authority inclusive of sales, use and like taxes where applicable; and

(iv) the amounts paid by the Lessee to independent contractors for work actually performed and labor and materials actually furnished for the installation and purchase of ticket counters, lounge seating, office furniture, computer equipment and other new furniture and equipment, title to which shall be and remain in the Lessee, which is installed and purchased in connection with the work performed and labor and materials furnished in Item (i) above inclusive of sales, use and like taxes where applicable, it being understood that the amounts under this Item (iv) shall not exceed three percent (3%) of the sum of the amounts and payments described in Item (i), Item (ii), and Item (iii) above and this Item (iv);

(v) with respect to the Phase I Construction Work only, the "Cost of the Sublessee's Flight Center Improvement Work" as such term is defined in Section 4 III(B) hereof (i.e. the sum of (2.a.) ;

and, further, in each case, as the aforementioned amounts and payments are evidenced, from time to time, by certificates of a responsible fiscal officer of the Lessee, sworn to before a notary public and delivered to the Port Authority, which certificates shall (a) set forth, in reasonable detail, the amounts paid to specified independent contractors, the payments made to other specified persons and 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, and (c) certify that the amounts and payments therein set forth constitute the Lessee's Capital Investment arising out of the performance of the construction work. The Lessee shall keep a separate accounting of the Lessee's Capital Investment which accounting 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 or the end of the term of the letting, whichever is later, and shall be subject to the audit and inspection of the Port Authority, its representatives and employees; provided, however, on the condition that the Lessee shall pay to the Port Authority all travel costs and expenses as determined by the Port Authority for Port Authority auditors and other representatives in connection with any audit at locations outside the Port of New York District, the Lessee may maintain said records and books and make them available to the Port Authority at the Lessee's office at 1030 Delta Boulevard, Hartsfield Atlanta International Airport, Atlanta, Georgia 30320.

(f) The Lessee, within ninety (90) days after the installation thereof, shall deliver to the Port Authority a bill of sale for each item of personal property underlined and starred in Exhibit E of the Lease and installed in the premises in connection with the Phase I Construction Work, showing ownership of such personal property in the Port Authority and identifying the same by

serial number or other similar identification number or other appropriate means of identification.

Section 89. Port Authority Construction Payments

(a) Definitions:

The following terms as used in this Agreement shall have the respective meanings given below:

(1) Each payment made by the Port Authority to the Lessee pursuant to paragraph (b) of this Section 89 is referred to herein as a "Construction Payment". The date of each payment by the Port Authority of a Construction Payment is herein referred to as a "Construction Payment Date".

(2) The term "Construction Payment Amount" shall mean the amount determined with respect to each Construction Payment paid by the Port Authority to the Lessee pursuant to paragraph (b) hereof, which amount shall be equal to such Construction Payment plus the Accrued Amount applicable to that Construction Payment as set forth in subparagraph (3) hereof.

(3) The term "the Accrued Amount" shall mean with respect to each Construction Payment (as hereinabove defined) the daily amounts, calculated daily and equal to the product obtained by multiplying the Accrued Amount Factor (as herein defined) by the Construction Payment for each day (including the Construction Payment Date) during the portion of the month from the Construction Payment Date of such Construction Payment to and including the day preceding the Other Additional Facility Rental Commencement Date for the Other Additional Facility Rental applicable to such Construction Payment Amount.

(4) The term "Accrued Amount Factor" shall mean with respect to the Accrued Amount of each Construction Payment Amount the quotient resulting from dividing "Fixed RBI Rate" (as defined in Section 4 III (C) (1) (ix)) by 365.

(5) The term "Final Date" as used herein shall, with respect to the Phase I Construction Work, mean the earlier occurring of (i) the last day of the twelfth month after that month in which the certificate of the Lessee pursuant to subparagraph (1) (i) of paragraph (g) of Section 2 of the Lease is delivered to the Port Authority or (ii) December 31, 2000; and with respect to the Phase II Construction Work shall mean the earlier occurring of (x) the last day of the twelfth month after that month in which the certificate of the Lessee pursuant to subparagraph (2) (i) of paragraph (g) of Section 2 of the Lease is delivered to the Port Authority or (y) December 31, 2000.

(6) The term the "Cost of the Phase I Construction Work" shall mean the sum of the following actually paid by the

Lessee to the extent that the inclusion of the same is permitted by sound accounting practices consistently applied:

(i) amounts actually paid and costs incurred by the Lessee to independent contractors for work actually performed and labor and materials actually furnished in connection with the construction of the Phase I Construction Work;

(ii) amounts actually paid and costs incurred by the Lessee in connection with the Phase I Construction Work for engineering, architectural, professional and consulting services and supervision of construction provided, however, payments under this item (ii) shall not exceed twelve percent (12%) of the amounts paid under item (i) above;

(iii) amounts actually paid by the Lessee for premiums on the Comprehensive General Liability and Comprehensive Automobile Liability insurance policies required under paragraph (b) 11 of Section 2 hereunder (excluding Workers Compensation and Employers Liability Insurance) to the extent, and only if, said insurance is project specific to the Phase I Construction Work hereunder and is not provided and maintained by any of the Lessee's contractors.

Amounts actually paid by the Lessee as set forth in items (i), (ii) and (iii) above shall be included in the Cost of the Phase I Construction Work only to the extent that the inclusion of the same is permitted by sound accounting practices consistently applied. Additionally, the Cost of the Phase I Construction Work shall include only that work performed by the Lessee in accordance with all the terms and provisions of (x) this Lease, (y) the final Construction Application(s) (including the final plans and specifications) as approved by the Port Authority pursuant to subparagraph (5) of paragraph (a) of Section 2 hereof and (z) the approval letter covering the work, if any, performed pursuant to paragraph (c) of Section 2 hereof and the Cost of the Phase I Construction Work shall not include either the Cost of the Phase I Construction Work which although performed pursuant to an approved plan or specification is not incorporated in the final plans and specifications as approved by the Port Authority or the cost of altering such Phase I Construction Work. In no event shall the cost of altering such Phase I Construction Work include any amounts paid for or in connection with any trade fixtures or other personal property of the Lessee other than as expressly provided for in Section 2 hereof. The Cost of the Phase I Construction Work shall not include any cost or work for which the Lessee receives a payment or credit under Section 90 hereof.

(7) The term the "Cost of the Phase II Construction Work" shall mean the sum of the following actually paid by the Lessee to the extent that the inclusion of the same is permitted by sound accounting practices consistently applied:

(i) amounts actually paid and costs incurred by the Lessee to independent contractors for work actually performed and labor and materials actually furnished in connection with the construction of the Phase II Construction Work;

(ii) amounts actually paid and costs incurred by the Lessee in connection with the Phase II construction work for engineering, architectural, professional and consulting services and supervision of construction provided, however, payments under this item (ii) shall not exceed twelve percent (12%) of the amounts paid under item (i) above;

(iii) amounts actually paid by the Lessee for premiums on the Comprehensive General Liability and Comprehensive Automobile Liability insurance policies required under paragraph (b) 11 of Section 2 hereunder (excluding Workers Compensation and Employers Liability Insurance) to the extent, and only if, said insurance is project specific to the Phase II Construction Work hereunder and is not provided and maintained by any of the Lessee's contractors.

Amounts actually paid by the Lessee as set forth in items (i), (ii) and (iii) above shall be included in the Cost of the Phase II Construction Work only to the extent that the inclusion of the same is permitted by sound accounting practices consistently applied. Additionally, the Cost of the Phase II Construction Work shall include only that work performed by the Lessee in accordance with all the terms and provisions of (x) this Lease, (y) the final Construction Application (s) (including the final plans and specifications) as approved by the Port Authority pursuant to subparagraph (5) of paragraph (a) of Section 2 hereof and (z) the approval letter covering the work, if any, performed pursuant to paragraph (c) of Section 2 hereof and the Cost of Phase II Construction Work which although performed pursuant to an approved plan or specification is not incorporated in the final plans and specifications as approved by the Port Authority or the cost of altering such Phase Construction Work. In no event shall the cost of altering such Phase II Construction Work include any amounts paid for or in connection with any trade fixtures or other personal property of the Lessee other than as expressly provided for in Section 2 thereof. The Cost of the Phase II Construction Work shall not include any cost or work for which the Lessee receives a payment or credit under Section 90 hereof.

(8) "Calendar Year Quarter" shall mean each of the 4 three-month periods occurring in a calendar year such that each of the following three-month periods shall constitute a Calendar Year Quarter: (i) January 1 through March 31; (ii) April 1 through June 30; (iii) July 1 through September 30 and (iv) October 1 through December 31.

(9) "Cost of the Construction Work" shall mean and include the Cost of the Phase I Construction and the Cost of the Phase II Construction Work.

(b) (1) The Port Authority shall make reimbursement payments to the Lessee for the Cost of the Phase I Construction Work, and the Cost of the Phase II Construction Work as follows:

(i) With respect to the Phase I Construction Work: On or before the last day of the Calendar Year Quarter in which complete execution and delivery of this Agreement occurs and on or before the last day of each Calendar Year Quarter thereafter up to and including the last day of the Calendar Year Quarter in which the last certificate described hereunder is delivered to the Port Authority by the Lessee, the Lessee shall deliver to the Port Authority a certificate which shall be signed by a responsible fiscal officer of the Lessee, sworn to before a notary public, and shall set forth the items specified in this subparagraph (b). The Lessee shall submit a certificate, as aforesaid, to the Port Authority no more frequently than once during each Calendar Year Quarter. Each certificate shall set forth a representation by the Lessee that the Lessee will apply the Construction Payment only to the Cost of the Phase I Construction Work and for no other purpose whatsoever. Each certificate shall certify the sum of: (x) the amounts of payments actually made by the Lessee to its independent contractors for work actually performed and labor and materials actually furnished for the Phase I Construction Work; (y) the amounts of payments actually made by the Lessee in connection with the Phase I Construction Work for engineering, architectural, professional, consulting services and supervision of construction, (it being understood that payments under this item (y) shall not exceed of the amounts paid under item (x) above and shall only apply to payments not included in a prior certificate, provided, however, that the said limitation shall not apply to payments made by the Lessee to limit the reimbursement to the Lessee in the early stages of construction); (z) amounts actually paid by the Lessee for premiums on the Comprehensive General Liability and Comprehensive Automobile Liability insurance policies required under paragraph (b) 11 of Section 2 hereunder (excluding Workers Compensation and Employers Liability Insurance) to the extent, and only if, said insurance is project specific to the Phase I Construction Work hereunder and is not provided and maintained by any of the Lessee's contractors. Any payment by the Port Authority which may exceed the limitation set forth in (y) above shall be promptly refunded to the Port Authority upon demand. Each such certificate shall also: (aa) set forth, in reasonable detail, the amounts actually paid to specified independent

contractors and the amounts paid to other specified persons and third parties which have not previously been reported in certificates delivered to the Port Authority; (bb) have attached thereto reproduction copies or duplicate originals of the invoices of such independent contractors and other persons, and an acknowledgment by such independent contractors and other persons of the receipt by them of such amounts and payments or which have attached thereto true and complete copies of the Lessee's cancelled checks (copies of front and back) by which it has made and said contractors and other persons have received such payments, which checks have been honored, paid and cancelled by payment by the drawee bank upon which such checks are drawn and which have been legibly and appropriately marked by said bank to show such payment by it and which checks further clearly show (including by appropriate endorsement thereof) receipt of such payments by said independent contractors and said other persons and identify the full names of said contractors and said other persons as well as the invoices covered by such payments; (cc) certify that the amounts, payments and expenses therein set forth constitute portions of the Cost of the Phase I Construction Work; and (dd) contain the Lessee's certification that the work for which payment is requested has been accomplished, that the amounts requested have been paid to the Lessee's contractors, and, subject to the concurrence of the Port Authority, that said work is in place and has a value of not less than the amount requested to be paid by the Port Authority as a Construction Payment. Each such certificate shall also set forth the total cumulative payments made by the Lessee as aforesaid from the commencement of such Phase I Construction Work to the date of the certificate, and each such certificate shall also contain a certification by the Lessee that each portion of the Phase I Construction Work covered by said certificate has been performed in accordance with the terms of the Lease.

In addition to the foregoing and in addition to any and all other information required to be submitted pursuant to the Lease, the Lessee shall furnish to the Port Authority information concerning cost and timing of construction of the Phase I Construction Work as may be requested by the Port Authority from time to time including but not limited to, the following:

(i) The Lessee's original detailed cost projections for the entire Phase I Construction Work, accompanied by a certification signed by an independent engineering consultant, to the effect that the cost projections submitted by the Lessee are accurate, and that the same represent a reasonable price for the work in question;

(ii) Reports of the full-time resident engineer hired by the Lessee's architect pursuant to subparagraph (4) of paragraph (b) of Section 2 of the Lease, and reports of the Lessee's Chief Architect, which reports or log must contain reports as to activity conducted in connection with the Phase I

Construction Work for each and every day that such activity occurred from the commencement of the work to the date of submission;

(iii) A certification signed by the Lessee's architect or architects certifying the value of work in place, both on and off the site (if any); and

(iv) Accurate, readable and complete copies of all change orders, extra work authorizations, design change authorizations and purchase orders in connection with the Phase I Construction Work.

(ii) With respect to the Phase II Construction Work: On or before the last day of the Calendar Year Quarter in which occurs the date of the Port Authority's consent to the Lessee's comprehensive plans for the Phase II Construction Work pursuant to Section (c) (3) hereof and on or before the last day of each Calendar Year Quarter thereafter up to and including the last day of the Calendar Year Quarter in which the last certificate described hereunder is delivered to the Port Authority by the Lessee, the Lessee shall deliver to the Port Authority a certificate which shall be signed by a responsible fiscal officer of the Lessee, sworn to before a notary public, and shall set forth the items specified in this subparagraph (b). The Lessee shall submit a certificate, as aforesaid, to the Port Authority no more frequently than once during each Calendar Year Quarter. Each certificate shall set forth a representation by the Lessee that the Lessee will apply the Construction Payment only to the Cost of the Phase II Construction Work and for no other purpose whatsoever. Each certificate shall certify the sum of: (x) the amounts of payments actually made by the Lessee to its independent contractors for work actually performed and labor and materials actually furnished for the Phase II Construction Work; (y) the amounts of payments actually made by the Lessee in connection with the Phase II Construction Work for engineering, architectural, professional, consulting services and supervision of construction, (it being understood that payments under this item (y) shall not exceed twelve percent (12%) of the amounts paid under item (x) above and shall only apply to payments not included in a prior certificate, provided, however, that the said 12% limitation shall not apply to payments made by the Lessee to limit the reimbursement to the Lessee in the early stages of construction); (z) amounts actually paid by the Lessee for premiums on the Comprehensive General Liability and Comprehensive Automobile Liability insurance policies required under paragraph (b) 11 of Section 2 hereunder (excluding Workers Compensation and Employers Liability Insurance) to the extent, and only if, said insurance is project specific to the Phase I Construction Work hereunder and is not provided and maintained by any of the Lessee's contractors. Any payment by the Port Authority which may exceed the limitation set forth in (y) above shall be promptly refunded to the Port Authority upon demand. Each such certificate shall also: (aa) set forth, in reasonable detail, the amounts paid to specified independent contractors and the amounts paid to other specified persons and

third parties which have not previously been reported in certificates delivered to the Port Authority; (bb) have attached thereto reproduction copies or duplicate originals of the invoices of such independent contractors and other persons, and an acknowledgment by such independent contractors and other persons of the receipt by them of such amounts and payments or which have attached thereto true and complete copies of the Lessee's cancelled checks (copies of front and back) by which it has made and said contractors and other persons have received such payments, which checks have been honored, paid and cancelled by payment by the drawee bank upon which such checks are drawn and which have been legibly and appropriately marked by said bank to show such payment by it and which checks further clearly show (including by appropriate endorsement thereof) receipt of such payments by said independent contractors and said other persons and identify the full names of said contractors and said other persons as well as the invoices covered by such payments; (cc) certify that the amounts, payments and expenses therein set forth constitute portions of the Cost of the Phase II Construction Work; and (dd) contain the Lessee's certification that the work for which payment is requested has been accomplished, that the amounts requested have been paid to the Lessee's contractors, and, subject to the concurrence of the Port Authority, that said work is in place and has a value of not less than the amount requested to be paid by the Port Authority as a Construction Payment. Each such certificate shall also set forth the total cumulative payments made by the Lessee as aforesaid from the commencement of such Phase II Construction Work to the date of the certificate, and each such certificate shall also contain a certification by the Lessee that each portion of the Phase II Construction Work covered by said certificate has been performed in accordance with the terms of the Lease.

In addition to the foregoing and in addition to any and all other information required to be submitted pursuant to the Lease, the Lessee shall furnish to the Port Authority information concerning cost and timing of construction of the Phase II Construction Work as may be requested by the Port Authority from time to time including but not limited to, the following:

(i) The Lessee's original detailed cost projections for the entire Phase II Construction Work, accompanied by a certification signed by an independent engineering consultant, to the effect that the cost projections submitted by the Lessee are accurate, and that the same represent a reasonable price for the work in question;

(ii) Reports of the full-time resident engineer hired by the Lessee's architect pursuant to subparagraph (4) of paragraph (b) of Section 2 of the Lease, and reports of the Lessee's Chief Architect, which reports or log must contain reports as to activity conducted in connection with the Phase II Construction Work for each and every day that such

activity occurred from the commencement of the work to the date of submission;

(iii) A certification signed by the Lessee's architect or architects certifying the value of work in place, both on and off the site (if any); and

(iv) Accurate, readable and complete copies of all change orders, extra work authorizations, design change authorizations and purchase orders in connection with the Phase II Construction Work.

(2) Within sixty (60) days after the delivery of a duly submitted certificate by the Lessee, as aforesaid, the Port Authority shall pay to the Lessee the amounts paid by the Lessee during the period covered by such certificate, as certified in such certificate (but only to the extent that such amounts or any portion thereof have not theretofore been included in a Construction Payment) provided, however, in the event the Lease is not in full force and effect, or if the Lessee shall be under a notice of termination of the Lease, or in default under any term or provision thereof, the Port Authority shall have the right, in its discretion, to withhold the payment of any Construction Payment to the Lessee, provided, further, no payment or withholding of a Construction Payment shall be or be deemed to be a waiver of any rights of the Port Authority with respect to the termination of the Lease, or to a default by the Lessee under any term or provision thereof, or to the withholding or payment of future Construction Payments, or with respect to any determination as to the usability of any item of work as aforesaid. It is hereby understood and agreed that nothing in this Section 89 shall be or be deemed to be for the benefit of any contractor of the Lessee. It is further understood that at the election of the Port Authority no payment will be made if the Port Authority's inspection or audit does not substantiate the contents of any of said certificates and until such matters have been resolved to the satisfaction of the Port Authority, but the Port Authority shall have no obligation to conduct any such inspection or audit at such time. The certificate shall also contain such further information and documentation with respect to the Lessee's costs as the Port Authority may from time to time require, which information, documentation and certification shall be given on such forms as may be adopted by the Port Authority.

(3) The Lessee shall mark as "Final" its final certificate covering the Phase I Construction Work and its final certificate covering the Phase II Construction Work. The Lessee shall not submit any certificate for the Cost of the Phase I Construction Work or the Cost of the Phase II Construction work later than the applicable Final Date as defined in paragraph (a) (5) hereof. After submitting the said Final Certificate for the Phase I Construction Work the Lessee shall submit no further certificate for the Phase I Construction Work hereunder; and after submitting the said final Certificate for the Phase II Construction Work the Lessee shall submit no further certificate for the Phase II Construction Work hereunder.

(iii) It is hereby acknowledged that prior to the execution of this Agreement, the Port Authority paid to the Lessee and the Lessee received from the Port Authority the "Cost of the Sublessee's Flight Center Improvement Work" (in the sum of $10,392,992.87) as such term is set forth and defined in the Area IB Prior Agreements, specifically the First Supplemental Agreement to Sublease, and that the Lessee shall ensure, and hereby represents and warrants to the Port Authority, that it shall not submit any requests for reimbursement payments which would result in a duplicative payment for work forming a part of the aforesaid "Cost".

(c) If for any reason, including but not limited to circumstances arising out of work performed pursuant to paragraph (c) of Section 2 hereof or as the result of a redesign of the construction work (as defined in Section 2 (a) hereof) or any portion thereof by the Lessee, the construction of the construction work or any portion thereof is not performed in accordance with the terms and provisions of (i) this Lease, (ii) the Construction Application (including the final plans and specifications) as finally approved by the Port Authority pursuant to paragraph (f) of Section 2 hereof, it is understood and agreed that the Port Authority shall not be obligated to make any Construction Payments nor shall the Construction Payment Amounts include any amount for such work or any costs in connection with the removal, restoration, modification, correction or change required to cause such work to comply with such terms and provisions, and in the event that the Port Authority shall have made a Construction Payment for such work, the Port Authority shall have the right to withhold and credit future Construction Payments against any such amount or upon demand of the Port Authority, the Lessee shall pay to the Port Authority the amount of any such Construction Payment or portion thereof covering such work.

(d) The entire obligation of the Port Authority under the Lease for the Cost of the Construction Work shall be limited as follows:

(1) The Port Authority's obligation under the Lease for the Cost of the Construction Work shall be limited to a total sum of (2.a.) for construction work for which certificates are properly submitted under paragraph (b) above not later than December 31, 1994. For purposes of the foregoing limitation, the payment previously made to the Lessee by the Port Authority under the Prior Agreements as and for the "Cost of the Sublessee's Flight Center Improvement Work" (as aforesaid) which is also referred to as the "Lessee's Initial Flight Center Improvement Work" (as defined in Section 4. III. (B) hereof) in the amount of (2.a.) shall be deemed included in, and applied toward, the aforesaid limitation of (2.a.)

(2) Except as expressly as set forth in subparagraph (1) above with respect to the dollar and time

limitations stated therein and subject to subparagraphs (3) and (4) below, the Port Authority's obligation hereunder to make Construction Payments to the Lessee shall obtain and apply if and only if on the date each such Construction Payment would be made under paragraph (b) above the Lessee's debt (as defined below) is rated by both rating agencies (as defined below) at or above investment grade (as defined below); it being specifically understood and agreed that if, and for so long as, and at any and all times during which, the Lessee's debt (as defined below) as determined by one or by both of the rating agencies (as defined below) is rated below investment grade (as defined below), the Port Authority shall have no obligation (other than as set forth in subparagraph (1) of this paragraph (d) and subject thereto) to make any Construction Payment(s) to the Lessee or for any cost or Cost of the Construction Work or any portion thereof, provided, however, that the Port Authority shall have the right, exercisable at its sole option and its sole and complete discretion, to make a Construction Payment or Construction Payments to the Lessee during any such time or times, subject to and in accordance with this Section 89. Without limiting the foregoing, and in order to enable the Port Authority to make its said election to make a Construction Payment or Construction Payments to the Lessee as provided under this Section 89, the Lessee shall and hereby agrees to fully comply with the provisions of this Section 89, in particular paragraph (b) hereof, notwithstanding the rating of its debt at any such time or times; it being further specifically understood and agreed, as aforesaid, that the Lessee shall have no right to receive a Construction Payment or Construction Payments (other than as expressly provided in subparagraph (1) of this paragraph (d) unless the Lessee's debt, at the time the Construction Payment would otherwise be made under this Section 89, is rated by both of the rating agencies at or above investment grade. For purposes hereof, the term "debt" shall mean, at any date, any and all obligations of the Lessee evidenced by debentures which are considered or known as senior unsecured long-term debentures; the term "grade" shall mean that evaluation of the quality of the debt of the Lessee as determined by a rating agency (as hereinafter defined); the term "rating agency" shall mean Standard & Poor's or Moody's or, in the event of the cessation of business of either, another nationally recognized rating agency firm or firms which is in the business of evaluating the degree of financial risk associated with debt securities and makes such information available to the investment community and as may be designated as a rating agency at any such time during the term of this Agreement by the Port Authority; the term "investment grade" shall mean a grade of "BBB-" or higher by Standard & Poor's or "Baa3" or higher by Moody's or such other designation that a rating agency may use publicly in the future to designate the relative investment qualities of debt securities and to differentiate between those investments that are investment grade and those that are not.

(3) Without limiting the foregoing, it is understood and agreed that in any event (including without limitation the election by the Port Authority to make Construction Payment(s) to the Lessee while the Lessee's debt is rated below investment grade in accordance with subparagraph (2) above) the entire total of Construction Payments shall not exceed a total amount of (2.a.) which total amount shall also include the "Cost of the Sublessee's Flight Center Improvement Work" as such term is set forth and defined in the Area IB Prior Agreements, specifically the First Supplemental Agreement to Sublease, and the amounts which the Port Authority, at its option, as aforesaid, elects to make as Construction Payments to the Lessee in accordance with subparagraph (2) above, and all other amounts paid by the Port Authority as Construction Payments under this Section 89.

(4) In addition to and without limiting any of the foregoing provisions, the entire obligation of the Port Authority for the Cost of the Construction Work under the Lease shall be limited in time to construction work covered by certificates of the Lessee submitted in accordance with paragraph (b) of this Section 89 no later than December 31, 1994 with respect to the dollar limitation set forth in subparagraph (1) above and otherwise no later than the applicable Final Date under subparagraph (5) of paragraph (a) above and in no event later than December 31, 2000. Without limiting the foregoing or any other term, provision, covenant or condition of this Agreement, it is understood and agreed that said date of December 31, 2000 shall not be extended and no Construction Payments made beyond said date unless such extension is set forth in a written supplemental agreement to this Agreement fully executed and delivered by the parties hereto which supplemental agreement, if the Port Authority in its sole discretion elects to enter into the same, would set forth the extended date as shall be determined by the Port Authority in its sole discretion and the terms and conditions applicable to such extension including without limitation the appropriate revisions to Section 4 hereof, and unless the Port Authority in its sole discretion has prior thereto determined that Port Authority funds are properly available for Construction Payments during such extension; the foregoing shall not create or be construed as creating any agreement or commitment to enter into such supplemental agreement or any inference or implication that there shall be such a supplemental agreement.

(e) The Lessee shall promptly submit to the Port Authority further information, including but not limited to its estimate of the amounts and times of the various payments it will be making connection with the Cost of the Phase I Construction Work and the Cost of the Phase II Construction Work as the Port Authority may from time to time, and at any time, request, and shall be available itself or cause its architect or engineer to be available for

consultation in connection with payment certificates submitted pursuant to paragraph (b) of this Section.

(f) In addition to and without limiting any other term or provision of this Lease, the Port Authority shall have the right at any time and from time to time by its agents, employees and representatives to audit and inspect during regular business hours the books, records and other data of the Lessee relating to the Cost of the Construction Work, or any part thereof, including without limitation any and all contracts covering or relating to the construction work or any portion thereof, any and all invoices covering or relating to the construction work or any portion thereof and the actual, original cancelled checks of the Lessee, or microfiche copies (front and back) of said checks as supplied to the Lessee by the drawee bank(s), covering the construction work or any portion thereof or any invoice or invoices with respect thereto; it being expressly agreed and understood that the Port Authority shall not be bound by any prior audit conducted by it. The Lessee agrees to keep such books, records and other data within the Port of New York District, or, on the condition that the Lessee shall pay to the Port Authority all travel costs and expenses determined by the Port Authority for Port Authority auditors and other representatives in connection with any audit at locations outside the Port of New York District, the Lessee may maintain said records and books of account and make them available to the Port Authority at the Lessee's offices in 1030 Delta Boulevard, Hartsfield Atlanta International Airport, Atlanta, Georgia 30320, but the Lessee shall not be required to maintain any such books, records and other data for more than four (4) years after the Lessee has delivered the applicable certificate marked "Final" called for under paragraph (b) (3) above.

(g) If the Lessee has included in any portion of the Cost of the Construction Work any item as having been incurred, but which in the opinion of the Port Authority was not so incurred, or which in the opinion of the Port Authority if so incurred is not an item properly chargeable to such element of cost under sound accounting practice, or does not represent an appropriate division of the costs of a particular contract which are required to be designated according to time of performance or delivery, and the parties have been unable to resolve their differences within 90 days after Port Authority gave its notice objecting to the same, the Port Authority's decision as to the nature of the item of construction cost shall be final; provided, however, that if and to the extent an item disallowed by the Port Authority in accordance with the foregoing and therefore not reimbursable to the Lessee under this Section 89 is nevertheless eligible for treatment as Lessee Capital Investment under the terms of Section 88 hereof then such item may be so treated pursuant to said Section 88 hereof.

Section 90. <u>Area IA Restoration Work/Payments</u>

(a) It is recognized that the Port Authority has heretofore received from Northwest Airlines, Inc. (hereinafter "Northwest") a payment in the amount of (2.a.)

in settlement of Northwest's restoration obligations from its prior use and occupancy of Area IA under its prior lease agreement with the Port Authority, and that the Port Authority and the Lessee have agreed that said amount less certain Port Authority costs, as hereinbelow described, is to be made available for reimbursement to the Lessee for the Cost of the Lessee's Area IA Restoration Work (as hereinafter defined). Accordingly, for the purposes hereof the following terms shall have the following meanings:

(1) "Restoration Amount" shall, subject to paragraph (i) below, mean the amount of (2.a.) which amount constitutes the difference after subtracting from the aforesaid (2.a.) the Port Authority's costs for or in connection with the removal of certain transformers from Area IA which removal costs equal the sum of (2.a.)

(2) "Area IA Restoration Work" shall consist generally of work (other than the construction work under Section 2 hereof) for the repair, rehabilitation and refurbishment of Area IA covering the conditions reported in the "Prior Condition Survey Report" (as defined below); as and to the extent all of said work is or shall be set forth in Alteration Applications, and the plans and specifications forming a part thereof, submitted or which shall be submitted by the Lessee to the Port Authority and as and when the same have been approved by the Port Authority, including without limitation Alteration Application Y-6519 (roof replacement) and Y-6530 (restroom renovation) mentioned in the Prior Letter Agreement as described and defined in paragraph (i) below; all of said Alteration Applications being herein collectively called the "Alteration Applications".

(3) "Cost of the Lessee's Area IA Restoration Work" shall mean the sum of the following actually paid by the Lessee to the extent that the inclusion of the same is permitted by sound accounting practices consistently applied:

(i) amounts actually paid and costs incurred by the Lessee to independent contractors for work actually performed and labor and materials actually furnished in connection with the Area IA Restoration Work;

(ii) amounts actually paid and costs incurred by the Lessee in connection with the Area IA Restoration Work for engineering, architectural, professional and consulting services and supervision of construction provided, however, payments under this item (ii) shall not exceed ten percent (10%) of the amounts paid under item (i) above.

Amounts actually paid by the Lessee as set forth in items (i) and (ii) above shall be included in the Cost of the Lessee's Area IA Restoration Work only to the extent that the inclusion of the same is permitted by sound accounting practices consistently applied. Additionally, the Cost of the Lessee's Area IA Restoration Work shall include only that work performed by the Lessee in accordance with all the terms and provisions of (x) this Lease, (y) the Alteration Applications (including the final plans and specifications forming a part thereof) as approved by the Port Authority and (z) the Prior Letter Agreement with respect to the amount covered thereunder (as described in paragraph (i) below) and the Cost of the Lessee's Area IA Restoration Work shall in no event include any amounts paid for or in connection with any trade fixtures or other personal property of the Lessee. Further, the Cost of the Lessee's Area IA Restoration Work shall not include the Cost of the Construction Work, as defined in Section 89 hereof, or any portion thereof, nor any cost or work for which the Lessee receives a payment from the Port Authority under Section 89 hereof.

(4) "Prior Condition Survey Report" shall mean that certain condition survey report of Area IA by the Eggers Group, PC. which the Port Authority caused to be conducted in August 1988 as revised in February 15, 1989 which reported the condition of Area IA with respect to the prior use and occupancy thereof by Northwest Airlines, Inc., which report has heretofore been supplied to the Lessee.

(5) Each payment made by the Port Authority to the Lessee pursuant to paragraph (c) of this Section 90 is referred to herein as an "Area IA Restoration Work Payment".

(b) The Lessee hereby agrees to and shall perform the Area IA Restoration Work and further agrees that the Area IA Restoration Work shall be performed by the Lessee in accordance with the terms and conditions of this Lease, the Alteration Applications and the final plans and specifications forming a part thereof as the same have been or shall have been approved by the Port Authority, and subject to any and all conditions which may be imposed by the General Manager of the Port Authority. Without limiting the foregoing and notwithstanding that the Area IA Restoration Work shall not be or form part of the construction work under Section 2 hereof, it is specifically understood and agreed that the Area IA Restoration Work shall be performed by the Lessee in accordance with all applicable terms, conditions and provisions of Section 2 hereof as if said term, conditions and provisions were fully set forth in this Section 90, including Items (i) through (xvi) of paragraph (a)(5), paragraph (b) (other than the last sentence of subparagraph (2) thereof) and paragraphs (e), (f), (g), (h), (i), and (j) of said Section 2 hereof and Schedule E attached hereto, and references therein in said paragraphs of said Section 2 hereof to construction

work shall, for the purposes of this Section 90, be deemed to refer to the Area IA Restoration Work.

(c) (1) The Port Authority shall make reimbursement payments (the Area IA Restoration Work Payments) to the Lessee for the Cost of the Lessee's Area IA Restoration Work as follows:

On the twentieth day of the calendar month following the month in which the complete execution and delivery of this Agreement occurs and on or before the twentieth day of each calendar month thereafter up to and including the calendar month in which the last certificate described hereunder is delivered to the Port Authority by the Lessee, the Lessee shall deliver to the Port Authority a certificate which shall be signed by a responsible fiscal officer of the Lessee, sworn to before a notary public, and shall set forth the items specified in this paragraph (c). Each certificate shall set forth a representation by the Lessee that the Lessee will apply the Area IA Restoration Work Payment only to the Cost of the Lessee's Area IA Restoration Work and for no other purpose whatsoever. Each certificate shall certify the sum of: (i) the amounts of actual payments made by the Lessee to its independent contractors for work actually performed and labor and materials actually furnished for the Area IA Restoration Work; (ii) the amounts of payments actually made by the Lessee in connection with the Area IA Restoration Work for engineering, architectural, professional, consulting services and supervision of construction, (it being understood that payments under this item (ii) shall not exceed ten percent (10%) of the amounts paid under item (i) above and shall only apply to payments not included in a prior certificate. Any payment by the Port Authority which may exceed the limitation set forth in (i) above shall be promptly refunded to the Port Authority upon demand. Each such certificate shall also: (aa) set forth, in reasonable detail, the amounts paid to specified independent contractors and the amounts paid to other specified persons and third parties which have not previously been reported in certificates delivered to the Port Authority; (bb) have attached thereto reproduction copies or duplicate originals of the invoices of such independent contractors and other persons and an acknowledgment by such independent contractors and other persons of the receipt by them of such amounts and payments or which have attached thereto true and complete copies of the Lessee's cancelled checks (copies of front and back) by which it has made and said contractors and other persons have received such payments, which checks have been honored, paid and cancelled by payment by the drawee bank upon which such checks are drawn and which have been legibly and appropriately marked by said bank to show such payment by it and which checks further clearly show (including by appropriate endorsement thereof) receipt of such payments by said independent contractors and said other persons and identify the full names of said contractors and said other persons as well as the invoices covered by such payments; (cc) certify that the amounts, payments and expenses therein set

forth constitute portions of the Cost of the Lessee's Area IA Restoration Work; and (dd) contain the Lessee's certification that the work for which payment is requested has been accomplished, that the amounts requested have been paid to the Lessee's contractors, and, subject to the concurrence of the Port Authority, that said work is in place and has a value of not less than the amount requested to be paid by the Port Authority as an Area IA Restoration Work Payment. Each such certificate shall also set forth the total cumulative payments made by the Lessee as aforesaid from the commencement of such Area IA Restoration Work to the date of the certificate, and each such certificate shall also contain a certification by the Lessee that each portion of the Area IA Restoration Work covered by said certificate has been performed in accordance with the terms of the Lease. Each such certificate shall also contain the Lessee's certification that the work covered by such certificate does not constitute part of the construction work under Section 2 hereof and that the costs of the work covered by such certificate are not included in the Cost of the Construction Work under Section 89 hereof.

(2) Within sixty (60) days after the delivery to the Port Authority of a duly submitted certificate by the Lessee, as aforesaid, the Port Authority shall pay to the Lessee as an Area IA Restoration Work Payment the amounts paid by the Lessee during the period covered by such certificate, as certified in such certificate (but only to the extent that such amounts or any portion thereof have not theretofore been included in an Area IA Restoration Work Payment) provided, however, in the event the Lease is not in full force and effect, or if the Lessee shall be under a notice of termination of the Lease, or in default under any term or provision thereof, the Port Authority shall have the right, in its discretion, to withhold the payment of any Area IA Restoration Work Payment to the Lessee, provided, further, no payment or withholding of an Area IA Restoration Work Payment shall be or be deemed to be a waiver of any rights of the Port Authority with respect to the termination of the Lease, or to a default by the Lessee under any term or provision thereof, or to the withholding or payment of future Area IA Restoration Work Payments. It is hereby understood and agreed that nothing in this Section 90 shall be or be deemed to be for the benefit of any contractor of the Lessee. It is further understood that at the election of the Port Authority no payment will be made if the Port Authority's inspection or audit does not substantiate the contents of any of said certificates and until such matters have been resolved to the satisfaction of the Port Authority, but the Port Authority shall have no obligation to conduct any such inspection or audit at such time. The certificate shall also contain such further information and documentation with respect to the Lessee's costs as the Port Authority may from time to time require, which information, documentation and certification shall be given on such forms as may be adopted by the Port Authority.

(3) The Lessee shall mark as "Final" its final certificate covering the Area IA Restoration Work. The Lessee shall

not submit any certificate for the Cost of the Area IA Restoration Work after submitting the said final certificate.

(d) If for any reason, including but not limited to circumstances arising out of or as the result of a redesign of the Area IA Restoration Work or any portion thereof by the Lessee, the construction of the Area IA Restoration work or any portion thereof is not performed in accordance with the terms and provisions of (i) this Lease, (ii) the Alteration Application (including the final plans and specifications forming a part thereof) as finally approved by the Port Authority, it is understood and agreed that the Port Authority shall not be obligated to make any Area IA Restoration Work Payments for any such noncomplying work nor shall any Area IA Restoration Work Payment include any amount for such work or any costs in connection with the removal, restoration, modification, correction or change required to cause such work to comply with such terms and provisions, and in the event that the Port Authority shall have made an Area IA Restoration Work Payment for such work, the Port Authority shall have the right to withhold and credit future Area IA Restoration Work Payments against any such amount or upon demand of the Port Authority, the Lessee shall pay to the Port Authority the amount of any such Area IA Restoration Work Payment or portion thereof covering such work.

(e) The entire obligation of the Port Authority under the Lease for the Cost of the Lessee's Area IA Restoration Work shall be limited in amount to the Restoration Amount (as hereinabove defined and subject to paragraph (i) below) to be paid to the Lessee pursuant to certificates of the Lessee submitted in accordance with paragraph (c) above.

(f) The Lessee shall promptly submit to the Port Authority further information, including but not limited to its estimate of the amounts and times of the various payments it will be making connection with the Cost of the Lessee's Area IA Restoration Work as the Port Authority may from time to time, and at any time, request, and shall be available itself or cause its architect or engineer to be available for consultation in connection with payment certificates submitted pursuant to paragraph (c) of this Section.

(g) Without limiting any other provision of this Lease, the Port Authority shall have the right at any time and from time to time by its agents, employees and representatives to audit and inspect during regular business hours the books, records and other data of the Lessee relating to the Cost of the Lessee's Area IA Restoration Work, or any part thereof, relating to the Cost of Construction Work, or any part thereof, including without limitation any and all contracts covering or relating to the construction work or any portion thereof, any and all invoices covering or relating to the construction work or any portion thereof and the actual, original cancelled checks of the Lessee, or microfiche copies (front and back) of said checks as supplied to the Lessee by the drawee bank(s), covering the construction work or any portion thereof or any invoice or invoices with respect thereto; it being understood

that the Port Authority shall not be bound by any prior audit conducted by it. The Lessee agrees to keep such books, records and other data within the Port of New York District, or, on the condition that the Lessee shall pay to the Port Authority all travel costs and expenses determined by the Port Authority for Port Authority auditors and other representatives in connection with any audit at locations outside the Port of New York District, the Lessee may maintain said records and books of account and make them available to the Port Authority at the Lessee's offices at 1030 Delta Boulevard, Hartsfield Atlanta International Airport, Atlanta, Georgia 30320, but the Lessee shall not be required to maintain any such books, records and other data for more than four (4) years after the Lessee has delivered the applicable certificate marked "Final" called for under paragraph (c) (3) above.

(h) (1) If the Lessee has included in any portion of the Cost of the Lessee's Area IA Restoration Work any item as having been incurred, but which in the opinion of the Port Authority was not so incurred, or which in the opinion of the Port Authority if so incurred is not an item properly chargeable to such element of cost under sound accounting practice, or does not represent an appropriate division of the costs of a particular contract which are required to be designated according to time of performance or delivery, and the parties have been unable to resolve their differences within 90 days after Port Authority gave its notice objecting to the same, the Port Authority's decision as to the nature of the item of construction cost shall be final; provided, however, that if and to the extent an item disallowed by the Port Authority in accordance with the foregoing and therefore not reimbursable to the Lessee under this Section 90 is nevertheless eligible for treatment as Lessee Capital Inverstment under the terms of Section 88 hereof then such item may be so treated pursuant to said said Section 88 hereof.

(2) The Lessee shall ensure that it properly segregates the Cost of the Lessee's Area IA Restoration Work from the Cost of the Construction Work (as defined in Section 89 hereof) and in the event any contract or item of work includes parts of both Area IA Restoration Work and the construction work under Section 2 hereof, the Lessee shall, in accordance with sound accounting practices, ensure that there shall be a proper allocation and apportionment of the costs of such work so that the costs thereof which cover or apply to the Area IA Restoration Work are allocated to the Cost of the Area IA Restoration Work and the costs thereof which cover or apply to the construction work under Section 2 hereof are allocated to the Cost of the Construction Work as defined in Section 89 hereof.

(i) It is hereby expressly acknowledged that prior to the execution of this Agreement the Port Authority and the Lessee entered into a letter agreement dated May 19, 1993 (herein referred to as the "Prior Letter Agreement") covering the reimbursement payment by the Port Authority from the Restoration Amount for certain Area IA Restoration Work (described and defined in the Prior

Letter Agreement as the "Permittee's Space Improvement Work") and pursuant to which the Port Authority paid to the Lessee and the Lessee received from the Port Authority the sum of $802,821.52 from the Restoration Amount.

Section 91. General Airport Agreement

It is recognized that the General Airport Agreement, as defined in Section 81 hereof, and the principles and formula set forth therein for the calculation of flight fees, including the costs recovery accounting principles, have by agreement or policy been the basis for determining flight fees payable by various aircraft operators at the Airport in addition to the aircraft operators who are the actual signatory lessees to the General Airport Agreement. In the event of the expiration and non-extension or non-renewal of the General Airport Agreement, the same formula, accounting principles and costs recovery methodology now set forth in the General Airport Agreement for the calculation of flight fees shall continue to be utilized for the calculation of flight fees at the Airport for the Lessee until such time as the General Airport Agreement is formally replaced by a new agreement or agreements or by a new policy or policies. The Port Authority has advised the Lessee that it is the intention of the Port Authority that with respect to the formula, accounting principles and the costs recovery methodology for the calculation of flight fees upon the expiration and non-extension or non-renewal of the General Airport Agreement all aircraft operators at the Airport which are similarly situated will be treated in a similar manner.

Section 92. The Lessee's Master Plan for the Premises

During the calendar years 1994, and 1999 the Lessee shall submit to the Port Authority for the Port Authority's information and review, the Lessee's Master Plan for the premises which Master Plan shall include but not be limited to the Lessee's utilization, marketing, development and construction plans for the premises for the next five years and shall include on or before October 31, 1999 the Lessee's comprehensive plan for the Phase II Construction Work. The Lessee shall meet with the Port Authority as requested by the Port Authority to discuss and review the Lessee's Master Plan and shall provide to the Port Authority upon request such plans, information and data as the Port Authority shall reasonably request in connection with its review of the Lessee's Master Plan.

Section 93. Pedestrian Connector

(a) As used herein "Pedestrian Connector" shall mean the elevated, enclosed bridge and its foundations, supports, utility systems, equipment and appurtenance, as shown in hatch and in stipple on Exhibit B. In the event that Building No. 53 shall no longer be part of the premises hereunder, the Lessee shall keep open and maintain that portion of the Pedestrian Connector located in Area IA of the premises in accordance with the terms and conditions of the Lease so that at all times during the term of the Lease it

can be used as a means of pedestrian ingress and egress to and from Building No. 53 and Building No. 54. In the event Building No. 54 shall no longer be a part of the premises hereunder, the Lessee shall keep open and maintain that portion of the Pedestrian Connector located in Area IB of the premises in accordance with the terms and conditions of the Lease so that at all times during the term of the Lease it can be used as a means of pedestrian ingress and egress to and from Building No. 53 and Building No. 54.

(b) (1) In the event that Building No. 53 shall no longer be a part of the premises hereunder, that portion of the Pedestrian Connector located in Area IA together with that portion of the Pedestrian Connector located in Building No. 53 shall be subject to a joint and mutual easement as a pedestrian passageway to be used jointly by the Lessee on one hand and by the Port Authority and any lessee(s), sublessee(s), occupant(s) or user(s) on the other hand who pursuant to Port Authority permission may lease, rent, occupy or use Building No. 53 for providing to the Lessee ingress to and egress from Building No. 53 on one hand and Building No. 54 on the other hand and for providing to the Port Authority and such lessee(s), sublessee(s), occupant(s) or user(s) ingress to and egress from Building No. 53 on one hand and Building No. 54 on the other hand.

(2) In the event that Building No. 54 shall no longer be a part of the premises hereunder, that portion of the Pedestrian Connector located in Area IB together with that portion of the Pedestrian Connector located in Building No. 54 shall be subject to a joint and mutual easement as a pedestrian passageway to be used jointly by the Lessee on one hand and by the Port Authority and any lessee(s), sublessee(s), occupant(s) or user(s) on the other hand who pursuant to Port Authority permission may lease, rent, occupy or use Building No. 54 for providing to the Lessee ingress to and egress from Building No. 54 on one hand and Building No. 54 on the other hand and for providing to the Port Authority and such lessee(s), sublessee(s), occupant(s) or user(s) ingress to and egress from Building No. 54 on one hand and Building No. 53 on the other hand.

(c) (1) In the event that Building No. 53 shall no longer be a part of the premises hereunder, the Lessee shall care for, maintain, repair and rebuild in accordance with the terms and provisions of the Lease that portion of the Pedestrian Connector located in the premises and shall cooperate with the Port Authority and any lessee(s), subuser(s), occupant(s) or user(s) who pursuant to Port Authority permission may lease, rent, occupy or use Building No. 53 in the care, maintenance, repair and rebuilding of the Pedestrian Connector. The Port Authority shall include in any agreement it shall enter into with any such lessee, subuser, occupant or user of Building No. 53 terms and provisions similar to those set forth in this Section 93.

(2) In the event that Building No. 54 shall no longer be a part of the premises hereunder, the Lessee shall care for,

maintain, repair and rebuild in accordance with the terms and provisions of the Lease that portion of the Pedestrian Connector located in the premises and shall cooperate with the Port Authority and any lessee(s), subuser(s), occupant(s) or user(s) who pursuant to Port Authority permission may lease, rent, occupy or use Building No. 54 in the care, maintenance, repair and rebuilding of the Pedestrian Connector. The Port Authority shall include in any agreement it shall enter into with any such lessee, subuser, occupant or user of Building No. 54 terms and provisions similar to those set forth in this Section 93.

Section 94. Entire Agreement

This Agreement consists of the following: Sections 1 through 94, inclusive, and Exhibits A, A-1, A-2, A-3, B, C, D, E, S, X and Y and Schedules E, R-1R and R-2R. 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 the other unless expressed in writing in this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year first above written.

ATTEST:

Secretary

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By

(Title) DEPUTY DIRECTOR OF AVIATION

(Seal)

ATTEST:

Leslie Klemperer

~~Secretary~~

LESLIE P. KLEMPERER
ASSISTANT SECRETARY

DELTA AIR LINES, INC.

By R. A. McClelland

(Title) R. A. McClelland
Senior Vice President ~~President~~
Corporate Services

(Corporate Seal)

APPROVED:
FORM | TERMS

EXHIBIT E

PHASE I CONSTRUCTION WORK

NOTE: Underlined, starred items are personal property title to which shall pass to the Port Authority upon the installation thereof.

I. BUILDING NO. 53

(a) Signage

Installation of interior and exterior signage and directional information. Asbestos abatement/removal as required.

(b) Roof/Expansion Joints/Roadways

Replace existing terminal roof. Replace interior roadway expansion joints and resurface roadways. Asbestos abatement/removal as required.

(c) Inbound Baggage Claim Renovation

Demolition of existing baggage claim units and installation of new Delta Air Lines standard widebody - capable inbound claim units*. Asbestos abatement/removal as required.

(d) Elevators/Escalators/Moving Walkways

Renovate vertical and horizontal transportation systems throughout facility and provide handicap access per Americans With Disabilities Act (ADA). Asbestos abatement/removal as required.

(e) Support Space Renovation

Renovate interior areas to provide support space for Lessee's operational services such as Flight Operations, In-Flight Service, Aircraft Maintenance. Asbestos abatement/removal as required.

(f) Crown Room/Business Class Lounge/First Class Lounge/Group Rooms Renovation

Renovate and expand club rooms to reflect Lessee's corporate identity. Asbestos abatement/removal as required.

(g) Ticket Counters/Concourse/Holdroom Renovation

Renovate holdrooms, concourse area ticket counters*, automated conveyor systems*. Asbestos abatement/removal as required.

(h) Loading Bridge and Ramp Upgrade

Installation of loading bridges and foundations*, 400HZ ground power units*, associated building modifications, fuel pit relocations, and concrete apron to reflect final aircraft layout. Asbestos abatement/removal as required.

(i) Building Systems Upgrade

Installation of energy management systems and upgrade HVAC systems. Upgrade electrical switchgear and distribution network. Provide sprinkler systems and related life safety equipment as required by local building codes. Remove transformers containing PCB's and install new transformers. Install additional exterior lighting. Asbestos abatement/removal as required.

(j) Gate Expansion

Installation of additional building gates through building expansion and ramp modifications. Asbestos abatement/removal as required.

(k) FIS - Meeter Greeter Area

Installation of new wall, floor, ceiling finishes and additional lighting. Asbestos abatement/removal as required.

(l) Ramp Filling Station/Glycol Facility

Provide facilities for a ramp equipment fueling station and glycol dispensing and glycol recovery facilities. Asbestos abatement/removal as required.

(m) Roadways

Renovations to the elevated and the lower level roadway accesses to maintain the structural integrity, improve traffic flow. Asbestos abatement/removal as required.

(n) Restroom Upgrades

Renovation and expansion of restrooms. Asbestos abatement/removal as required.

II BUILDING NO. 54

(a) Signage

Installation of interior and exterior signage and directional information. Asbestos abatement/removal as required.

(b) Inbound Baggage Claim Renovation

Demolition of existing baggage claim units and installation of new Delta Air Lines standard widebody - capable inbound claims units*. Asbestos abatement/removal as required.

(c) Elevators/Escalators

Renovate vertical transportation systems throughout facility and provide handicap access per Americans With Disabilities Act (ADA). Asbestos abatement/removal as required.

(d) Support Space Renovation

Renovate interior areas to provide support space for Lessee's operational services such as Flight Operations, In-Flight Service, Aircraft Maintenance. Asbestos abatement/removal as required.

(e) Crown Room/Business Class Lounge/First Class Lounge/Group Rooms Renovation

Renovate and expand club rooms to reflect Lessee's corporate identity. Asbestos abatement/removal as required.

(f) Ticket Counters/Concourses/Holdroom Renovation

Renovate holdrooms, concourse area ticket counters*, automated conveyor systems*. Asbestos abatement/removal as required.

(g) Loading Bridge and Ramp Upgrades

Installation of loading bridges and foundations*, 400HZ ground power units*, associated building modifications, fuel pit relocations; and concrete apron to reflect final aircraft pit relocations, and concrete apron to reflect final aircraft layout. Asbestos abatement/removal as required.

(h) Building Systems Upgrade

Installation of energy management systems and upgrade HVAC systems. Upgrade electrical switchgear and distribution network. Provide sprinkler systems and related life safety equipment as required by local codes. Install additional exterior lighting. Asbestos abatement/removal as required.

(i) Gate Expansion

Installation of additional building gates through building expansion and ramp modifications. Asbestos abatement/removal as required

(j) Meeter Greeter Area

Installation of new wall, floor, ceiling finishes and additional lighting. Asbestos abatement/removal as required.

(k) Roadways

Renovation to the elevated and the lower level roadway accesses to maintain the structural integrity, improve traffic flow. Asbestos abatement/removal as required.

For the Port Authority

Initialled:

For Delta Air Lines, Inc.
(the Lessee)

Schedule R-1R to Lease AYC-325 between the Port Authority of New York and New Jersey and Delta Air Lines, Inc. (the "Lessee")

st of the PBGC Assignment: First Additional Facility Rental

The annual rental rates of the First Additional Facility Rental are:

1993
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015

(2.a.)

The monthly rental payments of the First Additional Facility Rental are payable by the Lessee on the first day of each month, and in the amounts stated as follows:

01-Jan-93
01-Feb-93
01-Mar-93
01-Apr-93
01-May-93
01-Jun-93
01-Jul-93
01-Aug-93
01-Sep-93
01-Oct-93
01-Nov-93
01-Dec-93
01-Jan-94
01-Feb-94
01-Mar-94
01-Apr-94
01-May-94
01-Jun-94
01-Jul-94
01-Aug-94

(2.a.)

Schedule R-1R to Lease AYC-325 between the Port Authority of New York and New Jersey and Delta Air Lines, Inc. (the "Lessee")

:t of the PBGC Assignment: First Additional Facility Rental

01-Sep-94
01-Oct-94
01-Nov-94
01-Dec-94
01-Jan-95
01-Feb-95
01-Mar-95
01-Apr-95
01-May-95
01-Jun-95
01-Jul-95 (2.a.)
01-Aug-95
01-Sep-95
01-Oct-95
01-Nov-95
01-Dec-95
01-Jan-96
01-Feb-96
01-Mar-96
01-Apr-96
01-May-96
01-Jun-96
01-Jul-96
01-Aug-96
01-Sep-96
01-Oct-96
01-Nov-96
01-Dec-96
01-Jan-97
01-Feb-97
01-Mar-97
01-Apr-97
01-May-97
01-Jun-97
01-Jul-97
01-Aug-97
01-Sep-97
01-Oct-97
01-Nov-97
01-Dec-97
01-Jan-98
01-Feb-98
01-Mar-98
01-Apr-98
01-May-98
01-Jun-98
01-Jul-98
01-Aug-98
01-Sep-98

Schedule R-1R to Lease AYC-325 between the Port Authority of New York and New Jersey and Delta Air Lines, Inc. (the "Lessee")

st of the PBGC Assignment: *First Additional Facility Rental*

01-Oct-98	
01-Nov-98	
01-Dec-98	
01-Jan-99	
01-Feb-99	
01-Mar-99	
01-Apr-99	
01-May-99	
01-Jun-99	
01-Jul-99	
01-Aug-99	
01-Sep-99	(2.a.)
01-Oct-99	
01-Nov-99	
01-Dec-99	
01-Jan-2000	
01-Feb-2000	
01-Mar-2000	
01-Apr-2000	
01-May-2000	
01-Jun-2000	
01-Jul-2000	
01-Aug-2000	
01-Sep-2000	
01-Oct-2000	
01-Nov-2000	
01-Dec-2000	
01-Jan-2001	
01-Feb-2001	
01-Mar-2001	
01-Apr-2001	
01-May-2001	
01-Jun-2001	
01-Jul-2001	
01-Aug-2001	
01-Sep-2001	
01-Oct-2001	
01-Nov-2001	
01-Dec-2001	
01-Jan-2002	
01-Feb-2002	
01-Mar-2002	
01-Apr-2002	
01-May-2002	
01-Jun-2002	
01-Jul-2002	
01-Aug-2002	
01-Sep-2002	
01-Oct-2002	

Schedule R-1R to Lease AYC-325 between the Port Authority of New York and New Jersey and Delta Air Lines, Inc. (the "Lessee")

Cost of the PBGC Assignment: First Additional Facility Rental

01-Nov-2002
01-Dec-2002
01-Jan-2003
01-Feb-2003
01-Mar-2003
01-Apr-2003
01-May-2003
01-Jun-2003
01-Jul-2003
01-Aug-2003
01-Sep-2003
01-Oct-2003
01-Nov-2003
01-Dec-2003
01-Jan-2004
01-Feb-2004
01-Mar-2004
01-Apr-2004
01-May-2004
01-Jun-2004
01-Jul-2004
01-Aug-2004
01-Sep-2004
01-Oct-2004
01-Nov-2004
01-Dec-2004
01-Jan-2005
01-Feb-2005
01-Mar-2005
01-Apr-2005
01-May-2005
01-Jun-2005
01-Jul-2005
01-Aug-2005
01-Sep-2005
01-Oct-2005
01-Nov-2005
01-Dec-2005
01-Jan-2006
01-Feb-2006
01-Mar-2006
01-Apr-2006
01-May-2006
01-Jun-2006
01-Jul-2006
01-Aug-2006
01-Sep-2006
01-Oct-2006
01-Nov-2006

(2.a.)

Schedule R-1R to Lease AYC-325 between the Port Authority of New York and New Jersey and Delta Air Lines, Inc. (the "Lessee")

st of the PBGC Assignment: First Additional Facility Rental

01-Dec-2006
01-Jan-2007
01-Feb-2007
01-Mar-2007
01-Apr-2007
01-May-2007
01-Jun-2007
01-Jul-2007
01-Aug-2007
01-Sep-2007
01-Oct-2007
01-Nov-2007
01-Dec-2007
01-Jan-2008
01-Feb-2008
01-Mar-2008
01-Apr-2008
01-May-2008
01-Jun-2008
01-Jul-2008
01-Aug-2008
01-Sep-2008
01-Oct-2008
01-Nov-2008
01-Dec-2008
01-Jan-2009
01-Feb-2009
01-Mar-2009
01-Apr-2009
01-May-2009
01-Jun-2009
01-Jul-2009
01-Aug-2009
01-Sep-2009
01-Oct-2009
01-Nov-2009
01-Dec-2009
01-Jan-2010
01-Feb-2010
01-Mar-2010
01-Apr-2010
01-May-2010
01-Jun-2010
01-Jul-2010
01-Aug-2010
01-Sep-2010
01-Oct-2010
01-Nov-2010
01-Dec-2010

(2.a.)

Schedule R-1R to Lease AYC-325 between the Port Authority of New York and New Jersey and Delta Air Lines, Inc. (the "Lessee")

st of the PBGC Assignment: First Additional Facility Rental

01-Jan-2011
01-Feb-2011
01-Mar-2011
01-Apr-2011
01-May-2011
01-Jun-2011
01-Jul-2011
01-Aug-2011
01-Sep-2011
01-Oct-2011
01-Nov-2011
01-Dec-2011
01-Jan-2012
01-Feb-2012
01-Mar-2012
01-Apr-2012
01-May-2012
01-Jun-2012
01-Jul-2012
01-Aug-2012
01-Sep-2012
01-Oct-2012
01-Nov-2012
01-Dec-2012
01-Jan-2013
01-Feb-2013
01-Mar-2013
01-Apr-2013
01-May-2013
01-Jun-2013
01-Jul-2013
01-Aug-2013
01-Sep-2013
01-Oct-2013
01-Nov-2013
01-Dec-2013
01-Jan-2014
01-Feb-2014
01-Mar-2014
01-Apr-2014
01-May-2014
01-Jun-2014
01-Jul-2014
01-Aug-2014
01-Sep-2014
01-Oct-2014
01-Nov-2014
01-Dec-2014
01-Jan-2015

(2.a.)

Schedule R-1R to Lease AYC-325 between the Port Authority of New York and New Jersey and Delta Air Lines, Inc. (the "Lessee")

he PBGC Assignment: *First Additional Facility Rental*

01-Feb-2015
01-Mar-2015
01-Apr-2015
01-May-2015 (2.a.)
01-Jun-2015
01-Jul-2015
01-Aug-2015
01-Sep-2015
01-Oct-2015
01-Nov-2015

If the Lessee receives a Lease Supplement, as defined in and subject to Section 3A, then the above annual rental for 2015 will become , and the annual rentals for 2016 and 2017 shall be , and the monthly rental payments of the First Additional Facility Rental, payable by the Lessee on the first day of each month, shall be in the amounts stated as follows:

01-Nov-2015
01-Dec-2015
01-Jan-2016
01-Feb-2016
01-Mar-2016
01-Apr-2016
01-May-2016
n-2016 (2.a.)
01-Jul-2016
01-Aug-2016
01-Sep-2016
01-Oct-2016
01-Nov-2016
01-Dec-2016
01-Jan-2017
01-Feb-2017
01-Mar-2017
01-Apr-2017
01-May-2017
01-Jun-2017
01-Jul-2017
01-Aug-2017
01-Sep-2017
01-Oct-2017
01-Nov-2017
01-Dec-2017

Initialled:

For the Port Authority

For the Lessee

Schedule R-2R to Lease AYC-325 between the Port Authority of New York and New Jersey and Delta Air Lines, Inc. (the "Lessee")

st of the Lessee's Initial Flightcenter Improvement Work: Second Additional Facility Rental

The annual rental rates of the Second Additional Facility Rental are:

1993
1994
1995
1996
1997
1998
1999
2000
2001 (2.a.)
2002
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015

The monthly rental payments of the Second Additional Facility Rental are payable by the Lessee on the firs day of each month, and in the amounts stated as follows:

01-Jan-93
01-Feb-93
01-Mar-93
01-Apr-93
01-May-93
01-Jun-93
01-Jul-93
01-Aug-93
01-Sep-93 (2.a.)
01-Oct-93
01-Nov-93
01-Dec-93
01-Jan-94
01-Feb-94
01-Mar-94
01-Apr-94
01-May-94
01-Jun-94
01-Jul-94
01-Aug-94

Schedule R-2R to Lease AYC-325 between the Port Authority of New York and New Jersey and Delta Air Lines, Inc. (the "Lessee")

ıst of the Lessee's Initial Flightcenter Improvement Work: Second Additional Facility Rental

01-Sep-94
01-Oct-94
01-Nov-94
01-Dec-94
01-Jan-95
01-Feb-95
01-Mar-95
01-Apr-95
01-May-95
01-Jun-95
01-Jul-95
01-Aug-95
01-Sep-95
01-Oct-95
01-Nov-95
01-Dec-95
01-Jan-96
01-Feb-96
01-Mar-96
01-Apr-96
01-May-96
01-Jun-96
01-Jul-96
01-Aug-96
01-Sep-96
01-Oct-96
01-Nov-96
01-Dec-96
01-Jan-97
01-Feb-97
01-Mar-97
01-Apr-97
01-May-97
01-Jun-97
01-Jul-97
01-Aug-97
01-Sep-97
01-Oct-97
01-Nov-97
01-Dec-97
01-Jan-98
01-Feb-98
01-Mar-98
01-Apr-98
01-May-98
01-Jun-98
01-Jul-98
01-Aug-98
01-Sep-98

(2.a.)

Schedule R-2R to Lease AYC-325 between the Port Authority of New York and New Jersey and Delta Air Lines, Inc. (the "Lessee")

ost of the Lessee's Initial Flightcenter Improvement Work: Second Additional Facility Rental

01-Oct-98
01-Nov-98
01-Dec-98
01-Jan-99
01-Feb-99
01-Mar-99
01-Apr-99
01-May-99
01-Jun-99
01-Jul-99
01-Aug-99
01-Sep-99
01-Oct-99
01-Nov-99
01-Dec-99
01-Jan-2000
01-Feb-2000
01-Mar-2000
01-Apr-2000
01-May-2000
01-Jun-2000
01-Jul-2000
01-Aug-2000
01-Sep-2000
01-Oct-2000
01-Nov-2000
01-Dec-2000
01-Jan-2001
01-Feb-2001
01-Mar-2001
01-Apr-2001
01-May-2001
01-Jun-2001
01-Jul-2001
01-Aug-2001
01-Sep-2001
01-Oct-2001
01-Nov-2001
01-Dec-2001
01-Jan-2002
01-Feb-2002
01-Mar-2002
01-Apr-2002
01-May-2002
01-Jun-2002
01-Jul-2002
01-Aug-2002
01-Sep-2002
01-Oct-2002

(2.a.)

Schedule R-2R to Lease AYC-325 between the Port Authority of New York and New Jersey and Delta Air Lines, Inc. (the "Lessee")

Cost of the Lessee's Initial Flightcenter Improvement Work: Second Additional Facility Rental

01-Nov-2002
01-Dec-2002
01-Jan-2003
01-Feb-2003
01-Mar-2003
01-Apr-2003
01-May-2003
01-Jun-2003
01-Jul-2003
01-Aug-2003
01-Sep-2003
01-Oct-2003
01-Nov-2003
01-Dec-2003
01-Jan-2004
01-Feb-2004
01-Mar-2004
01-Apr-2004
01-May-2004
01-Jun-2004
01-Jul-2004
01-Aug-2004
01-Sep-2004
01-Oct-2004
01-Nov-2004
01-Dec-2004
01-Jan-2005
01-Feb-2005
01-Mar-2005
01-Apr-2005
01-May-2005
01-Jun-2005
01-Jul-2005
01-Aug-2005
01-Sep-2005
01-Oct-2005
01-Nov-2005
01-Dec-2005
01-Jan-2006
01-Feb-2006
01-Mar-2006
01-Apr-2006
01-May-2006
01-Jun-2006
01-Jul-2006
01-Aug-2006
01-Sep-2006
01-Oct-2006
01-Nov-2006

(2.a.)

Schedule R-2R to Lease AYC-325 between the Port Authority of New York and New Jersey and Delta Air Lines, Inc. (the "Lessee")

Cost of the Lessee's Initial Flightcenter Improvement Work: Second Additional Facility Rental

01-Dec-2006
01-Jan-2007
01-Feb-2007
01-Mar-2007
01-Apr-2007
01-May-2007
01-Jun-2007
01-Jul-2007
01-Aug-2007
01-Sep-2007
01-Oct-2007
01-Nov-2007
01-Dec-2007
01-Jan-2008
01-Feb-2008
01-Mar-2008
01-Apr-2008
01-May-2008
01-Jun-2008
01-Jul-2008
01-Aug-2008
01-Sep-2008
01-Oct-2008
01-Nov-2008
01-Dec-2008
01-Jan-2009
01-Feb-2009
01-Mar-2009
01-Apr-2009
01-May-2009
01-Jun-2009
01-Jul-2009
01-Aug-2009
01-Sep-2009
01-Oct-2009
01-Nov-2009
01-Dec-2009
01-Jan-2010
01-Feb-2010
01-Mar-2010
01-Apr-2010
01-May-2010
01-Jun-2010
01-Jul-2010
01-Aug-2010
01-Sep-2010
01-Oct-2010
01-Nov-2010
01-Dec-2010

(2.a.)

st of the Lessee's Initial Flightcenter Improvement Work: Second Additional Facility Rental

01-Jan-2011
01-Feb-2011
01-Mar-2011
01-Apr-2011
01-May-2011
01-Jun-2011
01-Jul-2011
01-Aug-2011
01-Sep-2011
01-Oct-2011
01-Nov-2011
01-Dec-2011
01-Jan-2012
01-Feb-2012
01-Mar-2012
01-Apr-2012
01-May-2012
01-Jun-2012
01-Jul-2012
01-Aug-2012
01-Sep-2012
01-Oct-2012
01-Nov-2012
01-Dec-2012
01-Jan-2013
01-Feb-2013
01-Mar-2013
01-Apr-2013
01-May-2013
01-Jun-2013
01-Jul-2013
01-Aug-2013
01-Sep-2013
01-Oct-2013
01-Nov-2013
01-Dec-2013
01-Jan-2014
01-Feb-2014
01-Mar-2014
01-Apr-2014
01-May-2014
01-Jun-2014
01-Jul-2014
01-Aug-2014
01-Sep-2014
01-Oct-2014
01-Nov-2014
01-Dec-2014
01-Jan-2015

(2.a.)

Schedule R-2R to Lease AYC-325 between the Port Authority of New York and New Jersey and Delta Air Lines, Inc. (the "Lessee")

st of the Lessee's Initial Flightcenter Improvement Work: Second Additional Facility Rental

01-Feb-2015
01-Mar-2015
01-Apr-2015
01-May-2015
01-Jun-2015
01-Jul-2015
01-Aug-2015
01-Sep-2015
01-Oct-2015
01-Nov-2015

(2.a.)

If the Lessee receives a Lease Supplement, as defined in and subject to Section 3A, then the above annual rental for 2015 will become , and the annual rentals for 2016 and 2017 shall be , and the monthly rental payments of the Second Additional Facility Rental, payable by the Lessee on the first day of each month, shall be in the amounts stated as follows:

01-Nov-2015
01-Dec-2015
01-Jan-2016
01-Feb-2016
01-Mar-2016
01-Apr-2016
01-May-2016
01-Jun-2016
01-Jul-2016
01-Aug-2016
01-Sep-2016
01-Oct-2016
01-Nov-2016
01-Dec-2016
01-Jan-2017
01-Feb-2017
01-Mar-2017
01-Apr-2017
01-May-2017
01-Jun-2017
01-Jul-2017
01-Aug-2017
01-Sep-2017
01-Oct-2017
01-Nov-2017
01-Dec-2017

(2.a.)

Initialled:

For the Port Authority

For the Lessee

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 Lessee shall require the Contractor, as hereinafter defined, to comply with the provisions set forth in this Schedule E and in Section 2(b)(18) of Port Authority Agreement AYC-325 (herein called "the Lease") with Delta Air Lines, Inc. (herein called the "Lessee"). The provisions set forth in this Part I are similar to the conditions for bidding on federal government contracts 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 Manager of the Office of Business and Job Opportunity of the Port Authority 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 sub-contractor; 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 decisions including specific review of these items with on-premises 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 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 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 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 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 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. 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 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).

(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/WOMEN-OWNED BUSINESS ENTERPRISES

As a matter of policy the Port Authority requires the Lessee and the Lessee shall itself and shall require the general contractor or other construction supervisor and each of the Lessee's contractors to use every good faith effort to provide for meaningful participation by Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs) in the construction 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.

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

For the Port Authority

Initialled:

For the Lessee

EXEMPTION (4) – DRAWINGS OF NON-PUBLIC AREAS

EXHIBIT E

PHASE I CONSTRUCTION WORK

NOTE: Underlined, starred items are personal property title to which shall pass to the Port Authority upon the installation thereof.

I. BUILDING NO. 53

(a) Signage

Installation of interior and exterior signage and directional information. Asbestos abatement/removal as required.

(b) Roof/Expansion Joints/Roadways

Replace existing terminal roof. Replace interior roadway expansion joints and resurface roadways. Asbestos abatement/removal as required.

(c) Inbound Baggage Claim Renovation

Demolition of existing baggage claim units and installation of new Delta Air Lines standard widebody - capable inbound claim units*. Asbestos abatement/removal as required.

(d) Elevators/Escalators/Moving Walkways

Renovate vertical and horizontal transportation systems throughout facility and provide handicap access per Americans With Disabilities Act (ADA). Asbestos abatement/removal as required.

(e) Support Space Renovation

Renovate interior areas to provide support space for Lessee's operational services such as Flight Operations, In-Flight Service, Aircraft Maintenance. Asbestos abatement/removal as required.

(f) Crown Room/Business Class Lounge/First Class Lounge/Group Rooms Renovation

Renovate and expand club rooms to reflect Lessee's corporate identity. Asbestos abatement/removal as required.

(g) Ticket Counters/Concourse/Holdroom Renovation

Renovate holdrooms, concourse area ticket counters*, automated conveyor systems*. Asbestos abatement/removal as required.

(h) Loading Bridge and Ramp Upgrade

Installation of loading bridges and foundations*, 400HZ ground power units*, associated building modifications, fuel pit relocations, and concrete apron to reflect final aircraft layout. Asbestos abatement/removal as required.

(i) Building Systems Upgrade

Installation of energy management systems and upgrade HVAC systems. Upgrade electrical switchgear and distribution network. Provide sprinkler systems and related life safety equipment as required by local building codes. Remove transformers containing PCB's and install new transformers. Install additional exterior lighting. Asbestos abatement/removal as required.

(j) Gate Expansion

Installation of additional building gates through building expansion and ramp modifications. Asbestos abatement/removal as required.

(k) FIS - Meeter Greeter Area

Installation of new wall, floor, ceiling finishes and additional lighting. Asbestos abatement/removal as required.

(l) Ramp Filling Station/Glycol Facility

Provide facilities for a ramp equipment fueling station and glycol dispensing and glycol recovery facilities. Asbestos abatement/removal as required.

(m) Roadways

Renovations to the elevated and the lower level roadway accesses to maintain the structural integrity, improve traffic flow. Asbestos abatement/removal as required.

(n) Restroom Upgrades

Renovation and expansion of restrooms. Asbestos abatement/removal as required.

II BUILDING NO. 54

(a) Signage

Installation of interior and exterior signage and directional information. Asbestos abatement/removal as required.

(b) Inbound Baggage Claim Renovation

Demolition of existing baggage claim units and installation of new Delta Air Lines standard widebody - capable inbound claims units*. Asbestos abatement/removal as required.

(c) Elevators/Escalators

Renovate vertical transportation systems throughout facility and provide handicap access per Americans With Disabilities Act (ADA). Asbestos abatement/removal as required.

(d) Support Space Renovation

Renovate interior areas to provide support space for Lessee's operational services such as Flight Operations, In-Flight Service, Aircraft Maintenance. Asbestos abatement/removal as required.

(e) Crown Room/Business Class Lounge/First Class Lounge/Group Rooms Renovation

Renovate and expand club rooms to reflect Lessee's corporate identity. Asbestos abatement/removal as required.

(f) Ticket Counters/Concourses/Holdroom Renovation

Renovate holdrooms, concourse area ticket counters*, automated conveyor systems*. Asbestos abatement/removal as required.

(g) Loading Bridge and Ramp Upgrades

Installation of loading bridges and foundations*, 400HZ ground power units*, associated building modifications, fuel pit relocations, and concrete apron to reflect final aircraft pit relocations, and concrete apron to reflect final aircraft layout. Asbestos abatement/removal as required.

(h) Building Systems Upgrade

Installation of energy management systems and upgrade HVAC systems. Upgrade electrical switchgear and distribution network. Provide sprinkler systems and related life safety equipment as required by local codes. Install additional exterior lighting. Asbestos abatement/removal as required.

(i) Gate Expansion

Installation of additional building gates through building expansion and ramp modifications. Asbestos abatement/removal as required

(j) Meeter Greeter Area

Installation of new wall, floor, ceiling finishes and additional lighting. Asbestos abatement/removal as required.

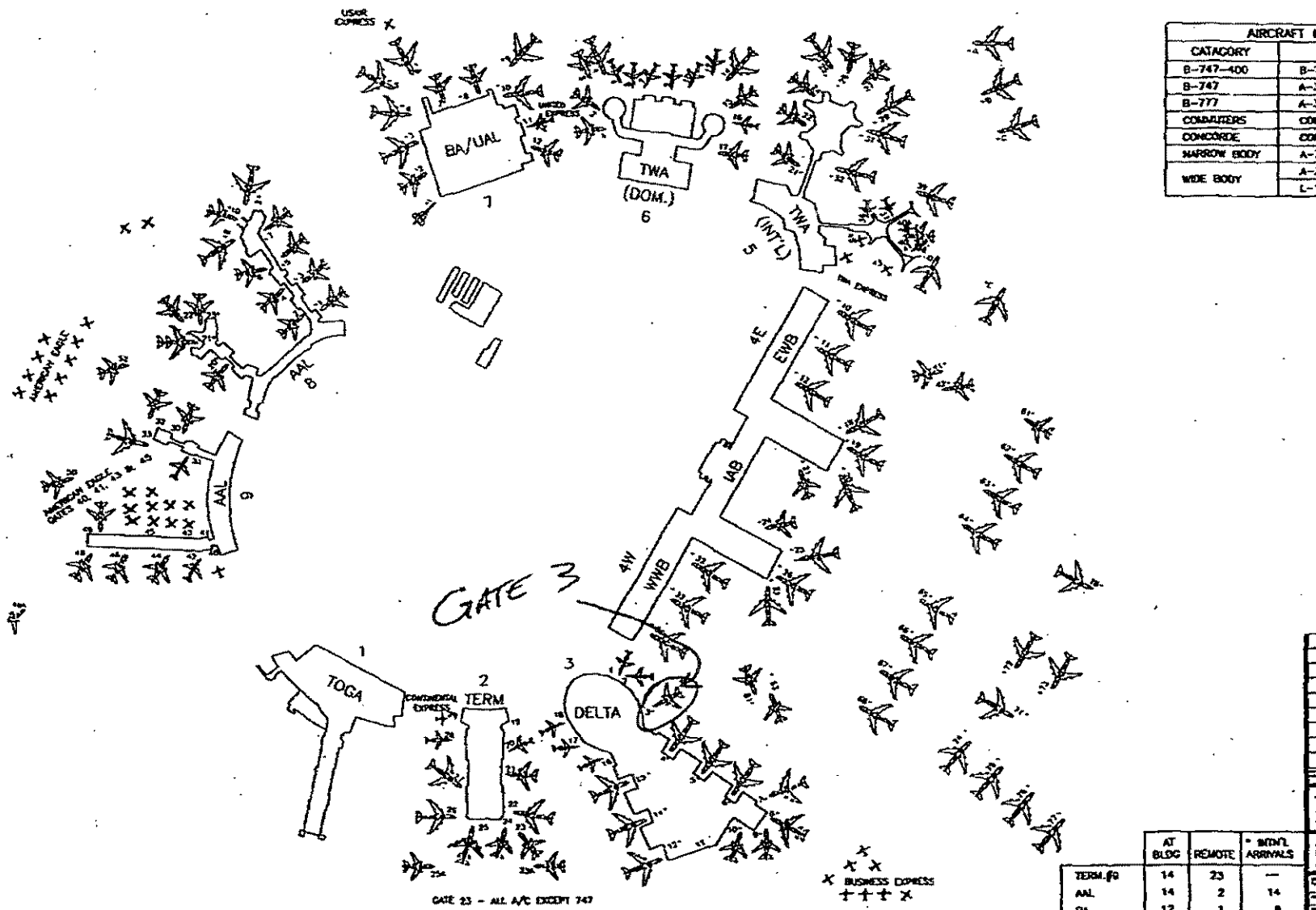
(k) Roadways

Renovation to the elevated and the lower level roadway accesses to maintain the structural integrity, improve traffic flow. Asbestos abatement/removal as required.

For the Port Authority

Initialled:

For Delta Air Lines, Inc.
(the Lessee)



SUPERSEDES DWG. NO. JFK-12393

AIRCRAFT CATAGOR	
CATAGORY	MO
B-747-400	B-747-400
B-747	A-340,(B-747-100,200,300)
B-777	A-330,B-777
COMMUTERS	COMMUTERS
CONCORDE	CONCORDE
NARROW BODY	A-320,B-727,B-737,B-757
WIDE BODY	A-300,A-310,B-767,DC-10,
	L-1011,MD-11

GATE SUMMARY
18 NARROW BODY
53 WIDE BODY
16 B-747-400
40 B-747
1 CONCORDE
39 COMMUTERS
169 TOTAL

	AT BLDG	REMOTE	* INT'L ARRIVALS
TERM #3	14	23	—
AAL	14	2	14
BA	12	1	9
TWA DOM.	12	—	—
TWA INT.	16	5	12
IAB & WB	14	20	34
DELTA	16	8	11
TERM #2	10	2	—
TOGA	4	—	—
TOTAL	108	61	80

THE PORT AUTHORITY OF NY & NJ
Aviation Project Management & Technical Services Division

John F. Kennedy International Airport JFK

AIRCRAFT GATES

JFK12364 7

Final Dated 2/9/09 Version 2

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

John F. Kennedy International Airport
Port Authority Lease No. AYC-325
Supplement No. 2

SUPPLEMENTAL AGREEMENT

THIS SUPPLEMENTAL AGREEMENT made as of August 1, 2008 (said date being hereinafter called the "***Effective Date***") by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called the "***Port Authority***") and DELTA AIR LINES, INC., a corporation organized under the laws of the State of Delaware (hereinafter called the "***Lessee***"),

WITNESSETH, THAT:

WHEREAS, by an agreement of lease made as of the first day of January, 1993 (which lease agreement, as the same has been and is herein extended, supplemented and amended is hereinafter called the "***Lease***"), the Port Authority let to the Lessee and the Lessee hired and took from the Port Authority certain premises at John F. Kennedy International Airport, all as more particularly described in the Lease; and

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

NOW, THEREFORE, for and in consideration of the covenants and mutual agreements herein contained, the Port Authority and the Lessee hereby agree, effective as of the Effective Date, unless otherwise stated, as follows:

1. The Port Authority and the Lessee hereby agree to extend the term of the letting under the Lease to December 31, 2017, unless sooner terminated, upon all of the terms and conditions of the Lease as herein amended, it being understood that this extension of the Lease shall not be nor be deemed to be a waiver by the Port Authority of any breach or default of any agreement, term, covenant or condition of this Agreement.

2. Paragraph (b) of Section 30 of the Lease entitled "Survival of the Obligations of the Lessee shall be amended by deleting the period appearing at the end of subparagraph (5) thereof and substituting a semi-colon and the word "and" in lieu thereof and by inserting the following new subparagraph (6) to read as follows:

"DELTA AIR LINES, INC.
CONTRACT NO. ____"

"(6) On account of the Lessee's obligation for the Design Rental, the amount of the total of all Design Rentals less the amount attributable to the installments of such Design Rentals payable prior to the effective date of termination or cancellation, except that the credit to be allowed for the installment thereof payable on the first day of the month in which the termination or cancellation is effective shall be prorated for the part of the month the letting remains in effect on the basis of the actual number of days in such month."

3. Section 41 of the Lease entitled, "Notices" shall be amended by deleting the address "One World Trade Center, New York, New York" appearing in the fourteenth (14th) and fifteenth (15th) lines thereof and by substituting in lieu thereof the address "225 Park Avenue South, New York, New York 10003" and by deleting the address "1030 Delta Boulevard, Hartsfield Atlanta International Airport, Atlanta, Georgia 30320 att: Director Airport and Corporate Affairs" appearing in the twenty-fifth (25th) through twenty-seventh (27th) lines thereof and by substituting in lieu thereof the address and title "1030 Delta Boulevard, Department 877, Atlanta, Georgia 30320, Attention: Vice-President-Corporate Real Estate."

4. Section 46 of the Lease entitled, "Place of Payments" shall be amended to read as follows:

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

THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY
P.O. BOX 95000-1517
PHILADELPHIA, PENNSYLVANIA 19195-1517

or made via the following wire transfer instructions:

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

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

5. Section 81 of the Lease entitled, "Definitions" shall be amended as follows:

a. Effective as of January 1, 2002, paragraph (b) thereof shall be amended to read as follows:

" '(b) ***John F. Kennedy International Airport*** ' or '***Airport***' shall mean John F. Kennedy International Airport, consisting of certain premises identified as 'John F. Kennedy International Airport' on Sheet JFK-1 of Exhibit G, and more particularly

described in Exhibit H, annexed to the Basic Lease, and such other property as may be acquired in connection with and added to such premises pursuant to the terms of the Basic Lease."

b. Effective as of January 1, 2002, paragraph (d) thereof shall be amended to read as follows:

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

6. Section 94 of the Lease entitled, "Entire Agreement" shall be deemed renumbered as "Section 97" and the number "94" appearing in the second (2nd) line thereof shall be deleted and the number "97" substituted in lieu thereof.

7. The following new Sections 94 through 96 are hereby added to the Lease and made a part thereof to read as follows:

"Section 94. <u>Development of Schematic Design Drawings and 30% Design Development for the Proposed Redevelopment of the Premises</u>

(a) The Port Authority and the Lessee have been in preliminary discussions with respect to the Lessee's redevelopment of the premises and the extension and amendment of the Lease in connection therewith (the '***Proposed Agreement***'). Although these discussions are very preliminary, the terms and conditions of any such Proposed Agreement have not been agreed to and the scope and nature of the redevelopment and the financial viability of and the source of funding for the proposed redevelopment have not been determined the Lessee has advised the Port Authority that it is conducting a schematic design, including without limitation 30% design development of selected elements of the schematic design work, and a project model for the proposed redevelopment work and has requested that the Port Authority provide a portion of the funding for such design work. The agreement of the parties on Port Authority funding of the Design Work, as herein after defined, and the repayment thereof are set forth in Sections 95 and 96 of this Lease.

(b) The Lessee has entered into a Special Services Agreement dated June 25, 2007 together with Change Orders Nos. 1 through 4 thereto with a joint venture of Skidmore, Owings & Merrill LLP Architects and Ove Arup & Partners Consulting Engineers PC (herein '***ARUP/SOM***'), a copy of such agreement and change orders being attached hereto, hereby made a part hereof and marked as "Exhibit G" (which contract as the same may be amended and supplemented by Change Order No 5 attached hereto, hereby made a part hereof and marked as "Exhibit H" and as further amended and supplemented in accordance with the terms of this Section is herein called the

'***ARUP/SOM Contract***'). The Lessee and ARUP/SOM shall be entering into Change Order No. 5 to the ARUP/SOM Contract covering the schematic design, including without limitation 30% design development of selected elements of the schematic design work, and a project model for the proposed redevelopment in the form attached hereto as Exhibit H. The work that ARUP/SOM is to perform under Change Order No. 5 to the ARUP/SOM Contract in accordance with this Section is herein called the '***Design Work***'). No changes shall be made to the ARUP/SOM Contract without the prior approval of the Port Authority, provided, however, the foregoing shall not prohibit the Lessee from entering into changes to the ARUP/SOM Contract without the Port Authority's approval provided that such changes are for different services or involve only the subject matter of change orders 1 through 4 and do not involve any obligation on the part of the Port Authority to pay for any portion of such services and do not change the original ARUP/SOM Contract as it existed prior to the first Change Order. The ARUP/SOM Contract shall include all of the provisions required by this Section 94 to be incorporated therein.

(c) The Design Work shall develop the concept design set forth in the conceptual report for the Terminals 2/3/4 Site entitled "JFK Redevelopment Concept Final Report" dated April 2008 performed by ARUP/SOM, copy of which is attached hereto, hereby made a part hereof and marked "Exhibit F" to the schematic design level.

(d) The Lessee agrees that all costs incurred in the performance of the Design Work shall be at the Lessee's sole cost and expense without any reimbursement from the Port Authority except as set forth in Sections 95 and 96 hereof and shall be subject to and performed in accordance with all the terms, provisions and conditions of this Lease.

(e) Right of the Port Authority to Use the Design Work:

Notwithstanding that the ARUP/SOM Contract is with the Lessee nor any other fact or circumstance, but subject to the provisions of Section 7.6 of the ARUP/SOM Contract, the Port Authority may use the Design Work in any manner and for any purpose without the consent of the Lessee upon the expiration or earlier termination of the Lease, and prior to the expiration or termination of the Lease, the Port Authority may use the Design Work without the consent of the Lessee for the project for which it was prepared and for any other purpose whatsoever in connection with the Airport from and after any default by the Lessee in the payment of the Design Rental.

(f) Reporting and Management:

(1) The Lessee shall provide the Port Authority in advance of a weekly calendar of design meetings between the Lessee and ARUP/SOM and in arrears a weekly report, including meeting minutes, of such meetings. The Port Authority shall be entitled to attend such meetings.

(2) The Lessee shall cause ARUP/SOM to deliver to the Port Authority upon request of the Port Authority up to thirty-six (36) copies of all reports, data, drawings and all other electronic and/or written information, documentation and work product with respect to the Design Work (the '***Design Submissions***'). The Port Authority shall have the right, but not the obligation, to review and comment on the Design Submissions and the Lessee shall direct ARUP/SOM to incorporate the Port Authority's comments relating to the completion of the Design Work and to take into consideration other comments of the Port Authority on the Design Work.

(3) The ARUP/SOM Contract shall provide that the Port Authority shall have the right at any time and from time to time by its agents, employees and representatives to audit and inspect during regular business hours the books, records and other data of ARUP/SOM relating to the Cost of the Design Work (as defined in Section 95(a) of this Lease), or any part thereof, including without limitation any and all timesheets and contracts covering or relating to the Design Work or any portion thereof, any and all invoices covering or relating to the Design Work or any portion thereof; it being expressly agreed and understood that the Port Authority shall not be bound by any prior audit conducted by it. ARUP/SOM shall agree to keep such books, records and other data within the Port of New York District but ARUP/SOM shall not be required to maintain any such books, records and other data for more than four (4) years after May 31, 2009.

(g) Performance of the Design Work:

All the Design Work shall be done in accordance with the following terms and conditions:

(1) (i) To the extent arising from the negligent or willful intentional acts or omissions of the Lessee, ARUP/SOM, or ARUP/SOM's subconsultants in connection with the performance of the Design Work, the Lessee shall itself and shall also require ARUP/SOM to indemnify and hold harmless the Port Authority, its Commissioners, officers, agents and employees from and against all claims and demands, just or unjust, of third persons (including employees, officers, and agents of the Port Authority) arising or alleged to arise out of the performance of the Design Work and for all expenses incurred by it and by them in the defense, settlement or satisfaction thereof, including without limitation thereto, claims and demands for death, for personal injury or for property damage, direct or consequential, whether they arise from the acts or omissions of the Lessee, of ARUP/SOM, of any other consultants or contractors of the Lessee, of the Port Authority, or of third persons, or from acts of God or of the public enemy, or otherwise (including claims of the City of New York against the Port Authority pursuant to the provisions of the Basic Lease whereby the Port Authority has agreed to indemnify the City against claims), excepting only claims and demands which result solely from affirmative wilful acts done by the Port Authority, its Commissioners, officers, agents and employees with respect to the Design Work, provided, however, that the Lessee shall not be required to indemnify, or to require ARUP/SOM to indemnify, the

Port Authority where indemnity would be precluded pursuant to the provisions of Section 5 322.1 of the General Obligations Law of the State of New York.

(ii) 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 written permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority.

(2) In addition to and without limiting any other right or remedy of the Port Authority under this Lease or otherwise, the Port Authority shall have the right to audit the books of ARUP/SOM with respect to the Design Work and the ARUP/SOM Contract shall so provide. In the event that a Port Authority audit shall disclose that amounts paid by the Port Authority for the Port Authority's Cost of the Design Work exceed amounts incurred for the Design Work actually performed, the Lessee shall immediately pay to the Port Authority an amount equal to the excess amount paid by the Port Authority.

(3) The Lessee shall cause ARUP/SOM to complete the Design Work by April 30, 2009.

(4) The Lessee agrees to be solely responsible for any plans and specifications prepared in connection with the Design Work and for any loss or damages resulting from the use thereof, notwithstanding the same have been approved by the Port Authority and notwithstanding the incorporation therein of Port Authority recommendations or requirements. Notwithstanding the requirement for approval by the Port Authority of the contracts to be entered into by the Lessee or the incorporation therein of Port Authority requirements or recommendations, and notwithstanding any rights the Port Authority may have reserved to itself hereunder, the Port Authority shall have no liabilities or obligations of any kind to ARUP/SOM 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 of the Design Work.

(5) The Lessee agrees that it shall deliver to the Port Authority ten (10) sets of all final drawings forming a part of the Design Work in an electronic CADD data file on a CD Rom in a format to be designated by the Port Authority, all of which shall conform to the specifications of the Port Authority (the receipt of a copy of said specifications prior to its execution of Supplement No. 2 to the Lease being hereby acknowledged by the Lessee), and all final analysis and reports generated as part of the Design Work.

(6) The Lessee shall pay or cause to be paid all claims lawfully made against it by ARUP/SOM, its other consultants and its contractors and subcontractors, materialmen and workmen, and all claims lawfully made against it by other third persons arising out of or in connection with or because of the performance of the Design Work, and shall cause ARUP/SOM and its subconsultants, contractors and subcontractors to pay all such claims lawfully made against them, provided, however, that nothing herein contained shall be construed to limit the right of the Lessee to contest any claim of ARUP/SOM or any other consultant or of a contractor, subcontractor, materialman, workman and/or other person and no such claim shall be considered to be an obligation of the Lessee within the meaning of this Section unless and until the same shall have been finally adjudicated. The Lessee shall diligently seek to resolve any such claims and shall keep the Port Authority fully informed of its actions with respect thereto. Nothing herein contained shall be deemed to constitute consent to the creation of any liens or claims against the premises or any other area of the Airport nor to create any rights in said third persons against the Port Authority.

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

(g) Notwithstanding the performance of the Design Work and notwithstanding any reference to various proposed property lines or to space to be occupied by the Lessee, it is hereby understood and agreed that said performance and references are not and shall not be or be deemed to be a part of, or to imply, that the Port Authority has any obligation whatsoever to negotiate or enter into the Proposed Agreement or any other lease, permit or other agreement covering the leasing, use or occupancy of any area at the Airport or that any Port Authority approval for any redevelopment of the premises or portion thereof shall be forthcoming.

(h) (1) The Lessee hereby specifically acknowledges and agrees that neither Supplement No. 2 to the Lease nor the performance of the Design Work or any portion thereof nor the expenditure of monies thereon shall grant nor shall be deemed to have granted any rights whatsoever in the Lessee to enter into the Proposed Agreement or otherwise to enter into agreements covering the leasing, use, redevelopment or occupancy of the premises or any other land or building at the Airport or to redevelop the

premises in accordance with the Design Work. The Lessee hereby acknowledges and agrees that if it proceeds with the Design Work covered by Supplement No. 2 to the Lease, it shall do so at its sole risk being fully cognizant of the fact that the entire expenditure of monies by it in the performance of the Design Work may be a complete waste to it and without consideration, in that no Proposed Agreement may ever be executed or no proposed redevelopment of the premises may be approved by the Port Authority or the Port Authority may not permit the redevelopment of the premises in the manner set forth in whole or in part in the Design Work. The Lessee hereby agrees that it shall never introduce in any forum the fact that the Design Work or any portion thereof was performed as the basis for a contention that there is in fact or by inference or by implication any agreement between the Lessee and the Port Authority that any redevelopment of the premises will incorporated any of the Design Work or any agreement between the Lessee and the Port Authority to reimburse the Lessee for the Design Work except as set forth in Sections 95 and 96 of the Lease or any portion thereof and the Lessee agrees that it shall not claim that it is entitled in law or in equity to any of the foregoing or to any compensation, award, suit, action or proceeding because of Supplement No. 2 to the Lease or the Port Authority's participation in the Design Work or the performance of the Design Work or any portion thereof or the expenditure of monies thereon by the Lessee.

(2) The Lessee further specifically acknowledges and agrees that the Port Authority shall have as full discretion in negotiating the provisions of the Proposed Agreement as if Supplement No. 2 to the Lease had never been executed and the Port Authority had not participated in the performance of the Design Work and the Design Work had not been performed and monies expended thereon. The Lessee hereby specifically acknowledges that the staffs of the Lessee and the Port Authority may not reach agreement on the terms and provisions of the Proposed Agreement.

(3) The Lessee also hereby specifically acknowledges and agrees that no statements, representations, promises or assurances other than as set forth in this Lease have been made or given to it by representatives of the Port Authority or shall be relied on by it with respect to the risks and obligations being assumed hereunder if it elects to proceed with the Design Work and that it shall never introduce in any forum any alleged statement, representation, promise or assurance to the extent that the same would change or affect the express and precise provisions of this Lease and the risks and obligations assumed by the Lessee hereunder, and the Lessee hereby affirms its acceptance of all risks and obligations hereunder."

"*Section 95.* *Design Payments for a Portion of the Cost of the Design Work*

(a) For the purposes of this Lease, the following terms shall have the respective meanings provided below:

(1) '***Cost of the Design Work***' shall mean the sum of the amounts, and such amounts only, due and payable by the Lessee to ARUP/SOM for the Design Work under Change Order No. 5 to the ARUP/SOM Contract to the extent that

the inclusion of the same is permitted by generally accepted accounting practices consistently applied for the performance of the Design Work. The Cost of the Design Work shall include only Design Work performed by ARUP/SOM under Change Order No. 5 in accordance with all the terms and provisions of this Lease.

(2) '***Design Payment***' shall mean each payment made by the Port Authority to ARUP/SOM pursuant to this Section.

(3) '***Design Work Certificate***' shall mean the certificate submitted by the Lessee pursuant to and in accordance with this Section which meets all of the requirements of this Section.

(4) '***Final Date***' shall mean May 31, 2009.

(5) '***Port Authority's Cost of the Design Work***' shall mean the lesser of (x) the amount of (2.a.) ıd (y) the Cost of the Design Work.

(b) Design Work Certificates and Design Payments:

The Port Authority shall pay for the Port Authority's Cost of the Design Work to the extent such costs and expenses are properly incurred by the Lessee and to the extent and subject to and in accordance with the terms and provisions of this Section as follows:

(1) On or before May 21, 2009, the Lessee shall deliver to the Port Authority a notarized certificate which shall be signed by a responsible officer of the Lessee having sufficient knowledge to provide such certificate and shall:

(i) certify and set forth the amounts actually due and payable from the Lessee to ARUP/SOM for work actually performed for the Design Work under Change Order No. 5 to the ARUP/SOM Contract;

(ii) have attached thereto reproduction copies or duplicate originals of the invoices of ARUP/SOM for the Design Work;

(iii) certify that the amounts and payments therein set forth constitute Costs of the Design Work;

(iv) certify that the work for which payment is requested has been accomplished and has a value of not less than the amount requested to be paid;

(v) certify that each portion of the Design Work covered by such certificate has been performed in accordance with the terms of this Lease and the ARUP/SOM Contract;

(vi) certify that, except for the amount stated in the Design Work Certificate, there is no outstanding indebtedness then due on account of the purchase of any equipment or fixtures described in the Design Work Certificate or for labor, wages, materials, supplies or services in connection with any Design Work whether or not described in or covered by such Design Work Certificate which, if unpaid, might become the basis of a vendor's, mechanic's, laborer's or materialmen statutory or similar lien or alleged lien upon such work or upon the premises or the Airport or any portion thereof, or upon the Lessee's leasehold interest in the premises, nor are any of the improvements, equipment or fixtures described in such Design Work Certificate secured by any liens, mortgages, security interests or other encumbrances, provided, however, nothing contained herein shall be deemed or construed as a submission by the Port Authority to the application to itself of any such lien; and

(vii) *contain such further information and documentation* with respect to the Cost of the Design Work as the Port Authority may from time to time require, which information, documentation and certification shall be given on such forms as may be adopted by the Port Authority.

(2) In addition to and without limiting the foregoing, and in addition to any and all other information required to be submitted pursuant to this Lease, the Lessee shall furnish to the Port Authority information concerning budget, costs, costs estimates, plans and specifications, timing, scheduling and performance of the Design Work as may be requested by the Port Authority.

(3) Within forty-five (45) days after the delivery of the duly submitted Design Work Certificate by the Lessee satisfying in full the requirements of this Section as determined by the Port Authority, the Port Authority shall pay to ARUP/SOM the amount set forth in such certificate, except that in no event shall the payment to be made by the Port Authority exceed the Port Authority's Cost of the Design Work, with the Lessee to pay the remainder of the Cost of the Design Work.

(4) In addition to and without limiting the foregoing provisions and without limiting or impairing or waiving any other right or remedy of the Port Authority under this Lease or otherwise, the Port Authority shall have the right, in its discretion, to withhold from the aforesaid payment to ARUP/SOM the amounts of any or all items contained in the Design Work Certificate if any the following shall have occurred:

(i) if the Port Authority's inspection and/or audit does not substantiate the contents of the Design Work Certificate, but the Port Authority shall have no obligation to conduct any such inspection or audit;

(ii) in the event this Lease is not in full force and effect, or the Lessee shall be under a notice of termination of the Lease, or in default

under any term or provision thereof, provided, however, no payment or withholding of a Design Payment shall be or be deemed to be a waiver of any rights of the Port Authority with respect to the termination of the Lease, or to a default by the Lessee under any term or provision thereof;

(iii) ARUP/SOM shall be in default or under a notice of termination with respect to the ARUP/SOM Contract, or has not complied with all of the applicable terms or provisions of the ARUP/SOM Contract;

(iv) the Design Work Certificate or any of the certifications and documentation and other items required to be contained therein, attached thereto or submitted therewith is not in accord with the terms of this Lease or the ARUP/SOM Contract, or is not complete or is otherwise improper or inadequate, or the same fails to include or omits required items; or

(v) the submitted Design Work Certificate covers work not performed.

(5) The Design Payment for the Port Authority's Cost of the Design Work shall not be made unless and until the Lessee has, to the satisfaction of the Port Authority, fully complied with all of the terms of this Section and all other applicable terms of this Agreement and submitted to the Port Authority all certifications, documentation and the like required under this Section. No such final payment by the Port Authority shall constitute any waiver of claims or release by the Port Authority against the Lessee or ARUP/SOM, nor any waiver of the Port Authority's rights of audit and inspection, nor any waiver of any other rights or remedies, legal or equitable, of the Port Authority.

(6) No Waiver:

No Design Payment made by the Port Authority hereunder shall mean or be deemed to mean that the amount of such Design Payment is correct or that all the requirements set forth herein with respect to the payment by the Port Authority for the Port Authority's Cost of the Design Work have been met.

(7) Limited Obligation:

It is specifically understood and agreed that notwithstanding anything to the contrary herein, the Cost of the Design Work shall be reimbursed by the Port Authority as provided herein and only to the extent provided for herein and properly includable in the Cost of the Design Work. Further, the obligation of the Port Authority to pay to for the Cost of the Design Work shall be limited to the amount of (2.a.) and shall be limited in time to a Design Work Certificates properly submitted by the Lessee in accordance with and under this Section on or prior to the Final Date.

(8) Further Requirements:

The Lessee shall promptly submit to the Port Authority further information, including but not limited to its estimate of the amounts and times of the various payments it will be making for the Cost of the Design Work as the Port Authority may from time to time, and at any time, request, and shall be available itself or cause ARUP/SOM to be available for consultation in connection with the Design Work Certificates submitted by this Lessee pursuant to this Section.

(c) (1) In addition to and without limiting any other term or provision of this Lease, the Port Authority shall have the right at any time and from time to time by its agents, employees and representatives to audit and inspect during regular business hours the books, records and other data of the Lessee relating to the Cost of the Design Work, or any part thereof, including without limitation any and all contracts covering or relating to the Design Work or any portion thereof, any and all invoices covering or relating to the Design Work or any portion thereof; it being expressly agreed and understood that the Port Authority shall not be bound by any prior audit conducted by it. The Lessee agrees to keep such books, records and other data within the Port of New York District but the Lessee shall not be required to maintain any such books, records and other data for more than four (4) years after the Final Date.

(2) If any books, records and other data described in paragraph (c)(1) of this Section 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, records and other data 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, records and other data the location(s) they are maintained and the Lessee shall pay to the Port Authority when billed all travel costs and related expenses, as determined by the Port Authority, for Port Authority auditors and other representatives, employees and officers in connection with such examination and audit.

(d) In the event that a Port Authority audit shall disclose, based upon Design Work Certificates or otherwise, that a Design Payment should not have been made or that amounts paid by the Port Authority pursuant to this Section exceed the amounts that are required to by paid by the Port Authority pursuant to this Section, then, upon thirty (30) days demand, the Lessee shall immediately pay to the Port Authority an amount equal to the excess amount paid by the Port Authority; the foregoing shall not be or be deemed to be any limitation, impairment or waiver of any other right or remedy of the Port Authority under the Lease or otherwise.

(e) If the Lessee has included in any portion of the Cost of the Design Work any item as having been incurred, but which in the opinion of the Port Authority was not so incurred, or which in the opinion of the Port Authority if so incurred is not an item properly chargeable to the Cost of the Design Work under generally accepted accounting practice, and the parties have been unable to resolve their differences within 90 days after

the Port Authority gave its notice objecting to the same, the decision of the Port Authority as to the nature of the items in question shall be final.

(f) It is hereby understood and agreed that nothing in this Supplemental Agreement shall be or shall be deemed for the benefit of ARUP/SOM or other third party and nothing contained herein shall operate or give to ARUP/SOM or third party any claim or right of action against the Lessee, the Port Authority and/or their respective Commissioners, officers, agents and employees."

"Section 96. Design Rental

(a) Definitions:

The following terms as used in this Section shall have the respective meanings given below:

(1) "***Design Rental Commencement Date***" shall mean the earlier to occur of (y) June 1, 2012 and (x) the "Design Rental Commencement Date" set forth in a notice, if any, given by the Port Authority to the Lessee, which Design Rental Commencement Date set forth in such notice shall not commence prior to June 1, 2009 nor sooner than thirty (30) days after such notice is given by the Port Authority to the Lessee.

(2) "***Design Accrued Amount***" shall mean with respect to each Design Payment, the product obtained by multiplying such Design Payment by the amount derived from the following formula:

$$(1+j)^{n} - 1$$

Where "j" equals the Monthly Factor, "n" a power that equals the number of calendar months, both whole and partial, occurring from and including the last day of the month in which the Payment Date for such Design Payment shall have occurred up to and including the Design Rental Commencement Date, both dates inclusive, provided, however, if the Payment Date for such Design Payment shall not be the first day of a calendar month, then the number "1" shall be subtracted from "n" and a fraction, the numerator of which shall be the number of days from the Payment Date for such Design Payment and the last day of the calendar month in which such Payment Date occurred, both dates inclusive, and the denominator of which shall be the number of days in such calendar month, shall be added to "n".

(3) "***Design Factor***" shall mean a percentage equal to the sum derived by adding the percentage 3.0% to the percentage reported as the weekly index of the Bond Buyer Revenue Bond Index in the publication "The Bond Buyer" on the day which is 30 days prior to the Design Rental Commencement Date, and if The Bond Buyer

is not published on such day, then on the day The Bond Buyer is published that is closest to 30 days prior to the Design Rental Commencement Date.

(4) "***Design Payment***" shall mean have the meaning given such term in Section 95 hereof.

(5) "***Design Rental Amount***" shall mean an amount calculated on a monthly basis equal to the product obtained by multiplying the Design Rental Factor by the Total Design Payment Amount.

(6) "***Design Rental Factor***" shall mean the factor derived in accordance herewith from time to time by application of the following formula:

$$\frac{i}{1 - \frac{1}{(1+i)^t}} = \text{Design Rental Factor}$$

Where "i" equals the Monthly Factor; "t" a power that equals the number of whole calendar months occurring from and after the Design Rental Commencement Date up to and including December 31, 2017; and "1" is the whole number one.

(7) "***Monthly Factor***" shall mean an amount equal to the quotient derived by dividing the Design Factor by the whole number twelve (12).

(8) "***Payment Date***" shall mean with respect to each Design Payment, the date that such Design Payment is made by the Port Authority.

(9) "***Total Design Payment Amount***" shall mean an amount derived as follows in the following order:

(A) First, the Design Accrued Amount for each Design Payment shall be added to the amount of such Design Payment (each such sum being herein referred to as a "***Total Design Payment***"); then

(B) Second, the Total Design Payment for all Design Payments shall be added together (such sum being herein referred to as the "***Total Design Payment Amount***").

(b) Payment of the Delta Design Rental.

(1) For the period commencing on the Design Rental Commencement Date up to and including December 31, 2017, both dates inclusive, the

Lessee shall pay to the Port Authority a monthly rental (the '***Design Rental***') in an amount equal to the Design Rental Amount. The Design Rental shall be paid on the Design Rental Commencement Date and on the first day of each and every calendar month thereafter occurring to and including December 1, 2017.

(c) Audit Findings:

In the event that an adjustment is made by the Port Authority with respect to any Design Payment pursuant to paragraphs (d) or (e) of Section 95 hereof, then the Design Rental Amount shall be recalculated based upon such adjustment. In addition, there shall be credited or debited, as the case shall be, against the Lessee's payment of future Design Rentals an amount equal to the difference between the amount of the Design Rentals which the Lessee has paid to the Port Authority and the amount of the Design Rentals as so recalculated.

(d) Prepayment:

The Lessee may prepay in full the unpaid balance of the Design Rental without penalty, provided, however, that any such payment shall be made on the scheduled date of the next succeeding installment payment.

8. As hereby amended, all of the terms, covenants, provisions, conditions and agreements of the Lease shall be and remain in full force and effect.

9. The Lessee represents and warrants that no broker has been concerned in the negotiation of this Supplemental Agreement or the extension hereunder and that there is no broker who is or may be entitled to be paid a commission in connection therewith. The Lessee shall indemnify and save harmless the Port Authority of and from any and all claims for commission or brokerage made by any and all persons, firms or corporations whatsoever for services in connection with the negotiation and execution of this Supplemental Agreement or the extension hereunder.

10. No Commissioner, director, officer, agent or employee of any party to this Supplemental Agreement shall be charged personally or held contractually liable by or to any other party under any term or provision of this Supplemental Agreement or of any supplement, modification or amendment to the Lease or because of its or their execution or attempted execution or because of any breach or alleged or attempted breach thereof.

11. This Supplemental Agreement consisting of Paragraphs 1 through 11 and Exhibit F, Exhibit G and Exhibit H and the Lease which it amends constitute the entire agreement between the Port Authority and the Lessee on the subject matter, and may not be changed, modified, discharged or extended except by instrument in writing duly executed on behalf of both the Port Authority an the Lessee. The Lessee and the Port Authority agree that no representations or warranties shall be binding upon the other unless expressed in writing in the

Final Dated 2/9/09 Version 2

Lease or in this Supplemental Agreement.

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

ATTEST:

Secretary

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By

Printed Name: DAVID KAGAN

(Title) Assistant Director

(Seal)

ATTEST:

Leslie Klemperer

Secretary

Leslie P. Klemperer
Corporate Secretary

DELTA AIR LINES, INC.

By

Printed Name: John W. Boatright

(Title) Vice President- Corporate Real Estate President

APPROVED:
FORM TERMS

Final Dated 2/9/09 Version 2

For the Port Authority

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

On the 5TH day of MARCH in the year 2009, before me, the undersigned, a Notary Public in and for said state, personally appeared DAVID KAGAN, 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.

Gail E. Mitchell
(Notarial seal and stamp)

GAIL E. MITCHELL
NOTARY PUBLIC-STATE OF NEW YORK
No. 01MI6026210
Qualified in Queens County
My Commission Expires June 14, 2011

For the Lessee

STATE OF ~~NEW YORK~~ Georgia)
) ss
COUNTY OF ~~NEW YORK~~ Fulton)

On the 18th day of February in the year 2009, before me, the undersigned, a Notary Public in and for said state, personally appeared John W. Boatright, 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.

Lisa Gavin
(notarial seal and stamp)

LISA GAVIN
MY COMMISSION EXPIRES
NOTARY
PUBLIC
DECEMBER 6, 2012
COBB COUNTY, GEORGIA

EXHIBIT G

To

Supplement No. 2 to Lease AYC-325

Between

The Port Authority of New York and New Jersey

And

Delta Air Lines, Inc.

Initialed:

For the Port Authority

For the Lessee

PLEASE REFERENCE THIS PURCHASE ORDER NUMBER ON ALL INVOICES: 91-30145
Cost Center: C8770ATG GL Account: 6407187 Contract #: 0094329

SPECIAL SERVICES AGREEMENT

THIS SPECIAL SERVICES AGREEMENT (this "Agreement") is made the 25th day of June, 2007, by and between:

Owner: Delta Air Lines, Inc.
1030 Delta Boulevard
Atlanta, Georgia 30354-1989

Attn: Corporate Real Estate, Dept. 877
Fax Number: (404) 715-2548

and
Architect: ARUP/SOM, a joint venture of
Skidmore, Owings & Merrill LLP Architects
and Ove Arup & Partners Consulting Engineers PC
14 Wall Street
New York, NY 10005

Attn: Anthony T. Vacchione, AIA
Fax Number: (212) 298-9500

for the Project: JFK Terminal Planning Study
John F. Kennedy International Airport
Jamaica, NY

For and in consideration of the covenants, promises and obligations contained herein, Owner and Architect agree as set forth below.

ARTICLE 1: SERVICES

1.1 Architect shall provide those services for the Project described in Exhibit A, attached hereto and incorporated herein by reference for the sole purpose of describing Architect's services and, in Exhibit B attached hereto and incorporated herein by reference to establish billing rates and not to exceed amounts for fees and reimbursable expenses. Any other terms and conditions therein, such as payment terms and indemnification, do not apply to this Agreement.

1.2 In the event Architect is requested to render services or incur expenses which Architect believes are beyond the scope of Architect's services set forth herein, it shall be the obligation of Architect to so advise Owner in writing prior to rendering such services or incurring such expenses. Unless Owner then gives its advance written approval of such additional services or expenses, Owner shall not be responsible for any extra compensation claimed by Architect on account of such services or expenses. In the event additional services or expenses are required as a result of an error by Architect or its failure to comply with this Agreement or Owner's instructions, then such cost for additional services shall be borne by Architect.

1.3 Architect shall perform the services as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. Architect shall perform the services within 60 calendar days from the Notice to Proceed date. Architect shall submit for Owner's approval, a schedule of deliverables consistent with the Project schedule, for the performance of Architect's services. This schedule may be adjusted as required as the Project proceeds, and shall include allowances for periods of time required for Owner's review and approval of submissions and for approvals of authorities having jurisdiction over the Project.

ARTICLE 2: OWNER'S RESPONSIBILITIES

2.1 Owner shall provide full information regarding requirements for the Project as expeditiously as necessary for the orderly progress of the Work, and Architect shall be entitled to rely upon the accuracy and completeness thereof.

2.2 Owner shall designate, when necessary, a representative authorized to act on Owner's behalf with respect to the Project. Owner or such authorized representative shall examine the documents submitted by Architect and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of Architect's services.

ARTICLE 3: PAYMENTS TO ARCHITECT

3.1 Payments for Architect's services shall be made monthly upon Architect's statement of services rendered. Owner shall make payment of undisputed amounts within forty-five (45) calendar days after the receipt of the invoice therefor.

3.2 If the Project is suspended or abandoned in whole or in part for more than three months, Architect shall be compensated for all services performed prior to receipt of written notice from Owner of such suspension or abandonment, together with all Termination Expenses as defined in Paragraph 5.4.

ARTICLE 4: ARCHITECT'S RECORDS

4.1 Architect's records pertaining to services performed and expenses incurred pursuant to this Agreement shall be kept on the basis of generally accepted accounting principles and shall be available to Owner or Owner's representative at mutually convenient times.

ARTICLE 5: TERMINATION OF AGREEMENT

5.1 This Agreement may be terminated by either party upon seven days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.

5.2 This Agreement may be terminated by Owner, in Owner's sole discretion, for convenience and with or without cause, upon at least seven days written notice to Architect.

5.3 In the event of termination not the fault of Architect, Architect shall be compensated for all services performed to the termination date, together with all Termination Expenses as defined in Paragraph 5.4.

5.4 Termination Expenses are defined as additional expenses directly attributable to termination which could not reasonably have been avoided and for which Architect is not otherwise compensated. Termination Expenses shall not include lost profits, lost opportunities, consequential damages, or the like.

ARTICLE 6: BASIS OF COMPENSATION

6.1 For the purposes of this Article 6, the following definitions shall apply. "Architect's Fee" shall mean the fee payable to Architect (other than Labor Costs) for the services described in Paragraph 1.1. "Labor Costs" shall mean all costs of Architect's personnel and any other independent professional contracted by Architect. "Reimbursable Expenses" shall be limited to actual expenditures made by Architect and Architect's employees and consultants in the interest of the Project and shall include expenses of transportation and living expenses in connection with out-of-town travel in accordance with Owner's Travel Reimbursement Policy attached to this Agreement as Exhibit C, when authorized by Owner in writing; long distance communications; fees paid for securing approvals of authorities having jurisdiction over the Project; reproductions; postage and handling of documents; renderings and models requested by Owner in writing; and expense of overtime work requiring higher than regular rates, if authorized by Owner in writing.

6.2 Owner shall compensate Architect for Architect's services, in accordance with ARTICLE 3: PAYMENTS TO ARCHITECT, and the other Terms and Conditions of this Agreement, per the schedule set out below. Such compensation shall cover all of Architect's services and expenses including the Architect's Fee, Labor Costs and Reimbursable Expenses.

.1 NOT-TO-EXCEED SUM: The not-to-exceed sum of One Hundred Eighty Six Thousand Eight Hundred Seventy Five Dollars (NTE $186,875.00), being the total of:

The not-to-exceed sum of One Hundred Sixty Six Thousand Eight Hundred Seventy Five Dollars ($166,875.00) for the Architect's Fee, according to the billing rates shown on Exhibit B; and

The not-to-exceed sum of Twenty Thousand Dollars (NTE $20,000.00) for Reimbursable Expenses.

6.3 Partial payments pursuant to Paragraphs 3.1, 3.2, or 5.3 shall be based upon the pro-rata portion of services performed and expenses incurred.

6.4 The Architect's compensation includes, and Architect shall be responsible for the payment of, any and all Taxes ("Taxes" means sales, use, customs, excise, value added, ad valorem or other similar tax, assessment, duty or similar governmental charge or fee chargeable on account of this Agreement, but excluding any tax measured by the net or gross income or excess profits, receipts, capital, franchise, net worth or business privilege of Owner) levied on Owner or Architect in connection with the Architect's services, and Architect expressly agrees to pay all such amounts, whether or not the statutory liability therefor is assigned to Owner; however, Architect's compensation shall not include amounts for any Taxes for which there is an exemption, and Owner agrees to use best efforts to take advantage of any such exemptions for Architect's benefit. Architect shall indemnify and hold Owner harmless with respect to the payment of any of these Taxes including any interest or penalties assessed thereon. If a claim is made against Owner for Taxes with respect to which Architect is responsible for payment hereunder, Owner will promptly give Architect notice in writing within thirty (30) days of such claim; provided, however, Owner's failure to give such notice will not relieve Architect of its obligations hereunder to pay such Taxes. Architect will be required to remit payment to Owner or the tax authority, as appropriate, unless Architect is permitted by applicable law to contest such claim and defer payment in accordance with the law. Such contest will be coordinated by Owner and the expense will be borne by Architect, and includes, but is not limited to all costs, expenses, legal and accounting fees, penalties and interest. If either party receives any refund on account of any suit or action with respect to any Taxes that were paid by the other party, the party receiving such refund shall promptly, but in any event within thirty (30) days of receipt of such refund, remit such refund to the other party, together with interest refunded on such amount.

ARTICLE 7: SPECIAL CONDITIONS

7.1 Architect shall maintain the following insurance coverages, with an insurance company or companies satisfactory to Owner for claims which may arise from and during operations under this Agreement, whether such operations be by Architect, its subcontractors or anyone directly or indirectly employed by any of them. Certificates of such insurance shall be filed with Owner prior to commencing the services contemplated by this Agreement, and shall provide coverage in not less than the following amounts:

Errors and Omissions or Professional Liability	When the amount stated in Paragraph 6.2 is greater than $100,000, the minimum policy limit shall be $3,000,000 per claim and in the aggregate. When the amount stated in Paragraph 6.2 is equal to or less than $100,000 the minimum policy limit shall be $1,000,000 per claim and in the aggregate
Commercial General Liability	$1,000,000 combined single limit per occurrence for bodily injury and property damage
Worker's Compensation	Statutory limits
Employer's Liability	$1,000,000 per occurrence
Automobile Liability	$1,000,000 combined single limit per occurrence for bodily injury and property damage

7.2 Except for claims arising under the Errors and Omissions and Workers' Compensation policies, the policies shall contain an appropriate cross-liability clause insuring Owner against any loss or damage to Owner or Owner's property resulting from any acts or omissions of Architect, its officers, directors, employees, agents or contractors, and shall name Owner as an additional insured to the extent of the indemnity obligations hereunder. The liability insurance policies shall include contractual liability. All insurance Architect provides shall be primary and not contributory as to any coverage of Owner. All policies shall remain in full force and effect for at least thirty (30) days after Owner receives written notice of cancellation, termination or material modification.

7.3 Except as provided below in clauses (1) and (2) of this Paragraph 7.3, to the fullest extent permitted by law, Architect shall indemnify, defend and hold harmless Owner and its directors, officers, employees and agents (collectively, the "Indemnified Parties" and individually, an "Indemnified Party") from and against any and all claims, damages, losses, fines, civil penalties, liabilities, judgments, costs and expenses of any kind or nature whatsoever (including but not limited to interest, court costs and attorney's fees) ("Claims"), arising out of or result from any act(s) or omission(s) by Architect (or anyone directly or indirectly employed by Architect or anyone for whose acts Architect may be liable) in the performance or nonperformance of the services under this Agreement, including but not limited to injury to or death of any person, damage to or destruction of any property, real or personal (including but not limited to property owned, leased or under the control of Owner), and liability or obligations under or with respect to any violation of federal, state and local laws, regulations, rules, codes and ordinances (including but not limited to those concerning environmental protection). This Paragraph 7.3 shall apply regardless of whether or not the damage, loss or

injury complained of arises out of or relates to the negligence (whether active, passive or otherwise) of, or was caused in part by, an Indemnified Party. However, (1) nothing contained in this Paragraph 7.3 shall be construed as a release or indemnity by Architect of an Indemnified Party from or against any loss, liability or claim arising solely from the negligence or willful misconduct of that Indemnified Party, and (2) with respect to Claims which are within the definition of coverage under Architect's Errors and Omissions/Professional Liability policy, this indemnity shall apply only to the extent such Claims arise out of or result from the negligent act(s), error(s), or omission(s) of Architect, or anyone directly or indirectly employed by Architect or anyone for whose acts Architect may be liable. This Paragraph 7.3 shall not be construed to negate, abridge or otherwise reduce any other right to indemnity which would otherwise exist in favor of any Indemnified Party, or any other obligation of Architect, its officers, directors, employees, agents or contractors to indemnify an Indemnified Party. Architect's obligations under this Paragraph 7.3 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits paid or payable by Architect under Workers' Compensation Acts, disability benefits acts or other employee benefit laws or regulations. The indemnification obligations of this Paragraph 7.3 shall survive termination or expiration of this Agreement.

7.4 All services hereunder shall be furnished by Architect as an independent contractor. All personnel utilized by Architect in the furnishing of such services shall be employees or subcontractors of Architect and under no circumstances shall be deemed employees of Owner. Architect shall be fully responsible for all acts and omissions of such personnel. Architect shall bear sole responsibility for payment of compensation to such personnel. Architect shall withhold (if applicable), pay and report, for all such personnel all federal, state and local income tax withholding, social security taxes, employment head taxes, and unemployment insurance applicable to such personnel. Architect shall bear sole responsibility for any health or disability benefits, retirement benefits, or welfare, pension or other benefits (if any) to which such personnel may be entitled.

7.5 For purposes of this Agreement, "Confidential Information" shall mean all information that Owner or any affiliate or representative of Owner discloses to Architect, as well as information disclosed to Architect by third parties in connection with the Project, and the work product and other information resulting from Architect's services hereunder, including without limitation Architect's evaluations and reports, Owner's responses to Architect's evaluations and reports, cost information, the extent and nature of the Project contemplated by Owner, and all drafts and associated materials; provided that Confidential Information does not include information that Owner identifies in writing as not confidential, that rightly becomes public, or that Architect otherwise knows or receives without obligation of confidence. For a period of five (5) years from the date of disclosure, Architect agrees to hold all Confidential Information in trust and confidence for Owner and agrees not to disclose Confidential Information, by publication or otherwise, to any person other than to Architect's consultants or subcontractors, employees, Owner, or any authority having jurisdiction over the Project, or to third parties having a need to know and whom Owner agrees in writing may receive such information; provided that, prior to such disclosure to third parties, Architect shall obtain appropriate non-disclosure agreements from such persons and firms. If any medium containing Confidential Information is lost, Architect shall promptly notify Owner. Architect shall not copy Confidential Information unless approved in writing by Owner. Upon expiration or early termination of this Agreement, Architect shall return to Owner all written or descriptive matter, in any form, which contains any Confidential Information, except that Architect may retain one copy of such documents or things for its records.

7.6 Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are for use solely with respect to this Project. Any other use shall be at the Owner's sole risk and without liability to the Architect or the Architect's consultants. Unless Owner fails hereunder to pay Architect therefor, Owner shall be deemed the owner of such drawings, specifications and other documents and shall have and retain all rights therein. In the event the Owner is adjudged to have failed hereunder to pay Architect for such drawings, specifications or other documents, ownership thereof, and all rights therein, shall revert to the Architect.

7.7 At the Owner's option the study may be continued for up to three additional 30 calendar day extension periods at the same terms, rate and conditions established in this Agreement and Exhibit B attached hereto.

ARTICLE 8: MISCELLANEOUS PROVISIONS

8.1 Unless otherwise specified, this Agreement shall be governed by the law of the principal place of business of Owner.

8.2 Owner and Architect, respectively, bind themselves, their successors, assigns, and legal representatives to the other party to this Agreement and to the successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Owner nor Architect shall assign or transfer any interest in this Agreement without the written consent of the other.

8.3 This Agreement represents the entire and integrated agreement between Owner and Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument

signed by both Owner and Architect. In the event of any inconsistency between this Agreement and Exhibit A attached hereto, this Agreement shall control.

8.4 If the scope of the Project or of Architect's services is changed materially, the amounts of compensation shall be equitably adjusted.

8.5 Architect acknowledges that (i) Owner is committed to enhancing business opportunities for small business, veteran-owned small business, HUBZone small business, small disadvantaged business and women-owned small business enterprises (collectively, "Small Business") as first and second tier suppliers to Owner, and (ii) Owner believes that every reasonable attempt should be made to include and utilize Small Business supplier firms as suppliers to Owner, as long as they are competitive on price, quality and service, and provide the best overall value for Owner. Architect agrees to cooperate with Owner to achieve the general objective of including Small Business supplier firms as suppliers to Owner, in accordance with the guidelines described in clause (ii) above, and to use all commercially reasonable efforts to include Small Business supplier firms in its procurement process. Upon request, Architect shall complete and submit to Owner supplier diversity reports in such format as Owner may reasonably specify, including without limitation a Supplier Diversity Quarterly Utilization Report.

8.6 Any notices, requests or other communications required or permitted to be given hereunder shall be in writing and shall be delivered by hand, by overnight courier or by facsimile transmission ("fax"), or mailed by registered or certified mail, return receipt requested, postage prepaid, and addressed to the appropriate party at its address or to its fax number first set forth above. Any such notice, request or other communication shall be considered given on the date of hand or courier delivery if delivered by hand or overnight courier, on the date of receipt if delivered by fax, or on the date of deposit in the mail as provided above. Rejection or other refusal to accept or inability to deliver because of changed address or fax number of which no notice was given shall not affect the validity or the effectiveness of the notice, request or other communication. By giving at least ten (10) days' prior written notice thereof, either party may from time to time and at any time change its mailing address hereunder.

8.7 In performing the services pursuant to this Agreement, Architect shall comply with the principles of business ethics and conduct required of suppliers to Owner as set forth in Owner's booklet entitled "Doing Business with Delta," available on-line at http://www.delta.com/about_delta/partnering_with_delta/supplier_diversity/suppliers_doing_business/index.jsp

This Agreement entered into the day and year first written above.

Owner: Delta Air Lines, Inc.

By:

Name: John W. Boatright
Title: Vice President – Corporate Real Estate
Date: 9-10-07

Architect: ARUP/SOM, a New York joint venture

By: Skidmore, Owings & Merrill LLP Architects, joint venturer

By:

Name: ANTHONY VANCHIONE
Title: PARTNER
Date: SEPTEMBER 17, 2007

By: Ove Arup & Partners Consulting Engineers PC, joint venturer

By:

Name: Nancy J. Hamilton
Title: Principal
Date: Sept 26, 2007

Exhibit A

Scope Description

June 5, 2007

Delta Air Lines
JFK Terminal Planning Study
John F. Kennedy International Airport
Jamaica, NY

Project Description:

- Delta is undertaking a study to develop terminal master plan concepts to support its forecast operations at JFK International Airport.
- The concepts will encompass redevelopment of Delta's Terminal 2 and 3 site as well as expansion or integration with Terminal 1 or Terminal 4.
- This initial study is planned to begin July 1, 2007 and be completed August 31, 2007.
- This study will be a high level planning effort and engineering or specialty consultants will not be required.

Services shall include:

- Assist Delta with development of high level program requirements for gates, processors and support space.
- Evaluate existing JFK Terminal 1 and Terminal 4 plans for a working knowledge of:
  - Curbside lengths
  - Passenger & baggage processor counts
  - FIS processor counts, capacity and processing times
  - Support space
  - Clubs & concessions
  - TSA screening
  - Gates, fleet mix, international/domestic capability
  - Constraints to terminal modification & expansion
- Explore master plan concepts to support program requirements.
- Develop two or three viable concepts. Provide site plans, terminal functional floor plans and functional building sections to describe each concept at a high level.
- Prepare high level phasing plans for each concept that support Delta's on-going operations during construction.

- Provide estimated areas and units for Delta's use in establishing rough order of magnitude pricing and schedules for each concept.

Your proposal response is to be inclusive in 10 pages or less:

- Brief resumes of key individuals who will be assigned to this study
- Relevant project experience and qualifications

In addition, complete and attach to your response, the Proposal Matrix indicating your proposed fees and not-to-exceed reimbursable expenses.

Exhibit B

THE ARUP/SOM TEAM

We are proposing for this Study a blended team of the most experienced airport terminal planners from Arup and SOM. We feel that together we offer Delta the strongest possible team to address what we already know – from working with you during 2000 and 2001 – is a very challenging project. All the key staff members from that project are ready to bring that knowledge to bear on your new set of requirements. In the intervening years we have gained even more PA and JFK experience, including projects for low-cost carriers. We feel we begin with the advantage of our previous experience with you and with the T2/3 site, but we bring a fresh look and our customary objectivity. Our strategic thinking is second to none. Let us re-introduce ourselves.

Arup-SOM Key Strengths and Relevant Experience

- Current understanding of JFK-wide operations at the highest level of planning through consultation to the Port Authority
- Current detailed knowledge of ground conditions and infrastructure as engineers and/or architects for T4, T5/6, and T7. Knowledge of T1 is also present within the team
- Current knowledge of Port Authority requirements, procedures and processes
- Architects and engineers for previous Delta project to redevelop T2/3 during 2000-2001
- Broad understanding of Delta operations and departments
- Key staff from the foregoing projects are available for the new Delta JFK Terminal Planning Study
- Planners and designers of facilities for low-cost carriers emphasizing quick-turnaround operations and cost-effective / low-cost design
- Extensive US and world-wide master planning experience
- Noted for detailed phasing plans for multiple JFK projects

Arup Firm Description

Arup has one of the world's largest and most successful airport consulting practices. We are committed to providing optimal solutions in planning, design, development and operational consulting for aviation-related facilities worldwide. Arup has been involved in airport development work for 40 years. During this period we have worked on a wide range of projects at more than 100 airports, with over $15 billion in constructed projects. Our aim is to provide the highest quality professional services in all aspects of our airport practice, consistently and economically.

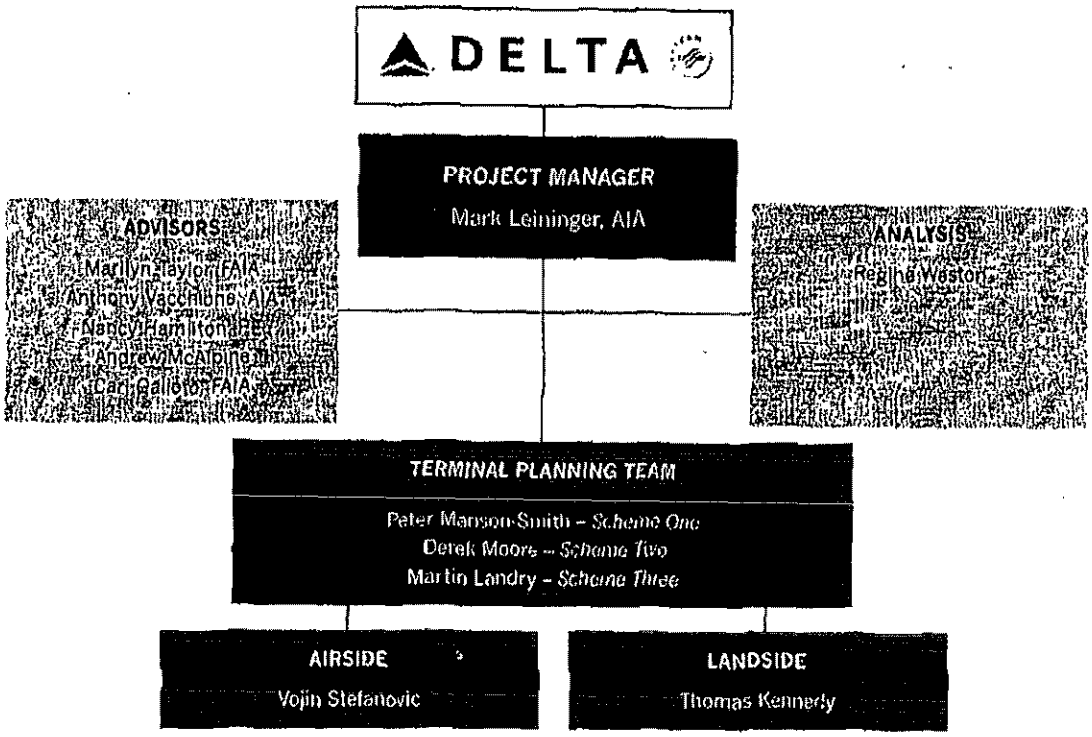
Arup has an in-depth knowledge of JFK International Airport from Terminal 1 to Terminal 7 as a result of 15 years of on-going work, both major and minor, at the airport. Our planning efforts at JFK have been implemented at Terminals 4 (JFKIAT), 5 (JetBlue), 6 (jetblue and United) and 7 (British Airways) on the airside, landside, and terminals. For the Port Authority, Arup provided the re-configuration design of the Terminals 5, 6 and 7 landside, including new parking structures, as well as strategic long range planning studies for the overall airport.

For Delta at JFK, Arup and SOM continued our partnership from Terminal 4 to plan an extension to T4 for Delta, with a phased strategy for replacement of Terminals 2 and 3 and integration of the landside and airside. That work unfortunately was stopped due to 9-11, but the knowledge of the puzzle pieces and possibilities still resides in the team we are bringing to your project.

SOM Firm Description

SOM specializes in designing complex, cost-effective airport terminals. Combining an in-depth knowledge of airport terminal design with an efficient approach, SOM's designs accommodate both the immediate needs of the passenger as well as our clients' need for long-term, flexible facilities. SOM Airports pays close attention to the design of functional spaces that are understandable and reflect a high level of passenger service. We also anticipate future changes, and our group works closely with clients to design facilities that respond to current operational demands as well as to the demands of projected expansion and growth.

SOM's history with JFK International Airport began in 1957 with the opening of the International Arrivals Building. Since then SOM has continued building upon our relationship with JFK and the Port Authority with terminal planning studies, designs for expansions and renovations and new facilities.



UNDERSTANDING OF KEY ISSUES

- Delta still needs the JFK facilities to function as a significant transfer hub between European/Asian and domestic US routes.
- Meeting the connection transfer time between domestic and international is a challenge, particularly with respect to phased development and baggage handling systems
- Delta will have increased its emphasis on cost-effective and highly functional solutions since 2001
- The T2/3 airside is fairly constrained, and operating almost at the saturation point. Phasing of aircraft parking positions during construction will be of paramount importance. Adjacent aprons may need to come into play.
- Delta's fleet mix must be considered in aircraft parking schemes, which can achieve certain efficiencies relative to the standard Code E aircraft planning dimensions.
- The JFK road quadrant system limits the ability to combine quadrants. The geometry of the roads must be understood. Splitting international and domestic landside traffic between quadrants leads to wayfinding and signage problems on the roads.
- T2 and T3 have limited landside curb lengths due to their "corner" position in the JFK central terminal area. Multiple terminal roadway alignments and diverse curb elevations are further complicated by the presence of the AirTrain station and infrastructure.
- Terminal 4 concourses are 3 levels high, with a constrained floor height at Level 2, while domestic operations would ideally want to depart and arrive at Level 2.
- T1 is also in effect a 3-level terminal, with an intermediate arrivals mezzanine floor. In addition, its international CBP arrivals facilities are located on the far side of the building, making connections to the T2 side difficult.
- "Decanting" of other airlines or Delta products from existing facilities in order to maintain existing levels of operation and service requires extra phasing considerations.
- Parking locations for A380 aircraft need to be maintained or relocated within the T1 and T4 sites if those aprons are involved in the Delta expansion.

A NOTE ON THE FEE PROPOSAL

We would welcome a discussion of our fee proposal. It is strongly informed by our understanding of the very complex issues on the landside, the constraints of the airside, and the need for multiple phases and sub-phases. Our advanced knowledge of the site has led us to include very experienced specialist planners for landside and airside, in support of the three independent terminal planners who will each develop a distinct concept. We feel that this approach – combined with our sophisticated analysis and programming – will give Delta the best value for money. We hope we have not disadvantaged ourselves by knowing what it will take to develop truly viable solutions for this complex site.

In addition, our fee proposal assumes the adequacy of the base planning data to be provided by Delta. We also assume – based on our previous experience – that Delta will provide a streamlined point of contact for this Study, and that interaction with the Port Authority and Delta operational departments will be appropriate to the high-level nature of this Study.

OUTLINE OF ARUP-SOM TEAM PROCESS

Task 1 – Assist Delta with development of high-level program requirements

With our analytical tools we will be able to move very quickly from the gate and peak hour information you provide to a robust set of terminal processors, taking into account your new business plans and strategic objectives for the JFK hub. We know that the landside requirements will also need to take into account Port Authority parameters. Within our team we have current knowledge of the airport's entire set of operations, and we have the analytical tools and benchmarks to help Delta quickly define an efficient set of processors and support facilities.

Task 2 – Evaluate existing JFK Terminal 1 and Terminal 4 plans

We have most of this base data already and will be able to hit the ground running. SOM and Arup were the architects and engineers for Terminal 4 and the proposed Delta Expansion. The team includes staff who participated in Terminal 1. Most important will be the knowledge of JFK infrastructure and ground conditions. Even though engineering and specialty sub-consultants are not required for this Study, our multi-disciplinary team and JFK experience makes that knowledge and expertise available anyway.

Task 3 – Explore master plan concepts to support program requirements

We will cast the widest possible net when looking at initial master planning concepts. We will begin this exploration almost immediately. We will be able to draw upon the numerous concepts that were looked at in the past, to see if any of these can be modified for Delta's current needs. However, we will be able to take a fresh and objective look at a wide range of new concepts, based on our extensive master planning experience. In particular, we will be able to apply an understanding of the requirements of an international-domestic hub operation with a high percentage of transfers. We plan to present the full range of concepts with a preliminary assessment and, through discussion and evaluation, assist Delta in the selection of three short-listed concepts for further development.

Task 4 – Develop three viable concepts

A unique aspect of our team will be the ability to put fully independent planning teams to work developing different concepts. These teams will be led by different senior planners from Arup and SOM. This approach assures Delta that the broadest possible range of alternatives will be considered at the outset. These teams will continue developing the short-listed concepts. Delta will be assured of receiving truly distinct concepts built on the same base assumptions and informed by a knowledge of existing conditions.

The key staff who participated in Delta's previous redevelopment project for T2/3 during 2000 and 2001 area all available to contribute to the new study. We have that much more experience since then, including the work at T5/6 for JetBlue and designing for other low-cost carrier operations.

Task 5 – Prepare high-level phasing plans for each concept

Our team has developed detailed phasing plans for all of our many projects at JFK. We understand the constraints and opportunities presented by the adjacent terminal sites. We know from previous work for Delta on the T2/3 site that there will be no viable concept without a viable phasing plan. There will likely be multiple phases and sub-phases. The landside in particular presents major phasing issues.

Task 6 – Provide estimated areas and units

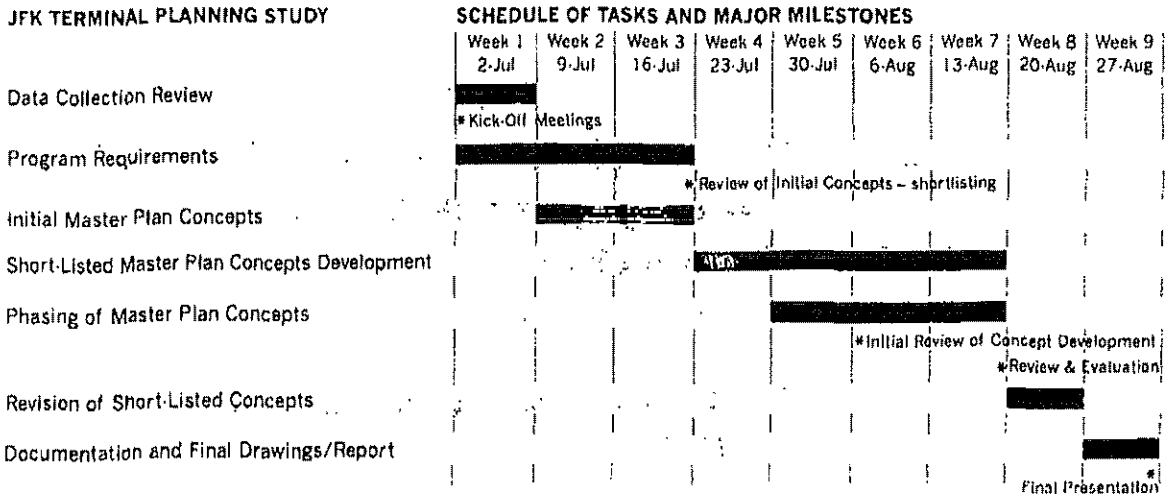
During the early weeks of the Study (Task 1) we will begin working closely with Delta to understand the specific support facility needs for the redeveloped JFK hub. This information will inform the development of viable concepts in task 4. By the time we get to Task 6 we will not only be able to provide the unit information and area breakdowns, but also – given our extensive and current experience at JFK (T4, T5) and elsewhere in New York – we will be able to assist Delta in building up the rough order of magnitude cost of the work.

Deliverables

- Technical Memorandum presenting the initial concepts considered and the rationale for winnowing the long list to three viable concepts to carry forward
- Final Report presenting the three short-listed concepts and a high-level evaluation and assessment

Graphic documentation of the three schemes:

- Site plans
- Terminal functional floor plans
- Functional building sections
- High-level phasing plans
- Estimated areas and units
- Other supporting diagrams and graphics



MARILYN TAYLOR, FAIA / URBAN DESIGN PARTNER / SOM

Marilyn leads the SOM Airports practice. She has directed the planning and design of most of SOM's major terminal projects, including those at Dulles, Newark, Toronto, and JFK Terminal 4, as well as other significant terminals around the world. Marilyn will provide strategic direction to this Study.

John F. Kennedy International Airport, Jamaica, New York
- Feasibility Study
- Terminal 4
- Terminal 4 / Delta Air Lines Expansion

Newark Liberty International Airport, Newark, New Jersey
- Continental Airlines Global Gateway

Logan International Airport, Boston, Massachusetts
- Design Guidelines
- Terminal E, International Arrivals Building

Dulles International Airport, Washington, DC
- Airport Master Plan
- Main Terminal Renovation/Expansion
- International Arrival Facility

Lester B. Pearson International Airport - Toronto, Canada

Hong Kong International Airport, Hong Kong, China
- SkyCity Master Plan / Terminal 2/SkyPlaza

Changi International Airport, Singapore
- Terminal 3

ANDREW McALPINE / PRINCIPAL AIRPORT PLANNER / ARUP

Andrew McAlpine leads Arup's North American Interchange and Terminal Planning Business. He is a professional architect with particular expertise in aviation terminal and facilities planning and design. Andrew is adept at responding to complex problems requiring highly functional concepts, tailored to specific sites and operational requirements. His experience includes developing innovative implementation strategies that respond to the many practical issues surrounding project development in active operational environments.

John F. Kennedy International Airport, Jamaica, New York
- jetBlue Terminal 5 Development
- Planning Alternatives Analysis

Washington Dulles International Airport, Washington, DC
- Tier 2 Programming and Planning

Minneapolis-St. Paul International Airport, Minneapolis, Minnesota
- 2020 Masterplan

Seattle-Tacoma International Airport, Seattle, Washington
- Simulation of Security Screening

Lester B. Pearson International Airport, Toronto, Ontario
- Airport Development

Ottawa Macdonald-Cartier International Airport, Ottawa, Ontario
- Terminal Development

ANTHONY VACCHIONE, AIA / MANAGING PARTNER / SOM

Tony has served as project manager for most of SOM's major terminal projects, including the JFK Terminal 4 Feasibility Study, the design of Terminal 4, and the proposed Expansion for Delta suspended in 2001. Tony will serve as Managing Partner for this Study, providing oversight and strategic direction.

John F. Kennedy International Airport, Jamaica, New York
- Feasibility Study
- Terminal 4
- Terminal 4 / Delta Air Lines Expansion

Newark Liberty International Airport, Newark, New Jersey
- Continental Airlines Global Gateway

Logan International Airport, Boston, Massachusetts
- Design Guidelines
- Terminal E, International Arrivals Building

Dulles International Airport, Washington, DC
- Airport Master Plan
- Main Terminal Renovation/Expansion
- International Arrival Facility

Lester B. Pearson International Airport - Toronto, Canada

San Francisco International Airport, San Francisco, California

Dublin Airport, Dublin, Ireland, Pier D

Hong Kong International Airport, Hong Kong, China
- SkyCity Master Plan / Terminal 2/SkyPlaza

NANCY HAMILTON / AVIATION TECHNICAL PLANNER / ARUP

Nancy Hamilton, a Principal with Arup, is their Aviation Sector Leader in America who has led 8 projects at JFK. She is expert at leading teams to create highly efficient and economical multi-disciplinary solutions. As Project Engineering Director on a daily basis for the $1.4 billion Terminal 4 at JFK, and as Principal in Charge /PM for Delta's major Expansion project at JFK in 2000 and 2001, she brings an expert knowledge of what is easily achievable or difficult to achieve on the Terminal 4 site, and on the airport landside for the Port Authority.

John F. Kennedy International Airport, Jamaica, New York
- jetBlue Terminal 5 Development
- Planning Alternatives Analysis

John F. Kennedy International Airport, Jamaica, New York
- Terminal 4
- Delta Expansion, 26 gates
- Master plan for Terminal 5 Jet Blue
- Terminal 4, Emirates A380 Gate Expansion, (current)

Minneapolis St Paul International Airport 2020 vision, 38 gate expansion, (2004)

Kunming Xiashao International Airport, China, 60m PAX airport (2006)

CARL GALIOTO, FAIA / TECHNICAL PARTNER / SOM

Carl Galioto is the firm wide Partner-in-Charge of SOM's Technical Group. The Technical Group is responsible for quality assurance, cost control, code compliance, exterior wall development, and the integration of building services and structural systems in the early design phases of projects, in addition to having the full responsibility for construction documents and construction administration.

Carl served as Senior Technical Coordinator for the JFK Terminal 4 project, as well as for the proposed Expansion for Delta, and will provide advice and guidance for the phasing planning of this Study.

John F. Kennedy International Airport, Jamaica, New York,
Terminal 4
Terminal 4/Delta Air Lines Expansion

Continental Airlines Global Gateway, Newark Liberty International Airport, Newark, New Jersey

Seven World Trade Center, New York, New York

World Trade Center, Tower One, "Freedom Tower" New York, New York

James A. Farley Post Office Renovation/Moynihan Station Redevelopment Project, New York, New York

New York Stock Exchange, New York, New York

MARK LEININGER / PROJECT MANAGER / SOM

Mark is an experienced project manager for airport and other transportation projects. He participated in the JFK Terminal 4 Expansion project, as well as playing significant planning roles in the completion of SOM's work at Logan terminal E, Toronto, and Dulles. He understands all phases of airport project development and will serve as overall Project Manager for the Study.

John F. Kennedy International Airport, Jamaica, New York
Terminal 4 /Delta Air Lines Expansion

Logan International Airport, Boston, Massachusetts
Terminal E, International Arrivals Building

Newark Liberty International Airport, Newark, New Jersey
Continental Airlines Global Gateway

Lester B Pearson International Airport, Toronto, Canada

Dulles International Airport, Washington, DC
Airport Master Plan
Main Terminal Renovation/Expansion
International Arrival Facility

James A. Farley Post Office Renovation/Moynihan Station Redevelopment Project, New York, New York

PETER MANSON-SMITH / TERMINAL PLANNER / ARUP

Peter Manson-Smith is an Associate Principal and Senior Airport Planner with more than 30 years experience in airport planning and development. He has worked at some of the world's most demanding airports, bringing a keen understanding of the intricacies of airport operations to deliver balanced, efficient and highly functional plans and designs, which minimize adverse impacts on the ongoing daily operations of busy international airports.

John F. Kennedy International Airport, Jamaica, New York
Terminal 4 Planning (current)
Terminal 5 Planning for jetBlue (current)
Terminal 6 Development (current)

LaGuardia International Airport, New York, New York
Port Authority of NY & NJ, Gate Capacity/Demand Analysis

Newark International Airport, Newark, New Jersey
Gate Utilization and Optimization

Atlanta Hartsfield International Airport, Atlanta, Georgia
Master Plan

Minneapolis-St. Paul International Airport, Minneapolis, Minnesota
2020 Plan

Lester B. Pearson International Airport, Toronto, Ontario
Terminal Development Master Plan

Dublin International Airport, Dublin, Ireland
Terminal 2 Development

Portland International Jetport, Portland, Oregon
Terminal and Apron Development Plan

DEREK A. R. MOORE / TERMINAL PLANNER / SOM

Derek has led master planning studies for numerous airports. He was SOM's lead planner for the expansion of Continental's hub at EWR and the suspended JFK Terminal 4 Expansion project for Delta. Prior to joining SOM he participated in the Terminal 1 project at JFK. He brings a broad knowledge of the site, from T1 through T4.

John F. Kennedy International Airport, Jamaica, New York
Terminal 4
Terminal 4 /Delta Air Lines Expansion

Newark Liberty International Airport, Newark, New Jersey
Continental Airlines Global Gateway

Lester B Pearson International Airport, Toronto, Canada

Dublin Airport, Dublin, Ireland
Master Plan and Pier D

Hong Kong International Airport, Hong Kong, China
SkyCity Master Plan / Terminal 2/SkyPlaza

Abu Dhabi Airport Master Plan, Abu Dhabi, UAE

Previous Experience: JFK International Airport, Terminal 1

LaGuardia, US Airways Terminal, New York

MARTIN LANDRY / TERMINAL PLANNER / ARUP

Martin is an Associate with Arup, Professional Architect and Airport Planner specializing in airport master plan, passenger terminal building and apron planning and design. He provides leadership and on-site project development skills to master plan, terminal building and apron projects at major international airports. He is particularly adept at managing, planning and programming and has been involved in reviewing capacity and demand analysis at two of the busiest airports in the United States – Orlando and JFK.

John F. Kennedy International Airport, Jamaica, New York
- Delta T4 Expansion
- Port Authority of NY & NJ Terminal Planning Services

Newark International Airport, Newark, New Jersey
- Port Authority of NY & NJ Terminal A Reconfiguration
- Terminal B Analysis, Gate Utilization and Optimization Studies

Orlando International Airport, Orlando, Florida
- Terminal Development Alternatives Analysis

Minneapolis-St. Paul International Airport, Minneapolis, Minnesota
- 2020 Plan

Lester B. Pearson International Airport, Toronto, Ontario
- New Terminal Development

Pierre-Elliot-Trudeau International Airport, Montreal, Quebec
- Terminal Development Plan Update

THOMAS KENNEDY / CIVIL ENGINEER / ARUP

Tom Kennedy is an Associate with Arup and brings over 12 years of experience in a wide range of civil engineering projects and site development worldwide, with the last 6 spent at JFK. Tom's skills include all aspects of planning design and construction associated with site development, including earthwork re-grading, internal and external site access roads, high-pressure utility diversions, storm and sanitary water drainage, rainwater harvesting, and utility supply and diversion. He brings extensive knowledge of airport operations, including significant experience at JFK International Airport.

John F. Kennedy International Airport, Jamaica, New York
- Delta T4 Expansion
- jetBlue T5
- jetBlue T6
- Terminal 4 A380 Emirates Gate

Kunming Xiashao International Airport, China
- New 60m Pax Airport -Landside planning and development

Birmingham International Airport, Birmingham, United Kingdom
- Access Roads
- Stands Extension
- Environmental Noise Bunds

Hamilton International Airport, Hamilton, Ontario
- Utilities Master Plan

VOJIN STEFANOVIC / APRON PLANNER / ARUP

Vojin Stefanovic is an airport planning specialist responsible for airside and gate planning to support airport and airline clients around the world. Vojin has a strong understanding of the integrated relationship between terminal buildings and airside operations, and extensive experience with the PANYNJ. His professional experience on both sides of the gate combined with his command of the ICAO and FAA standards and policies allow him to deliver balanced and efficient solutions for various airport development plans.

John F. Kennedy International Airport, Jamaica, New York
- Delta T4 Expansion
- T4 Airside Planning
- jetBlue Terminal Development
- Terminal 4 A380 Gate Modifications and Apron Improvements

Atlanta Hartsfield International Airport, Atlanta, Georgia
- Terminal Master Plan and Aircraft Gating Studies

Lester B. Pearson International Airport, Toronto, Ontario
- Airlines Integration Project
- Standing Services Airport Planning

Dublin International Airport, Dublin, Ireland
- New Terminal 2 Development Project

REGINE WESTON / LEAD ANALYST / CONSULTANT

Regine is an internationally recognized expert in Airport Planning and Systems Analysis. She specializes in terminal and apron capacity/demand analyses and forecasting and has worked at major airports around the world including John F. Kennedy , La Guardia, and Newark in New York, Atlanta, SEATAC, Dulles and Reagan (National) in Washington, Orlando, Toronto, Calgary, Dorval and Mirabel in Montreal, Manchester and Seoul among many others. Regine is particularly experienced at scenario assessment and is able to rapidly model and assess the impact on airports of alternative traffic assignment, forecast scheduling, development phasing options and physical planning scenarios.

John F. Kennedy International Airport, Jamaica, New York
- Delta T4 Expansion
- jetBlue Terminal Development
- Forecast Demand Analysis, Gate Modelling and Terminal Simulation

LaGuardia International Airport, New York, New York
- Port Authority of NY & NJ, Gate Utilization Analysis

Newark International Airport, Newark, New Jersey
- Port Authority of NY & NJ Future Demand Forecasts

Hartsfield Atlanta International Airport, Atlanta, Georgia
- Future Gates Analysis

Minneapolis-St. Paul International Airport, Minneapolis, Minnesota
- 2020 Plan

JFK INTERNATIONAL AIRPORT TERMINAL 4

The new terminal, opened in 2001, was designed to serve 7 million annual passengers and replace the original international arrivals building (also designed by SOM) through a process of carefully planned and coordinated construction stages, and a fast-tracked schedule, which allowed the terminal to remain fully operational during construction.

The new terminal was constructed in an intensely utilized operational area, with numerous different carriers and multiple peaks during the operational day. SOM and Arup worked out the phasing strategies, documenting the plan in a series of detailed drawings to guide the construction. The plan also included a new Meeter-Greeter Hall, strategically placed and linked to the existing terminal by means of a connecting passageway, to serve as a temporary arrivals hall while the former hall was demolished and the new permanent hall constructed.

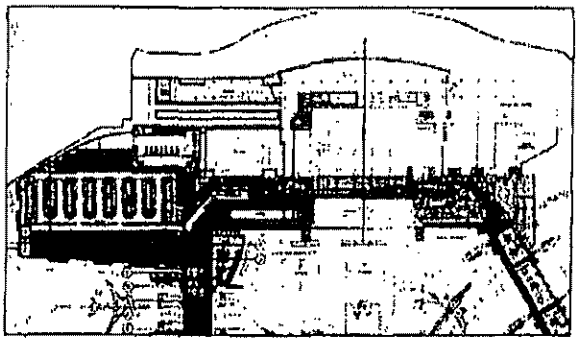
The new three-level, state-of-the-art terminal reasserts the airport's place as the pre-eminent international gateway in North America.

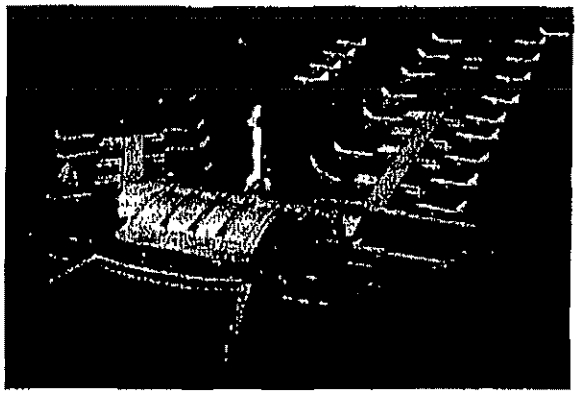
Team Credit: SOM and Arup

JFK INTERNATIONAL AIRPORT TERMINAL 4/DELTA AIR LINES EXPANSION

This SOM/Arup designed project, put on hold after 9/11, was expanded by an additional 1.5 million sf of program area to accommodate a significant portion of Delta Air Lines' operations at JFK, as well as growth in the operations of other IAT carriers. The East Concourse was to be extended and widened to accommodate a range of international and domestic carriers. The West Concourse extended and fitted out for Delta's combined international and domestic main line operations. Passenger amenities included Delta clubs and at least three airside concessions' nodes providing approximately 40,000 sf of retail and food/beverage concessions. The terminal, or Head House, of T4 was to be expanded to accommodate Delta's passenger processing functions. In addition to check-in and arrivals functions, the expansion included extensive new Federal Inspection Services (FIS) facilities for Delta international passengers, both connecting and terminating.

Team Credit: SOM and Arup

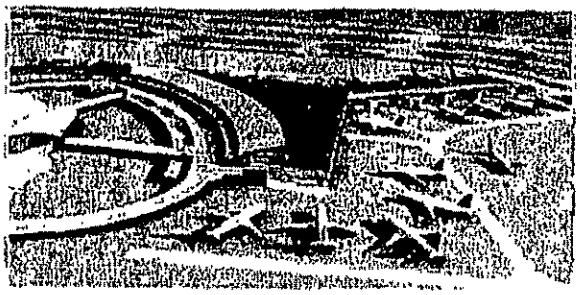


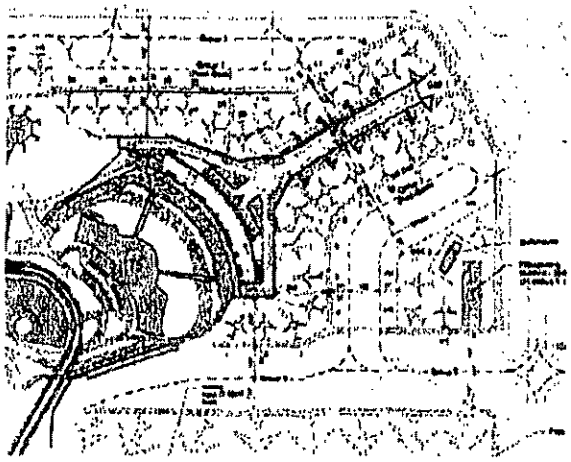


JFK INTERNATIONAL AIRPORT JETBLUE TERMINAL

Arup has worked closely with jetBlue to develop a terminal for their rapidly growing hub operation at JFK. At 26 gates and a projected 20 million passengers per annum, the jetBlue terminal (T5) will be one of the most productive terminals in the world. Facilities will be closely tailored to jetBlue's low cost, high efficiency business model. The site is in a very constrained quadrant of JFK occupied by the historically significant Terminal 5 designed by Eero Saarinen. The plan responds simply and directly to a range of imperatives, including high efficiency of airside aircraft movements, direct and uncomplicated internal passenger movements, efficiency of supporting operations, robust and reliable design able to withstand high volume usage, simplicity of baggage system design and deference to the historically significant existing Terminal 5. Work has included extensive passenger flow simulations and analysis, including simulation of the performance of the retail node using proprietary advanced simulation tools.

Team Credit: Arup

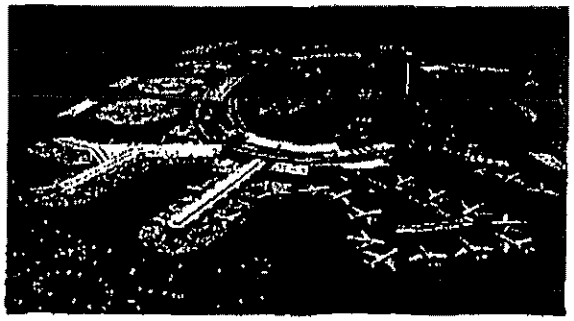




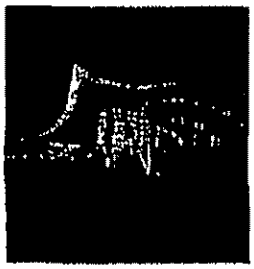
NEWARK LIBERTY INTERNATIONAL AIRPORT CONTINENTAL AIRLINES TERMINAL C3 EXPANSION

The new facilities include a 325,000 sf, 19-gate concourse for both international and domestic use, an FIS facility capable of processing 1,500 passengers per hour, an elevated departures roadway and dual arrivals roadway, a 3,400-space parking garage with bridge connections to the terminal, a Presidents Club, a consolidated outbound baggage facility, a 42-position ramp control tower standing 135 feet above grade, and a 700-foot-long airside corridor facilitating connections between Continental's three concourse. In addition, SOM has designed a complete renovation of the terminal, converting a ground-level parking area into a new arrivals area, adding a second departures level in its place, and augmenting all elevators, escalators and stairs.

Team Credit: SOM

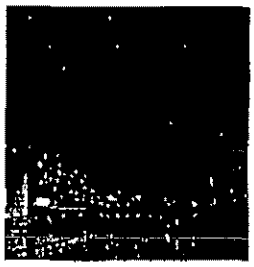


SECTION IV :: ADDITIONAL RELEVANT EXPERIENCE



LESTER B PEARSON INTERNATIONAL AIRPORT

SOM, in a joint venture with Adamson Associates and Moshe Safdie and Associates - teamed with **Arup**, planned and designed a new terminal in Toronto, Canada. The new terminal will replaces in phases the existing Terminals 1 and 2 and will to serve as Air Canada's main hub, and strengthening Pearson's position as a gateway to North America. The terminal planning provides for phased growth, flexibility, and positive passenger experience. As a hub terminal, one of the important planning goals was ease of transfer between domestic, international, and US-bound flights.



LOGAN INTERNATIONAL AIRPORT, TERMINAL E, INTERNATIONAL ARRIVALS BUILDING

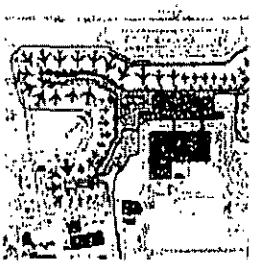
A signature building in Logan's $1 billion expansion, the new terminal creates a dramatic new image for Boston's 75-year old airport. As "Image Architect" for MASSPORT's expansion, **SOM** designed a new multi-level facility that gives the existing terminal a grander civic dimension while adding a sense of warmth. One of **SOM's** central priorities is to strengthen the airport's relationship with the city. Inside, passengers will enjoy panoramic views of Boston Harbor through a sweeping glass curtain wall on the terminal's south side. Outside, the vestibules' crystalline forms will be visible at night from downtown Boston.

MINNEAPOLIS ST PAUL INTERNATIONAL AIRPORT, 2020 VISION MASTER PLAN

As part of the Leading development of a new master plan, **Arup** was responsible for all terminal, groundside and terminal airside elements including forecasting, gate demand assessment, and airline assignment scenarios for an airport-wide plan to accommodate growth for NorthWest, its SkyTeam partners and all other users of Minneapolis St. Paul. One of the key strategic elements was to ensure a financially sustainable incremental development that would meet the traffic forecast for each individual segment of traffic, and to utilize the existing airport assets instead of abandoning them for a previously proposed new master terminal.

DULLES INTERNATIONAL AIRPORT

Dulles is one of the most architecturally and functionally significant airports of the modern era. Designed by Eero Saarinen, it was the first example of the now ubiquitous concept of separating the passenger processing (landside) and aircraft related (airside) components of an airport when it was built in 1962. Since 1984, **SOM** has provided design services for the Master Plan; Renovation and Expansion to the Main Terminal, the new International Arrivals Facility, and the new Automated People Mover which is currently under construction. **Arup** has contributed to planning and MEP engineering for the new 44 gate Tier 2 concourse to serve United Airline and the Star Alliance.



TRUDEAU INTERNATIONAL AIRPORT, TERMINAL DEVELOPMENT MASTER PLAN

The major elements of **Arup's** plan include: expansion & redevelopment of the existing terminal processor to provide additional check-in and ticketing, increased passenger queuing and public circulation space, improved retail facilities, new international arrivals and baggage claim facilities, new facilities for Canadian Inspection Services; construction of a new pier to accommodate US Transborder traffic, including the phased relocation of related US Federal Inspection Services Facilities; and construction of a new international pier, planned to serve traffic relocated from Mirabel to Trudeau, which has been temporarily accommodated during the first phase of the project.

SAN FRANCISCO INTERNATIONAL AIRPORT, INTERNATIONAL TERMINAL

As the centerpiece of SFIA's $2.6-billion expansion, the new Terminal has become a striking symbol of the city's status as the West Coast's gateway to the Pacific Rim. The five-story structure represents a watershed in the integration of structural and architectural design and a model for other urban airports with limited developable land. To assure that the facility would remain operational in the event of a major earthquake, **SOM** engineered the structure to the highest seismic safety requirements ever imposed on an American airport terminal. **SOM** introduced natural light throughout the building to clarify its structure and guide users through the massive facility's *circulation systems.*

Delta Air Lines
JFK Terminal Planning Study
John F. Kennedy International Airport

DELTA

Proposal Matrix
June 15, 2007

Insert the proposed employees, classification, salary cost, multiplier and hours required for this study. Please add more rows as needed. Insert an amount for not-to-exceed reimbursable expenses for this study as defined in other attachments to this Request for Proposa

Employee	Title	Labor Salary Cost ($/ hr)	Labor Burden Multiplier	Hourly Billing Rate	Hours Required	Totals	
Arup							
Andrew McAlpine, OAA	Principal, Senior Airport Planner	83.8	3.15	$263.97	20	$5,279.40	
Nancy Hamilton, PE	Principal, Aviation Technical Planner						
Martin Landry, OAQ	Associate Principal, Terminal Planner	$60.41	3.15	$190.29	140	$26,640.81	
Peter Manson-Smith	Associate Principal, Terminal Planner	$76.41	3.15	$240.69	140	$33,696.81	
Tom Kennedy, PE	Associate Principal, Groundside Planner	$65.38	3.00	$196.14	30	$5,884.20	
Vojin Stefanovic	Associate, Airside Planner	$50.91	3.15	$160.37	60	$9,621.99	
Staff	Roadway Planner	$38.00	3.00	$114.00	60	$6,840.00	
Staff	CAD	$30.69	3.15	$96.67	80	$7,733.88	
SOM							
Marilyn Jordan Taylor, FAIA	Urban Design Partner	$105.00	3.00	$315.00	20	$6,300.00	
Anthony Vacchione, AIA	Managing Partner						
Mark Leininger, AIA	Associate Partner, Project Manager	$50.00	3.00	$150.00	72	$10,800.00	
Derek A. R. Moore, Ph.D.	Associate, Terminal Planner	$50.31	3.00	$150.93	140	$21,130.20	
Staff	Terminal Planner	$33.33	3.00	$99.99	220	$21,997.80	
Staff	Architect(s)	$30.00	3.00	$90.00	80	$7,200.00	
WBE							
Regine Weston, PEng	Consultant, Lead Analyst	$75.00	2.50	$187.50	20	$3,750.00	
						Not to exceed (NTE) Total Labor Cost	$166,875.09
						Not to exceed (NTE) Total Reimbursable Expense	$20,000.00

NTE Labor Cost	$166,875.09
NTE Reimbursable Expense	$20,000.00
Total NTE	**$186,875.09**

EXHIBIT "C"

TRAVEL REIMBURSEMENT POLICY

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1. **Policy:**

It is the policy to reimburse the reasonable costs made by the Consultant under contract in the performance of their contractual responsibilities. Due to the various types of contracts entered into, there is a need for a consistent process in the approval, payment, review, and accounting for expenditures incurred by authorized persons.

2. **Purpose and Objective:**

It is the purpose of this policy to:

A. Provide clear guidelines for obtaining approval and reimbursement for travel-related expenditures by persons traveling in connection with contracted work.

B. Serve as a reference for prospective offerors or bidders for contracts for work.

C. Establish parameters for expenditures, accounting and auditing in connection with contracted work.

3. **Definitions:**

A. Reasonable cost: Least costly means of accomplishing objectives, considering the nature and purpose of expenditures, the value of the authorized individual's time, and the impact on the overall contract cost or agreed upon budgets.

B. Documentation: Original receipts, invoices, statements, etc. which confirm actual incurred costs, receipts of payment, date of transaction, and nature of the service or product received, or if other receipts are unavailable, a written letter of memorandum that summarizes the basis of the particular payment.

C. Per Diem: Allowance for meals associated with out-of-town business travel.

D. Business Need: Specific requirements or circumstances dictated by the nature of the requirements of the contract.

E. Out-of-town travel: Travel of more than 50 miles one way from the authorized traveler's designated place of assignment.

F. Non-reimbursable travel expenditures: Those expenses that were incurred without pre-approval; expenses not allowed in the contract; and expenditures not allowed in federal, state, and Owner's regulations current at that time

4. **Application of this Policy:**

This policy will be applicable to the following types of contracts, but only to the extent that expenditures are authorized in the contract:

A. Time and materials (expenses) contracts – T&M or T&E.

B. Lump sum plus reimbursement of expenses.

C. Contract with a not-to-exceed amount (NTE), which allows for reimbursement of expenses.

D. Other types of contractual agreements that are not lump sum and have identified expenditures as reimbursable line item in the fee proposal agreement.

5. **Reimbursable Expenses:**

A. Travel

1.) For travelers to the Project Site not based at the Project Site area or travelers to the Client's Office not based in the Client's Office area, only the following expenses shall be reimbursed and only the stated amounts.

a.) The means of transportation used by the authorized traveler must be the most economical means available during the time of travel, and Owner will only reimburse up to the expense of using that means. Example, if a traveler decides to drive instead of taking a plane, if the cost of a round trip ticket at the time was lower than the cost of mileage reimbursement, the Owner will only reimburse up to the cost of the airfare.

b.) If travel is by air, travel must be by Delta coach, if available and at the most reasonable cost available at the time of travel. Round trip fare will be reimbursed only if travel is directly between the Project Site or the Client's Office and the traveler's base of employment, and solely for purposes of performing the contract. If the travel is for additional purposes or includes other stops, the Owner will only reimburse the proportionate share of travel costs necessary for the performance of the contract with the Owner. If travel is by vehicle, reimbursement will be made based on the approved IRS reimbursable rate per mile.

c.) Lodging at the Project Site or in the Client's Office area will be paid up to the maximum Per Diem Rate established by the GSA for the current Fiscal Year for the location of the Project related overnight stay, plus the actual costs of taxes. No other room charges will be paid for lodging. This lodging limit will be adjusted based on the area's market conditions.

d.) Meal rates shall apply whether travelers dine alone or in groups. Rates and conditions are as follows:

(1.) Meals while at the Project Site or in the Client's Office area will be paid at actual cost, but not to exceed up to the maximum Per Diem Rate established by the GSA for the current Fiscal Year for the location of the Project related meal expense.

(2.) Reasonable reimbursement for meals while in transit to and from the Project Site or the Client's Office will be based on arrival time at the Project Site or in the Client's Office.

(3.) Meals will be reimbursed only for the authorized traveler and not for others who may accompany the traveler.

(4.) No charges for alcoholic beverages will be reimbursed.

e.) Transportation by rental car while at the Project Site or in the Client's Office area will be paid at a maximum of $60.00 per day base rate, based on a mid-sized car rental rate. The actual costs of taxes, insurance and gas will also be paid. This limit will be adjusted on an annual basis based on the car rental market. Actual parking costs will be paid. The traveler will obtain the best rate applicable to the period of time during which the rental car is needed.

(1.) If the nature of the visit does not require a rental car, the reasonable cost of ground transportation will be reimbursed. Actual taxi fare will be paid and use of a personal car will be limited to the approved IRS reimbursable rate per mile.

f.) The actual reasonable cost of other expenses incurred by the traveler while at the Project Site or in the Client's Office area will not be reimbursed if the traveler has a local office or local partner or affiliate at the Project Site or at the Client's Office area. If the traveler has no local partner, office or affiliate at the Project Site or in the Client's Office area, reasonable amounts for duplicating services, fax service, and other miscellaneous business expenses related to the engagement will be reimbursed at cost. Business phone calls in furtherance of the contract with the Owner will be reimbursed during the period of travel. Personal calls, whether local or long distance, will not be reimbursed.

g.) Travel in and out of the continental United States will be subject to written pre-approval by the Owner. If a traveler will be originating from outside the continental U.S., the cost of travel will be reimbursed only as if the travel was originated from the home office in the U.S. unless pre-approved in writing.

2.) For travelers based at the Project Site city or in the Client's Office city to destinations in the continental U.S., only the following expenses shall be reimbursed and only in the stated amounts:

a.) The traveler shall follow the provisions of Section 5.A.1 of this policy.

b.) Travel requests will be pre-approved by the Owner and should be all for the furtherance of the contract with the Owner and based on an annual or program out-of-town travel budget.

c.) If the contractor travels with a family member, only the cost that applies to the contractor will be reimbursed.

3.) Travel Authorization, Reimbursement and Documentation:

a.) Travel expenditures shall be part of the contract's approved budget or agreed reimbursable fee. The traveler's official contract representative will recommend the authorization for travel to the Owner's representative for approval using the Owner's Travel Authorization Form. If the requested travel is not in the approved budget or in the agreed contract fee, the Travel Authorization Form will be forwarded to the Owner's finance representative for financial and budget review and approval/disapproval. The traveler shall only make travel arrangements after receipt of an approved Travel Authorization Form from the Owner.

b.) Reimbursements for travel-related expenditures should be submitted within 30 days after completion of travel. The Owner will pay all approved travel in the amounts that are in compliance with this policy within 30 days after receipt of the reimbursement request.

c.) The traveler shall only submit the approved Travel Authorization Form and a Traven Expense Reconciliation Form to request a reimbursement. All original receipts shall be kept at the traveler's designated office of assignment and be made available on demand during the processing of reimbursement or during audit.

DELTA COPY

CHANGE ORDER - DESIGN

Owner: DELTA AIR LINES, INC.
Corporate Real Estate, Dept. 877
P.O. Box 20706
Atlanta, Georgia 30320

Architect: ARUP/SOM Joint Venture
14 Wall Street
New York, NY 10005

Please reference this purchase order # on all invoices:
Purchase Order: 91-30145
Contract No.: 0094329 Change Order No.: 001
WBS Element: N/A GL Account: 6407187
Cost Center: C8770ATG Internal Order: N/A
AMOUNT ADJUSTMENT: $ 80,200.00
TIME ADJUSTMENT: add/subtract zero (0) days
Change Order Date: October 4, 2007
Original Contract Date: June 25, 2007

PROJECT: JFK Terminal Planning Study

PROJECT SITE: John F. Kennedy International Airport

Owner and Architect agree that the Contract is changed as follows (☒ check appropriate box):

☒ As set forth in Architect's Proposal(s) dated August 17, 2007 and August 28, 2007, attached hereto and incorporated herein.

☐ Description of Work for this Change Order (if Proposal(s) are not attached):

Any conflict between the terms of this Change Order and any Proposal attached hereto or referenced herein shall be resolved in favor of the provisions of this Change Order. The parties agree that the adjustment, if any, to the compensation shown below is the only such adjustment that will be made on account of the change to the Contract made by this Change Order.

THE MAXIMUM COMPENSATION PAYABLE BY OWNER TO ARCHITECT UNDER THE CONTRACT WILL BE CHANGED AS SHOWN BELOW:

Original Amount:	Increase / (Decrease):	Total to Date:
$ 186,875.00	Previous Change Orders $ 0.00 (C.O. 0 through 0) **This Change Order $ 80,200.00**	$ 267,075.00

Owner: DELTA AIR LINES, INC.

By: [signature]
Name: John W. Boatright
Title: Vice President-Corporate Real Estate
Date: 10-5-07

Architect: ARUP/SOM, JOINT VENTURE

By: Skidmore, Owings & Merrill, LLP Architects, joint venturer
Name: [illegible]
Title: ASSOCIATE PARTNER
Date: 11-8-07

By: Ove Arup & Partners Consulting Engineers, PC, joint venturer
Name: [illegible]
Title: Principal
Date: 11-9-07

NO WORK COVERED BY THIS CHANGE ORDER SHALL COMMENCE UNTIL THIS CHANGE ORDER HAS BEEN EXECUTED BY ALL PARTIES.

ARUP/SOM

August 28, 2007

Thom Lang
Delta Air Lines
PO Box 20706
Atlanta, GA 30320

Dear Thom,

Thank you for acknowledging our efforts on the Delta Terminal Study at JFK. Working with you and the Delta team has been and exciting and rewarding project for all us here at ARUP and SOM. As requested we have reviewed our expenses to date and have calculated the following:

ARUP expenses to date	$19,700.00
SOM expenses to date	$ 4,000.00
ARUP expenses for 2 additional trips – 8-29 and 9-5 (2 persons per trip)	
	$ 5,400.00
SOM expenses additional	$ 1,200.00
40 Copies of final presentation	$10,000.00
Total	$40,200.00
Previously budgeted expenses	$20,000.00
New additional expenses	
(Not to exceed)	**$20,200.00**

Feel free to contact me with any questions, I have asked ARUP to provide back up to their expenses to date and I have SOM's and the printing estimate for your records if your require them for your use.

Sincerely,
Mark F. Leininger, AIA
Associate Partner

srv-configure

SKIDMORE, OWINGS & MERRILL LLP
14 WALL STREET, NEW YORK, NY 10005
TEL 212.298.9300 FAX 212.298.9500
SOM.COM

Booz | Allen | Hamilton

Booz Allen Hamilton Inc.
8283 Greensboro Drive
McLean, VA 22102

Tel 1-703-377-5196
Fax 1-703-902-3497

www.boozallen.com

DRAFT – CONFIDENTIAL

August 17, 2007

Mr. Thom Lang
General Manager – New York
Delta Air Lines
(404) 714-6168

Subject: JFK Redevelopment Options Analyses

Dear Mr. Lang:

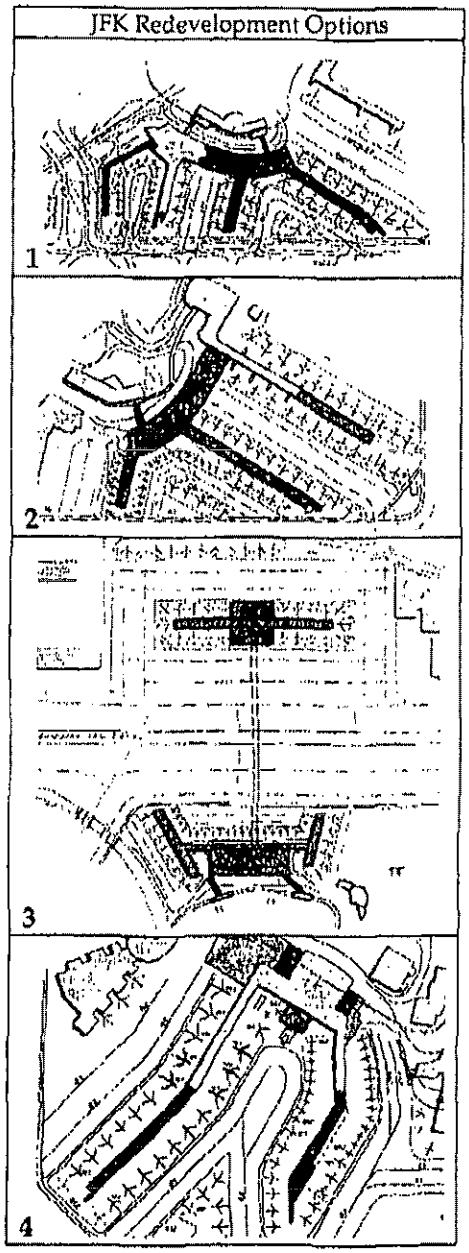
Booz Allen Hamilton welcomes the opportunity to submit this scope and fee proposal to assist Delta Air Lines (Delta) with John F. Kennedy International Airport (JFK) re-development plans. Specifically, this proposal covers the evaluation of the four terminal expansion options from the perspective of terminal ramp area aircraft congestion and efficiency. Although full TAAM[1] simulations may be necessary in the future to estimate the delays caused by the preferred option with finer precision, there is an urgent need now to quickly rank the proposed alternatives with respect to aircraft movement efficiency. We understand that the primary objective of this effort is to evaluate the proposed options rapidly before designs are developed further and identify better performing options or eliminate some. We will focus on the impact to the airside operations performance and support the overall assessment of the available expansion options.

The letter proposal is organized into three sections as follows:

- Objectives, Scope and Approach

[1] *Total Airspace and Airport Modeler - http://www.preston.net/Documents/taambrochure.pdf*

- Primary Tasks
- Staffing, Timetable and Fees



Objectives, Scope and Approach

Delta is engaged in re-development of its JFK hub and initiated a JFK Terminal Planning Study. The design team is considering alternative expansion options and in this early phase of the redevelopment, four scenarios emerged. JFK airport is experiencing significant airside and ramp congestion, and particularly, existing Delta facilities at Terminal 2 and Terminal 3 are severely constrained with respect to aircraft flows on terminal area taxiways and gate access.

The objective of the proposed work is to develop a modeling framework, quantify and evaluate the performance of the four proposed options with respect to ramp and taxiway aircraft flows and associated taxiing delays.

We will develop a network flow model and a probabilistic approach to evaluate each topology and determine the expected taxiing delays. The model will be used to identify all possible aircraft taxi conflicts and determine associated probabilities for each and duration of conflict resolution. The enumeration of all possible conflict events will lead us to an expected overall delay for a given topology. This is a probabilistic model with the ability to estimate the expected performance under the desired flight schedule, gate assignment, and time-of-day.

This approach will allow us to quantify the expected delays for each option under the forecast flight schedule. Running the model for different time of the day allows us to capture the variability in the taxi delays and understand and quantify the robustness of each option.

Primary Tasks

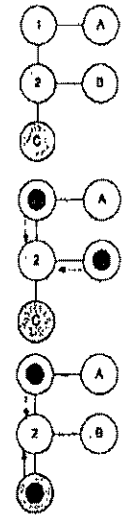
We recommend three tasks in this proposal as described in the paragraphs that follow.

Task 1 – Document Key Project Assumptions: This task consists of data gathering and assumption documentation, an essential part of our ramp modeling effort. Specifically, we will work with you to gather and understand:

- Proposed terminal option drawings, aircraft taxiing flows,
- Forecast flight schedule,
- Existing historical delays associated with flights using JFK Terminal 2.

Our initial assessment is that all required data and information are available, and will be provided by Delta. Information will be reviewed and any missing or incomplete items will be discussed with Delta to determine additional assumptions or identify other data to use. Booz Allen will inventory all relevant information and obtain agreement on the proposed test flight schedules with Delta's project staff.

Task 2 – Model and Algorithm Development: Booz Allen will develop a ramp and taxiway operations evaluation model to be used for options rankings. The model characterizes the ramp and taxiway operations using a node-arc network and facilitates the analysis of aircraft movement conflicts and taxiing delay estimation. The probability of each conflict event and the duration for conflict resolution can be derived from operational statistics, and the expected delay due to each conflict event can be computed accordingly. The algorithm enumerates all potential conflict scenarios and computes expected delay for each flight by summing up the expected delay of each conflict scenario.



A sample taxiing delay calculation of the model is depicted here:

- On the right is a simple layout with two gates A and B and an exit point C, the blue nodes 1 and 2 represent points along a taxipath.
- Considering the red aircraft going from A to C; it may need to wait at node 1 if the blue aircraft is pushing out from gate B. Assume for now that half of the time the red aircraft concedes and the other half of the time the blue aircraft concedes and waits.
- The red aircraft will need to wait at node 1 if the blue aircraft is taxiing to gate B from C.
- Assume the movement from node to node take 3 time units
- Expected[*delay from A to C*] = P(*taxiing from B*) * 3 * 0.5 + P(*taxiing to B*) * 3

Iterative calculation of such expected delays and summation will give us the total taxiing delays for each scenario. It is anticipated that there will be hundreds of such conflict scenarios. We will develop a computer program to enumerate and evaluate all possible delay events.

The model will serve as an evaluation platform for taxiing delays. We will test the model performance and calibrate as necessary if existing JFK delays are provided for Terminal 2, where Delta operates currently.

Task 3 – Evaluate the Four Proposed Options: We will evaluate and rank the four proposed layouts with respect to a set of defined metrics. The proposed evaluation metrics include:

- *Gate capacity*: number of aircraft per hour that can be supported by the terminal and gate layout
- *Taxiing distance*: weighted average and maximum from gate to terminal area exit, and ultimately to departing runway. (Arrivals are assumed same).
- *Expected taxiing delay*: expected additional taxi-in and taxi-out time spent because of interference due to movements of other aircraft.

Each option is given a score and ranked in an ordinal scale. Although it is possible to evaluate the absolute delay values for each option, the precision of the proposed approach better supports a comparative evaluation than an absolute delay prediction. We will score the options on a relative scale. Ultimate ranking of the options with respect to airside performance is a weighted sum of taxiing distance and associated delays.[2]

Deliverable: Management meeting and report with the rankings and recommendations.

Staffing, Timetable and Fees

Justin Zubrod, the partner in charge of Booz Allen's US commercial transportation business will be the officer-in-charge of this effort and Dr. Cenk Tunasar, Senior Associate, will serve as the project manager and be responsible for overall project delivery. Dr. Barry Liu, Associate, will serve as the technical lead and will develop the

---

[2] *It must be noted that our proposed approach only highlights the airside aircraft movements, and an ultimate ranking would need evaluation of passenger walking distances, connect times, constructability, cost of construction, further expansion flexibility, etc.*

proposed models. Cheech Ong, Associate, will consolidate the scoring and develop a ranking methodology. Additional resources will be added as needed.

We estimate that our professional fees will be $60,000 to complete all tasks of this effort including expenses. It is anticipated that all proposed work will be performed within 3 weeks from the date all required data and assumptions are available. The work will be performed under the conditions laid out in the Master Services Contract between Delta Air Lines and Booz Allen. All reports, analyses or other material provided by Booz Allen to Delta are solely for Delta information and use in connection with the assignment. Booz Allen will devote its best professional efforts to this assignment. All findings, conclusions, and recommendations will represent our best judgment based on the information supplied by Delta.

* * * * *

Mr. Lang, we very much look forward to working with you on this project and are anxious to get started.

Best Regards,

Justin F. Zubrod, Sr.
Vice President

Cenk Tunasar, Ph.D.
Senior Associate

ACCEPTED AND AGREED TO:

Delta Air Lines, Inc.

By:_____

CHANGE ORDER - DESIGN

Owner: DELTA AIR LINES, INC.
Corporate Real Estate, Dept. 877
P.O. Box 20706
Atlanta, Georgia 30320

Architect: ARUP/SOM Joint Venture
14 Wall Street
New York, NY 10005

Please reference this purchase order # on all invoices:
Purchase Order: 91-30145
Contract No.: 0094329 Change Order No.: 003
WBS Element: N/A GL Account: 6407187
Cost Center: C8770ATG Internal Order: N/A
AMOUNT ADJUSTMENT: $ 275,761.00
TIME ADJUSTMENT: add/subtract zero (0) days
Change Order Date: March 6, 2008
Original Contract Date: June 25, 2007

PROJECT: JFK Terminal Planning Study

PROJECT SITE: John F. Kennedy International Airport

Owner and Architect agree that the Contract is changed as follows (☒ check appropriate box):

☒ As set forth in Architect's Proposal(s) dated January 4, 2008, attached hereto and incorporated herein.

☐ Description of Work for this Change Order (if Proposal(s) are not attached):

Any conflict between the terms of this Change Order and any Proposal attached hereto or referenced herein shall be resolved in favor of the provisions of this Change Order. The parties agree that the adjustment, if any, to the compensation shown below is the only such adjustment that will be made on account of the change to the Contract made by this Change Order.

THE MAXIMUM COMPENSATION PAYABLE BY OWNER TO ARCHITECT UNDER THE CONTRACT WILL BE CHANGED AS SHOWN BELOW:

Original Amount:	**Increase / (Decrease):**	**Total to Date:**
$ 186,875.00	Previous Change Orders $ 362,310.00 (C.O. 0 through 2) **This Change Order $ 275,761.00**	$ 824,946.00

Owner: DELTA AIR LINES, INC.

By:
Name: John W. Boatright
Title: Vice President-Corporate Real Estate
Date: 3-7-08

Architect: ARUP/SOM, JOINT VENTURE

By: Skidmore, Owings & Merrill, LLP
Architects, joint venturer
Name:
Title: Partner
Date: March 11, 2008

By: Ove Arup & Partners Consulting
Engineers, PC, joint venturer
Name:
Title: Principal
Date: 3.11.08

NO WORK COVERED BY THIS CHANGE ORDER SHALL COMMENCE UNTIL THIS CHANGE ORDER HAS BEEN EXECUTED BY ALL PARTIES.

ARUP|SOM a joint venture of
Skidmore, Owings & Merrill LLP Architects and
Ove Arup & Partners Consulting Engineers PC

January 4, 2008

Thom Lang
Delta Air Lines, Inc.
Hartsfield Atlanta International Airport
Atlanta, Georgia 30320
via Email: thom.lang@delta.com

Re: JFK Terminal Planning Study – Phase 3

Dear Mr. Lang:

We are delighted to know that Delta is moving ahead with plans for redeveloping your facilities at JFK. We have enjoyed working with you and the rest of the Delta team on the Redevelopment Study Report this summer and are enthusiastic about proposing for this additional Study. In fact, all of the senior staff who have worked on that project and gained knowledge of the site, the facilities and Delta operations continue to be available to take part in this new phase of Study.

As requested we have broken our fee into Phase 3 and Expenses.

Phase 3	–	$229,761.00
Expenses –		$ 46,000.00
Total not to exceed ·		$275,761.00

We and our colleagues are keenly interested in this assignment and assure you our personal commitment to making your project a success. Kindly review the information in this submittal and feel free to contact us if you have any questions. Please sign and return a copy for our files. Thank you very much.

Very truly yours,

Mark Leininger, AIA
Associate Partner, SOM

Skidmore, Owings & Merrill LLP Architects and Ove Arup & Partners Consulting Engineers PC

14 Wall Street, New York, New York 10005
212 298-9300, Fax 212 298-9500

CHANGE ORDER - DESIGN

Owner: DELTA AIR LINES, INC.
Corporate Real Estate, Dept. 877
P.O. Box 20706
Atlanta, Georgia 30320

Architect: ARUP/SOM Joint Venture
14 Wall Street
New York, NY 10005

Please reference this purchase order # on all invoices:
Purchase Order: 91-30145
Contract No.: 0094329 Change Order No.: 004
WBS Element: N/A GL Account: 6407187
Cost Center: C8770ATG Internal Order: N/A
AMOUNT ADJUSTMENT: $ 80,000.00
TIME ADJUSTMENT: add/subtract zero (0) days
Change Order Date: May 13, 2008
Original Contract Date: June 25, 2007

PROJECT: JFK Terminal Planning Study

PROJECT SITE: John F. Kennedy International Airport

Owner and Architect agree that the Contract is changed as follows (☒ check appropriate box):

☒ As set forth in Architect's Proposal(s) dated May 12, 2008, attached hereto and incorporated herein.

☐ Description of Work for this Change Order (if Proposal(s) are not attached):

Any conflict between the terms of this Change Order and any Proposal attached hereto or referenced herein shall be resolved in favor of the provisions of this Change Order. The parties agree that the adjustment, if any, to the compensation shown below is the only such adjustment that will be made on account of the change to the Contract made by this Change Order.

THE MAXIMUM COMPENSATION PAYABLE BY OWNER TO ARCHITECT UNDER THE CONTRACT WILL BE CHANGED AS SHOWN BELOW:

Original Amount:	**Increase / (Decrease):**	**Total to Date:**
$ 186,875.00	Previous Change Orders $ 638,071.00 (C.O. 0 through 3) **This Change Order $ 80,000.00**	$ 904,946.00

Owner: DELTA AIR LINES, INC.

By:
Name: John W. Boatright
Title: Vice President-Corporate Real Estate
Date: 5-13-2008

Architect: ARUP/SOM, JOINT VENTURE

By: Skidmore, Owings & Merrill, LLP Architects, joint venturer
Name:
Title:
Date:

By: Ove Arup & Partners Consulting Engineers, PC, joint venturer
Name:
Title:
Date: 5-19-08

NO WORK COVERED BY THIS CHANGE ORDER SHALL COMMENCE UNTIL THIS CHANGE ORDER HAS BEEN EXECUTED BY ALL PARTIES.

ARUP|SOM *a joint venture of*
Skidmore, Owings & Merrill LLP Architects and
Ove Arup & Partners Consulting Engineers PC

May 12, 2008

Thom Lang
Delta Air Lines, Inc.
Hartsfield Atlanta International Airport
Atlanta, Georgia 30320
via Email: thom.lang@delta.com

Re: JFK Terminal Planning Study – Concept Design Continuation

Dear Mr. Lang:

We are delighted to know that Delta is moving ahead with plans for redeveloping your facilities at JFK. We have enjoyed working with you and the rest of the Delta team on the Redevelopment Study Report this year and are enthusiastic about proposing for this additional Study. In fact, all of the senior staff who have worked on that project and gained knowledge of the site, the facilities and Delta operations continue to be available to take part in this work. Due to the extension of time and effort, we are requesting an increase in fee to cover our costs. The tasks involved include the preparation and participation in the peer review, modifications to the concept design and continued meetings with the PA and IAT.

Phase 4	–	$80,000.00
Total not to exceed	·	$80,000.00

We and our colleagues are keenly interested in this assignment and assure you our personal commitment to making your project a success. Kindly review the information in this submittal and feel free to contact us if you have any questions. Please sign and return a copy for our files. Thank you very much.

Very truly yours,

Mark Leininger, AIA
Associate Director, SOM

Skidmore, Owings & Merrill LLP Architects and Ove Arup & Partners Consulting Engineers PC

14 Wall Street, New York, New York 10005
212 298-9300, Fax 212 298-9500

EXHIBIT H

To

Supplement No. 2 to Lease AYC-325

Between

The Port Authority of New York and New Jersey

And

Delta Air Lines, Inc.

Initialed:

For the Port Authority

For the Lessee

CHANGE ORDER - DESIGN

Owner:	DELTA AIR LINES, INC. Corporate Real Estate, Dept. 877 P.O. Box 20706 Atlanta, Georgia 30320	Please reference this purchase order # on all invoices: **Purchase Order:** ##-#### Contract No.: 94329	Change Order No.: 005 GL Account: _____
		WBS Element: ######	
		Cost Center: _____	Internal Order: _____
Architect:	ARUP|SOM, a joint venture 14 Wall Street New York, NY 10005	AMOUNT ADJUSTMENT: $5,654,117.00 TIME ADJUSTMENT: December 31, 2008 Change Order Date: October 3, 2008 Original Contract Date: June 25, 2007	

PROJECT: JFK Terminal Planning Study

PROJECT SITE: JFK International Airport, Jamaica, NY

Owner and Architect agree that the Contract is changed as follows (☒ check appropriate box):

☒Description of Changes for this Change Order:

This Change Order is for Schematic Design and 30% Design Development for select portions of the Project as outlined and supported on the attached proposals from ARUP|SOM dated April 11, 2008 and last revised September 25, 2008, AERO Systems Engineering ("AERO") dated May 24, 2008, BNP Associates, Inc. ("BNP") dated May 23, 2008 and TransSolutions dated July 18, 2008. This Change Order also modifies the Contract as follows:

1. Increase the value of the Basic Compensation NTE sum from $904,946.00 to $6,559,063.00.

2. Increase the value of the JFK Terminal Planning Study Total Compensation NTE sum in the amount of $5,654,117.00. Architect's fee shall be increased in the NTE amount of $5,339,552.00. Architect's reimbursable expense shall be increased in the NTE amount of $314,565.00.

3. By Supplement No. 2 to Port Authority Lease No. AYC-325 between PANYNJ and Owner dated as of August 1, 2008 (the "Lease Supplement"), PANYNJ has agreed to pay for a portion of the work described in this Change Order, subject to the terms and conditions of the Lease Supplement. A true and correct copy of the Lease Supplement is attached to this Change Order as Exhibit "A" and incorporated herein for all purposes. The total cost to PANYNJ associated with this Change Order shall not exceed $5,440,598.00. Architect acknowledges that PANYNJ plans to remit payment of its share of amounts payable under this Change Order directly to Architect and Architect shall treat all such amounts remitted by PANYNJ to Architect as payments hereunder. Owner and Architect anticipate that Owner's obligation to make payments to Architect as a result of this Change Order shall not exceed $213,519.00; however, in the event PANYNJ fails to make payment of its share of amounts payable under this Change Order to Architect, Owner shall be responsible for paying such amounts to Architect, it being understood that Architect has no contractual rights against PANYNJ to enforce payment of any amounts under the Lease Supplement.

4. The following tasks shall be included in Schematic Design services:

- Architect shall develop schematic design requirements of the Project. In developing schematic plans, Architect not only must explore various design options; Architect also must consider expansion potentials of the facility. Architect shall prepare Schematic Design Documents consisting of drawings and other documents to illustrate the scale and relationship of Project components.
- Architect shall provide schedule estimates based on the schematic design.
- Architect shall review with Owner alternative approaches to design and construction of the Project.
- Architect shall work with the Value Engineering (VE) entity in connection with the preparation of the Schematic Designs.
- Architect shall construct a Project model in accordance with the schematic design package.

5. The following tasks shall be included in the Design Development services:

- Based on the approved Schematic Design documents and any adjustments authorized by Owner in the program, schedule or construction budget, Architect shall prepare, for approval by Owner, 30% Design Development documents consisting of drawings and other documents to establish and describe the size and character of the select portions of the Project specified in the attached Proposals.

6. The Architect's services shall be performed in a skillful and competent manner, exercising due and reasonable professional care, and shall comply with the professional standards of a nationally-recognized architectural and engineering firm performing similar services for similar projects and the standards and practices specified in the Contract.

7. The PANYNJ, together with its directors, officers, officials, employees and agents shall be deemed to be "Indemnified Parties" for purposes of the Contract, in addition to the Indemnified Parties defined therein.

8. Sections 7.1 and 7.2 of the Contract are hereby deleted and replaced with the following:

7.1 Architect shall maintain the following insurance coverages, with an insurance company or companies satisfactory to Owner for claims which may arise from and during operations under this Agreement, whether such operations be by Architect, its subcontractors or anyone directly or indirectly employed by any of them. Certificates of such insurance shall be filed with Owner prior to commencing the services contemplated by this Agreement, and shall provide coverage in not less than the following amounts:

Errors and Omissions or Professional Liability	The minimum policy limit shall be $3,000,000 per claim and in the aggregate.
Commercial General Liability	$1,000,000 combined single limit per occurrence for bodily injury and property damage
Worker's Compensation	Statutory limits
Employer's Liability	$1,000,000 per occurrence
Automobile Liability	$1,000,000 combined single limit per occurrence for bodily injury and property damage

7.2 Except for claims arising under the Errors and Omissions and Workers' Compensation policies, the policies shall contain an appropriate cross-liability clause insuring Owner and PANYNJ against any loss or damage to Owner or PANYNJ or property of Owner or PANYNJ resulting from any acts or omissions of Architect, its officers, directors, employees, agents or contractors, and shall name Owner and PANYNJ as additional insureds to the extent of the indemnity obligations hereunder. The liability insurance policies shall include contractual liability. All insurance Architect provides shall be primary and not contributory as to any coverage of Owner or PANYNJ. All policies shall remain in full force and effect for at least thirty (30) days after Owner and PANYNJ receive written notice of cancellation, termination or material modification.

9. Architect shall secure Owner's approval in writing prior to including photographic or artistic representations of the design of the Project among Architect's promotional and professional materials. However, Architect's materials shall not include Owner's confidential or proprietary information.

10. Architect has entered or will enter into contractual agreements with AERO, BNP, TransSolutions, and other third party consultants and will require AERO, BNP, TransSolutions and other third party consultants to assume responsibility to Architect, Owner, and PANYNJ for work product produced by such sub-consultants.

11. "Article 9: Security" is added to the Agreement as follows:

9.1 **EMPLOYMENT AND ACCESS INVESTIGATIONS.**

9.1.1 If the Project site is an airport, Architect represents and agrees that it has performed and will continue to perform all employment and access investigations required by and in accordance with federal law and Owner's Aircraft Operator Standard Security Program as approved by the Transportation Security Administration (the

"TSA") as in effect from time to time, including, without limitation, the requirements of 49 U.S.C. § 44936 and the TSA's regulations promulgated pursuant thereto at 49 C.F.R. Parts 1542 and 1544, with respect to all persons hired or utilized by Architect to perform any portion of the services at the Project site who require Special Security Authority, as defined in Paragraph 9.1.2 below. Such employment and access investigations may include without limitation employment histories and verifications, verifications of identity, and criminal history records checks as and to the extent required by federal law.

9.1.2 Required employment and access investigations shall be completed for all persons prior to Architect allowing such persons "unescorted access authority" (as such term is defined in 49 C.F.R. Part 1544), prior to Architect allowing such persons to work in the sterile area of and airport, and otherwise as required by and in accordance with federal law and Owner's Aircraft Operator Standard Security Program (said authority being referred to herein as "Special Security Authority").

9.1.3 Architect and Engineer's services under this Agreement do not include any involvement in the detection, reporting, permitting, analysis, abatement or removal of any existing mold, asbestos, lead, underground storage tanks, polychlorinated biphenyl (PCB), toxic substances or any other hazardous materials which my be encountered within or around the Project Site.

9.2 **ADDITIONAL REQUIREMENTS.**

Architect also agrees to undertake whatever other measures are necessary to comply with security, drug and alcohol testing, record-keeping, and other requirements appropriate to the services to be performed by Architect and to the areas to which Architect has access at an airport in connection with performance of the services, that are imposed from time to time by public agencies such as the TSA, DOT, FAA, the United States Postal Service, the United States Customs Service, and the operator of the airport in question.

9.3 **AUDIT OF EMPLOYMENT RECORDS.**

Architect shall keep full and detailed records demonstrating its compliance with this Article 9 as to each employee with Special Security Authority employed at the Project site and shall maintain and preserve such records without additional compensation therefor for a period of three (3) years after termination or expiration of this Agreement. Owner shall have the right, but not the duty, to conduct such audits of Architect's employment records as it deems prudent to ensure Architect's compliance with this Article 9.

9.4 **RETURN OF CREDENTIALS.**

Architect acknowledges the importance of maintaining control over all access/identification media and credentials issued to Architect's employees allowing such employees Special Security Authority or other special access authority granted by the operator of an airport or Owner ("Credentials"). Architect shall maintain by means acceptable to Owner a current listing of all of Architect's employees, all subconsultant employees and all other individuals employed on the Project site by or through Architect who require Credentials, and the type of Credentials issued to such individuals. Architect shall, within the time periods prescribed by law and by the issuing authority and by means acceptable to the issuing authority, (i) return to the issuing authority all Credentials issued to such individuals upon termination of employment or disqualification for Credentials of such individuals, and (ii) report to the issuing authority all lost, stolen and unaccounted for Credentials. Architect shall notify Owner's Station Manager/Director at the applicable airport or his designee in writing (x) of such termination or disqualification of such individuals immediately after such termination or disqualification, (y) of the return of Credentials to the issuing authority simultaneously with such return, and (z) of such lost, stolen and unaccounted for Credentials simultaneously with such report to the issuing authority.

12. Architect acknowledges that the Lease Supplement requires certain provisions granting rights and protections to PANYNJ to be incorporated into this Change Order. Such provisions are hereby incorporated by this reference and shall apply to the Contract with respect to the services provided under this Change Order only. In addition, Architect shall cooperate with Owner to supply reports, documentation, work product, and back-up requested by PANYNJ under the Lease Supplement in connection with PANYNJ's review and approval of pay applications. Architect hereby consents to Owner's assignment to PANYNJ of all right, title and interest that Owner has or may have in and to the drawings, specifications and

other documents, including those in electronic form, prepared by the Architect and the Architect's consultants in accordance with the provisions of Section 94(e) of the Lease as added by the Lease Supplement.

Any conflict between the terms of this Change Order and any Proposal attached hereto or referenced herein shall be resolved in favor of the provisions of this Change Order. The parties agree that the adjustment, if any, to the compensation shown below is the only such adjustment that will be made on account of the change to the Contract made by this Change Order.

THE MAXIMUM COMPENSATION PAYABLE TO ARCHITECT UNDER THE CONTRACT WILL BE CHANGED AS SHOWN BELOW:

Original Amount:	**Increase / (Decrease):**	**Total to Date:**
$ 186,875.00	Previous Change Orders $ 718,071.00 (C.O. 1 through 4) **This Change Order $5,654,117.00**	$ 6,559,063.00

Owner: DELTA AIR LINES, INC.

By:

Name: John W. Boatright
Title: Vice President - Corporate Real Estate
Date:

Architect: **ARUP|SOM**

By: Skidmore, Owings & Merrill LLP
Architects

By:
Name:
Title:
Date:

By: Ove Arup & Partners Consulting
Engineers PC

By:
Name:
Title:
Date:

EXHIBIT F

To

Supplement No. 2 to Lease AYC-325

Between

The Port Authority of New York and New Jersey

And

Delta Air Lines, Inc.

Initialed:

For the Port Authority

For the Lessee

THIRD SUPPLEMENTAL AGREEMENT

To

LEASE NO. AYC-325

Between

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

And

DELTA AIR LINES, INC.

Dated as of December 9, 2010

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

Port Authority Lease No. AYC-325
Supplement No. 3
John F. Kennedy International Airport

SUPPLEMENTAL AGREEMENT

THIS SUPPLEMENTAL AGREEMENT (this "Third Supplemental Agreement"), made as of December 9, 2010 (said date being hereinafter called the "Effective Date") by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (the "Port Authority") and DELTA AIR LINES, INC. (the "Lessee"), a corporation organized and existing under the laws of the State of Delaware. Capitalized terms used but not defined herein have the meanings assigned to them in the Lease, as herein amended and supplemented.

WITNESSETH, That:

WHEREAS, the Port Authority and the Lessee entered into an Agreement of Lease, made as of January 1, 1993 (the "**Original Lease**"), pursuant to which the Port Authority let to the Lessee and the Lessee hired and took from the Port Authority certain premises at John F. Kennedy International Airport, all as more particularly described in the Original Lease; and

WHEREAS, the Original Lease has been supplemented and amended by a Supplemental Agreement, dated as of August 1, 2008 ("**Second Supplemental Agreement**"), it being acknowledged that a proposed First Supplemental Agreement, dated as of May 14, 2007 was not fully executed; the Original Lease, as supplemented, modified and amended by the Second Supplemental Agreement and the Third Supplemental Agreement being hereinafter called the "**Lease**");

WHEREAS, contemporaneously with the execution of this Third Supplemental Agreement, the Lessee is entering into an Anchor Tenant Agreement (as herein defined), dated as of the date hereof, which provides for, *inter alia*, the Lessee subletting of a substantial portion of Terminal 4 and the expansion, renovation and modification of the terminal building on the premises covered by the Terminal 4 Lease, and the Lessee undertaking of the demolition of Terminal 3, the construction of improvements to utilities at the Terminal 3 Site, the paving and creation of up to 16 initial hardstands on the Terminal 3 Site and the construction of a Terminal 2-4 Pedestrian Connector (all of the aforementioned and other contemplated work referenced in

the Anchor Tenant Agreement as the Phase I IAT Project being collectively referred to as the "**2010 Phase I Project**");

WHEREAS, contemporaneously with the execution of this Third Supplemental Agreement, the Lessee is entering into (1) Port Authority Permit No. AYE-066 ("**Aircraft Parking Permit**") with the Port Authority, dated as of the date hereof, which contemplates the surrender of the Terminal 3 Site under the Lease and which grants to the Lessee, thereafter and as of the effective date of the Aircraft Parking Permit, permission to park aircraft operated by the Lessee and certain other Aircraft Operators at hardstand positions at the Terminal 3 Site, and (2) the Security Agreement, as defined in Section 23A of the Lease;

WHEREAS, the Port Authority and the Lessee desire to extend the term of the Lease, to provide for the aforesaid demolition, construction, paving and creation of hardstands, and surrender, and amend the Lease in certain other respects;

NOW, THEREFORE, for and in consideration of the covenants and mutual agreements herein contained, the Port Authority and the Lessee hereby agree, effective as of the Effective Date, unless otherwise stated, as follows:

1. <u>Amendment to Section 81 of the Lease.</u>

(a) Section 81 of the Agreement, entitled "Definitions", is hereby amended by amending and restating the following definitions:

"**Agreement**" shall mean this Agreement of Lease, dated as of January 1, 1993, by and between the Port Authority and the Lessee, as supplemented by the Second Supplemental Agreement, dated as of August 1, 2008, the Third Supplemental Agreement, dated as of December 9, 2010, and as further supplemented, modified, amended and/or restated.

(b) Section 81 of the Lease, entitled *"Definitions"*, is hereby amended by adding new definitions as follows:

"Additional Area IB" shall have the meaning set forth in Section 16(a) of the Third Supplemental Agreement.

"Additional Area IB Commencement Date" shall have the meaning set forth in Section 16(a) of the Third Supplemental Agreement.

"Aircraft Parking Easement" shall have the meaning set forth in Section 98(c) of the Lease.

"**Aircraft Parking Permit**" shall have the meaning set forth in the fourth (4th) WHEREAS clause to the Third Supplemental Agreement.

"Anchor Tenant Agreement" or **"ATA"** shall mean the sublease agreement, dated as of December 9, 2010, between JFK International Air Terminal LLC, as sublessor, and the Lessee, as sublessee, relating to the Lessee's lease of premises at Terminal 4 at the Airport, which sublease agreement is subject and subordinate in all respects to the Terminal 4 Lease.

"**Area IB Ground Rental Abatement Period**" shall have the meaning set forth in Section 4(IV).

"**ATA Defined Term**" shall have the meaning set forth in Section 2(g)(4)(viii) of the Lease.

"**Blocked Persons**" shall have the meaning set forth in Section 79 of the Lease.

"**Blocked Persons Laws**" shall have the meaning set forth in Section 79 of the Lease.

"**Bond**" shall have the meaning set forth in Section 2(k)(7) of the Lease.

"**Completion Date**" shall have the meaning set forth in Section 2(g)(4)(iv) of the Lease.

"**Comprehensive Plan for AYC-325**" shall have the meaning set forth in Section 2(k)(1) of the Lease.

"**Construction Application**" shall mean the applicable Tenant Alteration Application(s) for completion of the 2010 Construction Work approved by the Port Authority in effect from time to time.

"**Demolition Commencement Date**" shall mean the first day of the first calendar month after which all of the following conditions have been determined by the Port Authority to have been satisfied by the Lessee: the Lessee has (1) obtained Port Authority approval of those of its tenant alteration applications which cover asbestos abatement at Terminal 3, demolition of Terminal 3, and the 2010 Environmental Management Plan, (2) entered into signed contracts, in compliance with Section 2 of the Lease, for asbestos abatement at Terminal 3 and demolition of Terminal 3 and (3) commenced, or caused the commencement by approved third party contractors of, asbestos abatement at Terminal 3 and demolition of Terminal 3. The parties currently anticipate the Demolition Commencement Date to be on or about May 10, 2013.

"**Discharge**" shall have the meaning set forth in Section 84(a) of the Lease, as amended.

"**Eligible PFC Construction Work**" shall have the meaning set forth in Section 88(g)(2) of the Lease.

"**Environmental Requirements**" in the plural and "Environmental Requirement" in the singular shall have the meaning ascribed to them in Section 81 of the Lease, as amended.

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

"**First Deferred Area IB Ground Rental**" shall have the meaning set forth in Section 4 (IV) of the Lease, as amended.

"**General Contractor**" shall have the meaning set forth in Section 2(k)(7) of the Lease.

"**Hazardous Substances**" in the plural and "**Hazardous Substance**" in the singular shall have the meaning ascribed to it in Section 81 of the Lease, as amended.

"**Lease**" shall have the meaning set forth in the second WHEREAS clause to the Third Supplemental Agreement.

"**Lease Defined Term**" shall have the meaning set forth in Section 2(g)(4) of the Lease.

"**OFAC**" shall have the meaning set forth in Section 79 of the Lease.

"**Original Lease**" shall have the meaning set forth in the first WHEREAS clause to the Third Supplemental Agreement.

"**Partial Approval Work**" shall have the meaning set forth in Section 2(g) of the Lease.

"**Partial Approval Work Plans**" shall have the meaning set forth in Section 2(g) of the Lease.

"**PFCs**" shall mean passenger facility charges covered by Part 158 of Title 14 of the Code of Federal Regulations Section 158.3, imposed by a public agency on passengers enplaned at a commercial service airport it controls.

"**Remediate**" or "**Remediation**" shall have the meanings set forth in Section 81 of the Lease, as amended.

"**ROE Agreement**" shall mean the Right of Entry Agreement, dated as of October 1, 2010, by and among the Port Authority, the Lessee, and JFK International Air Terminal, LLC.

"**Second Deferred Area IB Ground Rental**" shall have the meaning set forth in Section 4 (IV) to the Lease.

"**Second Supplemental Agreement**" shall have the meaning set forth in the second WHEREAS clause to the Third Supplemental Agreement.

"**Security Agreement**" shall have the meaning set forth in Section 23A of the Lease.

"**Tanks**" shall have the meaning set forth in Section 84(a) of the Lease.

"**Tank Claims**" shall have the meaning set forth in Section 84(a) of the Lease.

"**Taxiway Easement**" shall have the meaning set forth in Section 98 of the Lease.

"**Terminal 2-4 Pedestrian Connector**" means the elevated, enclosed secure passenger connector (including without limitation people movers) to be constructed by the Lessee as part of the 2010 Construction Work, connecting Terminal 1A (and commonly known as "Building 54"

or "Terminal 2") with Terminal 4, as shown in shading on Exhibit 93-2, such connector to include its foundations, supports, utility systems, equipment and appurtenances.

"Terminal 2-4 Pedestrian Connector Area" means the portion of the Terminal 4 Site containing approximately 0.13 acres shown in shading on Exhibit 93-1, page 1 of 2, of which a portion of the Terminal 2-4 Pedestrian Connector is to be constructed.

"Terminal 3 Easement Site" shall have the meaning set forth in Section 98 of the Lease.

"Terminal 3 Site" means a portion of Area IB as shown on Exhibit A of the Lease on which Terminal 1B (commonly known as "Building 53" or air passenger terminal "Terminal 3") is located.

"Terminal 3 Site Surrender Date" shall have the meaning set forth in Section 97(a) of the Lease.

"Terminal 3 Site Surrender Notice" shall have the meaning set forth in Section 97(a) of the Lease.

"Terminal 3 Site Surrender Acceptance Notice" shall have the meaning set forth in Section 97(a) of the Lease.

"Terminal 3 Site Surrender Remediation Action Plan" shall have the meaning set forth in Section 97(a) of the Lease.

"Terminal 4" means the air passenger terminal known as Terminal 4 at the Airport, including (i) the Terminal 4 Site, (ii) all buildings, structures, improvements and building fixtures now or hereafter located on the Terminal 4 Site, and (iii) the related aircraft parking, apron, ramp, taxiway and other aircraft operations areas, and has the same meaning as the term "Premises" under the Terminal 4 Lease.

"Terminal 4 Easement Site" shall have the meaning set forth in Section 98 of the Lease.

"Terminal 4 Easement Users" shall have the meaning set forth in Section 98 of the Lease.

"Terminal 4 Lease" shall mean the agreement of lease, made effective as of May 13, 1997, bearing Port Authority File No. AYC-685 (as the same has been heretofore and may hereafter be amended and supplemented), by and between JFK International Air Terminal, LLC, as lessee, and the Port Authority, as lessor.

"Third Supplemental Agreement" shall mean that certain Supplement No. 3, dated as of December 9, 2010, by and between the Port Authority and the Lessee.

"2010 Basis of Design" shall have the meaning set forth in Section 2(k)(1) of the Lease.

"2010 Capital Investment" shall have the meaning set forth in Section 88 of the Lease.

"2010 Construction Work" shall have the meaning set forth in Section 2(k) of the Lease.

"2010 Environmental Management Plan" shall have the meaning set forth in Section 2(g)(8) of the Lease.

"2010 Expansion DBO" shall have the meaning set forth in the Fifth Supplemental Agreement to the Terminal 4 Lease.

"2010 Phase I Project" shall have the meaning set forth in the third (3rd) WHEREAS clause to the Third Supplemental Agreement.

2. Amendment to Section 2 of the Lease

Section 2 of the Lease, entitled *"Construction by the Lessee"* is hereby amended as follows:

(a) Subparagraph (b)(7) shall be deleted in its entirety and replaced with a new subparagraph (b)(7) which shall provide as follows:

"(7) The Lessee agrees that it shall deliver to the Port Authority upon completion of the construction work two (2) sets of "as built" drawings of the construction work in an electronic CADD data file in a format to be designated by the Port Authority, all of which shall conform to the specifications of the Port Authority (the receipt of a copy of said specifications prior to the execution of this Agreement being hereby acknowledged by the Lessee), together with two (2) complete hard copies of such drawings, all engineering reports, engineering analysis, boring logs, survey information and engineering design calculations and operation and maintenance manuals in a comprehensive, coordinated package. The Lessee shall, during the term of this Lease, keep said drawings current showing thereon any changes or modifications which may be made and provide same to the Port Authority upon its request. No changes or modifications shall be made without prior Port Authority consent. It is understood and agreed that, with respect to the 2010 Phase I Project, the construction work referenced in this subparagraph (7) shall refer to the 2010 Construction Work."

(b) By adding a sentence at the end of the first paragraph of subparagraph (b)(11)(i) which shall state as follows:

"With respect to the 2010 Construction Work, the above-stated insurance requirements shall be superseded by the insurance requirements set forth in Section 2(l)(2) of the Lease, as set forth in the Third Supplemental Agreement."

(c) By adding in the first paragraph of subparagraph (b)(14) the words "(but not the demolition work associated with the 2010 Construction Work)" immediately after the words "construction work" in the first sentence thereof.

(d) By adding a new Section 2(g)(4) which shall state as follows:

"(g)(4)(i) Upon final completion of all of the Lessee's 2010 Construction Work, the Lessee shall deliver to the Port Authority a certificate to such effect signed by a responsible officer of the Lessee, and by the architect or engineer who sealed the Lessee's plans pursuant to the provisions of this paragraph, certifying that all of the work has been performed in accordance with the approved Construction Application and plans and specifications and the provisions of the Lease, and the Lessee shall supply the Port Authority with as-built drawings of the Lessee's 2010 Construction Work in such form and number requested by the Port Authority. Following its receipt of the Lessee's certificate, the Port Authority shall inspect the work and, unless such certification is not correct, or the Port Authority determines that the premises are unsuitable for occupancy and use by the Lessee, a certificate of completion shall be delivered to the Lessee by the Port Authority.

(ii) Except as set forth in subparagraph (iii) of this paragraph, the Lessee shall not commence any portion of the Lessee's 2010 Construction Work until the Construction Application and plans and specifications covering such work have been finally approved by the Port Authority, and the required insurance procured.

(iii) If the Lessee desires to commence construction of portions of the Lessee's 2010 Construction Work prior to the approval by the Port Authority of the complete Construction Application and plans and specifications covering all of such work pursuant to subparagraph (ii), above, the Lessee shall submit to the Port Authority a separate Construction Application for each portion of the Lessee's 2010 Construction Work the Lessee so desires to commence (each such portion of the Lessee's 2010 Construction Work being hereinafter designated as **"Partial Approval Work"**) which shall be executed by an authorized officer of the Lessee and shall be accompanied by final and complete plans, specifications, drawings, and data with respect to such portion of the Lessee's Construction Work (the final and complete plans, specifications, drawings, and data covering each such portion of the Lessee's 2010 Construction Work are hereinafter referred to as the **"Partial Approval Work Plans"** with respect to such portion of the Lessee's 2010 Construction Work) setting forth in detail the work to be performed in connection with each such portion of the Lessee's 2010 Construction Work. The Port Authority shall use its discretion to determine whether to permit the Lessee to proceed with the performance of any Partial Approval Work. If the Port Authority consents to the performance of any Partial Approval Work, the Port Authority shall review the Construction Application covering such work and shall give its written approval or rejection of the Partial Approval Work Plans with respect thereto or shall request such revisions or modifications thereto as the Port Authority may find necessary. Upon the Port Authority's approval of the Construction Application covering an item of Partial Approval Work and its approval of the Partial Approval Work Plans with respect thereto, the Lessee may proceed to perform such item of Partial Approval Work subject to and in accordance with the following terms and conditions:

(1) The performance by the Lessee of any item of Partial Approval Work in accordance with the Port Authority's approval will be at its sole risk and if for any reason the Construction Application and plans and specifications for the balance of the Lessee's 2010 Construction Work, or any part thereof, are not approved by the Port Authority or if the approval thereof calls for modifications or changes in any item of Partial Approval Work undertaken by the Lessee under any approval granted by the Port Authority pursuant to this paragraph, the Lessee shall, as directed by the Port Authority, and at the Lessee's sole cost and expense, either restore the area affected to the condition existing prior to the commencement of such item of Partial Approval Work or make such modifications and changes to such work as may be required by the Port Authority.

(2) Nothing contained in any approval given pursuant to this paragraph shall constitute a determination or indication by the Port Authority that the Lessee has complied with any laws, rules, orders, ordinances, enactments, resolutions, regulations, statutes, requirements, codes, directions, and executive orders, including but not limited to those of the State of New York, Borough of Queens or City of New York, which may pertain to the Partial Approval Work to be performed and which the Lessee is required to comply with pursuant to the Lease, as amended.

(3) Each item of Partial Approval Work shall be performed in accordance with and subject to the terms and provisions of the Lease, as amended by the Third Supplemental Agreement, covering the Lessee's 2010 Construction Work, and in accordance with the approved Construction Application covering such item of Partial Approval Work, and in accordance with the approved Partial Approval Work Plans constituting a part of such Construction Application, and subject to any requirements, stipulations, and provisions which the Port Authority may impose in its approval of the performance of such item of Partial Approval Work.

(4) No Partial Approval Work performed by the Lessee pursuant to the provisions of this paragraph shall affect or limit the obligations of the Lessee with respect to the Lessee's 2010 Construction Work or any prior approvals thereof.

(5) The Lessee specifically understands that neither the Port Authority's approval of any Construction Application and Partial Approval Work Plans covering any item of Partial Approval Work nor the performance by the Lessee of any item of Partial Approval Work pursuant to such approval shall obligate the Port Authority to approve the Construction Application and plans and specifications submitted by the Lessee for the balance of the Lessee's 2010 Construction Work or shall create or be deemed to create any obligation on the part of the Port Authority to permit subsequent Partial Approval Work to be performed. Without limiting the generality of the provisions of this paragraph, it is specifically understood that the Port Authority may withhold its approval of a Construction Application and Partial Approval Work Plans covering any item of Partial Approval Work if the Port Authority determines that review of subsequent items of Partial Approval Work is required before the Port Authority can approve, reject, or comment upon such Partial Approval Work Plans.

(6) In the event that in the opinion of the Port Authority the Lessee: (i) fails to comply with all of the provisions of the Lease, as amended, with respect to such work; (ii) fails to comply with the provisions of the Construction Application covering such work and the plans and specifications forming a part thereof; (iii) fails to comply with any requirements, stipulations, or provisions imposed by the Port Authority in its approval of the performance of such item of Partial Approval Work; or (iv) shall be in breach of any of the provisions of the Construction Application and plans and specifications covering the performance of such work, the Port Authority shall have the right to cause the Lessee to cease the work that is being performed in violation of the Third Supplemental Agreement, the Construction Application and plans and specifications, or the conditions of the Port Authority's approval. Upon written direction from the Port Authority, the Lessee shall promptly cease performance of the portion of the Partial Approval Work specified. The Lessee shall thereupon submit to the Port Authority for its written approval of the Lessee's proposal for making modifications, corrections or changes in or to the item of Partial Approval Work that has been or is to be performed so that the same will comply with the provisions of the Lease, as amended, the Construction Application and plans and specifications, or the conditions of the Port Authority's approval covering such work. The Lessee shall not commence construction of the portion of the Partial Approval Work that has been halted until it has received written approval of the proposed modifications, corrections or changes.

(7) It is hereby expressly understood and agreed that the Port Authority has no duty or obligation of any kind whatsoever to inspect or police the performance of any Partial Approval 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 Port Authority has not exercised its right to require the Lessee to cease performance of all or any part of the Partial Approval 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 the Third Supplemental Agreement, the Construction Application and plans and specifications covering such work, or the conditions of the Port Authority's approval of such work. Nor shall such fact be or be deemed to be a waiver by the Port Authority of any of the requirements of this Agreement with respect to such work, or any of the requirements of the Construction Application and plans and specifications covering such work, or any of the conditions of the Port Authority's approval of such work.

(iv) Without limiting the generality of subparagraph (v) of this paragraph, the Lessee shall be solely responsible for the plans and specifications used by it and for the adequacy or sufficiency of such plans and specifications and all the improvements, fixtures, and equipment depicted thereon or covered thereby, regardless of the consent thereto or approval thereof by the Port Authority or the incorporation therein of any Port Authority requirements or recommendations. The Port Authority shall have no obligation or liability in connection with the performance of any of the Lessee's 2010 Construction Work or for the contracts for the performance thereof entered into by the Lessee. Any warranties extended or available to the Lessee in connection with the aforesaid work shall be for the benefit of the Port Authority as well as the Lessee. The Lessee shall not permit passenger use of the Terminal 2-4 Pedestrian Connector, or conduct aircraft parking operations at the Terminal 3 Site, until the Port Authority

shall have notified the Lessee in writing that the Lessee's 2010 Construction Work or the Partial Approval Work, as applicable, has been completed to its satisfaction, to be evidenced by the issuance of a "permit to occupy or use" with respect to the 2010 Construction Work, or with respect to each Partial Approval Work, as applicable, pursuant to subparagraph (i) of this paragraph. The date of the issuance of such permit to occupy or use, if only one for the 2010 Construction Work, or the date of the issuance of the final permit to occupy or use, if more than one for the 2010 Construction Work, shall be called the 2010 Construction Work "**Completion Date**". The Lessee shall be obligated to pay any tenant construction review fee or other review fee charged by the Port Authority for its costs of administrating the Construction Application process, consistent with the Port Authority's procedures or policies concerning charges for such review fees.

(v) Without limiting or affecting any other term or provision of the Lease, as amended by the Third Supplemental Agreement, as between the Lessee and the Port Authority (but without limiting the Lessee's indemnification and hold harmless obligations to the Port Authority under the Lease with respect to third party claims brought against the Port Authority), the Lessee shall be solely responsible for (x) the design, adequacy and operation of any utility, mechanical, electrical, communications and other systems installed at the Terminal 3 Site by the Lessee as part of the Lessee's 2010 Construction Work and any other improvements, additions, fixtures, finishes, decorations and equipment made or installed by the Lessee at the Terminal 3 Site as Lessee's 2010 Construction Work and shall do preventive maintenance and make such repairs, replacements, rebuilding (ordinary or extraordinary, structural or non-structural) and painting necessary to keep such systems, improvements, additions, fixtures, finishes, decorations and equipment (whether the same involves structural or non-structural work) in the condition they were in when made or installed except for reasonable wear which does not adversely affect the efficient or proper utilization of any part of the Terminal 3 Site or the balance of the premises, (y) any systems, improvements, fixtures and equipment decommissioned and left in place at the Terminal 3 Site by Lessee as part of the 2010 Construction Work, and (z) the condition of the Terminal 3 Site including, without limitation, utility and other systems and improvements thereat, affected by the removal of any systems, improvements, fixtures and equipment effected as part of the 2010 Construction Work.

(vi) The Lessee shall pay all claims lawfully made against it by its contractors, subcontractors, materialmen and workmen, and all claims lawfully made against it by other third persons arising out of or in connection with or because of the performance of the work, and shall cause its contractors and subcontractors to pay all such claims lawfully made against them. Nothing herein contained shall be deemed to constitute consent to the creation of any lien or claim against the Terminal 3 Site, or the premises, or any part thereof, nor to prevent the Lessee from contesting claims in good faith.

(vii) In the performance of the Lessee's 2010 Construction Work, the Lessee shall not employ any contractor nor shall the Lessee or any of its contractors employ any persons or use or have any equipment or materials or allow any condition to exist if any such shall or, in the opinion of the Port Authority, may cause or be conducive to any labor troubles at the Airport which interfere, or in the opinion of the Port Authority are likely to interfere, with the operations

of others at the Airport or with the progress of construction work thereat. The determination of the Port Authority shall be conclusive on the Lessee. Upon notice from the Port Authority, the Lessee will (or will cause its contractor to, as applicable) immediately rectify any condition causing or contributing to labor troubles as specified in such notice. In the event of failure by the Lessee (or any of its contractors, as applicable) to timely comply with the requirements of this paragraph, the Port Authority shall have the right, by notice from the Port Authority to the Lessee, to suspend the Lessee's right to proceed with the 2010 Construction Work, or the applicable portion thereof, being performed by or on behalf of the Lessee and the Lessee will thereupon immediately cease the same. When labor troubles will be so settled that such interference no longer exists and the danger thereof no longer exists, the Port Authority by notice to the Lessee will reinstate the permission to the Lessee to perform the Lessee's 2010 Construction Work on all the same terms and conditions as before the suspension. "Labor troubles" shall mean and include strikes, boycotts, picketing, work-stoppages, slowdowns, complaints, disputes, controversies or any other type of labor trouble, regardless of the employer of the person involved or their employment status, if any.

(viii) In the event of a conflict or ambiguity between the terms and provisions of the Lease and those of the ATA, or between the terms and provisions of the Lease and those any other agreement to which the Port Authority is not a signatory, the terms and provisions of the Lease in all respects shall be controlling and determinative as between the Port Authority and the Lessee. The ATA is an agreement between JFK International Air Terminal, LLC and the Lessee, and by referencing the ATA in the Third Supplemental Agreement the Port Authority does not incorporate into the Lease any agreements or understandings that are contained in the ATA unless expressly stated to be so incorporated. The ATA shall not be used or referred to in interpreting any defined term in the Lease (**"Lease Defined Term"**), and in interpreting any Lease Defined Term, no inference shall be drawn from the use thereof in the ATA. Further, defined terms used in the ATA (**"ATA Defined Term"**) shall not be considered or referred to in the interpretation or construction of the Lease. In any event, ATA Defined Terms shall not be deemed to elaborate, amplify, limit or otherwise explain in any manner (whether expressly, by manner of use, by context, by analogy, by contract, or by example, or pursuant to any other rule of construction or interpretation) any Lease Defined Term, or any term or provision of the Lease. Notwithstanding the foregoing, where an ATA Defined Term is expressly used in a provision of the Third Supplemental Agreement, such ATA Defined Term shall be used, only in the interpretation of such provision, by ascribing to such ATA Defined Term the definition specifically set forth in the ATA."

(d) By adding the following sentence at the end of subparagraph (h):

"Notwithstanding anything to the contrary stated elsewhere in this subparagraph (h), the provisions of this subparagraph shall not be deemed to modify the abatement provisions contained in Section 4 (IV) of the Lease as set forth in the Third Supplemental Agreement."

(e) By adding new subparagraphs (k) and (l) which shall read in their entirety as follows:

"(k) Comprehensive Plan for AYC-325.

(1) *Comprehensive Plan for AYC-325.*

Prior to the execution of the Third Supplemental Agreement the Lessee has submitted to the Port Authority for review two design documents entitled "Basis of Design" relating to the 2010 Construction Work, specifically (a) one design document relating to the Terminal 2-4 Pedestrian Connector and (b) one design document relating to the demolition of Terminal 3, the demolition of the Air Train connector and elevator core at Terminal 3, the construction of a covered walkway from the Terminal 2-3 Air Train Station elevator core to Terminal 2, the pavement of the area on which hardstands shall be constructed, hardstand construction and other components of the 2010 Construction Work, copies of which are attached hereto, hereby made a part hereof and marked Exhibit 2(k) (collectively, the "**2010 Basis of Design**"), and has submitted, or shall submit, for the Port Authority's review further plans and specifications based on the approved 2010 Basis of Design (such plans and specifications, upon approval by the Port Authority, together with the approved 2010 Basis of Design, the "**Comprehensive Plan for AYC-325**"). The 2010 Basis of Design includes, among other things, requirements in order to ensure safe vehicular and pedestrian access to Terminal 2, to preserve the Lessee's safe use of the existing Terminal 2 aircraft movement areas for Lessee's aircraft parking, de-icing and operation needs, and to delineate the site preparation work. The Comprehensive Plan for AYC-325 shall include the 2010 Construction Work (as hereinafter defined).

(2) *Description of 2010 Construction Work.*

In connection with the 2010 Phase I Project, the Lessee hereby agrees to undertake and complete at its sole cost and expense at the premises the 2010 Construction Work. The 2010 Construction Work, inclusive of all necessary construction and relocation of paved areas, utility lines, pipes, mains, conduits and other improvements, and whether commenced or completed prior to, or following, the effective date of the Third Supplemental Agreement, and as described in the 2010 Basis of Design (as herein defined) and/or the applicable Construction Application(s), constitutes "construction work" as such term is used in Section 2 of the Lease. The 2010 Construction Work shall mean and include, without limitation, the following:

(i) the complete abatement and removal of all asbestos, asbestos-containing materials, lead and other Hazardous Substances located in all structures (whether above-grade or below-grade) on the Terminal 3 Site prior to the actual demolition of Terminal 3, and the handling, transporting and off-Airport disposal thereof (including, if required, disposal of asbestos in an off-Airport long-term asbestos disposal facility), all of the foregoing to be performed and completed in accordance with Environmental Requirements but, in all events, to the levels, within a time frame, and in a manner necessary in the judgment of the Port Authority for it to be at all times in compliance with the Basic Lease;

(ii) the demolition and removal of all aboveground structures located on and at the Terminal 3 Site, including Terminal 3. All Terminal 3 deep foundations shall remain intact but basement foundation walls shall be demolished;

(iii) the installation and use of supportive and protective systems in connection with disassembly and demolition in order to support and protect adjacent structures and structures that are to remain at the Airport after the 2010 Construction Work is completed;

(iv) the capping of building and site utilities, alarms and other Terminal 3 systems back to the nearest existing isolation valves, manholes and/or junctions;

(v) Remediation of the Terminal 3 Site in compliance with the Lease but, in all events, in compliance with Environmental Requirements, including, without limitation, any stipulation agreements entered into by the Lessee with the NYS Department of Environmental Conservation; such Remediation to include, without limitation, (x) closing of all spills (including, without limitation, Spill Number 0802350 reported to have occurred on May 30, 2008, Spill Number 9800920 reported to have occurred on April 21, 1998, Spill Number 9604699 reported to have occurred on June 30, 1996, and Spill Number 9414047 reported to have occurred on January 18, 1995) and (y) de-commissioning the hydrant fueling system with the existing transfer lines from the Airport Satellite Fuel Farm that serve Terminal 3 to be cut and capped as close to the leasehold as possible, all fuel removed, and filled with nitrogen for long term storage. All fuel transfer lines that pass through the Terminal 3 Site and supply fuel to Terminal 4 or any other terminal at the Airport shall remain undisturbed and protected throughout the duration of the construction work. All Remediation shall be performed and completed in accordance with Environmental Requirements but, in all events, to the levels and in a manner necessary, in the judgment of the Port Authority, for it to be in compliance at all times with the Basic Lease;

(vi) demolition, removal and/or capping of drainage piping and structures, water/sewer piping, and electric duct banks related to the demolition which shall involve the identification, trenching, capping, disabling, removal and disposal of fittings, hydrant extensions, valve boxes, precast utility boxes, vaults, lift stations, meters and duct banks, as well as removal of electric cables from the duct banks;

(vii) once the demolition component of the 2010 Construction Work has been completed, the Terminal 3 footprint shall be brought to grade by backfilling and thereafter such Terminal 3 Site shall be paved with airport-rated pavement, and marked, as required to enable the Terminal 3 Site to be used for aircraft parking purposes;

(viii) if desired by Lessee and included in an approved Construction Application installation, after previously obtaining a required permit therefor, of above-grade glycol tanks to be used for de-icing at the Terminal 3 Site after the Terminal 3 Site Surrender Date and, if such de-icing is to take place at the Terminal 3 Site, then compliance with secondary containment requirements and installation of infrastructure to handle collection and treatment of glycol;

(ix) installation of utilities, storm, water catch basins, storm receptors for water quality control and treatment systems where de-icing agents are applied or utilized;

(x) installation of all necessary or required blast fences and other fencing;

(xi) installation of ramp and taxilane lighting;

(xii) the construction of a secure Terminal 2-4 Pedestrian Connector from an intermediate point on the Pedestrian Connector to Terminal 4, and, in connection with the demolition of Terminal 3, the demolition of the portion of the existing Pedestrian Connector between the intermediate point on the Pedestrian Connector and Terminal 3, the aforesaid to be as described in Section 93 of the Lease, entitled *"Pedestrian Connector"*. The Terminal 2-4 Pedestrian Connector shall not be less than 20 feet in clear interior width other than at the approach to the connection points at Terminal 4 and the Pedestrian Connector and shall consist of secure, enclosed, climate-controlled passenger connection bridges between the named terminals with moving walkways in both directions;

(xiii) demolition and removal of the existing vertical circulation and overhead connector from the Terminal 2-3 Air Train station. It is contemplated that the overhead structure will be taken back to either face of the Air Train station or to a natural stopping point. Sealing of the penetration shall match existing finishes;

(xiv) the construction of a covered walkway from the Terminal 2-3 Air Train Station elevator core to Terminal 2;

(xv) the construction of Taxiway "HA", off-premises on the PAF Site (as defined in the ROE Agreement) at the location shown in hatching on Exhibit 2(L) attached hereto and hereby made a part hereof; and

(xvi) all other appropriate or necessary work in connection with effectuation of the 2010 Construction Work at the premises.

(3) *Updates to Comprehensive Plan for AYC-325.*

The Lessee shall keep the Comprehensive Plan for AYC-325 up to date and shall submit to the Port Authority for its approval all amendments, supplements or modifications thereto, which amendments, supplements or modifications shall not become effective until the same have been approved by the Port Authority.

(4) *Certain Details Concerning the 2010 Construction Work.*

(a) All of the 2010 Construction Work shall be performed and completed in accordance with applicable law including, without limitation, all Environmental Requirements which shall include, among others, filing notices of intent for coverage under the Port

Authority's State Pollution Discharge Elimination System permits for management of stormwater and obtaining all relevant permits for ground water activities. The 2010 Construction Work shall include the removal by Lessee of all above-ground emergency generator fuel tanks and all underground storage tanks. The 2010 Construction Work shall include sampling in connection with the decommissioning of the Distribution Portion of the Underground Fuel System pursuant to NYSDEC DER10 or subsequent adopted regulations and guidance. While the 2010 Construction Work shall not include the removal and/or closure of the Distribution Portion of the Underground Fuel System (as defined in the Lease) located at Terminal 3, the 2010 Construction Work shall include any testing, sampling, the removal of the fuel from the related underground piping, the removal of surge suppressors, isolation valves and associated piping, and the installation of blind flanges, as necessary. The Distribution Portion of the Underground Fuel System shall be slurry-filled and the hydrant pits shall be back-filled and cemented to grade. All additional soil to be used for backfilling in connection with the 2010 Construction Work shall be obtained from the Port Authority's on-Airport stockpile (which will be made available to Lessee at no incremental cost to the extent available and shall be subject to testing and approval for use by the Lessee at Lessee's sole cost and expense) and, to the extent not available from such stockpile, from another source at Lessee's sole cost and expense.

(b) Both during and after the 2010 Construction Work, (i) both vehicular and pedestrian access shall be continued, ongoing, unimpeded and uninhibited to Terminal 2 via existing roadways, existing bridges, temporary walkways and the Pedestrian Connector; however, it is anticipated that the Terminal 3 upper level roadway will be closed commencing with construction of the Terminal 2-4 Pedestrian Connector; (ii) the current at-grade pedestrian access walkway shall be continued, ongoing, unimpeded and uninhibited to the existing Terminal 2-3 Air Train elevator core and exit stair tower; and (iii) the existing Terminal 2 aircraft movement areas shall remain available for the Lessee's aircraft parking, de-icing and operational needs.

(c) As a general matter with regard to utilities, utilities that serve the premises and will no longer be needed in connection with operations under the Aircraft Parking Permit shall be disconnected as part of the 2010 Construction Work at existing manholes, valves and/or junctions, as close to the leasehold line under the Lease as possible, and all utilities that remain on the Terminal 3 Site after completion of the 2010 Construction Work shall be the sole responsibility of the Lessee under the Aircraft Parking Permit, in accordance with the terms of the Aircraft Parking Permit.

(5) *Lessee's Capital Investment.* The Lessee's Capital Investment (as defined in Section 88 of the Lease) in connection with the 2010 Construction Work shall be as set forth in said Section 88, as herein amended.

(6) *Compliance with 2010 Basis of Design and other Procedures.* All of the 2010 Construction Work which is consented to by the Port Authority shall be designed and constructed in accordance with the 2010 Basis of Design and the design criteria contained in the Port Authority Tenant Construction Review Manual and in the Port Authority Aviation Department Tenant Alteration Procedures and Standards Guide, as the same may be amended from time to time. The Lessee agrees that in the performance of the 2010 Construction Work, it

will comply with the Port Authority's policy on sustainable design as set forth in the sustainable design guidelines promulgated by the Port Authority Engineering Department from time to time. In the event of any inconsistency between the terms of the Port Authority Tenant Construction Review Manual or the Port Authority Aviation Department Tenant Alteration Procedures and Standards Guide on one hand and the terms of the Lease, as amended, on the other hand, the terms of the Lease shall prevail and control.

(7) *Payment and Performance Bond.*

Prior to the commencement of any 2010 Construction Work, the Lessee shall procure from each of its general contractors (**"General Contractor"**), and cause to be delivered to the Port Authority, a payment and performance bond covering the applicable portion of the 2010 Construction Work to be performed by such general contractor (a **"Bond"**) in such form as has been approved in advance in form and substance by the Port Authority in its sole discretion, whereby the Port Authority and the Lessee shall be listed as the payee, protecting the Port Authority and the Lessee from monetary risk during, relating to or arising out of the 2010 Construction Work, and in all events each Bond shall be only with a surety listed in the Financial Management Service of the United States Department of the Treasury. Each Bond shall be in an amount equal to the entire contract price for the portion of the 2010 Construction Work to be performed by the General Contractor providing such Bond, and shall guarantee the full, faithful and prompt performance of and compliance with, on the part of such General Contractor, all of the terms, provisions, covenants and conditions of the Lease, as amended by this Agreement relating to the portion of the 2010 Construction Work to be performed by such General Contractor including, without limitation, the terms, provisions, covenants and conditions which relate to the 2010 Construction Work generally and the insurance, indemnity and environmental obligations associated therewith. Each Bond shall remain in effect in all respects through and after the Completion Date, and indefinitely until the applicable General Contractor fully satisfies its obligations relating to the portion of the 2010 Construction Work to be performed by such General Contractor. The existence of the Bond shall not limit or alter any other remedies of the Port Authority under the Lease, as amended, and the Port Authority may from time to time and at any time elect to pursue (or not to pursue) its rights under any Bond without thereby limiting, voiding or relinquishing any of its other rights or remedies under the Lease, as amended.

(8) *2010 Environmental Management Plan.* The Lessee shall submit to the Port Authority for its approval prior to the commencement of the 2010 Construction Work an environmental management plan setting forth in detail the Lessee's plans for all handling, excavation, depositing, testing, screening, backfilling, removal, storage, transportation, disposal and other handling of soil and the treatment of ground and wastewater in the performance of the 2010 Construction Work (such plan, as approved by the Port Authority, the **"2010 Environmental Management Plan"**). The 2010 Construction Work shall be performed in accordance with the 2010 Environmental Management Plan.

(9) *No Release or Discharge from Demolition Obligation.* In the event the Lessee fails to demolish Terminal 3, which the Lessee acknowledges is required by this Agreement, the Port Authority shall not release or discharge the Lessee from such obligation.

(l) Other Lease Requirements for 2010 Construction Work; Insurance.

(1) Except as expressly provided otherwise in the Third Supplemental Agreement, the Lessee shall perform the 2010 Construction Work in strict accordance with Section 2 of the Lease, entitled *"Construction by the Lessee"*, it being understood that Section 2 applies to the 2010 Construction Work in the same way that it applied to the Phase I Construction Work and Phase II Construction Work, except that:

(i) Sections 2(a)(1)-(3) of the Lease are inapplicable to the 2010 Construction Work,

(ii) references to "Phase I Construction Work" and "Phase II Construction Work" in Section 2(a)(4) and (5) shall refer instead to the 2010 Construction Work,

(iii) reference in Section 2(a)(5)(ix) to Section 21 of the Basic Lease shall mean and refer to Section 18 of the Basic Lease as such term was revised in the Second Supplemental Agreement to the Lease,

(iv) the Capital Investment amounts attributable to the Phase I Construction Work and Phase II Construction Work shall not apply to the 2010 Construction Work, but the Capital Investment associated with the 2010 Construction Work shall be as set forth in Section 88 of the Lease, as amended by the Third Supplemental Agreement,

(v) the insurance requirements set forth in Section 2(b)(11)(i) shall be superseded by the insurance requirements set forth in Section 2(l)(2), below,

(vi) the per diem rate of pay to Port Authority engineer(s), for the services of said engineer or engineers, as set forth in Section 2(d), shall be replaced with the per diem rates as follows: The rate that the Port Authority shall charge Aircraft Operators at the Airport for the services of such engineer or engineers during such calendar year that the engineer or engineers are so assigned for such calendar year,

(vii) Schedule E, referenced in Section 2(b)(18)(i), shall be deleted and substituted with a new Schedule E, a copy of which is attached to the Third Supplemental Agreement and hereby incorporated by reference into the Lease, and

(viii) a new Section 2(g)(4) shall be added to apply to the 2010 Construction Work.

(2) (a) In addition to all policies of insurance otherwise required by the Lease, the Lessee shall procure and maintain or cause to be procured and maintained in effect during the performance of the Lessee's 2010 Construction Work the following:

(i) Commercial General Liability Insurance including but not limited to Independent Contractor coverage and coverage for Premises Operations and Completed-Operations and for Broad Form Property Damage, with a contractual liability endorsement covering the obligations assumed by the Lessee under paragraph (b) of Section 2 of the Lease as the same applies to the 2010 Construction Work, and which are customarily insured under such a policy, with a minimum combined single limit coverage for death, bodily injury and property damage of $100,000,000.00 per occurrence, and in the aggregate.

(ii) Commercial Automobile Liability Insurance covering all owned, non-owned or hired vehicles used in connection with said construction with a minimum combined single limit coverage for death, bodily injury and property damage of $25,000,000.00 per occurrence, no general aggregate; and

(iii) Environmental Impairment Liability Insurance, on a claims-made or occurrence basis, with a minimum combined single limit coverage per claim for death, bodily injury and property damage, with liability for both gradual and sudden and accidental occurrences and both on-site and off-site cleanup of $10,000,000.00 per occurrence, and in the aggregate.

(b) The environmental impairment liability policy(ies) and any certificate of insurance submitted hereunder in relation to such policy(ies) shall (i) be expressly endorsed for the Airport and each transfer location, travel route and material disposition location selected by the Lessee, (ii) state that claims disputes and coverage shall be litigated in United States courts having jurisdiction, and not be limited to arbitration, and (iii) acknowledge the Lessee disclosure to the insurance carrier that the material may be considered a Hazardous Substance under applicable law including, but not limited to, RCRA (as defined herein) and/or CERCLA (as defined herein) and/or the TSCA (as defined herein). It should be noted that the substances may be considered "hazardous" under CERCLA, but not necessarily "hazardous" under RCRA and that such materials if RCRA "hazardous" would require a manifest and disposal certificate under RCRA at a Subtitle C hazardous waste disposal facility. A copy of the Lease, including the Third Supplemental Agreement and including all schedules and documents attached thereto, shall be provided to the insurance carrier.

(c) With the exception of the Commercial Automobile Liability policy, each policy of insurance described in subparagraph (a), above, shall include the Port Authority as an additional insured in its coverages including, without limitation, coverage for premises- operations and completed operations, and no such policy shall contain any care, custody or control exclusions, or 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 an additional insured, or the coverage under the contractual liability endorsement described in subparagraph (a)(1), above, of this paragraph. The policies or policies of such insurance shall also provide or contain an endorsement providing that the protections afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third party shall pertain and apply with like effect with respect to any claim or action against the Lessee by the Port Authority and against the Port

Authority by the Lessee, and shall also provide or contain a separation of insureds endorsement; but said endorsement shall not limit, vary, change or affect the protections afforded the Port Authority thereunder as an additional insured and/or loss payee, as applicable. Such insurance shall contain a provision that the insurer shall not, without obtaining express written permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority."

3. **Amendment to Section 3 of the Lease.**

Section 3 of the Lease, entitled *"Term"*, is hereby amended by restating paragraph (b) in its entirety as follows:

"(b) Unless sooner terminated, the term of the letting under this Lease (i) with respect to Area IB (the Terminal 3 Site), shall expire on the earlier to occur of (x) the Terminal 3 Site Surrender Date and (y) December 31, 2017 and (ii) with respect to the balance of the premises let to the Lessee under the Lease, exclusive of Area IB, shall expire on December 31, 2020, upon all of the terms and conditions of the Lease as herein amended, it being understood that this extension of the Lease shall not be nor be deemed to be a waiver by the Port Authority of any breach or default of any agreement, term, covenant or condition of the Lease."

4. **Amendment to Section 4 of the Lease**

Section 4 of the Lease, entitled *"Rentals"* is hereby amended as follows:

(a) Section 4(I)(a), entitled *"Ground Rentals: Area IA Ground Rental"* shall be amended by adding a new paragraph (b)(7) which shall read as follows:

"(7) Effective January 1, 2018, the annual rental rate for the Area IA Ground Rental shall be increased to the rate of per acre. As of each January 1 anniversary date thereafter during the term of the letting, the Area IA Ground Rental shall be an amount equal to the Area IA Ground Rental in effect during the preceding calendar year plus

(b) Section 4(II)(a), entitled *"Area IA Facility Rental"* shall be amended by amending and restating paragraph (a)(5) and by adding a new paragraph (a)(6) which paragraphs shall read as follows:

"(5) For the portion of the term of the letting hereunder commencing on January 1, 2013 to and including December 31, 2017, the Lessee hereby agrees to and shall pay to the Port Authority Area IA Facility Rental at the annual rate of

(6) For the portion of the term of the letting hereunder commencing on January 1, 2018 to and including December 31, 2018, the Lessee hereby agrees to and shall pay to the Port Authority Area IA Facility Rental at the annual rate equal to the amount in effect during the prior year plus . As of each January 1

anniversary date thereafter during the term of the letting, the Area IA Facility Rental in effect for the succeeding year shall increase by four percent (4%)."

(c) Section 4(I)(e)(i), entitled "*Ground Rentals: Abatement*", shall be amended by adding a new subparagraph (4), (5) and (6) which shall read as follows:

"(4) For the portion of the term from January 1, 2018 to December 31, 2018 at the daily rate of (2.a.)

(5) For the portion of the term from January 1, 2019 to December 31, 2019 at the daily rate of (2.a.)

(6) For the portion of the term from January 1, 2020 to December 31, 2020 at the daily rate of (2.a.)

(d) Section 4(II)(d)(i), entitled "*Facility Rentals: Abatement*", shall be amended by amending and restating subparagraph (5) and by adding new subparagraph (6), (7) and (8) which shall read as follows:

"(5) For the portion of the term from January 1, 2013 to December 31, 2017 at the daily rate of (2.a.)

(6) For the portion of the term from January 1, 2018 to December 31, 2018 at the daily rate of (2.a.)

(7) For the portion of the term from January 1, 2019 to December 31, 2019 at the daily rate of (2.a.)

(8) For the portion of the term from January 1, 2020 to December 31, 2020 at the daily rate of (2.a.)

(e) A new Section 4 (IV) shall be added which shall read as follows:

"IV. *Area IB Abatement as of Demolition Commencement Date.*

As of the Demolition Commencement Date, the following shall occur with respect to Area IB Facility Rental and Area IB Ground Rental:

(i) the Lessee shall cease to incur an obligation to pay Area IB Facility Rental for the balance of the letting under this Agreement after such date. The Lessee shall continue to be liable for timely payment of Area IA Facility Rental incurred prior to the Demolition Commencement Date.

(ii) the Lessee's obligation to pay Area IB Ground Rental shall continue to accrue after the Demolition Commencement Date, but its obligation to pay such Area IB Ground Rental shall be deferred during the period from the Demolition Commencement Date to the earlier of (A) the day preceding the second (2nd) anniversary of the Demolition Commencement Date and (B) the Terminal 3 Site Surrender Date (the "**Area IB Ground Rental Abatement Period**"). During the Area IB Ground Rental Abatement Period, the Area IB Ground Rental shall accrue at (1) the annual rental rate for Area IB Ground Rental otherwise in effect

during such period plus (2) interest on such Area IB Ground Rental at the rate on the coupon of longest maturity of the Series 8 Bonds, as such term is defined in the Terminal 4 Lease (such increased rental rate being called the "**First Deferred Area IB Ground Rental Rate**"). The aggregate amount of the Area IB Ground Rental that accrues during the Area IB Ground Rental Abatement Period shall be paid to the Port Authority in consecutive, equal monthly amounts, together with interest thereon, commencing on the first day of the first month after the expiration of the Area IB Ground Rental Abatement Period and, thereafter, on the first day of each month thereafter occurring through December 31, 2017; provided, however, if the Terminal 3 Site Surrender Date has not occurred by the end of the twenty-fourth (24th) month from and including the month in which the Demolition Commencement Date occurs then, commencing the first day of the twenty fifth (25th) month from and including the month in which the Demolition Commencement Date occurs, Area IB Ground Rental shall be deemed to have accrued, retroactively, during the period from the Demolition Commencement Date through the Terminal 3 Site Surrender Date at the rate of one hundred fifty percent (150%) of the Area IB Ground Rental rate otherwise in effect during such period, i.e., the Area IB Ground Rental provided for under Section 4(I)(c) of the Lease plus fifty percent (50%) of such Area IB Ground Rental (such increased rental rate being called the "**Second Deferred Area IB Ground Rental Rate**"). A retroactive adjustment to the Area IB Ground Rental shall be made at the Second Deferred Area IB Ground Rental Rate. The Lessee shall pay the Area IB Ground Rental in monthly installments at the Second Deferred Area IB Ground Rental Rate commencing with the first day of the twenty-fifth (25th) month except that, if the Terminal 3 Site Surrender Date has not occurred by the end of the thirtieth (30th) month from and including the month in which the Demolition Commencement Date occurs, then, within thirty (30) days after the expiration of the thirtieth (30th) month, the full amount of the Area IB Ground Rental accrued from and after the Demolition Commencement Date, at the Second Deferred Area IB Ground Rental Rate, shall be due and payable to the Port Authority in a single, lump sum payment. For the avoidance of doubt, Area IB Ground Rental shall continue to accrue after the Area IB Ground Rental Abatement Period and prior to the expiration of the 30th month from and including the month in which the Demolition Commencement Date occurs at the Second Deferred Area IB Ground Rental Rate, but a lump sum payment of accrued Area IB Ground Rental shall not be due unless the Terminal 3 Site Surrender Date does not occur by the last day of the thirtieth (30th) month from the Demolition Commencement Date. After the thirtieth (30th) month, if the Terminal 3 Site Surrender Date has not occurred, monthly payments of Area IB Ground Rental shall continue to accrue and be paid on the first day of each month occurring after such 30th month, until the Terminal 3 Site Surrender Date, at the Second Deferred Area IB Ground Rental Rate. Notwithstanding the provisions of this Section 4(IV) to the contrary, the Second Deferred Area IB Ground Rental Rate, as opposed to the First Deferred Area IB Ground Rental Rate, shall apply only if the failure or inability for the Terminal 3 Site Surrender Date to occur within 24 months from the Demolition Commencement Date is caused by the Lessee or its officers, directors, employees, representatives, agents, contractors, subcontractors or matters under the control of any of the foregoing. In all events, Area IB Ground Rental shall cease to accrue after the Terminal 3 Site Surrender Date. It is expressly agreed that no delay, condition relating construction work under the Anchor Tenant Agreement or Terminal 4 Lease, or force majeure event under the Anchor Tenant Agreement or Terminal 4 Lease shall constitute a force majeure event under the Lease, as amended."

5. Amendment to Section 5 of the Lease

Section 5 of the Lease, entitled *"Use of Premises"*, shall be amended to add a new paragraph at the end of Section 5 which provides as follows:

"As of the "2010 Expansion DBO", as such term is defined in the Fifth Supplemental Agreement to the Terminal 4 Lease, the Lessee shall be obligated to immediately cease its use of Area IB (including, but not limited to, cessation of its business of transportation by aircraft and cessation of concession operations); provided, however, that the Lessee shall be permitted to use Area IB (a) for those of its operations and activities necessary to prepare for, undertake and complete the 2010 Construction Work, and (b) if less than sixteen (16) Delta Gates (as such term is defined in the Anchor Tenant Agreement) are located at Terminal 4, for live hardstands, until sixteen (16) Delta Gates are located at Terminal 4, but use under this clause (b) shall only be permitted if (i) such use does not delay or unduly interfere with 2010 Construction Work activities) and (ii) at all times for such proposed use, there is maintained peak hour customer service levels in the Terminal 4 FIS Facility, Baggage and Ticketing hall processors (as such terms are defined in the ATA) at Level of Service C which shall have the meaning set forth in the IATA Airport Development Reference Manual. It is expressly agreed that any continued use of Area IB for hardstand use pursuant to clause (b), above, shall not constitute a force majeure event under the Lease, as amended."

6. Amendment to Section 15 of the Lease.

Section 15 of the Lease, entitled *"Joint Periodic Condition Survey"*, shall be amended by adding a new paragraph (i) which shall read as follows:

"(i) In connection with the Condition Survey to be undertaken prior to the expiration date of the term of the letting under this Agreement, as described in subparagraph (b), above, the parties acknowledge that subparagraph (e), above, requires the Lessee to commence and complete all items and action required or recommended (in accordance with the standards of subparagraph (e) above) to be taken in the relevant Contract Condition Survey Report and within the time periods described in said subparagraph (e). The Port Authority hereby reserves the right to elect, in its sole and absolute discretion, to accept surrender of the Area IA premises by the Lessee at the expiration of the Agreement in a condition where the items and areas described in subparagraph (a)(1), above, while the same shall all be in good working condition, as applicable, but where not all of the work required or recommended in the relevant Contract Condition Survey Report is completed as otherwise required by subparagraph (e). In such event, the Port Authority shall so advise the Lessee in writing and the parties, thereafter, shall negotiate in good faith to determine a payment amount, and the due date therefor, that would be due and payable to the Port Authority by the Lessee, based on the findings of the Contract Condition Survey Report, in lieu of all the work that would otherwise be required to be completed by the Lessee in order for it to strictly comply with subparagraph (e), above. If the parties are unable to agree upon the amount of, and due date for receipt of, the payment to be made to the Port Authority in lieu of completing the work in strict compliance with subparagraph (e) within sixty (60) days of the date of the Port Authority's written notice described in the immediately preceding sentence, then the Lessee shall be obligated to perform all the work cited in the Contract Condition Survey Report in accordance with this Section as if such notice had not been

received from the Port Authority. For the avoidance of doubt, nothing in this paragraph (i) is intended to modify the provisions of Section 97 of the Lease, entitled "*Surrender of the Terminal 3 Site*", which controls with respect to the surrender of the Terminal 3 Site."

7. Amendment of Section 23A of the Lease

Section 23A of the Lease, entitled "*Security Deposit*", is hereby amended by amending and restating subsections (a) and (b) as follows:

"Section 23A. Security Deposit.

(a) The Port Authority and the Lessee are contemporaneously with the execution of this Lease entering into an agreement, dated as of the date of the Third Supplemental Agreement, and identified by Port Authority No. AX-852 (as the same may hereafter be supplemented, amended or extended, the "**Security Agreement**") covering certain agreements to which the Lessee is a party relating to use, occupancy or privileges at Port Authority facilities. The Lessee and the Port Authority hereby agree that all sums deposited by the Lessee as security as set forth in the Security Agreement shall be held and used by the Port Authority as security for the full, faithful and prompt performance of and compliance with, on the part of the Lessee, all of the terms, provisions, covenants and conditions of the Lessee in connection with this Lease, as well as the other agreements covered by such Security Agreement.

(b) Accordingly, notwithstanding anything to the contrary contained in this Lease, the Lessee hereby agrees that this Lease is one of the "Agreements", as such term is defined in the Security Agreement, and that a breach or failure to perform or comply with any of the terms and conditions of the Security Agreement including, without limitation, failure to provide a letter of credit in accordance with the terms and provisions of the Security Agreement at any time during the term under any of the Agreements valid and available to the Port Authority or any failure of any banking institution issuing a letter of credit to make one or more payments as provided in such letter of credit, shall, if not cured within any applicable grace period set forth in the Security Agreement, constitute a material breach of this Lease and the Security Agreement thereby entitling the Port Authority to immediately exercise any and all rights available to it including, without limitation, the right to terminate this Lease for cause."

8. Addition of Section 79 of the Lease.

A new Section 79 to the Lease, entitled "*OFAC Compliance*", shall be inserted and shall provide in its entirety as follows:

"Section 79. OFAC Compliance

(a) As of the Effective Date of the Third Supplemental Agreement, Lessee represents and warrants to the Port Authority that it (i) is not 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 or other regulation relating to national security or foreign policy (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, such persons being referred to herein as "Blocked Persons" and such regulations, statutes, executive orders and governmental actions related to national security, the violation of which would also constitute a violation of law, being referred to herein as "Blocked Persons Laws") and (ii) is not engaging in any dealings or transactions with Blocked Persons in violation of any Blocked Persons Laws. Lessee acknowledges that the Port Authority is entering into the Third Supplemental Agreement to the Lease 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 the Third Supplemental Agreement.

(b) Lessee covenants that (i) during the term of the Lease it shall not become a Blocked Person and shall not engage in any dealings or transactions with Blocked Persons in violation of any Blocked Persons Laws. In the event of any breach of the aforesaid covenant, the same shall constitute an event of default and, accordingly, a basis for termination of the Lease by the Port Authority in accordance with Section 26 of the Lease, entitled "*Termination by the Port Authority*", in addition to any and all other remedies provided under the Lease or at law or in equity. The foregoing shall not constitute an acknowledgement by the Port Authority that such breach is capable of being cured.

(c) 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 paragraph. 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.

(d) The provisions of this Section shall survive the expiration or earlier termination of the Lease."

9. **Amendment of Section 81 of the Lease.**

Section 81 to the Lease, entitled *"Definitions"*, shall be amended by adding the following definitions:

(a) **"Environmental Requirement"** shall mean in the singular and "Environmental Requirements" shall mean in the plural all common law and all past, present and future laws, statutes, enactments, resolutions, regulations, rules, directives, ordinances, codes, licenses, permits, orders, memoranda of understanding and memoranda of agreement, guidances, approvals, plans, authorizations, concessions, franchises, requirements and similar items of all governmental agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof, all pollution prevention programs, "best management practices plans", and other programs adopted and agreements made by the Port Authority with any governmental agencies (whether adopted or made with or without consideration or with or without compulsion), with any government agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof, and all judicial, administrative, voluntary and regulatory decrees, judgments, orders and agreements relating to the protection of human health or the environment, and in the event that there shall be more than one compliance standard, the standards that the Lessee shall comply with shall be those standards that achieve the level of Hazardous Substances required by the New York State Department of Environmental Conservation ("NYSDEC"), or any successor agency thereto, and, with respect to Remediation, for issuance of a written determination stating that no further action is required with regard to such Hazardous Substances; provided, however, that in all events, the standards that the Lessee shall comply with shall be those that, when complied with by the Lessee, would not be or become a breach or default under the Basic Lease in the judgment of the Port Authority, and those standards that would not result in or permit any encumbrance being placed on or with respect to the Airport or any portion thereof, such as but not limited to, the imposition of any deed restriction, any engineering or institutional controls or restrictions, limitations or conditions on the use and occupancy of the airport, the operations and activities that may be conducted thereon or upon any transfer of the Airport. The foregoing shall include, without limitation, the following:

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

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

(iii) The Atomic Energy Act of 1954 , 42 U.S.C. Section 2011 *et seq.*; the Clean Water Act also known as the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 *et seq.*; the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 *et seq.*; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 *et seq.*; the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Section 2701 *et seq.*; the Emergency Planning and Community Right to Know Act, 42 U.S.C. Section 11001 *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. Section 651 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101 *et seq.*; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*; the Toxic Substances

Control Act, 15 U.S.C. Section 2601 *et seq.*; the Safe Drinking Water Act of 1974, 42 U.S.C. Sections 300f-300h-11 *et seq.*; the New York State Environmental Conservation Law; the New York State Navigation Law; together, in each case, with any amendment thereto, and the regulations adopted, guidances, memoranda and publications promulgated thereunder and all substitutions thereof.

(b) **Hazardous Substances**" shall mean and include in the plural and "**Hazardous Substance**" shall mean any pollutant, contaminant, toxic or hazardous waste, dangerous substance, potentially 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 substances declared to be hazardous or toxic or the removal, containment or restriction of which is required, or the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling or ownership of which is 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.

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

10. <u>Addition of Section 84 of the Lease.</u>

A new Section 84 of the Lease, entitled *"Storage Tanks"* shall be inserted and shall read in its entirety as follows:

"84. Storage Tanks

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

"Discharge" for purposes of this Section 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 Effective Date, together with all underground storage tanks and all above-ground storage tanks installed in the premises during the period of permission, and their appurtenances, pipes, lines, fixtures and other related equipment.

"Tank Claims" shall have the meaning set forth in paragraph (f)(1), below.

(b) Lessee to Have Responsibility for All Tanks.

Notwithstanding any other facts or circumstances to the contrary, including without limitation any vesting of title to the Tanks in the City of New York pursuant to any construction or alteration application or otherwise, the Lessee hereby agrees that title and ownership of the Tanks shall be and remain in the Lessee, that all Tanks shall be registered by the Lessee in the name of the Lessee as operator and owner and that the Lessee shall have full and sole responsibility for all the Tanks, and shall release and relieve the Port Authority from all costs and responsibility for the Tanks. The Port Authority has made no representations or warranties with respect to the Tanks or their location and shall assume no responsibility for the Tanks. All Tanks installed by the Lessee shall be installed pursuant to the terms and conditions of the Lease including, without limitation, the Section of Lease entitled *"Other Construction by the Lessee"*, and nothing in this Section shall be deemed to be permission or authorization to install any Tanks.

(c) Maintenance of Tanks.

Without limiting the generality of any of the provisions of the Lease, 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. Further, Lessee shall provide to the Port Authority copies of all annual testing final reports, tank certified engineering drawings, and regulatory submissions prepared in connection with meeting all applicable Environmental Requirements.

(d) Removal.

(1) The Lessee shall remove all the Tanks from the premises on or before the expiration of the Lease (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 Remediate any contamination disclosed by said testing. In the event the Lessee does not remove the Tanks as required by subparagraph (l), above, the Port Authority may enter upon the premises and effect the removal and disposal of the Tanks, restoration of the premises and such Remediation and the Lessee hereby agrees to pay all costs and expenses of the Port Authority arising out of such removal, disposal, restoration and Remediation.

(e) Compliance with Environmental Requirements. Without limiting the generality of any other term or provision of the Lease, 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 Remediation of Discharges and filing all reports, making all submissions to, providing all information required by, and complying with all requirements of, all Governmental Authorities pursuant to all such Environmental Requirements. Nothing in the foregoing shall be construed as a submission by the Port Authority to the application to itself of the Environmental Requirements; provided, however, no immunity or exemption of the Port Authority from the Environmental Requirements shall excuse the compliance therewith by the Lessee or shall be grounds for non-compliance therewith by the Lessee.

(f) Lessee's Assumption of Risks.

(1) The Lessee hereby assumes all risks arising out of or in connection with the Tanks and all Discharges whether or not foreseen or unforeseen and shall indemnify and hold harmless the Port Authority, its Commissioners, officers, agents and employees from and against (and shall reimburse the Port Authority for their costs and expenses including without limitation penalties, fines, liabilities, settlements, damages, attorney and consultant fees, investigation and laboratory fees, 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 including Tank Claims by the City of New York against the Port Authority pursuant to the provisions of the Basic Lease whereby the Port Authority has agreed to indemnify the City of New York against claims. It is understood the foregoing indemnity shall cover all claims, demands, penalties, settlements, damages, fines, costs and expenses of or imposed by any Governmental Authority under the aforesaid Environmental Requirements.

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

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

(g) Survival of Obligations. The Lessee's obligations under this Section shall survive the expiration or earlier revocation or termination of the Lease.

(h) Port Authority-directed Testing and Remediation. In addition to the requirements of the Section hereof entitled *"Compliance With Governmental Requirements"* 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, (i) to perform such reasonable testing of the Tanks as the Port Authority shall direct and to perform such reasonable testing of the soil, subsoil and ground water of the premises at or near the Tanks and of such surrounding area as the Port Authority shall direct, and (ii) to Remediate any Discharge, regardless of whether any Environmental Requirement or Governmental Authority shall require such testing or Remediation, which testing 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. All Remediation required by this Section shall be to levels, within a time frame, and in a manner necessary in the judgment of the Port Authority for it to be at all times in compliance with the Basic Lease;

(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, 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, all subject to the Sections of the Lease entitled *"Compliance with Governmental Requirements"* and *"Other Construction by the Lessee"*.

11. <u>Amendment to Section 88 of the Lease.</u>

Section 88 of the Lease, entitled *"Lessee's Capital Investment and Port Authority's Additional Rights of Termination"*, shall be amended by adding subparagraphs (g), (h), and (i) which shall read as follows:

"(g) (1) The Lessee agrees to make a Capital Investment, as hereinafter defined, at the premises to complete the 2010 Construction Work (including without limitation submitting to the Port Authority the certifications and supporting materials therefor as set forth in paragraph (g) below) of approximately
(which Capital Investment is hereinafter called the **"2010 Capital Investment"**). The Lessee's cash contribution to the total cost of the 2010 Phase I Project shall in all events be no less than

(2.a.)

(2) Notwithstanding the Lessee's obligation to make the 2010 Capital Investment and complete the 2010 Construction Work, the Port Authority agrees to use diligent efforts to submit an application to the Federal Aviation Administration (**"FAA"**) to obtain approval to apply PFC funds up to for (a) PFC-eligible construction work performed by the Lessee at the PAF Site, as such term is defined in the ROE Agreement, together with related costs of the type included in the 2010 Capital Investment and described in Section 88(h)(ii) of the Lease and (b) that portion of the 2010 Construction Work that excludes (i) construction of the Terminal 2-4 Pedestrian Connector and costs and expenses relating thereto, (ii) all underground environmental Remediation of Hazardous Substances, (iii) the demolition of the Air Train connector and elevator core at Terminal 3, and (iv) any non-PFC eligible financing cost component of the 2010 Capital Investment. Such aforesaid exclusions shall include all Remediation and other environmental-related liabilities and obligations for which the Lessee is responsible under (a) the ROE Agreement, (b) Section 83 of the Lease, whether relating to Area IA or Area IB, including, therefore, without limitation, (x) all costs and expenses associated with closing open spills at the Terminal 3 Site and (y) all other Remediation which is occasioned by, arises out of, or relates to the 2010 Construction Work, whether above-ground or below-ground (excluding asbestos abatement and removal at Terminal 3 and excluding "universal waste" within Terminal 3). By way of example, but not limitation, the Port Authority PFC application would seek approval for PFC funding of the 2010 Construction Work relating to Terminal 3 Site work (except Remediation and other items identified in clauses (i)-(iv), as aforesaid), Terminal 3 utility work, Terminal 3 demolition, Terminal 3 asbestos abatement work, and Terminal 3 ramp paving for aircraft parking. The Port Authority's PFC application, and PFC funds, shall not apply to any (a) improvement at the Airport which was PFC-funded and as to which the useful life has not expired or (b) component of the 2010 Phase I Project which occurs on or at Terminal 4. Upon any determination by the FAA that all or a part of the portion of the PFC-eligible construction work performed by the Lessee at the PAF Site or the 2010 Capital Investment to be funded by PFCs is so eligible and FAA-approved to be paid or reimbursed through PFCs (**"Eligible PFC Construction Work"**), the Port Authority agrees to reimburse the Lessee on a monthly basis, up to (2.a.) from PFC funds it has collected, for Eligible PFC Construction Work. In this connection, the Lessee acknowledges that, as of the date of the Third Supplemental Agreement, there are other projects at Port Authority facilities as to which PFC funding has previously been deemed eligible and which have received approval from the FAA and, subsequent to this Third Supplemental Agreement but prior to the time full reimbursement for Eligible PFC Construction Work shall have been made to the Lessee, there likely shall be other projects at Port Authority facilities as to which PFC funding is deemed eligible and which are submitted by the Port

Authority for approval from the FAA prior to or contemporaneously with the Eligible PFC Construction Work or for other airport terminal projects. The Lessee understands and acknowledges that any monthly reimbursement to the Lessee pursuant to this Section shall not be a fixed amount but shall vary from month to month and, additionally, that the Port Authority's determination of the appropriate amount to reimburse the Lessee for Eligible PFC Construction Work in any month shall be relative to, and in the context of, the application by it of PFC funds for other PFC-qualifying projects submitted by the Port Authority for approval from the FAA prior to or contemporaneously with the Eligible PFC Construction Work or for other airport terminal projects. Accordingly, following approval by the FAA of the Port Authority PFC application to use PFC funds on Eligible PFC Projects, PFC reimbursement to the Lessee shall be made as follows. Within forty five (45) days after the end of the calendar month in which the Lessee submits an invoice for reimbursement of expenditures related to Eligible PFC Construction Work, provided such invoice is in a form and includes such back-up documentation and detail reasonably acceptable to the Port Authority, the Port Authority will pay the Lessee the lesser of (a) the invoiced amount or (b) a *pro rata* amount, calculated by multiplying the total PFC collections during the calendar month following the calendar month in which the Lessee submitted the invoice, together with any other PFCs previously collected and unspent, by a fraction of which (i) the numerator shall be the total of all invoices submitted by the Lessee to the Port Authority that are eligible for PFC-reimbursement and for which reimbursement has not yet been made by the Port Authority, and (ii) the denominator shall be the total of all eligible Port Authority PFC expenditures not yet reimbursed for PFC-qualifying projects submitted by the Port Authority for approval from the FAA prior to or contemporaneously with the Eligible PFC Construction Work or for other airport terminal projects. Any difference between the Lessee's invoiced amount and the Lessee's reimbursed amount shall be included in the following month's calculation of the Lessee's *pro rata* amount. In the event that all unreimbursed invoiced amounts in any month is (i) equal to the balance remaining to be reimbursed to the Lessee for all Eligible PFC Construction Work and (ii) less than or equal to $1,000,000, the Port Authority shall pay the Lessee the invoiced amount, without regard to *pro ration.*

(3) The Lessee expressly agrees that it shall not, directly or through a third party, request Port Authority financing or other funding from the Port Authority (whether in the form of construction reimbursement, loans, rent offsets, rent credits, or otherwise) for any portion of the 2010 Construction Work that is not covered by Eligible PFC Construction Work, and the Port Authority shall not be obligated to consider, respond to, negotiate with Lessee as to, or seek approval of its Board of Commissioners in connection with, any such request. It is expressly understood and agreed by the Lessee that the sole source of reimbursement by the Port Authority for any costs and expenses incurred by it for any portion of the 2010 Construction Work or 2010 Capital Investment shall be from PFC funds, and only if and to the extent the same are approved by the FAA. Further, the Lessee expressly agrees that it is obligated to perform and complete the 2010 Construction Work in a timely and diligent manner, at its sole cost and expense, regardless of when or whether the FAA determines whether or not there is any Eligible PFC Construction Work.

(h) Without limiting and in addition to any other right or remedy of the Port Authority, in the event that the Terminal 3 Site Surrender Date including, without limitation, submitting to the Port Authority the certifications and supporting materials therefor as set forth in

paragraph (i), below, has not occurred by December 31, 2017, then upon the occurrence of such event, or at any time thereafter for so long as the Terminal 3 Site Surrender Date shall not have occurred, the Port Authority may, upon thirty (30) days' notice to the Lessee, terminate the term of the Lease and the letting thereunder with respect to all or such portion or portions of the premises as shall be set forth in the Port Authority's said notice of termination to the Lessee, the letting as to all of such portion or portions of the premises shall be deemed terminated and the Lessee shall thereafter be a holdover tenant, on a month-to-month periodical basis, of the Port Authority of such portion or portions of the premises.

(i) As used in this Lease with respect to the 2010 Construction Work, the Lessee's "2010 Capital Investment" shall mean:

(i) the amounts paid by the Lessee to independent contractors for work actually performed and labor and materials actually furnished, inclusive of sales, use and like taxes where applicable, whether prior to or following the effective date of the Third Supplemental Agreement (but not earlier than Port Authority authorization for the Third Supplemental Agreement on August 5, 2010), in connection with the 2010 Construction Work;

(ii) the payments made and expenses incurred by the Lessee, in connection with the 2010 Construction Work, whether prior to or following the effective date of the Third Supplemental Agreement (but not earlier than Port Authority authorization for the Third Supplemental Agreement on August 5, 2010) , for engineering, architectural, professional and consulting services, and the supervision of construction (which term shall be understood to include demolition), inclusive of sales, use and like taxes where applicable, it being understood that payments under this item (ii) shall not exceed sixteen percent (16%) of the sum of the amounts described in item (i), above;

and, further, in each case, as the aforementioned amounts and payments are evidenced, from time to time, by certificates of a responsible fiscal officer of the Lessee, sworn to before a notary public and delivered to the Port Authority, which certificates shall (a) set forth, in reasonable detail and in appropriate format as may be required, in the judgment of the Port Authority, for PFC purposes, 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 duplicates originals of the invoices of such independent contractors and other persons acknowledging the receipt by them of such amounts and payments, and (c) certify that the amounts and payments therein set forth constitute the Lessee's 2010 Capital Investment arising out of the performance of the construction work. The Lessee shall keep a separate accounting of the Lessee's 2010 Capital Investment which accounting 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 or the end of the term of the letting, whichever is later, and shall be subject to the audit and inspection of the Port Authority, its representatives and employees; provided, however, on the condition that the Lessee shall pay to the Port Authority all travel costs and expenses as determined by the Port Authority for Port Authority auditors and other representatives in connection with any audit at locations outside the Port of New York District, the Lessee may maintain said records and books

and make them available to the Port Authority at the Lessee's office at 1030 Delta Boulevard, Hartsfield Atlanta International Airport, Atlanta, Georgia 30320."

12. Amendment to Section 93 of the Lease

Section 93 of the Lease, entitled *"Pedestrian Connector"*, shall be amended by adding subparagraph (d) which shall read in its entirety as follows:

"(d) (1) As part of the 2010 Construction Work, (i) Lessee acknowledges that (i) Lessee shall design, construct and complete a new secure Terminal 2-4 Pedestrian Connector (from an intermediate point on the Pedestrian Connector to Terminal 4) and (ii) in connection with the demolition of Terminal 3, Lessee shall remove the portion of the Pedestrian Connector between the intermediate point on the Pedestrian Connector and Terminal 3. The Terminal 2-4 Pedestrian Connector refers to an elevated, enclosed bridge and its foundations, supports, utility systems, equipment and appurtenances. Notwithstanding anything to the contrary stated in the ATA, the Terminal 2-4 Pedestrian Connector shall be designed, constructed and completed in accordance with this Lease and the applicable Port Authority standards and application process and in the event of a conflict between the ATA and this Lease, the provisions of this Lease shall be determinative and controlling.

(2) (a) The Pedestrian Connector and Terminal 2-4 Pedestrian Connector shall be subject to a joint and mutual easement as pedestrian passageways to be used jointly by the Lessee on one hand and by the Port Authority and any lessee(s), sublessee(s), occupant(s) or user(s) on the other hand who pursuant to Port Authority permission may lease, rent, occupy or use Terminal 4. Such joint and mutual easements shall be for the provision to the Lessee ingress to and egress from Terminals 2 and 3 on the one hand and Terminal 4 on the other hand and for the provision to the Port Authority and such lessee(s), sublessee(s), occupant(s) or user(s) of ingress to and egress from Terminal 4 on the one hand and Terminals 2 and 3 on the other hand. The aforedescribed joint and mutual easements shall remain in effect subsequent to the demolition by the Lessee of Terminal 3, during the course of the 2010 Construction Work, except for that portion of the Pedestrian Connector that shall be demolished in connection with the demolition of Terminal 3.

(b) Effective as the Effective Date of this Third Supplemental Agreement, and for so long as the Terminal 2-4 Pedestrian Connector (once constructed) remains in place (subject to restoration after a casualty), the Terminal 2-4 Connector Area shall be subject to a leasehold easement in favor of the Lessee for the purpose of constructing, maintaining, repairing and rebuilding the portion of the Terminal 2-4 Pedestrian Connector located in the Terminal 2-4 Pedestrian Connector Area, including attaching the Terminal 2-4 Pedestrian Connector to Terminal 4.

(3) The Lessee shall have sole responsibility, at its own cost and expense, to care for, maintain, repair and rebuild in accordance with the terms and provisions of the Lease all portions of the Pedestrian Connector and Terminal 2-4 Pedestrian Connector

throughout the term of the Lease (except that portion of the Pedestrian Connector which is to be demolished in connection with the demolition of Terminal 3). With respect to the portion of the Terminal 2-4 Pedestrian Connector located within Terminal 4 in the Terminal 2-4 Connector Area, the Lessee shall cooperate with the Port Authority and any lessee(s), subuser(s), occupant(s) or user(s) who pursuant to Port Authority permission may lease, rent, occupy or use Terminal 4 in the care, maintenance, repair and rebuilding of the portion of the Terminal 2-4 Pedestrian Connector located in the Terminal 2-4 Pedestrian Connector Area. The parties contemplate that, after the effective date of the ATA and continuing after the expiration or termination of this Lease, the Lessee shall be conducting operations at and from Terminal 4, and throughout the period of its operations at Terminal 2 and/or Terminal 4, the Lessee's responsibilities with respect to the Pedestrian Connector and the Terminal 2-4 Pedestrian Connector, as aforesaid, shall remain solely with Lessee under its agreement(s) relating to its operations at Terminal 4. The Lessee covenants that it shall include in the ATA, any replacement lease with any successor terminal operator of Terminal 4, and any agreement the Lessee shall enter into with any lessee, subuser, occupant or user of Terminal 4 terms and provisions that require its continued responsibility, at its own cost and expense, to care for, maintain, repair and rebuild the Terminal 2-4 Pedestrian Connector and the remaining portion of the Pedestrian Connector, as aforesaid. Notwithstanding the preceding sentence, the Lessee shall be obligated to demolish the Terminal 2-4 Pedestrian Connector and the remaining portion of the Pedestrian Connector, at its sole cost and expense, at the expiration or termination of the Lease unless otherwise directed to the contrary in writing by the Port Authority, and if the Port Authority directs that the Terminal 2-4 Pedestrian Connector and/or remaining portion of the Pedestrian Connector not be so demolished, then Lessee's obligations to maintain, repair and rebuild same shall immediately cease except for the fulfillment of its obligations pursuant to Section 15 of the Lease, entitled "*Joint Periodic Condition Survey*", which shall survive.

13. <u>Addition of Section 97 to the Lease.</u>

A new Section 97 shall be added to the Lease which shall state in its entirety as follows:

"Section 97. <u>Surrender of the Terminal 3 Site; Terminal 3 Site Surrender Remediation Action Plan.</u>

(a) Upon the completion of the 2010 Construction Work in accordance with the Third Supplemental Agreement, the Lessee shall surrender the Terminal 3 Site and the letting hereunder and all of its rights with respect thereto under this Lease, immediately after which the grant of the license to the Lessee, pursuant to the terms of the Aircraft Parking Permit, shall be effective. In this connection, the Lessee shall send written notice to the Port Authority (the "**Terminal 3 Site Surrender Notice**") that it has completed the 2010 Construction Work in accordance with the Third Supplemental Agreement. The Port Authority shall not be obligated to accept surrender of the Terminal 3 Site unless and until it has (i) received the Terminal 3 Site Surrender Notice, (ii) received the Terminal 3 Site Surrender Remediation Action Plan (as hereinbelow defined), and (iii) determined in its sole discretion that the 2010 Construction Work has been so completed and, in this connection, the 2010 Construction Work shall be deemed not to have been completed if the Remediation of the Terminal 3 Site, including without limitation the clean-up and closing of all spills and the

obtaining of a "no further action" status from the NYSDEC with respect to all spills reported to the NYSDEC, has not been completed. The aforesaid obligation to fully complete all Remediation of the Terminal 3 Site as of the date of the Terminal 3 Site Surrender Notice may exclude only such ongoing monitoring and natural attenuation as is described in an environmental remediation action plan approved in writing by the Port Authority (the "**Terminal 3 Site Surrender Remediation Action Plan**"), which pre-approved plan shall be delivered to the Port Authority prior to, or together with, the Terminal 3 Site Surrender Notice. The Lessee shall be fully responsible for all costs associated with any ongoing monitoring, reporting and closure activities relating to or resulting from such spills, and shall complete all necessary remedial actions, monitoring and reporting necessary to obtain such "no further action" status. Upon the acceptance by the Port Authority of the surrender of the Terminal 3 Site, the Port Authority shall issue a written notice to such effect (the "**Terminal 3 Site Surrender Acceptance Notice**").

(b) Effective as of the date and time stated in the Terminal 3 Site Surrender Acceptance Notice (which date and time are hereinafter collectively called the "**Terminal 3 Site Surrender Date**"), the Lessee shall and be deemed to have granted, bargained, sold, surrendered and yielded up and by these presents have granted, bargained, sold, surrendered and yielded up unto the Port Authority, its successors and assigns, forever, its rights in the Terminal 3 Site and the term of years with respect thereto under the Lease, as amended, yet to come and shall and be deemed to have given, granted, surrendered and by these presents does give, grant and surrender to the Port Authority, its successors and assigns, all the rights, rights of renewal, licenses, privileges and options of the Lessee granted by the Lease, as amended, with respect to the Terminal 3 Site, all to the intent and purpose that the said Terminal 3 Site term of letting under the Lease, as amended, and the said rights of renewal, licenses, privileges and options may be wholly merged, extinguished and determined on the Terminal 3 Site Surrender Date, with the same force and effect as if the said Terminal 3 Site term were in and by the provisions of the Lease, as amended, originally fixed to expire on the Terminal 3 Site Surrender Date, but the Lease and the letting thereunder, as amended, shall continue in full force and effect as to the remainder of the premises under the Lease, as amended, and in accordance with all the terms and provisions thereof. The Aircraft Parking Permit shall become effective at 12:01 a.m. on the day immediately following the Terminal 3 Site Surrender Date.

(c) The Lessee hereby covenants on behalf of itself, its successors and assigns that (x) it has not done or suffered and will not do or suffer anything whereby Terminal 3 Site or the Lessee's leasehold therein, has been or shall be encumbered as of the Terminal 3 Site Surrender Date in any way whatsoever (other than pursuant to the rights granted pursuant to the Aircraft Parking Permit); (y) the Lessee is and will remain until the Terminal 3 Site Surrender Date the sole and absolute owner of the leasehold estate in Terminal 3 Site and of the rights, rights of renewal, licenses, privileges and options granted by the Lease, as amended, with respect thereto and that the same area is and will remain until the Terminal 3 Site Surrender Date free and clear of all liens and encumbrances of whatsoever nature (other than pursuant to the rights granted pursuant to the Aircraft Parking Permit); and (z) the Lessee has full right and power to make this agreement.

(d) All promises, covenants, agreements and obligations of the Lessee with respect to Terminal 3 Site which under the provisions thereof would have matured upon the date originally fixed in the Lease for the expiration of the Terminal 3 Site term, or upon the termination of the Lease prior to the said date, or within a stated period after expiration or termination shall, notwithstanding such provisions, mature upon the Terminal 3 Site Surrender Date and shall survive the delivery of the Terminal 3 Site Termination Notice by the Port Authority to the Lessee.

(e) As of the Terminal 3 Site Surrender Date, the Lessee shall and shall have released and discharged and does by these presents release and discharge the Port Authority from any and all obligations on the part of the Port Authority to be performed under the Lease, as amended, with respect to Terminal 3 Site after the Terminal 3 Site Surrender Date. The Port Authority does by these presents release and discharge the Lessee from any and all obligations on the part of the Lessee to be performed under the Lease, as amended, with respect to Terminal 3 Site for that portion of the Terminal 3 Site term subsequent to the Terminal 3 Site Surrender Date; it being understood that nothing herein contained shall release, relieve or discharge the Lessee from any liability for rentals or for other charges that may be due or become due to the Port Authority for any period or periods prior to the Terminal 3 Site Surrender Date, or for breach of any other obligation on the Lessee's part to be performed under the Lease, as amended, for or during such period or periods or maturing pursuant to the foregoing paragraph, nor shall anything herein be deemed to release the Lessee from any liability for rentals or other charges that may be due or become due to the Port Authority for any other portion of the premises or the Terminal 3 Site or for breach of any other obligation on the Lessee's part to be performed under the Lease, as amended.

(f) The Lessee hereby agrees to terminate its occupancy of Terminal 3 Site and to deliver actual, physical possession of Terminal 3 Site to the Port Authority, on the Terminal 3 Site Surrender Date, in the condition required by the Lease upon surrender including, without limitation, in the condition representing completion of the 2010 Construction Work, subject only to the proviso in paragraph (a), above, of this Section relating to incomplete cleanup of spills as of the Terminal 3 Site Surrender Date. The Lessee further agrees that it shall remove all of the Lessee's personal property from Terminal 3 Site prior to the Terminal 3 Site Surrender Date (other than personal property that is to be used in connection with the Aircraft Parking Permit), and all the terms and conditions of Section 29 of the Lease with respect to termination of the letting shall apply to any of the Lessee's personal property not so removed.

(g) The Lessee hereby acknowledges that each and every term, provision and condition of the Lease, as amended, shall continue to apply to the premises remaining after the termination of Terminal 3 Site.

(h) From and after the Terminal 3 Site Surrender Date, (i) Area IB Ground Rental shall cease to accrue and (ii) the Aircraft Parking Permit shall automatically become effective pursuant to the terms of the Aircraft Parking Permit.

14. Addition of Section 98 to the Lease.

A new Section 98 shall be added to the Lease which shall state in its entirety as follows:

"Section 98. Taxilane Easement; Aircraft Parking Easement.

(a) Taxilane Easement.

The strips of land identified as "West Easement" and "East Easement" on the drawings attached hereto as Exhibit S3-98-1 and Exhibit S3-98-2 , which includes the portion of the Terminal 3 Site shown in diagonal hatching (**"Terminal 3 Easement Site"**) on Exhibit S3-98-1 and the portion of premises covered under the Terminal 4 Lease shown in diagonal hatching on Exhibit S3-98-2 (**"Terminal 4 Easement Site"**), shall be subject to an easement for use as a taxilane (the **"Taxilane Easement"**) in favor of the Port Authority, lessee(s), sublessee(s), occupant(s) or user(s) who pursuant to Port Authority permission may lease, rent, occupy or use Terminal 4 (**"Terminal 4 Easement Users"**) for purposes of ingress to and egress from Terminal 4, and in favor of the Lessee for the purposes of ingress to and egress from the Terminal 3 Site, and may be used jointly by the Lessee and the Terminal 4 Easement Users, the successors in interest of either of the foregoing, the Port Authority and any other entity to whom the Port Authority may grant the right to use the Taxilane Easement.

(b) Aircraft Parking Easement.

Effective as of the Effective Date, the Lessee acknowledges and agrees that the portion of the Terminal 3 Site shown in cross-hatching on Exhibit S3-98-1 shall be subject to a non-exclusive easement in favor of the Port Authority and lessee(s), sublessee(s), occupant(s) or user(s) who pursuant to Port Authority permission may lease, rent, occupy or use Terminal 4 for the purposes of the parking of aircraft at the contiguous aircraft building gate positions at Terminal 4, and related operations (the **"Aircraft Parking Easement"**).

15. Addition of Section 99 to the Lease.

A new Section 99 shall be added to the Lease which shall state in its entirety as follows:

"99. Addition to Area IB to the Premises.

(a) In addition to the premises heretofore let to the Lessee under the Lease, the letting as to which shall continue in full force and effect subject to and in accordance with all the terms, provisions, covenants and conditions of the Lease as herein amended, the Port Authority hereby lets to the Lessee and the Lessee hereby hires and takes from the Port Authority the two additional open areas shown in shading on Exhibit S3-99-1, page 1 of 2 (such areas being sometimes hereinafter collectively called **"Additional Area IB"**), together with the structures, fixtures, improvements and other property, if any, of the Port Authority located or to be located therein or thereon, to be and become a part of Area IB and, accordingly, part of the premises under the Lease as herein amended from and after 12:01 o'clock A.M. on the Effective Date of

this Third Supplemental Agreement (such date sometimes hereinafter in this Third Supplemental Agreement called the "**Additional Area IB Commencement Date**") let to the Lessee, subject to and in accordance with all of the terms, provisions, covenants and conditions of the Lease as herein amended, for and during the remainder of the term of the letting of Area IB under the Lease as herein amended, unless sooner terminated. The parties acknowledge that Additional Area IB, as well as the premises heretofore covered by the Lease, constitute non-residential real property.

(b) The Additional Area IB shall be used solely as space over which the Terminal 2-4 Pedestrian Connector shall be constructed, located and maintained, and for no other purpose or purposes whatsoever.

(c) The Lessee acknowledges that it has not relied upon any representation or statement of the Port Authority or its Commissioners, officers, employees or agents as to the suitability of Additional Area IB for the operations permitted thereon by the Lease as herein amended. The Lessee agrees that no portion of Additional Area IB will be used initially or at any time during the term of the letting thereof which is in a condition unsafe or improper for the conduct of the Lessee's operations therein under the Lease as herein amended so that there is possibility of injury or damage to life or property and the Lessee further agrees that before any use it will immediately correct any such unsafe or improper condition.

(d) The Port Authority shall deliver Additional Area IB or any portion thereof in its "as is" condition. The Lessee acknowledges that prior to the execution of this Third Supplemental Agreement it thoroughly examined and inspected Additional Area IB and found the same in good order and repair and determined the premises to be suitable for the Lessee's operations hereunder. The Lessee agrees to and shall take the said premises in such "as is" condition. The Port Authority shall have no obligation for finishing work or for preparation of any portion of Additional Area IB for the Lessee's use. All provisions of the Lease as herein amended that apply to Area IB shall apply to Additional Area IB, of which it is a part, other than the specific use to which Additional Area IB shall be put (as set forth in subparagraph (b), above), the Ground Rent applicable to Additional Area IB (as set forth in subparagraph (e), below, and the abatement rate applicable to Additional Area IB (as set forth in subparagraph (f), below).

(e) Rentals.

(1) For the portion of the term of the letting commencing on the Additional Area IB Commencement Date, in addition to all other rentals payable under the Lease as herein amended, the Lessee agrees to and shall pay to the Port Authority Area IB Ground Rental for Additional Area IB at the annual rate of (2.a.) as follows, payable in advance at the time and in the manner required for the payment of Area IB Ground Rental under the Lease.

(2) Effective on January 1, 2011 and thereafter on the first day of the month in each succeeding year during the term of the letting hereunder, rental for the

Additional Area IB shall be increased in accordance with the escalation provisions set forth in Section 4(I)(c) of the Lease, applicable to the Area IB Ground Rental.

(3) Section 2(IV), entitled "*Area IB Abatement as of Demolition Commencement Date*", shall apply to Additional Area IB in the same manner that it applies to the balance of Area IB, to which Additional Area IB shall constitute a part.

(f) Abatement.

In the event that the Lessee shall at any time by the provisions of the Lease become entitled to an abatement of Ground Rentals, said abatement for the Additional Area IB shall be computed at the same daily rate as shall apply with respect to the balance of Area IB. The parties acknowledge that, as of the Additional Area IB Commencement Date, abatement for the Additional Area IB shall be at the daily rate of $

16. <u>Renumbering of Entire Agreement Section</u>

Section of the Lease, entitled "*Entire Agreement*", shall be deemed renumbered as "Section 100" and the number "97" appearing in the second (2nd) line thereof shall be deleted and the number "100" substituted in lieu thereof.

17. <u>Cross-Default between Lease and ATA.</u>

Without limiting the generality of Section 26 of the Lease, entitled "*Termination by the Port Authority*" or any other rights or remedies of the Port Authority under the Lease or in law or equity, the Lessee shall be deemed to have breached the Lease, as amended, in the event that the Lessee shall have either (a) breached any of its obligations or defaulted under the Aircraft Parking Permit or (b) breached any of its obligations or defaulted under the ATA, in either case after the expiration of any applicable cure period. It is expressly agreed, therefore, that the Lease, as amended, and the Aircraft Parking Permit, in the first instance, and the Lease, as amended, and the ATA, in the second instance, shall be cross-defaulted.

18. <u>Cost of the Design Work.</u>

Contemporaneously with the execution and delivery of this Agreement, the Lessee shall wire transfer to the Port Authority, in accordance with Section 46 of the Lease, entitled "*Place of Payments*" (as amended by the Second Supplemental Agreement thereto), the sum of (2.a.)

as repayment to the Port Authority for the Cost of the Design Work, as defined in Section 95 of the Lease, entitled "*Design Payments for a Portion of the Cost of the Design Work*".

19. Amendment and Addition to the Lease Exhibits.

The following Exhibits are attached to this Third Supplemental Agreement:

Schedule E	Affirmative Action-Equal Opportunity-Minority Business Enterprises-Women-Owned Business Enterprises Requirements
Exhibit 2(k)	2010 Basis of Design
Exhibit 2(L)	Taxiway-HA
Exhibit93-1	Terminal 2-4 Pedestrian Connector
Exhibit93-2	Terminal 2-4 Pedestrian Connector Area
Exhibit S3-98-1	Terminal 3 Easement Site
Exhibit S3-98-2	Terminal 4 Easement Site
Exhibit S3- 99-1	Additional Area IB

20. Effect of Amendments.

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

21. Broker.

Each party represents and warrants that to the other party that no broker has been concerned in the negotiation of this Third Supplemental Agreement and that there is no broker who is or may be entitled to be paid a commission in connection therewith. Each party shall indemnify and save harmless the other party of and from all claims for commissions or brokerage fees made by any and all persons, firms or corporations whatsoever for services provided to the indemnifying party in connection with the negotiation or execution of this Third Supplemental Agreement.

22. No Personal Liability.

No Commissioner, director, officer, agent or employee of any party to this Third Supplemental Agreement shall be charged personally, or held contractually liable by or to any other party under any term or provision of this Third Supplemental Agreement, or because of its or their execution or attempted execution, or breach of any breach or attempted or alleged breach thereof.

23. Lease in Full Force and Effect.

As hereby amended, all of the terms, provisions, covenants and conditions of the Lease are incorporated herein by reference, shall continue in full force and effect, and shall, in accordance with this Third Supplemental Agreement, apply to the Terminal 3 Site, including

without limitation, the termination rights of the Port Authority and the Lessee set forth in Sections 20, 43, 50 and 83 to the Lease.

24. Miscellaneous.

(a) Construction and Application of Terms.

(i) The Section and paragraph headings, if any, in this Third Supplemental 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.

(ii) 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 Third Supplemental Agreement stated, shall have the same force and effect as if herein set forth in full.

(iii) If any clause, provision or section of this Third Supplemental 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.

(iv) 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.

(v) Nothing contained herein shall be deemed or construed to be an undertaking or covenant for the benefit of any third party.

(vi) 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 Third Supplemental Agreement or any amendments, addenda or supplements hereby or any Exhibits or Schedules hereto.

(b) Entire Agreement. This Third Supplemental Agreement, together with the Lease (to which it is supplementary), constitutes the entire agreement between the Port Authority and the Lessee on the subject matter, and may not be changed, modified, discharged or extended, except by instrument in writing duly executed on behalf of both 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 the Lease or this Third Supplemental Agreement.

(c) Counterparts. This Third Supplemental Agreement may be executed in any number of counterparts, but not facsimile counterparts, each of which shall constitute an original agreement, and all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year first above written.

ATTEST:

Assistant Secretary

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By:

Name: David Kagan

Title: Assistant Director
Business, Properties & Airport Development

(Seal)

ATTEST:

Assistant Secretary

DELTA AIR LINES, INC.

By:

Name: John W. Boatright

Title: Vice President – Corporate Real Estate

(Corporate Seal)

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

Schedule E

Affirmative Action-Equal Opportunity-Minority Business Enterprises
Women-Owned Business Enterprises Requirements

SCHEDULE E

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

PART I. AFFIRMATIVE ACTION GUIDELINE-EQUAL EMPLOYMENT OPPORTUNITY

I. As a matter of policy the Port Authority hereby requires Delta Air Lines, Inc. (hereinafter called "Airline"), and Airline shall require the Contractor, as hereinafter defined, to comply with the provisions set forth hereinafter in this Schedule E and in the Letter Agreement to which this Schedule is attached. 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 Airline as well as each bidder, contractor and subcontractor of the Airline 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 Airline 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 Airline 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 Airline 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 Airline and the Airline 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 Airline 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 Airline. 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 Airline 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 Airline and the Airline shall itself and shall require that any Contractor utilized by the Airline 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 Airline 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 Airline 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, 4th Floor, New York, New York 10003 or such other address as the Port Authority may specify by notice to the Airline. 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.

For the Port Authority

Initialed:

For the Lessee

Exhibit 2(k)

2010 Basis of Design

Basis of Design

ARCHITECT
Skidmore, Owings & Merrill LLP
New York, New York

STRUCTURAL ENGINEER
Skidmore, Owings & Merrill LLP
New York, New York

MEP ENGINEER
WSP Flack + Kurtz
New York, New York

CIVIL ENGINEER
ARUP
New York, New York

BUILDING TRANSPORTATION SYSTEMS ENGINEER
VDA Associates
New York, New York

Signage and Wayfinding
Steven Abel LLC
Jersey City, New Jersey

Initialed:

For the Port Authority

For the Lessee

December 6, 2010

PASSENGER BRIDGE T2 / T4

JOHN F. KENNEDY INTERNATIONAL AIRPORT

Basis of Design

ARCHITECT
Skidmore, Owings & Merrill LLP
New York, New York

STRUCTURAL ENGINEER
Skidmore, Owings & Merrill LLP
New York, New York

MEP ENGINEER
WSP Flack + Kurtz
New York, New York

CIVIL ENGINEER
ARUP
New York, New York

BUILDING TRANSPORTATION SYSTEMS ENGINEER
VDA Associates
New York, New York

Signage and Wayfinding
Steven Abel LLC
Jersey City, New Jersey

Initialed:

For the Port Authority

For the Lessee

December 6, 2010

Basis of Design Narrative

CHAPTER 1 General Information

A. Project Introduction

B. Applicable Regulations and Codes

C. Program Summary

D. Area Calculations

CHAPTER 2 Project Elements

A. Substructure
A10 Foundations

B. Shell
B10 Superstructure
B20 Exterior Enclosure
B30 Exterior Stairways
B40 Roof System
B50 Façade Maintenance System
B60 Exposed Structural Steel Paint Finish
B70 Mock-Ups

C. Interiors
C10 Interior Finishes

D. Services
D10 Conveying Systems
D20 Plumbing Systems
D30 Mechanical Systems
D40 Fire Protection Systems
D50 Electrical Systems
D60 Communications and Security

E. Building Sitework
E10 Site Preparation
E20 Site Pavement
E30 Site Utilities
E40 Site Stormwater

CHAPTER 1 General Information

A. PROJECT INTRODUCTION

1. General:

The Basis of Design description is intended to outline the general scope, building systems and project standards and reference applicable codes to be used as the basis for developing the construction documents. The description indicates the general scope of the project in terms of architectural design, dimensions of the building, major architectural elements, and mechanical, plumbing, fire protection, and electrical systems.

2. Project Summary:

The proposed connector bridge is a passenger connection bridge between Terminals 2 and 4. It is an airside connection due to the fact that passengers have already been processed thru security screening and are transferring between the secure portions of the terminals. The bridge is an enclosed, climate controlled structure that connects the rotunda of the existing terminal 2 to Terminal 3 Connector Bridge with Level 3 of Terminal 4. Moving walkways in both directions are in the main portions of the trusses. The remaining clear width allows for 2 golf cart type vehicles to pass one another. The bridge is arranged on the site as 3 main truss sections, with 6 nodes – 2 nodes at either end connecting to the terminals, with the other 4 nodes functioning as structures that transition the overall direction of the bridge and provide emergency egress.

Exclusions:

None

B. APPLICABLE CODES and STANDARDS

The following Codes, Standards and Regulations have been identified.

- The Building Code of New York City 2008.
  - New York City Building Code
  - New York City Mechanical Code
  - New York City Plumbing Code
  - New York City Fuel Gas Code
- The New York City Fire Prevention Code 2008.
- New York City Rules and Regulations 2004 Edition.
- New York City Administrative Code, Title 28
- New York City Electrical Code
- New York City Fire Code and Directives
- New York City Health Code
- New York City Local Laws
- New York City Rules

Title 1, Department of Buildings

Title 2, Board of Standards and Appeals

Title 3, Fire Department

Title 24, Department of Health

- New York State Energy Conservation and Construction Code
- New York State Labor Laws
- Port Authority Tenant Construction Review Manual (TCRM) - 2008 Edition
- Americans with Disabilities Act (ADA)
- American National Standards Institute (ANSI)
- Applicable Flood Control Regulations
- Department of Buildings - Directives and Memoranda
- Environmental Protection Agency - Applicable regulations of the U.S. and local
- Federal Occupational Safety and Health Administration Regulations (OSHA)
- Federal Aviation Regulations - Title 147 Part 139 Certification of Airports Subpart D - Operations
- *Illumination Engineering Society of North America: Lighting Handbook - 9th Edition*
- National Electrical Code with New York City Amendments, 2005
- National Electrical Contractors Association (NECA)
- National Electrical Manufacturers Association (NEMA)
- National Electric Safety Code (NESC)
- National Fire Protection Association
- NFPA-415 "Standard on Airport Terminal Buildings, Fueling Ramp drainage, and loading walkways", 2008 Edition.
- Port Authority Signage and Wayfinding Airport Standards Manual, 4th Edition June 2008
- Transportation Security Administration
- Underwriters Laboratories (UL)

B.1 Construction Classification

The Terminal 2 to Terminal 4 Passenger Connector Bridge will follow the guidance of the New York City Building Code (2008 with subsequent amendments).

The construction type for the Passenger Connector Bridge will be Type II-B.

The Fire Resistive Requirements Class II-B.

B.2 Occupancy Classification

The occupancy classification of the Passenger Connector Bridge is considered is

A-3 (place of assembly) Section 303.1

B.3 Occupant Load and Egress

C. PROGRAM SUMMARY:

The requirements of the project are to: 1). Provide direct cleared passenger access between Terminals 2 and 4. 2). Equip the bridge with moving walkways to facilitate passenger movement as well as provide access for customer assistance vehicles for passengers with limited mobility. 3). The bridge is to have a minimum impact on current operations at either of its terminating ends within Terminals 2 and 4 or on ramp operations.

D. AREA CALCULATIONS:

Total Area of Approximately 31,000 Square Feet

Interior Finishes - (In-place visual)
Interior and Exterior Lighting - (Visual)

C. INTERIORS

C10 Interior Finishes

1. **Public Spaces:**

1.1 Pedestrian Walkway

1.1.1 Floors:	36" x 36" Carpet Tiles as manufactured by Millkin
1.1.2 Walls:	Gypsum wall board clad with Acrovyn impact resistant wall panel system as manufactured by Construction Specialties
1.1.3 Ceilings:	V200 Luxalon type suspended baffle ceiling system on a code compliant suspension carrier system as manufactured by Hunter Douglass. Fixed baffles at typical application - moveable baffles for access to mechanical equipment where equipment occurs
1.1.4 Lighting:	Linear Fluorescent Fixture - Mntd. flush with Finished Ceiling

1.2 Nodes

1.2.1 Floors:	36" x 36" Carpet Tiles as manufactured by Millkin
1.2.2 Walls:	Gypsum wall board clad with Acrovyn impact resistant wall panel system as manufactured by Construction Specialties
1.2.3 Ceilings:	V200 Luxalon type suspended baffle ceiling system on a code compliant suspension carrier system as manufactured by Hunter Douglass. Fixed baffles at typical application - moveable baffles for access to mechanical equipment where equipment occurs
1.2.4 Lighting:	Linear Fluorescent Fixture - Mntd. flush with Finished Ceiling

1.2.5 Doors, Frames and Hardware:	Flush, seamless, hollow metal 8'-0" high with 116 ga. frames and 18 ga. doors rated as required. Factory primed, field painted. Mortised lever locksets, ball bearing hinges and surface mounted closers. Provide 1-1/2 hour rated doors, frames and hardware at stairs and electrical closets.

2. **Utility Spaces:**

2.1 Mechanical, Telecom and Electric Closets

2.1.1 Floors:	Float finished concrete with vinyl composition tile flooring.
2.1.2 Walls:	Gypsum wall board on metal studs, primed not painted. Rated as required at mechanical and electrical rooms and shafts. Acoustical insulation to be provided as required to meet NC requirements of office and conference rooms.
2.1.3 Ceilings:	Exposed construction, spray-on fireproofing to be sealed.
2.1.4 Lighting:	Surface mounted fluorescent fixtures.

D. SERVICES

The following narrative describes the scope of work associated with the mechanical and electrical systems design of a passenger connector bridge to connect Terminal 4 to Terminal 2 at JFK airport. of this project, there will be a passenger bridge that links Terminal 4 to the rotunda of the Connecter bridge from Terminal 2.

It is assumed that all of the mechanical and electrical infrastructure to support the connector bridge will come from Terminal 4, excluding a small portion of the extension of the bridge, which will have its dry sprinkler service be supplied via an existing service located inside the sprinkler room in the base of the T2/T3 rotunda.

Heating and cooling will be achieved using roof-mounted air-cooled DX units with electric heating coils. Three units, one located on each of the connector nodes, will serve the project. The units will require the concurrence of KIAC/Calpine.

D10 Conveying Systems

The complete moving walkway systems shall comply with the applicable local codes and sized to accommodate passengers with hand luggage.

The bridge is equipped with six (6) moving walkway which are 40 inches in width and approximately 200 feet in length. The balustrades are constructed of clear tempered glass on the open floor area side and stainless steel where the walkway

Delta Air Lines

JFK Terminal 3 Demolition & Apron Reinstatement

Basis of Design

December 06,2010

Initialed:

For the Port Authority

For the Lessee

ARUP|SOM a joint venture of
Skidmore, Owings & Merrill LLP Architects and
Ove Arup & Partners Consulting Engineers PC

Delta Air Lines

JFK Terminal 3 Demolition & Apron Reinstatement

Basis of Design

December 06,2010

Initialed:

For the Port Authority

For the Lessee

ARUP | SOM *a joint venture of*
Skidmore, Owings & Merrill LLP Architects and
Ove Arup & Partners Consulting Engineers PC

Exhibit 2(L)

Taxiway-HA

EXEMPTION (4) – DRAWINGS OF NON-PUBLIC AREAS

Exhibit 93-2

Terminal 2-4 Pedestrian Connector Area

EXEMPTION (4) – DRAWINGS OF NON-PUBLIC AREAS

Exhibit S3-98-1

Terminal 3 Easement Site

EXEMPTION (4) – DRAWINGS OF NON-PUBLIC AREAS

Exhibit S3-98-2

Terminal 4 Easement Site

EXEMPTION (4) – DRAWINGS OF NON-PUBLIC AREAS

Exhibit S3- 99-1

Additional Area IB

EXEMPTION (4) – DRAWINGS OF NON-PUBLIC AREAS

JFK-Delta Air Lines, Inc.
AYC-325, Supp 3

ACKNOWLEDGEMENT

FOR THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

STATE OF NEW YORK)
)ss.
COUNTY OF NEW YORK)

On the 7th day of December in the year 2010, before me, the undersigned, a Notary Public in and for said state, personally appeared DAVID KAGAN, 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Marie Carolle Tertulien
Notary Public

MARIE CAROLLE TERTULIEN
NOTARY PUBLIC, State of New York
No. 01TE6051440
Qualified in Kings County
Commission Expires Nov. 27, 2014

FOR DELTA AIR LINES, INC.

STATE OF Georgia)
)ss.
COUNTY OF Coweta)

On the 6th day of December in the year 2010, before me, the undersigned, a Notary Public in and for said state, personally appeared JOHN W. BOATRIGHT, 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.

Pamela B. Greer
Notary Public

PAMELA B GREER
MY COMMISSION EXPIRES
NOTARY
PUBLIC
NOVEMBER 19, 2014
COWETA COUNTY, GEORGIA