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Wednesday, March 06, 2013 10:54 AM  
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Freedom of Information Online Request Form

Information:

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

List of specific records(s):

All lease agreements and any amendements or extensions thereto between the Port Authority of New York and New Jersey, as landlord, in connection with the building 261 located at JFK Airport, Jamaica, NY 11430 for the last 5 years

April 15, 2013

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

Re: Freedom of Information Reference No. 13820

Dear Mr. Vitulli:

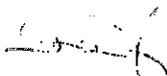
This is a response to your March 6, 2013 request, which has been processed under the Port Authority's Freedom of Information Code (the "Code") for copies of all lease agreements and any amendments or extension thereto between the Port Authority, as landlord, in connection with the building 261 located at John F. Kennedy International Airport, Jamaica, NY 11430 for the last 5 years.

Material responsive to your request and available under the Code can be found on the Port Authority's website at <http://www.panynj.gov/corporate-information/foi/13820-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

Lease No. AYD-480

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**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

**AGREEMENT OF LEASE**

Between

**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

And

**K.L.M. ROYAL DUTCH AIRLINES**

Dated: May 15, 2005

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*TKM*

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K.L.M. Royal Dutch Airlines

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EXHIBITS

- Exhibit A
- Exhibit B
- Exhibit C
- Exhibit D
- Exhibit E

Exhibit M

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- Schedule E
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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

Lease No. AYD-480

### AGREEMENT OF LEASE

THIS AGREEMENT OF LEASE, made as of the 15th day of May, 2005, by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called "the Port Authority"), a body corporate and politic, established by Compact between the States of New York and New Jersey with the consent of the Congress of the United States of America, and having an office at 225 Park Avenue South, New York, New York 10003, and K.L.M. ROYAL DUTCH AIRLINES (hereinafter called "the Lessee"), a corporation organized and existing under and by virtue of the laws of the Netherlands and having an office address at 618 South Access Road, Chicago, Illinois 60666, whose representative is Mr. Jan de Vegt, Vice President Worldwide Cargo Operations.

WITNESSETH, That:

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

#### Section 1. Letting

(a) Effective as of May 15th, 2005, the Port Authority hereby lets to the Lessee and the Lessee hereby hires and takes from the Port Authority at John F. Kennedy International Airport (sometimes hereinafter referred to as "the Airport") in the County of Queens, City and State of New York, upon all the terms, conditions, provisions and agreements of the Lease, Building 261 consisting of approximately 171,224 square feet of office, warehouse, cargo handling and mechanical space located on an approximately 13.673 acre site shown in diagonal hatching, diagonal cross hatching, perpendicular cross hatching and stipple on the drawings attached hereto, hereby made a part hereof, and marked "Exhibit A, Exhibit B, Exhibit C, Exhibit D and Exhibit E" which ground space is hereinafter sometimes collectively referred to as "the site," together with all other buildings, structures, fixtures, improvements, facilities and other property of the Port Authority located therein, thereon or thereunder, and all buildings, structures, additions, fixtures, improvements, and facilities located, constructed or installed, or which may be located, constructed or installed therein, thereon or thereunder, and all easements and other rights appurtenant thereto and granted by this Lease, all of the foregoing being

hereinafter collectively referred to as "the premises."

(b) The one hundred-thirty foot (130') wide strip of land lying along and within the southerly boundary line of the premises (which strip is shown in diagonal hatching on Exhibit E) together with the contiguous one hundred-thirty foot (130') wide strip of land lying along and adjacent to the southerly boundary line of the premises, which latter one-hundred-thirty foot (130') strip, as shown in diagonal cross-hatchings on Exhibit E, shall be subject to a joint and mutual easement for use as an aircraft taxiway two-hundred-sixty feet (260') wide to be used jointly by the Lessee and the tenant of the adjoining space immediately south of the premises, or by any successors in interest of such other tenant of the said adjoining space immediately south of the premises, or any of them, or sublessees or other occupants or users thereof, who, pursuant to Port Authority permission may occupy the space immediately south of the premises and such mutual rights of easements for such aircraft taxiway purposes shall continue during the term of the letting hereunder.

(c) Except to the extent required for the performance of any of the obligations of the Lessee hereunder, nothing contained in this Agreement shall grant to the Lessee any rights whatsoever in the air space above the premises above the heights of the structures thereon as of the Commencement Date, as hereinafter defined.

(d) Except as otherwise set forth in Section 2 hereof, the Port Authority shall deliver the premises to the Lessee in its "as is" condition. The Lessee acknowledges that prior to execution of this Agreement it has thoroughly examined and inspected the premises and has found it to be in good order and repair and has determined it to be suitable for the Lessee's activities under this Agreement. The Lessee agrees to and shall take the premises in its "as is" condition and the Port Authority shall have no obligation hereunder for finishing work or for preparation of the premises for the Lessee's use.

(e) The parties acknowledge that the premises constitute non-residential real property.

## **Section 2. Environmental Obligations**

(a) (1) Attached hereto, hereby made a part hereof is an exhibit marked "Exhibit M" which consists of a "John F. Kennedy International Airport, Building 261, Environmental Subsurface Baseline Investigation, Final Report, June 2002," including its appendices and compilation of reports and tests results of subsurface soil and groundwater samples taken on various dates as set forth in Exhibit M from a total of sixteen (16) soil borings including ten (10) of said borings were completed as permanent monitoring wells. Soil and ground water samples were collected and analyzed for constituents on the levels of PP + 40 (Priority Pollutant plus 40 compounds), MTBE Methyl Tert-Butyl Ether, Xylens), Tert-Butyl

Alcohol (TBA), TPHC (Total Petroleum Hydrocarbons), and total glycols, all as more specifically named and set forth in Exhibit M.

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

(3) The Port Authority hereby represents to the Lessee and the Lessee acknowledges and agrees that the aforesaid Exhibit M as attached hereto contains and sets forth tests results and a report of subsurface environmental investigations performed at the premises by or on behalf of the Port Authority prior to the execution of this Lease and for purposes of this Lease establishing the levels of the Analyzed Items in the soil and ground water in the premises at the commencement of the term of the letting hereunder and are herein called the "Existing Condition".

(b) (1) Without limiting the generality of any provision of the Lease, in the event that any applicable governmental or regulatory environmental requirements set forth more than one compliance standard, the Port Authority and the Lessee agree that the standard or standards to be applied in connection with any obligation they each may have under the Lease with respect to environmental requirements shall be that which requires or permits the lowest level of a hazardous substance.

(2) Except as set forth in Section 2 (c) below, the Lessee further agrees that, the Port Authority shall have the right at any time and from time to time, acting in its sole discretion and without any obligation whatsoever to the Lessee or otherwise to do so, to designate any level or levels or standard or standards of remediation or cleanup permitted or required under any such environmental requirements, and such designation shall be binding upon the Lessee with respect to its obligations under the Lease with respect to such environmental requirements.

(c) Without limiting the generality of paragraph (b) hereof or any other term or provision of the Lease, the Lessee agrees to accept the premises and, except as set forth in subparagraphs (1) through (3) below, to be solely responsible for any and all contaminants, and any and all soil and ground water or other contamination and remediation thereof, in and on the premises, including without limitation, all costs and expenses thereof and any and all claims, penalties or other expenses relating thereto. Notwithstanding any other provision hereof to the contrary, the Lessee shall not be responsible for the following remediation of and contamination in and on the premises:

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

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

(3) contamination and contaminants existing under, in or on the premises prior to the effective date of this Lease which are discovered subsequent to the establishment of the Existing Condition including the Analyzed Items and are not listed in Exhibit M and the remediation thereof; except that the Lessee shall be solely responsible for such contamination and contaminants and the remediation thereof if (i) the Lessee is not able to or does not establish or prove to the reasonable satisfaction of the Port Authority that such contamination and contaminants in fact existed in or on the premises prior to the effective date of this Lease, or (ii) if any such contamination or contaminants were caused by or resulted from any act or omission of the Lessee or of any of its agents, contractors or representatives;

(d) Without limiting the generality of the provisions of Section 22 of this 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 wells made by borings referred to in paragraph (a) above, to make additional borings and wells and to conduct testing and related activities therefrom, and to otherwise remediate the Existing Condition at the Port Authority's expense to the extent the Lessee is not required to do so by this Section 2 including but not limited to, conducting pumping from the wells made by borings referred to in paragraph (a) above. In the exercise of the foregoing rights the Port Authority shall not unreasonably interfere with the use and occupancy of the premises by the Lessee.

(e) Without limiting the generality of the provisions of Section 12 of the Lease, the Lessee agrees to protect and maintain the wells made by the borings referred to in paragraph (a) above and shall repair any damage thereto not caused by the activities of the Port Authority or its designees, if any.

(f) Nothing in this Section 2 shall limit, modify or otherwise alter the rights and remedies which the Port Authority or Lessee may have against third parties at law, equity or otherwise.

### Section 3. Storage Tanks

(a) All aboveground storage tanks and underground storage tanks installed in the premises as of the Commencement Date which are put into service by the Lessee or used by the Lessee, together with all aboveground and underground storage tanks installed in the premises subsequent to the Commencement Date or during the letting or use of the premises by the Lessee, and its or their appurtenances, pipes, lines, fixtures and other related equipment are hereinafter collectively called the "Tanks" and singularly called a "Tank". 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. The Port Authority has made no representations or warranties with respect to the Tanks or their location and shall assume no responsibility for the Tanks. All Tanks installed subsequent to said Commencement Date shall be installed pursuant to the terms and conditions of the Lease including without limitation Section 20 thereof and nothing in this Section 3 shall or shall be deemed to be permission or authorization to install any Tanks.

(b) Without limiting the generality of any of the provisions of 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, repairs or non-routine maintenance to the Tanks without the prior written approval of the Port Authority.

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

(d) Without limiting the generality of any other term or provision of the Lease, the Lessee shall at its cost and expense comply with all Environmental Requirements pertaining to the Tanks and any presence, pumping, pouring, venting, emitting, emptying, leakage, deposit, spill, discharge or other release of Hazardous Substances from the Tanks or in connection with their use, operation, maintenance, testing or repair (any such presence, pumping, pouring, venting, emitting, emptying, leakage, deposit, spill, discharge or other release during the period the Lessee shall use or occupy the premises or use the Tanks being hereinafter called a "Discharge") including without limitation registering and testing the Tanks, submitting all required clean-up plans, bonds and other financial assurances, performing all required clean-up and remediation of a Discharge and filing all reports, making all submissions to, providing all information required by, and complying with all requirements of, all governmental authorities pursuant to the Environmental Requirements.

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.

(e) Without limiting the terms and provisions of Section 15 of the Lease, the Lessee hereby assumes all risks arising out of or in connection with the Tanks and all Discharges whether or not foreseen or unforeseen and shall indemnify and hold harmless the Port Authority, its Commissioners, officers, agents and employees from and against (and shall reimburse the

Port Authority for their costs and expenses including without limitation penalties, fines, liabilities, settlements, damages, attorney and consultant fees, investigation and laboratory fees, clean-up and remediation costs, court costs and litigation expenses), all claims and demands, just or unjust, of third persons (such claims and demands being hereinafter in this Section 3 referred to as "Claims" and singularly referred to as a "Claim") including but not limited to those for personal injuries (including death), property damages, or environmental impairment, arising or alleged to arise out of or in any way related to, the failure of the Lessee to comply with each and every term and provision of the Lease, or the Tanks, or any Discharge, or any lawsuit brought or threatened, settlement reached or any governmental order relating to the Tanks or a Discharge, or any violation of any Environmental Requirements or demands of any governmental authority based upon or in any way related to the Tanks or a Discharge, and whether such arise out of the acts or omissions of the Lessee or of customers or contractors of the Lessee or of third persons or out of the acts of God or the public enemy or otherwise including claims by the City of New York against the Port Authority pursuant to the provisions of the Basic Lease (as defined in the Lease) whereby the Port Authority has agreed to indemnify the City against claims. It is understood the foregoing indemnity shall cover all claims, demands, penalties, settlements, damages, fines, costs and expenses of or imposed by any governmental authority under the Environmental Requirements.

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

(f) The Lessee's obligations under this Section 3 shall survive the expiration or earlier termination of the Lease.

(g) In addition to the requirements of Section 8 of the Lease and paragraph (d) hereof, 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 testing of the soil, subsoil and ground water of the premises and of such surrounding area as the Port Authority shall direct, and (ii) to clean-up and remediate any Discharge, regardless of whether any Environmental Requirement or governmental authority shall require such testing, clean-up or remediation, which testing, clean-up and remediation shall be performed pursuant to an alteration application prepared by the Lessee and submitted to the Port Authority for the Port Authority's approval.

(h) In the Lessee's use and operation of the Tanks, the Lessee shall not permit any Hazardous Substance from entering the ground including without limitation (subject to

Section 38 hereof) installing appropriate spill and overfill devices and placing an impervious material, such as asphalt or concrete, over the ground area above and in the vicinity of the Tanks.

(i) (1) The Lessee shall remove the Tanks from the premises on or before the expiration of the Lease and dispose of the Tanks off the Airport in accordance with all Environmental Requirements.

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

#### Section 4. Term

The term of the letting under this Lease shall commence on May 15, 2005 (which date is hereinafter called the "Commencement Date"), and, unless sooner terminated, shall expire on April 30, 2015.

#### Section 5. Rental and Abatement

##### I. Ground Rental

(a) For the purposes of this Section 5, the following terms shall have the respective meanings given below:

1. "Adjustment Period" shall mean as the context requires the twelve-month period commencing May 1, 2006 and expiring April 30, 2007, and each of the succeeding twelve-month periods thereafter occurring during the letting under the Lease, commencing on each May 1, and in the event the term expires or is terminated on other than the last day of an Adjustment Period, then in such event "Adjustment Period" shall mean the actual number of days during such Adjustment Period that the lease was in effect.

2. "Ground Rental" shall mean the amount payable by the Lessee to the Port Authority pursuant to and calculated in accordance with the terms of subparagraph (b) of this paragraph.

3. "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 United States Department of Labor, Bureau of Statistics.

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

5. "Reference Month" shall mean the calendar month of May 2005 (the first Reference Month) and each succeeding calendar month of May occurring during the term of the letting under the Lease.

(b) (i) The Lessee shall pay to the Port Authority from August 1, 2005 to April 30, 2006, both dates inclusive, a Ground Rental for the premises in the amount of' (Ex. 2.a.

) per annum, payable in advance in equal monthly installments of

, which Ground Rental thereafter shall be increased on an annual basis as hereinafter set forth during the term of the letting under the Lease.

(ii) For the portion of the term from May 1, 2006 through April 30, 2015, both dates inclusive, in lieu of the Ground Rental set forth in subparagraph (b)(i) of this Section, the Ground Rental for the premises shall be adjusted to an amount equal to the greater of the sum obtained by adding to the Ground Rental in effect immediately prior to such May 1 adjustment date the product obtained by multiplying such Ground Rental (a) by fifty percent (50%) of the CPI Percentage Increase for such adjustment date, or (b) by four percent (4%). Accordingly, effective on May 1, 2006 and on the first day of each Adjustment Period occurring during the remainder of the letting under the Lease, the Ground Rental shall be increased for each Adjustment Period so as to equal the greater of the sum obtained by adding to the Ground Rental in effect as of the day immediately preceding the first day of the Adjustment Period for which the adjustment is being determined, the product obtained by multiplying such Ground Rental (a) by fifty percent (50%) of the CPI Percentage Increase for such adjustment date (using the two Reference Months immediately preceding the first day of the subject Adjustment Period), or (b) by four percent (4%); and the sum so obtained from the foregoing calculation shall be and become the Ground Rental in effect for the Adjustment Period.

(iii) Pursuant to Section 5(a) above, the Port Authority shall ascertain the CPI for the first Reference Month and for each succeeding Reference Month after the same has been published, and the Port Authority shall also determine the CPI increase.

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

(d) In the event of the change of basis or the discontinuance of the publication by the United States Department of Labor of the CPI, such other appropriate index or indexes shall be substituted as may be agreed by the parties hereto as properly reflecting changes in the value of the current United States money in a manner similar to that established in the said indexes used in the latest adjustment. In the event of the failure of the parties to so agree, the Port Authority may select and use such index or indexes as it deems appropriate, provided, however, that the foregoing shall not preclude the Lessee from contesting the Port Authority's selection.

(e) In no event shall any adjustment in the Ground Rental for any change in the CPI result in a decrease in Ground Rental.

(f) Such Ground Rental shall be payable by the Lessee in advance in equal monthly installments commencing on August 1, 2005 and on the first day of each and every calendar month thereafter until the expiration of the term of the letting. If any installment of Ground Rental 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.

Upon any termination of the letting hereunder (even if stated to have the same effect as expiration) the Lessee shall, within twenty (20) days after the effective date of such termination, make a payment of the Ground Rental computed as follows: if the letting hereunder is terminated effective on a date other than the last day of a month the Ground Rental for the portion of that month in which the letting remains effective shall be the amount of the monthly installment of Ground Rental prorated on a daily basis, and if the monthly installment due on the first day of that month has not been paid the Lessee shall pay the prorated part of the amount of that installment; if the monthly installment has been paid, then the excess thereof shall be credited to the Lessee's obligations. If there are no obligations, the excess shall be refunded promptly to the Lessee.

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

## II. Building Rental

### (1) Minimum Annual Guarantee

JFK-KLM Cargo Lease AYD-480Execution

In addition to the Ground Rental, the Lessee shall pay to the Port Authority a minimum annual guarantee rental ("MAG") for the premises as follows:

(a) For the portion of the term commencing on August 1, 2005 through April 30, 2010, both dates inclusive, the Lessee shall pay to the Port Authority a MAG in the amount of \_\_\_\_\_ per annum, payable in advance in equal monthly installments of \_\_\_\_\_ (Ex. 2.a.)

(b) For the portion of the term commencing on May 1, 2010 through April 30, 2015, both dates inclusive, the Lessee shall pay to the Port Authority a MAG in the amount of \_\_\_\_\_ per annum.

(c) The MAG shall be payable by the Lessee in advance in equal monthly installments on August 1, 2005 and on the first day of each and every month thereafter until the expiration of the term of the letting. If any installment of MAG 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.

Upon any termination of the letting hereunder (even if stated to have the same effect as expiration), the Lessee shall, within twenty (20) days after the effective date of such termination, make a payment of MAG computed as follows: if the letting hereunder is terminated on a date other than the last day of a month the rental for the portion of that month in which the letting remains effective shall be the amount of the monthly installment of MAG prorated on a daily basis, and if the monthly installment due on the final day of that month has not been paid the Lessee shall pay the prorated part of the amount of that installment; if the monthly installment has been paid, then the excess thereof shall be credited to the Lessee's obligations. If there are no obligations, the excess shall be refunded promptly to the Lessee.

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

(2) Activity Rental

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

(i) "Annual Cargo Throughput" shall mean the total weight (measured in pounds) of all cargo, including commercial mail, received, stored, distributed, consolidated or otherwise handled at the premises during each year during the term of the letting hereunder, including, but not limited to, air cargo transported or to be transported on aircraft of the Lessee, air cargo transported or to be transported on aircraft of a sublessee of the Lessee, and air cargo transported or to be transported on aircraft of any other Aircraft Operator at the premises or for which the Lessee provides Cargo Services.

JFK-KLM Cargo Lease AYD-480 Execution

in sufficient itemized detail and description all of the monthly Cargo Throughput at the premises for the preceding month including specificity as to the number of pounds received, number of pounds stored, number of pounds consolidated, number of pounds distributed, and number of pounds handled and separately listing and identifying the parties on whose account each pound of monthly Cargo Throughput was received, stored, distributed, consolidated or handled during such month. Each such statement shall have attached thereto and as part thereof true and complete copies of all manifests, airway bills, reports, invoices, and other documentation prepared by or for the Lessee or prepared by or for a sublease of the Lessee or a contractor of the Lessee, or an Aircraft Operator operating or being handled at the premises, including, but not limited to, such manifests, airway bills, reports, invoices and other documentation prepared for purposes of meeting the requirements of any governmental agency, office or authority (including without limitation the United States Customs Services), or to meet any other term or provision of this Agreement. Each such statements shall also identify with respect to monthly Cargo Throughput information in sufficient detail as to date and time, and by aircraft (manufacturer's model and capacity) the monthly Cargo Throughput for the month covered by the statement. Each of such statements for the period from August 1, 2005 through April 30, 2006 shall also show on a cumulative basis all monthly Cargo Throughput for each and every month from August 1, 2005 through April 30, 2006. At the same time it renders each of such statements, the Lessee shall pay to the Port Authority the Activity Rental due with respect thereto in accordance with paragraph (b) of this Subdivision II (2). In addition to the foregoing, on the 20<sup>th</sup> day of the first month following each anniversary of May 1, 2005 the Lessee shall submit to the Port Authority a sworn statement certified by a responsible fiscal or executive officer of the Lessee setting forth the cumulative totals of such monthly Cargo Throughput for each and every month of the entire preceding twelve-month period, with the specificity and itemization required for the monthly statements as described herein. All of the foregoing shall be subject to the record keeping obligations of the Lessee under the Lease and to the review and audit rights of the Port Authority as described in Section 40 hereof.

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

First, without limiting the above, the Lessee shall, within twenty (20) days after the effective date of termination, render to the Port Authority a sworn statement of all monthly Cargo Throughput for each and every month during the period from the last preceding anniversary of May 1, 2005 up to the date of termination.

Second, the Lessee shall at the same time pay to the Port Authority the payment then due on account of all Activity Rental during the period from the last preceding anniversary of May 1, 2005 up to the date of termination.

(e) Nothing hereinabove provided shall affect the survival obligations of the Lessee as set forth in Section 25 of this Agreement.

(f) Nothing hereinabove provided shall limit, impair or waive the terms and provisions of Section 21 of this Agreement.

(3) Mezzanine Office Space Rental

(a) In addition to the Ground Rental, the MAG and the Activity Rental, the Lessee shall pay to the Port Authority a rental ("Office Space Sublease Rental") for all subleases of mezzanine office space within the premises, shown in diagonal cross hatching on Exhibit C, to third parties with the prior written consent of the Port Authority.

(b) (i) The Lessee shall pay to the Port Authority from August 1, 2005 to April 30, 2006, both dates inclusive, the Office Space Sublease Rental, if any, in the amount of the annual gross rental revenue received from third parties minus (x) a fixed operating and maintenance component of (Ex. 2.a.) per square foot per annum and (y) an allocated ground rental component of ("Variable Component") per square foot per annum.

(ii) For the portion of term of all subleases from May 1, 2006 through April 30, 2015, both dates inclusive, the Variable Component specified in item (y) of subparagraph (b)(i) above may be adjusted to an amount equal to the greater of the sum obtained by adding to the Variable Component in effect immediately prior to such May 1 adjustment date the product obtained by multiplying such Variable Component (a) by fifty percent (50%) of the CPI Percentage Increase for such adjustment date, or (b) by four percent (4%). Accordingly, effective on May 1, 2006 and on the first day of each Adjustment Period occurring during the remainder of the letting under the subleases, the Variable Component of the Office Space Sublease Rental shall be increased for such Adjustment Period so as to equal to the greater of the sum obtained by adding to the Variable Component in effect as of the day immediately preceding the first day of the Adjustment Period for which the adjustment is being determined, the product obtained by multiplying such Variable Component (a) by fifty percent (50%) of the CPI Percentage Increase for such adjustment date (using the two Reference Months immediately preceding the first day of the subject Adjustment Period, or (b) by four percent (4%); and the sum so obtained from the foregoing calculation shall be and become the Variable Component in effect for the Adjustment Period.

(c) Such Office Space Sublease Rental shall be payable by the Lessee in advance in equal monthly installments on August 1, 2005 and on the first day of each and every calendar month thereafter until the expiration of the term of the letting of the subleases. If any installment of Office Space Sublease Rental payable hereunder shall be for less than a full calendar month 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.

(4) Building Rental for the Support/Mechanical Space

(a) In addition to the Ground Rental, the MAG, the Activity Rental and the Office Space Sublease Rental, the Lessee shall pay to the Port Authority a rental ("Non-Office Space Rental") for all subleases of the support/mechanical space within the premises, shown in diagonal cross hatching on Exhibit A, Exhibit B and Exhibit D, to third parties with the prior written consent of the Port Authority.

(b) The Lessee shall pay to the Port Authority on the commencement date of such subleases and on the first day of each and every calendar month thereafter until the expiration of the term of the letting of the subleases, the Non-Office Space Rental in the amount of the annual gross rental revenue received from third parties minus a fixed operating and maintenance component of (Ex. 2.a.) per square foot per annum.

(c) Such Non-Office Space Rental shall be payable by the Lessee in advance in equal monthly installments, on the first day of each and every calendar month thereafter.

III. Abatement

Notwithstanding the provisions of Section 55, in the event the Lessee shall at any time by the provisions of this Agreement become entitled to an abatement of Ground Rental, the Ground Rental for each square foot of land the use of which is denied the Lessee, shall be reduced for each calendar day or major fraction thereof the abatement remains in effect, as follows (it being understood that there shall be no abatement of Ground Rental under the Lease for any portion of the premises or for any portion of the term except as specifically provided in this Agreement): for any portion of the term set forth in subparagraph I(b)(i) above, at the daily rate of (Ex. 2.a.) adjusted in the same proportion as the Ground Rental for such portion has been adjusted as provided in paragraph I (b)(ii) above.

Section 6. Use of Premises

The Lessee hereby agrees to and shall use the premises or cause the premises to be used for the following purposes and for activities reasonably required for such purposes and for such purposes and activities only:

(a) For the reception, sorting, temporary storage and distribution and appropriate federal inspection services by federal agencies (if the United States government makes the same available to the Lessee), of air cargo transported or to be transported on aircraft operated by the Lessee, permitted sublessee of the Lessee, or any other Aircraft Operator at the premises for which the Lessee provides Cargo Services, and for purposes reasonably incidental thereto and for administrative and business offices in connection therewith;

(b) For loading and unloading operations in connection with the Lessee's

operations hereunder;

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

(d) For the storage of aircraft parts and supplies;

(e) For business and administrative offices and storerooms and employees' locker rooms in connection with the Lessee's operations hereunder;

(f) For the parking of passenger automobiles used by the officers, employees, invitees and business visitors of the Lessee;

(g) For the parking and storage of aircraft and ramp equipment;

(h) For the performance of transit or turn-around aircraft maintenance only which is incidental to the Lessee's air cargo operations;

(i) For the fueling and serving of aircraft and ramp equipment operated by the Lessees and used by it in connection with its operations; and

(j) For any other purpose or activity which the Port Authority may, from time to time, expressly authorize in advance and in writing.

**Section 7. Ingress and Egress**

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

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

(c) The use of all roadways and taxiways shall be subject to the Rules and Regulations of the Port Authority which are now in effect or which may hereafter be

promulgated for the safe and efficient operation of the Airport. In addition to the rights of closure granted above, the Port Authority may, at any time, temporarily or permanently close, or consent to or request the closing of, any such roadway and any other area at the Airport presently or hereafter used as such, so long as means of ingress and egress reasonably equivalent to that provided in paragraphs (a) and (b) above are concurrently made and remain available to the Lessee. The Lessee hereby releases and discharges the Port Authority, its successors and assigns, of and from any and all claims, demands or causes of action which the Lessee may now or at any time hereafter have against any of the foregoing, arising or alleged to arise out of the closing of any street, roadway, taxiway or other area used as such whether within or outside the Airport, provided, that the Port Authority makes available to the Lessee a means of ingress and egress reasonably equivalent to that provided in paragraphs (a) and (b) above.

**Section 8. 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 or the occupancy or use of the premises, and the Lessee shall, in accordance with and subject to the provisions of Section 37 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 law, rule, regulation, requirement, order or direction.

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

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

(d) Since the Port Authority has agreed in the Basic Lease to conform to the enactments, ordinances, resolutions and regulations of The City of New York and its various departments, boards and bureaus in regard to the construction and maintenance of buildings and structures and in regard to health and fire protection which would be applicable if the Port Authority were a private corporation to the extent that the Port Authority finds it practicable so to do, the Lessee shall comply with all such enactments, ordinances, resolutions and regulations which would be applicable to its operations hereunder if the Port Authority were a private corporation, except in cases where the Port Authority either notifies the Lessee that it need not comply with or directs it not to comply with any such enactments, ordinances, resolutions or

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

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

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

#### Section 9. Rules and Regulations

(a) The Lessee covenants and agrees to observe and obey (and to require its officers, employees, guests, invitees and those doing business with it to observe and obey) the Rules and Regulations of the Port Authority in effect as of the execution of this Agreement and such reasonable future Rules and Regulations and amendments and supplements to existing Rules and Regulations for the government of the conduct and operations of the Lessee and others on the premises as may from time to time during the letting be promulgated by the Port Authority for reasons of safety, health, sanitation or good order. The obligation of the Lessee to require such observance and obedience on the part of its guests, invitees and business visitors shall obtain only while such persons are on the premises. The Port Authority agrees that, except in cases of emergency, it will give notice to the Lessee of every such future rule or regulation adopted by it at least ten (10) days before the Lessee shall be required to comply therewith.

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

**Section 10. Various Obligations of the Lessee**

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

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

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

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

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

(f) From time to time and as often as reasonably required by the Port Authority, the Lessee shall conduct pressure, water-flow, and other appropriate tests of the fire-extinguishing system and apparatus, fire-alarm and smoke detection systems and any other fire protection systems which constitute a part of the premises. The Lessee shall keep in proper functioning order all fire-fighting equipment, fire alarm and smoke detection equipment on the premises. The Lessee shall at all times maintain on the premises adequate stocks of fresh, usable

chemicals for use in such systems and apparatus. The Lessee shall notify the Port Authority prior to conducting such tests. If requested in writing by the Port Authority, the Lessee shall furnish the Port Authority with a copy of written reports of such tests.

(g) In addition to compliance by the Lessee with all laws, ordinances, governmental rules, regulations and orders now or at any time in effect during the term of the letting hereunder which as a matter of law are applicable to the operation, use or maintenance by the Lessee of the premises or the operations of the Lessee under this Agreement (the foregoing not to be construed as a submission by the Port Authority to the application to itself of such requirements or any of them), the Lessee agrees that it shall exercise the highest degree of safety and care and shall conduct all its operations under the Agreement and shall operate, use and maintain the premises in accordance with the highest standards and in such manner that there will be at all times a minimum of air pollution, water pollution or any other type of pollution and a minimum of noise emanating from, arising out of or resulting from the operation, use or maintenance of the premises by the Lessee and from the operations of the Lessee under this Agreement. The Port Authority hereby reserves the right from time to time and at any time during the term of the Lease to require the Lessee and the Lessee agrees to design and construct at its sole cost and expense such reasonable structures, fences, equipment, devices and other facilities as may be necessary or appropriate to accomplish the objectives as set forth in the first sentence of this paragraph. All locations, the manner, type and method of construction and the size of any of the foregoing shall be determined by the Port Authority. The Lessee shall submit for Port Authority approval its plans and specifications covering the required work and upon receiving such approval shall proceed diligently to construct the same.

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

#### Section 11. Prohibited Acts

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

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

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

(d) The Lessee shall not itself do nor shall the Lessee give its permission to any other to do any act or thing upon the premises or at the Airport (1) which will invalidate or conflict with any fire insurance, extended coverage or rental insurance policies covering the premises or any part thereof, or the Airport or any part thereof, or (2) which, in the opinion of the Port Authority, may constitute an extra-hazardous condition so as to increase the risks normally attendant upon the operations contemplated by Section 6 hereof. The Lessee shall promptly observe, comply with and execute the provisions of any and all present and future rules and regulations, requirements, orders and directions of the Insurance Services Offices of New York and the National Fire Protection Association, or of any other board or organization exercising or which may exercise similar functions, which may pertain or apply to the operations of the Lessee on the premises, and the Lessee shall, subject to and in accordance with the provisions of Section 38 hereof, make any and all structural and non-structural improvements, alterations or repairs of the premises that may be required at any time hereafter by any such present or future rule, regulation, requirement, order or direction. If by reason of any failure on the part of the Lessee to comply with the provisions of this paragraph any fire insurance rate, extended coverage or rental insurance rate on the premises or any part thereof, or on the Airport or any part thereof, shall at any time be higher than it would be if the premises were properly used for the purposes permitted by Section 6 hereof, then the Lessee shall pay to the Port Authority, as an item of additional rental, that part of all insurance premiums paid by the Port Authority which shall have been charged because of such violation or failure by the Lessee.

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

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

(g) The Lessee shall not operate any engine or any item of automotive equipment in any enclosed space on the premises unless such space is adequately ventilated and

unless such engine or item of automotive equipment is equipped with a proper spark-arresting device which has been approved by the Port Authority.

(h) With the exception of a lunchroom for its employees, the Lessee shall not install, maintain or operate, or permit the installation, maintenance or operation on the premises of any vending machine or device designed to dispense or sell food, beverages, tobacco, tobacco products or merchandise of any kind whether or not included in the above categories, or of any restaurant, cafeteria, kitchen, stand or other establishment of any type for the preparation, dispensing or sale of food, beverages, tobacco, tobacco products, or merchandise of any kind, whether or not included in the above categories, or of any equipment or device for the furnishing to the public of service of any kind including therein, without limitation thereto, telephone pay-stations, unless the Lessee obtains the prior written consent of the Port Authority.

(i) The Port Authority, by itself or by contractors, lessees or permittees, shall have the exclusive right to install, maintain and receive the revenues from all coin-operated or other vending machines or devices installed by it and operated on the premises for the sale of merchandise of all types or for the rendering of services, provided, however, that no such machine or device shall be installed except upon the request of the Lessee. If the Port Authority does not install and maintain any such machine that the Lessee may reasonably request, the Lessee shall have the right to do so, provided, however, (1) that the Lessee shall pay or cause to be paid to the Port Authority each month for each machine upon the same basis for the preceding month as any concessionaire, permittee or licensee of the Port Authority then operating machines at the Airport for the sale of similar merchandise or the rendering of similar services, and (2) that in the event the Lessee exercises such right the Port Authority, at any time thereafter, may substitute for the Lessee's machines other machines selling similar merchandise or services operated by the Port Authority or by its licensee, permittee or concessionaire, and thereupon the Lessee shall remove its machines.

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

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

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

(m) The Lessee shall not use or permit the use of any truss or structural supporting member of the building or roof or any part thereof for the storage of any material or equipment, or to hoist, lift, move or support any material or equipment or other weight or load,

by means of said trusses or structural supporting members, without the prior written approval of the Port Authority.

**Section 12. Care, Maintenance, Rebuilding and Repair by the Lessee**

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

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

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

(3) Take good care of the premises and maintain the same at all times in good condition, except for reasonable wear and tear, perform all necessary preventive maintenance, including but not limited to, painting (the exterior of the structures on the premises and areas visible to the general public to be painted only in colors which have been approved by the Port Authority); and make all repairs and replacements and, subject to and in accordance with the provisions of Section 38 hereof, do all rebuilding, inside and outside, ordinary and extraordinary, partial and entire, foreseen and unforeseen, structural or otherwise, which repairs, rebuilding and replacements by the Lessee shall be in quality and class not inferior to the original in materials and workmanship; and to pay promptly the cost and expense of such repairs, replacements and maintenance;

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

(5) Provide and maintain all obstruction lights and similar devices on the premises, and provide and maintain all fire-protection and safety equipment and all other equipment of every kind and nature required by any law, rule, ordinance, resolution or regulation of the type and nature described in Sections 8 and 9 of this Agreement;

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

Authority may require, including the cross hatched area delineated on Exhibit A until such area is developed by the Port Authority;

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

(8) Repair any damage to the paving or other surface of the premises caused by any oil, gasoline, grease, lubricants or other flammable liquids and substances having a corrosive or detrimental effect thereon.

(b) In addition, the Lessee shall be responsible for landscaping the premises, where appropriate, consistent with the Port Authority's airport landscaping program.

(c) In the event the Lessee fails to commence to maintain, clean, repair, replace, rebuild or paint within a period twenty (20) days after notice from the Port Authority so to do the event that the said notice specifies that the required work to be accomplished by the Lessee includes maintenance or repair other than preventive maintenance, or within a period of twenty (20) days if the said notice specifies that the work to be accomplished by the Lessee involves preventive maintenance only, or Lessee fails diligently to continue to completion the repair, replacement, rebuilding or painting of all of the premises required to be repaired, replaced, rebuilt or painted by the Lessee under the terms of this Agreement, the Port Authority may, at its option and in addition to any other remedies which may be available to it, repair, replace, rebuild or paint all or any part of the premises included in the said notice, and the cost thereof shall be payable by the Lessee upon demand.

(d) Notwithstanding anything to the contrary in Section 12(a) above, Lessee shall not be required to make structural improvements, repairs, or alterations to the premises unless such structural improvements, repairs, or alterations are necessary to correct conditions arising out of, related to or occurring during Lessee's occupancy, use and operation of the premises. The Port Authority acknowledges that Lessee did not design or construct the premises and shall have no obligation to pay for or perform structural repairs or rebuilding or maintenance arising out of the design or construction of the premises. The Port Authority further acknowledges that payment for such structural repairs or rebuilding or maintenance arising out of the design or construction shall be borne by the Port Authority.

### Section 13. Insurance

(a) The Lessee shall, during the term of this Agreement, insure and keep insured to the extent of the full Replacement Cost thereof, all buildings, structures,

improvements, installations, facilities and fixtures now or in the future located on the premises when the same are located on the premises against all risks of physical loss or damage, including loss against flood and earthquake, if available, and if not available, then against such hazards and risks as may now or in the future be included under a standard form of fire and extended coverage insurance policy available in the State of New York including damage or loss by windstorm, cyclone, tornado, hail, explosion, riot, civil commotion, aircraft, vehicles, flood, earthquake and smoke, and, if the Port Authority so requests upon written notice, also covering nuclear property losses and contamination hazards and risks (if such coverage is or becomes available) and boiler and machinery hazards and risks in a separate insurance policy or policies or as an additional coverage endorsement to the aforesaid policies in the form as may now or in the future be prescribed as of the effective date of said insurance by the Rating Organization having jurisdiction or the Superintendent of Insurance of The State of New York and the Lessee shall furthermore provide additional insurance in such reasonable amounts with respect to the premises covering any other property risk that the Port Authority may at any time during the term of this Agreement cover by carrier or self-insurance covered by appropriate reserves at other locations at the Airport upon written notice to the Lessee to such effect.

(b) In addition to all other policies of insurance required under this Lease, the Lessee shall also procure and maintain throughout the period of this Lease (including any and all extensions) Business Interruption Insurance (if such coverage is available) in such amount as shall be at least sufficient to cover, and applicable to, all fees, charges and other payments that are payable by the Lessee to the Port Authority under this Lease including rental expenses for a period of not less than three (3) years for any business interruption losses in business revenue that occur when the premises or any portion thereof is unusable or is out of operation due to a fire or for any other risks or hazards that are normally covered under a standard form of "All Risk" policy.

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

(d) In the event the premises or any part thereof shall be damaged by any casualty against which insurance is carried pursuant to this Section 13, the Lessee shall promptly furnish to the Port Authority such information and data as may be necessary to enable the Port Authority to adjust the loss.

(e) The certificates representing insurance covered by this Section 13 shall be delivered by the Lessee to the Port Authority upon execution of this Agreement by the Lessee and each certificate delivered shall bear the endorsement of or be accompanied by evidence of payment of the premium thereon and such policies shall also contain a valid provision obligating the insurance company to furnish the Port Authority and The City of New York thirty (30) days' advance notice of the cancellation, termination, change or modification of the insurance evidenced by said policy or certificate. Any renewal 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, if possible; but in no event, a current, compliant certificate of insurance must be delivered prior to the renewal. If at any time the Port Authority so requests, a certified copy of each of said policies shall be delivered promptly to the Port Authority.

(f) Regardless, however, of the persons whose interests are insured, the proceeds of all policies covered by this Section 13 shall be applied as provided in Section 14; and the word "insurance" and all other references to insurance in said Section 14 shall be construed to refer to the insurance which is the subject matter of this Section 13, and to refer to such insurance only.

(g) All insurance coverages and policies required under these Sections may be reviewed by the Port Authority for adequacy of terms, conditions and limits of coverage at any time and from time to time during the period the Lease remains in effect and insurance companies issuing such policies shall be licensed to do business in the State of New York and have ratings classifications of "A" or better and a financial size category ratings of "VII" or better according to the latest edition of the A.M. Best Key Rating Guide. The Port Authority at any such time may make additions, deletions, amendments to or modifications of the above-scheduled insurance requirements and may require such other and additional insurance, in such reasonable amounts, against such other insurable risks and hazards, as the Port Authority may deem advisable and the Lessee shall promptly comply therewith.

**Section 14. Damage to or Destruction of Premises**

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

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

(c) Major Damage to or Destruction of the Premises. If the premises, or any part thereof, shall be destroyed or so damaged by fire, the elements, the public enemy or other casualty as to be untenable 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 untenable or unusable for ninety (90) days, then the Lessee shall proceed with due diligence to make the necessary repairs or replacements to restore such

premises in accordance with the plans and specifications for the premises as the same existed prior to such damage or destruction; or with the approval in writing of the Port Authority make such other repairs, replacements or changes as may be desired by the Lessee. If such destruction or damage was covered by insurance, the proceeds thereof shall be made available to the Port Authority and be used by the Lessee for such restoration.

(d) The obligation of the Lessee to repair or replace shall be limited to the amount of the insurance proceeds provided the Lessee has carried insurance to the extent and in accordance with Section 13 hereof. Any excess of the proceeds of insurance over costs of the restoration shall be retained by the Port Authority.

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

**Section 15. Indemnity and Liability Insurance**

(a) (1) The Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, agents, employees and representatives, from and against (and shall reimburse the Port Authority for the Port Authority's reasonable costs and expenses, including 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 any default of the Lessee in performing or observing any term or provision of this Agreement, or out of the use or occupancy of the premises by the Lessee or by others with its consent or out of any of the acts or omissions of the Lessee, its officers, employees, guests, invitees and other persons who are doing business with the Lessee or who are at the premises with the consent of the Lessee or arising out of the acts or omissions of the Lessee, its officers and employees elsewhere at the Airport (excepting only claims and demands arising from the sole willful acts of the Port Authority), including claims and demands of The City of New York from which the Port Authority derives its rights in the Airport, for indemnification, arising by operation of law or through agreement of the Port Authority with the said City.

Notwithstanding anything to the contrary in the foregoing, the Lessee shall not be liable for any claims and demands or causes of action, accrued prior to the Commencement Date, for death or personal injuries of persons, including but not limited to employees or former employees of Lufthansa Cargo AG, arising out of or relating to asbestos in the premises, if any.

(2) If so directed, the Lessee shall at its own expense defend any suit based upon any such claim or demand (even if such claim or demand is groundless, false or fraudulent), and in handling such it shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the

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

(b) In addition to the obligations set forth in paragraph (a) of this Section and all other insurance required under this Agreement, the Lessee during the term of this Agreement in its own name as insured and including the Port Authority as an additional insured shall maintain and pay the premiums on a policy or policies of Commercial General Liability Insurance, including products-completed operations, premises-operations, and covering bodily injury, including death, and property damage liability, broadened to include or equivalent separate policies covering Warehousemen's Legal Liability and providing for coverage in the limit set forth below; and Commercial Automobile Liability Insurance covering owned, non-owned and hired vehicles and including automatic coverage for newly acquired vehicles and providing for coverage in the limit set forth below; and Workers' Compensation Insurance in accordance with the requirements of law. All the aforesaid liability policy or policies of insurance shall also provide or contain an endorsement providing that the protections afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third person shall pertain and apply with like effect with respect to any claim or action against the Lessee by the Port Authority but such endorsement shall not limit, vary, change, or affect the protections afforded the Port Authority thereunder as an additional insured. In addition, all the aforesaid liability policy or policies of insurance shall also provide or contain an endorsement providing that the protections afforded the Port Authority thereunder with respect to any claim or action against the Port Authority by the Lessee shall be the same as the protections afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third person as if the Port Authority were the named insured thereunder. The said liability policy or policies of insurance, where applicable, shall also provide or contain a contractual liability endorsement covering the obligations assumed by the Lessee under paragraph (a) hereof.

Minimum Limits

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

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(c) The minimum limits as to the aforesaid Warehousemen's Legal Liability policy to be maintained by either the Lessee shall be as follows:

Warehousemen's Legal Liability	\$2,000,000
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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.

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

(e) As to the insurance required by the provisions of this Section a certified copy of the policies, or a certificate or certificates evidencing the existence thereof, or binders, shall be delivered by the Lessee to the Port Authority upon execution of this Lease and delivery thereof by the Lessee to the Port Authority. 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, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority. Any renewal policy shall be delivered to the Port Authority at least thirty (30) days prior to the expiration of each expiring policy, except for any policy expiring after the date of expiration of the term of this Agreement. The aforesaid insurance shall be written by a company or companies approved by the Port Authority, the Port Authority agreeing not to withhold its approval unreasonably. If at any time any of the insurance policies shall be or become unsatisfactory to the Port Authority as to the form or substance or if any of the carriers issuing such policies shall be or become unsatisfactory to the Port Authority, the Lessee shall promptly obtain a new and satisfactory policy in replacement, the Port Authority covenanting and agreeing not to act unreasonably hereunder. If the Port Authority at any time so requests, a

certified copy of each of the policies shall be delivered to the Port Authority.

**Section 16. Signs**

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

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

**Section 17. Obstruction Lights**

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

**Section 18. Additional Rent and Charges**

If the Port Authority is required or elects to pay any sum or sums or incurs any obligations or expense by reason of the Lessee's breach, beyond all cure periods provided in this Agreement, to perform or fulfill any one or more of the conditions, covenants or agreements contained in this Agreement or as a result of an act or omission of the Lessee contrary to the said conditions, covenants and agreements, the Lessee agrees to pay the sum or sums so paid or the expense so incurred, including all interest, costs, damages and penalties, and the same may be added to any installment of rent thereafter due hereunder, and each and every part of the same shall be and become additional rent, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the rent as set forth in Section 5 hereof.

Section 19. Rights of Entry Reserved

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

(b) Without limiting the generality of the foregoing, the Port Authority, by its officers, employees, agents, representatives and contractors, and furnishers of utilities and other services, shall have the right, for its own benefit, for the benefit of the Lessee, or for the benefit of persons other than the Lessee at the Airport, to maintain existing and future sewerage, utility, mechanical, electrical and other systems or portions thereof on the premises, including but not limited to, systems for the supply of heat, water, gas, fuel, electricity and for the furnishing of fire-alarm, fire-protection, sprinkler, sewerage, drainage, telegraph and telephone service, including all lines, pipes, mains, wires, conduits and equipment connected with or appurtenant to such systems, and to enter upon the premises at all reasonable times to make such repairs, replacements or alterations as may, in the opinion of the Port Authority, be deemed necessary or advisable and, from time to time, to construct or install over, in or under the premises new systems or parts thereof, and to use the premises for access to other parts of the Airport otherwise not conveniently accessible; provided, however, that in the exercise of such rights of access, repair, alteration or new construction the Port Authority shall not unreasonably interfere with the use and occupancy of the premises by the Lessee.

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

(d) Nothing in this Section shall or shall be construed to impose upon the Port Authority any obligations so to construct or maintain or to make repairs, replacements, alterations or additions, or shall create any liability for any failure so to do. The Lessee is and shall be in exclusive control and possession of the premises during the letting and the Port Authority shall not in any event be liable for any injury or damage to any property or to any person happening on or about the premises nor for any injury or damage to the premises nor to any property of the Lessee or of any other person located in or thereon (other than those occasioned by the affirmative, willful acts of the Port Authority, its employees, agents and representatives).

(e) Upon reasonable notice and during ordinary business hours within the six (6) months next preceding the expiration of the letting, the Port Authority, for and by its agents and employees, whether or not accompanied by prospective lessees, occupiers or users of the premises, shall have the right to enter thereon for the purpose of exhibiting and viewing all parts of the same.

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

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

**Section 20. Condemnation**

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

(ii) As used in this Section with reference to the premises, the phrase "a material part" shall mean such a part of the premises that the Lessee cannot continue to carry on or cause to be carried on the operations described in Section 6 hereof without using such part.

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

(ii) In the event a permanent taking covers less than all or a material part of the premises, this Agreement and the term of the letting hereunder shall be deemed terminated

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

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

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

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

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

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

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

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

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

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

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

(e) (i) The phrase "unamortized capital investment" shall mean, for purposes of this Lease, the amount of the Lessee's investment in the premises (excluding any personal property whatsoever) arising out of the performance by the Lessee of the Construction Work pursuant to and as set forth in Section 2 of this Lease with respect to the Cargo Facility after deduction therefrom of an amount equivalent to an allowance for depreciation and amortization. Such allowance will be computed on a straight-line basis over a period of twenty-five (25) years commencing on the Completion Date.

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

(iii) For purposes of this paragraph (e), the Lessee's investment in the premises shall be equal to the sum of: (1) the amounts paid by the Lessee to independent contractors for work actually performed and labor and materials actually furnished in connection with the construction of the Cargo Facility; and (2) the payments made and expenses incurred by the Lessee, in connection with such construction, for engineering, architectural, professional and consulting services, the supervision of construction, and other customary and reasonable fees and

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

(iv) The sole and entire amount to be paid by the Port Authority to the Lessee from the said remainder of the award under Section 20(d)(iii)(2) shall be (1) in the event of a taking of all of the said premises, an amount up to the unamortized capital investment, if any, of the Lessee in the premises, or, (2) in the event of a taking of less than all of the said premises, an amount equal to an appropriate portion of the unamortized capital investment, if any, of the Lessee in so much of the premises as are taken. However, the Port Authority shall make such payment to the Lessee only if the amount to be paid by the Port Authority will constitute "unamortized Port Authority funds other than bond proceeds or Federal or State grants expended for capital improvements at the municipal air terminals," within the meaning of said phrase as used in Section 23, I, D of the Basic Lease or if a sum not less than said amount can be retained by the Port Authority (and not be required to be paid to The City of New York) out of the damages or award in respect to such taking without violation of any obligation of the Port Authority to The City of New York under the Basic Lease. Such payment shall be made as of the date upon which such body having superior power of eminent domain obtains possession of any such permanent interest in the demised premises or after receipt of said award by the Port Authority, whichever shall last occur, and, upon such payment, the Lessee (except with respect to its personal property) shall not have any claim or right to claim or be entitled to any portion of the amount which may be awarded as damages or paid as a result of such taking, and all rights to damages, if any, of the Lessee (except for damages to its personal property) by reason thereof are hereby assigned to the Port Authority.

(v) If, however, the amount to be paid by the Port Authority (the unamortized capital investment, as hereinabove defined, if any, of the Lessee in the premises) for such leasehold interest will not constitute "unamortized Port Authority funds other than bond proceeds or Federal or State grants expended for capital improvements at the municipal air terminals," within the meaning of said phrase as used in Section 23, I, D of the Basic Lease or if a sum not less than such amount cannot otherwise be retained by the Port Authority (and not be required to be paid to The City of New York) out of the damages or award in respect to such taking without violation of any obligation of the Port Authority to The City of New York under the Basic Lease, then the aforesaid agreement to make such payment to the Lessee shall be null

and void; and in any such event, the Lessee shall have the right to appear and file its claim for damages in the condemnation or eminent domain proceedings, to participate in any and all hearings, trials and appeals therein, and to receive such amount as it may lawfully be entitled to receive as damages or payment as a result of such taking because of its leasehold interest in the premises up to, but not in excess of, an amount equal to the unamortized capital investment (as hereinabove defined), if any, of the Lessee in the premises.

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

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

**Section 21. Assignment and Sublease**

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

(b) The Lessee shall not sublet the premises or any part thereof without the prior written consent of the Port Authority.

(c) Any sale, assignment, transfer, sublease, mortgage, pledge, hypothecation, encumbrance or disposition of the premises or of the rents, revenues or any other income from the premises, or this Agreement or any part thereof, or any license or other interest of the Lessee therein not made in accordance with the provisions of this Agreement shall be null and void abinitio and of no force or effect.

(d) If, without the prior written consent of the Port Authority, the Lessee assigns, sells, conveys, transfers, mortgages, pledges or sublets in violation hereof the Port Authority may collect rent from any assignee, sublessee or anyone who claims a right under this Agreement or letting or who occupies the premises, and the Port Authority shall apply the net amount collected to the rental herein reserved; but no such collection shall be deemed a waiver by the Port Authority of the covenants contained in this Section or an acceptance by the Port Authority of any such assignee, sublessee, claimant or occupant as Lessee, nor a release of the Lessee by the Port Authority from the further performance by the Lessee of the covenants contained herein; nor shall the granting of the Port Authority's approval and consent pursuant to paragraph (a) or (b) of this Section be construed to be a waiver or release by the Port Authority from the further performance by the Lessee of the covenants contained herein.

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

(f) The Lessee shall not use or permit any person to use the premises or any portion thereof except in accordance with the provisions of Section 9 hereof and this Section nor for any purpose other than the purposes stated in Section 6 hereof. Except as provided in writing by the Port Authority, the Lessee shall not permit the premises to be used or occupied by any person other than its own officers, employees, representatives, agents, contractors, guests, visitors and business invitees.

**Section 22. Termination by the Port Authority**

(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

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

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

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

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

(6) Except as expressly permitted in Section 21 of this Agreement, the letting hereunder or the interest or estate of the Lessee under this Agreement shall be transferred directly by the Lessee or shall pass to or devolve upon, by operation of law or otherwise, any other person, firm or corporation; or

(7) A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Lessee and shall not be dismissed within sixty (60) days after the filing thereof; or

(8) Except as otherwise provided in Section 21 hereof, the Lessee shall, without the prior written approval of the Port Authority, become a possessor or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or

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

Authority to make such payment; or

(10) The Lessee shall fail to keep, perform and observe each and every other promise, covenant and agreement set forth in this Agreement on its part to be kept, performed, or observed, within thirty (30) days after receipt of notice of default thereunder from the Port Authority (except where fulfillment of its obligation requires activity over a period of time and the Lessee shall have commenced to perform whatever may be required for fulfillment within thirty [30] days after receipt of notice and continues such performance without interruption except for causes beyond its control); then upon the occurrence of any such event or at any time there-after during the continuance thereof, the Port Authority may upon twenty (20) days' notice terminate the rights of the Lessee 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 23. Right of Re-entry**

The Port Authority shall, as an additional remedy upon the giving of a notice of termination as provided in Section 22 hereof, have the right to re-enter the premises and every part thereof upon the effective date of termination without further notice of any kind, and may regain and resume possession either with or without the institution of summary or any other legal proceedings or other-wise. Such re-entry, or regaining or resumption of possession, however, shall not in any manner affect, alter or diminish any of the obligations of the Lessee under this Agreement, and shall in no event constitute an acceptance of surrender.

**Section 24. Waiver of Redemption**

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

**Section 25. Survival of the Obligations of the Lessee**

(a) In the event that the letting shall have been terminated in accordance with a notice of termination as provided in Section 22 hereof, or the interest of the Lessee canceled pursuant thereto, or in the event that the Port Authority has re-entered, regained or resumed possession of the premises in accordance with the provisions of Section 23 hereof, all the rental obligations of the Lessee under this Agreement shall survive such termination or cancellation, or re-entry, regaining or resumption of possession and shall remain in full force and effect for the full term of the letting under this Agreement, and the amount or amounts of damages or deficiency shall become due and payable to the Port Authority to the same extent, at the same time or times and in the same manner as if no termination, cancellation, re-entry, regaining or resumption of possession had taken place. The Port Authority may maintain separate actions each month to recover the damage or deficiency then due or at its option and at any time may sue to recover the full deficiency, less the proper discount, for the entire unexpired term.

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

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

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

**Section 26. Reletting by the Port Authority**

The Port Authority upon termination or cancellation pursuant to Section 22 hereof, or upon any re-entry, regaining or resumption of possession pursuant to Section 23 hereof, may occupy the premises or may relet the premises, and shall have the right to permit any person, firm or corporation to enter upon the premises and use the same. Such reletting may be of part only of the premises or a part thereof together with other space, and for a period of time

the same as or different from the balance of the term hereunder remaining, and on terms and conditions the same as or different from those set forth in this Agreement. The Port Authority shall also, upon termination or cancellation pursuant to the said Section 22, or upon its re-entry, regaining or resumption of possession pursuant to the said Section 23, have the right to repair or to make structural or other changes in the premises, including changes which alter the character of the premises and the suitability thereof for the purpose of the Lessee under this Agreement, without affecting, altering or diminishing the obligations of the Lessee hereunder. In the event either of any reletting or of any actual use and occupancy by the Port Authority (the mere right of the Port Authority to use and occupy not being sufficient however) there shall be credited to the account of the Lessee against its survived obligations hereunder any net amount remaining after deducting from the amount actually received from any lessee, licensee, permittee or other occupier in connection with the use of the said premises or portion thereof during the balance of the letting as the same is originally stated in this Agreement, or from the market value of the occupancy of such portion of the premises as the Port Authority may during such period actually use and occupy, all expenses, costs and disbursements incurred or paid by the Port Authority in connection therewith (except to the extent the same have been paid or reimbursed by the Lessee pursuant to subparagraph (b) (2) of Section 25 hereof). No such reletting shall be or be construed to be an acceptance of a surrender.

**Section 27. 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 28. Surrender**

The Lessee covenants and agrees to yield and deliver peaceably to the Port Authority possession of the premises on the date of cessation of the letting, whether such cessation be by termination, expiration or otherwise, promptly and in good condition, except for reasonable wear and tear arising from the permitted use of the premises by the Lessee which does not cause or tend to cause deterioration of the premises or adversely affect the efficient or proper utilization thereof, and all of the premises shall be free and clear of all liens, encumbrances, and security interests and of any rights of any sublessees or other occupants of the premises.

**Section 29. Acceptance of Surrender of Lease**

No agreement of surrender or to accept a surrender shall be valid unless and until the same shall have been reduced to writing and signed by the duly authorized representatives of the Port Authority and of the Lessee. Except as expressly provided in this Section, neither the

doing of, nor any omission to do, any act or thing, by any of the officers, agents or employees of the Port Authority, shall be deemed an acceptance of a surrender of the letting or of this Agreement.

**Section 30. Effect of Basic Lease**

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.

**Section 31. Removal of Property**

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

**Section 32. Brokerage**

The Lessee and the Port Authority represent and warrant to each other that no broker has been concerned on its respective behalf in the negotiation of this Agreement and that there is no broker who is or may be entitled to be paid a commission in connection therewith. The Lessee and the Port Authority shall indemnify and save each other harmless of and from any claim for commission or brokerage made by any and all persons, firms or corporations whatsoever for services rendered to the Lessee or to the Port Authority, as the case may be, in connection with the negotiation and execution of this Agreement.

**Section 33. Limitation of Rights and Privileges Granted**

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

(b) The premises are let to the Lessee and the Lessee takes the same subject to

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

**Section 34. Notices**

Except where expressly required or permitted herein to be oral, all notices, directions, requests, consents and approvals required to be given to or by either party shall be in writing, and all such notices and requests shall be personally delivered to the duly designated officer or representative of such party or delivered to the office of such officer or representative during regular business hours, or forwarded to him or to the party at such address by certified or registered mail. The Lessee shall from time to time designate in writing an office within the Port of New York District and an officer or representative whose regular place of business is at such office upon whom notices and requests may be served. Until further notice, the Port Authority hereby designates its Executive Director and the Lessee designates its representative named on the first page hereof as their respective officers upon whom notices and requests may be served, and the Port Authority designates its office at 225 Park Avenue South, New York, New York 10003, and the Lessee designates its office at 618 South Access Road, Chicago, Illinois 60666 as their respective offices where notices and requests may be served. If mailed, the notices herein required to be served shall be deemed effective and served as of the date three (3) days after the certified or registered mailing thereof.

**Section 35. Non-Discrimination**

(a) Without limiting the generality of any of the provisions of the Agreement, the Lessee, for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the grounds of race, creed, color, national origin, sex, age, disability or marital status shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the premises by it, (2) that in the construction of any improvements on, over, or under the premises and furnishing of services thereon by it, no person on the ground of race, creed, color, national origin, sex, age, disability or marital status shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination, (3) that the Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended, and any other present or future laws, rules, regulations, orders or directions of the United States of America with respect thereto which from time to time may be applicable to

the Lessee's operations at the Airport, whether by reason of agreement between the Port Authority and the United States Government or otherwise.

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

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

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

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

**Section 36. Affirmative Action**

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

(b) The Lessee shall not discriminate against employees or applicants for

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

(c) In addition to and without limiting the foregoing, and without limiting the provisions of subparagraphs (18) and (19) of paragraph (c) of Section 2 hereof and Schedule E hereof, it is hereby agreed that the Lessee, in connection with its continuing operation, maintenance and repair of the premises, or any portion thereof, and in connection with every award or agreement for concessions or consumer services at the Airport, shall throughout the term of the letting hereunder commit itself to and use good faith efforts to implement an extensive program of affirmative action, including specific affirmative action steps to be taken by the Lessee, to ensure maximum opportunities for employment and contracting by minorities and women. In meeting the said commitment the Lessee agrees to submit to the Port Authority for its review and approval its said extensive affirmative action program, including the specific affirmative action steps to be taken by the Lessee to meet its aforesaid commitment, within eighteen (18) months after the execution of this Agreement and the delivery thereof by the Lessee to the Port Authority. The Lessee shall incorporate in its said program such revisions and changes which the Port Authority initially or from time to time may require. The Lessee throughout the term of the letting hereunder shall document its efforts in implementing the said program, shall keep the Port Authority fully advised of the Lessee's progress in implementing the said program and shall supply to the Port Authority such information, data and documentation with respect thereto as the Port Authority may from time to time and at any time request, including but not limited to, annual reports.

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

(e) In the implementation of this Section 36 the Port Authority may consider compliance by the Lessee with the provisions of any federal, state or local law concerning affirmative action equal employment opportunity which are at least equal to the requirements of this Section, as effectuating the provisions of this Section. If the Port Authority determines that by virtue of such compliance with the provisions of any such federal, state or local law that the provisions hereof duplicate or conflict with such law the Port Authority may waive the applicability of the provisions of this Section to the extent that such duplication or conflict exists.

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

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

**Section 37. The Lessee's Ongoing Affirmative Action-Equal Opportunity Commitment**

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

(b) In addition to and without limiting the foregoing, and without limiting any other provisions hereof, it is hereby agreed that the Lessee in connection with its continuing operation, maintenance and repair of the premises, or any portion thereof, as provided in this Agreement, and in connection with every award or agreement for concessions or consumer services at the Airport, shall throughout the term of the letting hereunder commit itself to and use good faith efforts to implement an extensive program of Affirmative Action, including specific affirmative action steps to be taken by the Lessee, to ensure maximum opportunities for employment and contracting by minorities and women, and by Minority Business Enterprises and Women-owned Business Enterprises. In meeting the said commitment the Lessee agrees to submit its said extensive Affirmative Action program, including the specific affirmative action steps to be taken by the Lessee to meet its aforesaid commitment, within eighteen (18) months after the execution of this Agreement by the Lessee and the delivery thereof to the Port Authority, to the Port Authority for its review and approval. The Lessee shall incorporate in its said program such revisions and changes which the Port Authority initially or from time to time may reasonably require. The Lessee throughout the term of the letting hereunder shall document its efforts in implementing the said program, shall keep the Port Authority fully advised of the Lessee's progress in implementing the said program and shall supply to the Port Authority such information, data and documentation with respect thereto as the Port Authority may from time to time and at any time request, including but not limited to, annual reports.

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

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

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

(iii) Asian and Pacific Islander (all persons having origins in any

of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Section 38. Other Construction by the Lessee**

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

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

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

**Section 39. Termination by the Lessee**

(a) If any one or more of the following events shall occur:

(1) 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 ninety (90) consecutive days; or

(2) Scheduled Aircraft Operators at the Airport shall be prevented from using the Public Landing Area at the Airport to conduct their scheduled flights to and from the Airport or the Lessee or Permitted Sublessees are prevented from conducting its or their operations for a period covering more than ninety (90) consecutive days as a result of an injunction issued by a court of competent jurisdiction; or

(3) Scheduled Aircraft Operators at the Airport shall be prevented from using the Public Landing Area at the Airport to conduct their scheduled flights to and from the Airport for a period covering more than ninety (90) consecutive days as a result of any order, rule or regulation of the Federal Aviation Administration or other governmental agency having jurisdiction over the operations of the Scheduled Aircraft Operators;

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.

(b) The payment of rentals by the Lessee for the period or periods after the Lessee shall have a right to terminate under this Section shall not be or be construed to be a waiver by the Lessee of any such right of termination.

(c) In addition, the Lessee shall have the right to terminate the letting hereunder upon six (6) months' prior written notice to the Port Authority. In such event, the Lessee shall pay to the Port Authority an amount equal to the sum of one year of Ground Rental and MAG, payable in a lump sum on the date of giving such written notice.

**Section 40. Books and Records**

(a) The Lessee shall maintain, in English and in accordance with generally accepted accounting principles full and complete records and books of account for at least seven (7) years after the expiration or termination of this Lease (unless such records and books are material to litigation initiated within that time in which event they shall be maintained until final determination of the controversy), which records and books of account shall include without limitation (i) Annual Cargo Throughput, (ii) Annual Cargo Base Throughput, (iii) Annual Second-level Throughput, (iv) Annual Third-level Cargo Throughput, (v) all matters which the Lessee is required to certify to the Port Authority pursuant to this Lease and (vi) 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 and whether or not an express obligation to keep books and records with regard thereto is expressly set forth elsewhere in this Lease.

(b) (i) "Affiliate" shall mean in the singular and "Affiliates" shall mean in the plural any person that directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Lessee and any person in which the Lessee or a shareholder of the Lessee has a five percent (5%) ownership interest, licensor/licensee or franchiser/franchisee interest or relationship. As used in this definition, the term "control" (including the terms controlling, controlled by and under common control with) shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the person, whether through the ownership of voting securities, by contract and a five percent (5%) ownership interest in such affiliate.

(ii) The Lessee shall cause any Affiliate, if any such Affiliate performs services similar to those performed by the Lessee, to maintain in English and in accordance with accepted accounting practice full and complete records and books of account for at least seven (7) years after the expiration or termination of this Lease (unless such records and books are material to litigation initiated within that time in which event they shall be maintained until final

determination of the controversy), which records and books of account shall include without limitation all agreements and source documents such as but not limited to, original invoices, invoice listings, timekeeping records, work schedules and the general ledger (including its chart of accounts) and shall record all transactions of each Affiliate, through or in any way connected with the Airport, which records and books of account shall be kept at all times within the Port of New York District and shall separately state and identify each activity performed at the Airport and off the Airport if the order therefore is received at the Airport.

(c) The Lessee shall permit and/or cause to be permitted in ordinary business hours during the term of this Lease, for one (1) year thereafter, and during such further period as is mentioned in the preceding paragraphs (a) and (b), the examination and audit by the officers, employees and representatives of the Port Authority of all the records, documentation and books of account of the Lessee and all the records, documentation and books of account of all Affiliates (if any) of the Lessee (including without limitation all corporate records and books of account which the Port Authority in its sole discretion believes may be relevant to all revenues received by the Lessee, including without limitation those from its customers, sublessees, patrons, invitees and all others using the premises, whether in the form of rental payments or otherwise) (all of the foregoing records and books described in this paragraph (c) being hereinafter collectively referred to as the "*Books and Records*") within fourteen (14) days following any written request by the Port Authority from time to time and at any time to examine and audit any Books and Records. It is hereby understood that the Port Authority shall not be bound by any prior audit or inspection of the Lessee's or of an Affiliate's Books and Records.

(d) In the event any Books and Records are maintained outside the Port of New York District then, in addition to all, and without limiting any other, rights and remedies of the Port Authority under this Lease or otherwise and in addition to all of the Lessee's other obligations under this Lease, the Port Authority in its sole discretion may (x) require on ten (10) days' notice to the Lessee that any such Books and Records be made available to the Port Authority within the Port of New York District for examination and audit pursuant to paragraph (c) hereof and/or (y) examine and audit any such Books and Records pursuant to paragraph (c) hereof at the location(s) they are maintained and if such Books and Records are maintained within the contiguous United States the Lessee shall pay to the Port Authority when billed all travel costs and related expenses, as determined by the Port Authority, for Port Authority auditors and other representatives, employees and officers in connection with such examination and audit (hereinafter the "*Contiguous Travel Costs*") and if such Books and Records are maintained outside the contiguous United States the Lessee shall pay to the Port Authority when billed all costs and expenses of the Port Authority, as determined by the Port Authority, of such examination and audit, including but not limited to, salaries, benefits, travel costs and related expenses, overhead costs, and fees and charges of third party auditors retained by the Port Authority for the purpose of conducting such audit and examination (all the foregoing costs and expenses together with the Contiguous Travel Costs being hereinafter referred to as the "*Travel Costs*").

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(e) The foregoing auditing costs, expenses and amounts of the Port Authority set forth in paragraph (d) above shall be deemed fees hereunder payable to the Port Authority with the same force and effect as the additional rentals payable to the Port Authority pursuant to Section 5 hereof.

**Section 41. Place of Payments**

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

THE PORT AUTHORITY OF NEW YORK  
AND NEW JERSEY  
P. O. Box 95000-1517  
PHILADELPHIA, PENNSYLVANIA 19195-1517

or via the following wire transfer instructions:

Bank: Commerce Bank  
Bank ABA Number: 026013673  
Account No.: (Ex. 1)

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

**Section 42. Construction and Application of Terms**

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

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

**Section 43. Non-liability of Individuals**

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

**Section 44. Security Deposit or Letter of Credit**

(a) Upon the execution of this Agreement by the Lessee and delivery thereof to the Port Authority, the Lessee shall deliver 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 terms, provisions, covenants and conditions of this Agreement on its part to be fulfilled, kept, performed or observed, a clean irrevocable letter of credit issued by a banking institution satisfactory to the Port Authority and having its main office within the Port of New York District, in favor of the Port Authority in the amount of Seven Hundred Thousand Dollars and No Cents (\$700,000.00). The form and terms of such letter of credit, as well as the institution issuing it, shall be subject to the prior and continuing approval of the Port Authority. Such letter of credit shall provide that it shall continue throughout the term of the letting under this Agreement and for a period of not less than six (6) months thereafter; such continuance may be by provision for automatic renewal or by substitution of a subsequent satisfactory letter. Upon notice of cancellation of a letter of credit the Lessee agrees that unless, by a date twenty (20) days prior to the effective date of cancellation, the letter of credit is replaced by security in accordance with paragraph (a) of this Section or another letter of credit satisfactory to the Port Authority, the Port Authority may draw down the full amount thereof without statement of default and thereafter the Port Authority will hold the same as security under paragraph (a) of this Section. Failure to provide such a letter of credit at any time during the term of the letting, valid and available to the Port Authority, including any failure of any banking institution issuing any such letter of credit previously accepted by the Port Authority to make one or more payments as may be provided in such letter of credit, shall be deemed to be a breach of this Agreement on the part of the Lessee. Upon acceptance of such letter of credit by the Port Authority, and upon request by the Lessee made thereafter, the Port Authority will return the security deposit theretofore made under and in accordance with the provisions of paragraph (a) of this Section. The Lessee shall have the same rights during the existence of a valid letter credit to the return thereof as it would have to receive the sum set forth in paragraph (a) hereof upon expiration of the letting and fulfillment of the obligations of the Lessee under this Agreement. If the Port Authority shall make any drawing under a letter of credit held by the Port Authority hereunder, the Lessee on demand of the Port Authority and within five (5) days thereafter, shall bring the letter of credit back up to its full amount.

(b) The Lessee hereby certifies that its Federal Tax Identification Number is  
(Ex. 1) for the purposes of this Section.

(c) The Lessee acknowledges and agrees that the Port Authority reserves the right, as its sole discretion, to adjust at any time and from time to time upon thirty (30) days notice to the Lessee, the security deposit amount as set forth in paragraph (a). Not later than the effective date as set forth in said notice the Lessee shall deposit with the Port Authority the new security deposit amount as set forth in and in such form as requested by the said notice which new amount (including without limitation an amendment to or a replacement of the letter of credit) shall thereafter constitute the security deposit subject to this Section.

(d) The letter of credit is subject to the Uniform Customs and Practice for

Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500.

**Section 45. Services to the Lessee**

(a) Except as provided in this Section 45, the Port Authority shall not be obligated to perform or furnish any services or utilities whatsoever in connection with this Lease or the use and occupancy of the premises hereunder.

(b) The Port Authority shall sell, furnish and supply to the Lessee in reasonable quantities and to the extent of the capability of existing facilities 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, through existing wires, conduits and outlets, if any, at the same charge which would be made by such public utility for the same quantity used under the same conditions and in the same service classification but in no event less than an amount that would reimburse the Port Authority for its cost of obtaining and supplying electricity to the Lessee hereunder; charges shall be payable by the Lessee when billed and the quantity of electricity consumed shall be measured by the meter or meters installed for the purpose; provided, however, that if for any reason, any meter or meters fail to record the consumption of electricity, the consumption during the period such meter or meters are out of service will be considered to be the same as the consumption for a like period either immediately before or after the interruption as elected by the Port Authority. The Port Authority shall not discontinue the supply of electricity except upon thirty (30) days' notice to the Lessee and unless a supply of electricity of the same voltage, phase and cycle 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 thirty (30) days from any other person, firm or corporation.

(c) 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 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 which would reimburse the Port Authority for its costs of obtaining and supplying cold 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 meters 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.

(d) 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 its use and occupancy thereof. In the event that The City or The State of New York is now furnishing services with or without charge therefor, which are beneficial to the Lessee in its use 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.

(e) In the event the Port Authority shall provide extermination service for the enclosed areas of the premises, the Lessee agrees to utilize the same and to pay its pro rata share of the reasonable cost thereof, upon demand. This paragraph does not impose any obligation on the Port Authority to furnish such service.

(f) 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. The Port Authority shall not be obligated to perform or furnish any service whatsoever in connection with the premises at any time while the Lessee shall be in default hereunder or has breached any of the provisions hereof after the period, if any, herein granted to cure such default shall have expired. The Port Authority shall give the Lessee five (5) days' written notice prior to terminating any service.

(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 willful failure of the Port Authority) shall be grounds for any claims by the Lessee for damages, consequential or otherwise.

**Section 46. Condition of Premises**

The Lessee hereby acknowledges that it has not relied upon any representation or statement of the Port Authority or its Commissioners, officers, employees or agents as to the condition of the premises or the suitability thereof for the operations permitted on the premises by this Agreement. The Lessee, prior to the execution of this Agreement, has thoroughly examined the premises and determined them to be suitable for the Lessee's operations hereunder and the Lessee hereby agrees to take the premises in the condition they are in as of the

commencement of the term of the letting hereunder. Without limiting any obligation of the Lessee to commence operations hereunder at the time and in the manner stated elsewhere in this Agreement, the Lessee agrees that no portion of the premises will be used initially or at any time during the letting which is in a condition unsafe or improper for the conduct of the Lessee's operations hereunder so that there is possibility of injury or damage to life or property.

**Section 47. Late Charges**

If the Lessee should fail to pay any amount required under this Agreement when due to the Port Authority, including but not limited to, any payment of rental or any payment of utility or other charges, then, in such event, the Port Authority may impose (by statement or bill) a late charge with respect to each such unpaid amount for each late charge period herein below 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 during each calendar year; each late charge period shall be for a period of at least fifteen (15) calendar days except one late charge period each calendar year may be for a period of less than fifteen (but not less than thirteen) calendar days. Each late charge shall be payable immediately upon demand made at any time therefor by the Port Authority. No acceptance by the Port Authority of payment of any unpaid amount or of any unpaid late charge amount shall be deemed a waiver of the right of the Port Authority to payment of any late charge or late charges payable under the provisions of this Section, with respect to such unpaid amount. Each late charge shall be and become additional rent, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the rental as set forth in the Section of this Agreement entitled "Rental and Abatement Rates." Nothing in this Section is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) any rights of the Port Authority under this Agreement, including but not limited to, the Port Authority's rights set forth in Section 22 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 applicable to such late charges then, in such event, each such late charge payable under this Agreement shall be payable instead at such legal maximum.

**Section 48. Force Majeure**

Neither the Port Authority nor the Lessee shall be deemed to be in violation of this Lease 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 (or its contractors or subcontractors) is not responsible and which are not within its (or its contractors' or subcontractors') control; provided, however, that this provision shall not apply to failures by the Lessee to pay the rentals specified in Section 5 hereof and shall not apply to any other charges or money payments by either party; and, provided, further, that this provision shall not prevent either party from exercising any right of

termination hereunder, and shall not prevent the Lessee from exercising any right it has hereunder to an abatement of rental.

**Section 49. Use of Airport Prohibited**

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 domestic and foreign air cargo 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 premises enumerated in Section 6 hereof, then upon the occurrence of such event, the Lessee at its option shall be entitled to abatement of rentals as set forth in Section 5 of this Agreement, if any is then otherwise payable, 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 50. Automobile Parking**

Except as provided in Section 6 hereof, the Lessee shall prevent all persons from parking automobiles on the premises, except that automobiles may be permitted to be on the premises for a reasonable period of time for the purpose of discharging or picking up cargo and for official and special purposes.

**Section 51. Obligations in Connection with the Conduct of the Lessee's Business**

(a) The Lessee shall:

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

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

(3) Set up, keep and maintain in accordance with accepted accounting practice, records and books of account recording all transactions at, through or in any wise connected with the Lessee's operations hereunder, including but not limited to, an accounts receivable ledger and a general ledger and all agreements the Lessee has entered into with respect to the premises and such additional information and other records and books of account as the Port Authority may from time to time and at any time request with respect to any matter covered by this Section 51, all of which records and books of account, to the extent the same are both related to the Lessee's operations at the premises and necessary to confirm the Lessee's compliance with its obligations under the Lease other than this item 3, shall be kept for a period

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of at least seven (7) years and shall be kept at all times within the Port of New York District, which records shall show (i) the basis and supporting documents for each and every statement to be furnished hereunder by the Lessee and (ii) the revenues of whatever kind or nature received by the Lessee by or from its or any other operations hereunder (whether in the form of rental payments or otherwise). The Lessee shall furnish such other information and comply with any further directions or requirements of the Port Authority relating to the keeping and transmitting of forms, reports or other procedures covering the Lessee's operations hereunder, including but not limited to, the billing of handled airlines;

(4) 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 and audit by the officers, employees, agents and representatives of the Port Authority of such agreements and records and books of account set forth in subparagraph (3) above, 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 or performs or provides any services in connection with the premises, and any agreement or contract between the Lessee and any handled airlines.

(5) Permit the inspection by the officers, employees and representatives of the Port Authority of any equipment used by the Lessee in connection with the operations hereunder, including but not limited to, cash registers; and

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

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

**Section 52. Federal Airport Aid**

(a) The Lessee shall:

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

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

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

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

(c) The Port Authority has applied for and received a grant or grants of money from the Administrator of the Federal Aviation Administration pursuant to the Airport and Airways Development Act of 1970, as the same has been and may hereafter be amended and supplemented or superseded by similar federal legislation, and under prior federal statutes which said Act superseded and the Port Authority may in the future apply for and receive further such grants. In connection therewith, the Port Authority has undertaken and may in the future undertake certain obligations respecting its operation of the Airport and the activities of its contractors, lessees and permittees thereon. The performance by the Lessee of the covenants, promises and obligations contained in this Section 52 and in Section 53 hereof, is therefore a special consideration and inducement to the execution of this Lease by the Port Authority, and the Lessee further covenants and agrees that if the Administrator of the Federal Aviation Administration or any other governmental officer or body having jurisdiction over the enforcement of the obligations of the Port Authority in connection with the Federal Airport Aid, shall make any orders, recommendations or suggestions respecting the performance by the Lessee of such covenants, promises and obligations, the Lessee will promptly comply therewith, at the time or times when and to the extent that the Port Authority may direct.

**Section 53. Method of Operation**

(a) The principal purpose of the Port Authority in the making of this Agreement is to make available on the Airport a cargo reception, storage and distribution facility for the better accommodation, convenience and benefit of the air cargo industry and in fulfillment of the Port Authority's obligation to operate the Airport for the use and benefit of the public. Consistent with the provisions of Section 6 hereof, the Lessee hereby warrants and agrees that it will conduct a first class operation and will furnish all necessary or proper fixtures, equipment, personnel (including licensed personnel as necessary), supplies, materials and facilities, for the operation of a first class cargo facility and that it will furnish the foregoing promptly, efficiently and adequately to meet all demands therefor, on a fair, equal and non-discriminatory basis to all users thereof, and at charges which are fair, reasonable and non-discriminatory, provided that reasonable and non-discriminatory discounts, rebates, or other similar types of price reductions may be made to volume purchasers.

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

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

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

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

**Section 54. Relationship of the Parties**

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

**Section 55. Lessee's Rights Non-Exclusive**

Except as expressly provided herein with respect to the premises, neither the execution of this Lease by the Port Authority nor anything contained herein shall grant or be deemed to grant to the Lessee any exclusive rights or privileges.

**Section 56. Quiet Enjoyment**

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

**Section 57. Definitions**

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

(a) "Airport" shall mean John F. Kennedy International Airport, consisting of certain premises identified as "JFK International Airport" on Sheet JFK-1 of Exhibit A, and more particularly described in Exhibit B, annexed to the Basic Lease, and such other property and premises as may be acquired in connection with and added to such premises pursuant to the terms of the Basic Lease.

(b) "Basic Lease" shall mean the Amended and Restated Agreement of Lease of the Municipal Air Terminals between The City of New York, as Landlord, and The Port Authority of New York and New Jersey, as Tenant, dated as of November 24, 2004 and recorded in the office of the City Register of the City on December 3, 2004 under City Register File Number 2004000748687, as the same may have been or may be amended or supplemented.

(c) "Agreement" shall mean this agreement of lease.

(d) "Lease" shall mean this agreement of lease.

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

(f) "Premises" as defined in Section 1 hereof shall without limiting the generality of said Section include the land, 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, refrigeration, communications, gas and other systems, and their pipes, wires, mains, lines, tubes, conduits, equipment and fixtures, and all paving, drains, culverts, ditches and catch-basins.

(g) "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.

(h) "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.

(i) "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.

(j) "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.

(k) "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 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.

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

(m) "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.

(n) "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).

(o) "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 and unloading of passengers or cargo to or from aircraft using the Public Landing Area.

(p) "Runways" (including approaches thereto) shall mean the portion of the Airport used for the purpose of the landing and taking-off of aircraft.

(q) As used in this Agreement, "Air Cargo Service Organization" shall mean an individual or entity engaged in the business of providing freight forwarding, custom house brokering, the reception, temporary storage, consolidation and distribution of air cargo transported by aircraft to or from the Airport, and such other types of services related to the transportation or handling of cargo transported by aircraft to or from the Airport as may be approved by the Port Authority.

**Section 58. Compliance with Basic Lease**

The Lessee acknowledges that it has received a copy of the Basic Lease and, further, that the terms and provisions of the Basic Lease require or may require certain modifications to the Lease, specifically those relating to condemnation, indemnity and insurance. The Lessee covenants and agrees that upon delivery to it by the Port Authority of a supplement to the Lease which sets forth said modifications which are necessary for full compliance with the Basic Lease, the Lessee shall immediately execute said supplement and return same to the Port Authority. A failure by the Lessee to so execute and return said supplement shall constitute a material breach of the Lease.

**Section 59. Joint Periodic Condition Survey**

In addition to and without limiting Sections 8 through 14 and Sections 17, 18, 19 and 28 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, anti-pollution 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 8 through 14, 17, 19 and 28 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 without limitation all interest, costs, damages and penalties, in accordance with the provisions of Section 18 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.

(7) Notwithstanding anything to the contrary in Section 58(a) above, a Condition Survey Contract shall not include structural improvements, repairs, or alterations to the premises unless such structural improvements, repairs, or alterations are necessary to correct conditions arising out of, related to or occurring during Lessee's occupancy, use and operation of the premises or is otherwise necessary for Lessee to have fully complied with Section 12 of this Lease.

(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, 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, the Port Authority may advise the Lessee of a proposed contract including the name of the proposed contractor who will perform a Condition Survey, as defined above. 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 non response shall be deemed a concurrence and the Port Authority shall proceed with the said contract for purposes of performing a Condition Survey. 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 and that the Port Authority shall not act arbitrarily or capriciously in making such determination.

(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 only for Condition Survey work actually completed 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. 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 review and audit of the Port Authority 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 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 and the written notice of the Port Authority delivering said Report, unless the Port Authority expressly advises the Lessee to the contrary, and shall diligently continue the same to completion provided, however, that fire safety, 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 the right of the Port Authority to have the Lessee perform and complete the work required by the Report nor any such performance by the Lessee, 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 Section 19 hereof. Without limiting the foregoing, it is expressly understood and agreed that the Lessee shall not postpone or delay any action, maintenance, rebuilding or repair or other item or thing required to be taken by the Lessee under any other section of this Agreement on the basis of the provisions of this Section.

Section 60. Entire Agreement

This Agreement consists of the following: Sections 1 through 60, inclusive, Exhibit A, Exhibit B, Exhibit C, Exhibit D, Exhibit E, Exhibit M, and Schedules E and F.

It constitutes the entire agreement of the parties on the subject matter hereof and may not be changed, modified, discharged or extended except by written instrument duly executed by the Port Authority and the Lessee. The Lessee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year first above written.

ATTEST:

THE PORT AUTHORITY OF NEW YORK  
AND NEW JERSEY

JFK-KLM Cargo Lease AYD-480 Execution

[Signature]  
H.S.P. Secretary

By [Signature]  
(Title) Manager, Property and Commercial Development  
(Seal)

WITNESS:

\_\_\_\_\_  
Secretary

K.L.M. ROYAL DUTCH AIRLINES

By [Signature]  
(Title) VP Cargo Operations

[Signature]

APPROVED:  
FORM | TERMS  
[Signature] | [Signature]

10/05 10/05  
10/05 10/05

NOTARIAL CERTIFICATE

The undersigned, Cornelis Pieter Boodt, civil law notary in Amsterdam, the Netherlands, herewith certifies that:

- according to information obtained from the Trade Register of the Chamber of Commerce and Industry for Amsterdam, on this day, **KONINKLIJKE LUCHTVAART MAATSCHAPPIJ N.V.**, a public company ("*naamloze vennootschap*"), having its statutory seat at Amstelveen, the Netherlands and its office address at 1182 GP Amstelveen, Amsterdamsweg 55, is registered under file number: 33.014.286;
- according to the abovementioned Chamber of Commerce, Mr Erik Ruben Swelhelm and Mr Cornelis van Woudenberg are respectively (i) a proxy holder and a Managing Director of **KONINKLIJKE LUCHTVAART MAATSCHAPPIJ N.V.**, and (ii) in said capacities authorized to represent this company acting jointly;
- according to a Power of Attorney which has been signed by Mr E.R. Swelhelm and Mr C. van Woudenberg, which is in my possession, Mr Jan de Vegt is authorized to represent **KONINKLIJKE LUCHTVAART MAATSCHAPPIJ N.V.** with regard to the attached Agreement of Lease on behalf of **KONINKLIJKE LUCHTVAART MAATSCHAPPIJ N.V.** and further to do all such other things as he deems necessary in this connection;
- the signature of Mr Jan de Vegt on the attached document has been legalized by me.

Amsterdam, May 20, 2005.

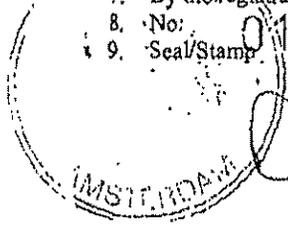


A large, stylized handwritten signature in black ink, likely belonging to the notary, Cornelis Pieter Boodt.

NautaDutilh N.V. has its seat at Rotterdam, The Netherlands and is registered in the Commercial Register in Rotterdam under number 24138323. All services and other work are carried out under a contract for professional services ("*overeenkomst van opdracht*") with NautaDutilh N.V., subject to the general conditions of NautaDutilh N.V. These general conditions include, among other provisions, a limitation of liability clause and have been filed with the Rotterdam Court of First Instance. They can be consulted at [www.nautadutilh.com](http://www.nautadutilh.com) and will be provided free of charge upon request.  
ABN AMRO Bank 45.24.77.999; ING Bank 69.74.64.008; Postbank 57683; Account Name: Kwadrantsrekening Notarissen Amsterdam NautaDutilh N.V.

**APOSTILLE**  
Convention de La Haye du 5 octobre 1961

1. Country: THE NETHERLANDS  
This public document
2. Has been signed by: mr. C.P. Boodt
3. Acting in the capacity of: notaris te Amsterdam
4. Bears the seal/stamp of  
mr. C.P. Boodt  
Certified (0 MPA 7005)
5. At Amsterdam
6. The
7. By the registrar of the Court in Amsterdam
8. No: 011088
9. Seal/Stamp
10. Signature  
mw. L.G. van der Horst



*L.G. van der Horst*

**EXEMPTION (4) – DRAWINGS OF NON-PUBLIC AREAS**