

Torres Rojas, Genara

From: mgribben@seiu32bj.org
Sent: Tuesday, July 01, 2014 4:36 PM
To: Duffy, Daniel
Cc: Torres Rojas, Genara; Van Duyne, Sheree; American, Heavyn-Leigh
Subject: Freedom of Information Online Request Form

Information:

First Name: Maggie
Last Name: Gribben
Company: SEIU 32BJ
Mailing Address 1: 25 W. 18th St
Mailing Address 2:
City: New York
State: NY
Zip Code: 10011
Email Address: mgribben@seiu32bj.org
Phone: 212-388-3602
Required copies of the records: Yes

List of specific record(s):

To Whom it May Concern: I am requesting the current lease and all attachments, exhibits and amendments between British Airways and the Port Authority of New York and New Jersey at Newark Liberty International Airport. Thank you, Maggie Gribben SEIU 32BJ

THE PORT AUTHORITY OF NY & NJ

FOI Administrator

July 8, 2014

Ms. Maggie Gribben
SEIU 32BJ
25 W. 18th Street
New York, NY 10011

Re: Freedom of Information Reference No. 15047

Dear Ms. Gribben:

This is in response to your July 1, 2014 request, which has been processed under the Port Authority's Freedom of Information Code (the "Code", copy attached) for a copy of "the current lease and all attachments, exhibits and amendments between British Airways and the Port Authority of New York and New Jersey at Newark Liberty International Airport."

Material responsive to your request and available under the Code can be found on the Port Authority's website at <http://www.panynj.gov/corporate-information/foi/15047-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

Attachment

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

Lease No. ANC-120

AGREEMENT OF LEASE

Between

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

And

BRITISH AIRWAYS PLC

Dated: As of November 1, 2010

THIS AGREEMENT OF LEASE, made as of the first day of November 2010 by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, a body corporate and politic created by Compact between the States of New York and New Jersey with the consent of the Congress of the United States of America and having an office and place of business at 225 Park Avenue South, New York, New York 10003 (the "**Port Authority**") and BRITISH AIRWAYS PLC, a company organized and existing under the laws of England, with an office and place of business at 75-20 Astoria Blvd., Jackson Heights, New York 11370 (the "**Lessee**"), whose representative is Ken Deming, Manager,

WITNESSETH, That:

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

ARTICLE I. The Port Authority hereby lets to the Lessee and the Lessee hereby hires and takes from the Port Authority, at Newark Liberty International Airport (the "**Airport**" or the "**Facility**") in the City of Newark, County of Essex, State of New Jersey, the following described premises:

the space on the INS Level of the Terminal B2 connector of the Facility, as shown in square hatching on the drawing attached hereto as Exhibit A and hereby made a part hereof.

together with the buildings, structures, fixtures, improvements and other property; if any, of the Port Authority located or to be located therein or thereon, the said areas, buildings, structures, fixtures, improvements and other property of the Port Authority being hereinafter called the "**Premises**". The Port Authority and the Lessee hereby acknowledge that the Premises constitute non-residential property.

ARTICLE II. The term of the letting hereunder (the "**Term**") shall commence at 12:01 o'clock a.m. on November 1, 2010 (the "**Commencement Date**") and, unless sooner terminated, shall expire at 11:59 o'clock p.m. on October 31, 2021 (the "**Expiration Date**").

ARTICLE III. The Lessee shall pay a basic rental as provided in Special Endorsement No. 1 hereto.

ARTICLE IV. The Lessee shall use and occupy the Premises for the following purposes only, and for no other purpose whatsoever:

As a first class passenger lounge for the furnishing of special services to the Lessee's passengers, invitees and guests in connection with the Lessee's business of transportation of persons by aircraft, as well as to the passengers, invitees and

guests of other international airlines operating at the Airport who desire such service in connection with such airlines' business of transportation of persons by aircraft, such special services to include selling at retail or dispensing, for consumption on premises, food, alcoholic and non-alcoholic beverages through the services of a Port Authority operator who has been authorized through agreement with the Port Authority to operate such establishments at the Airport.

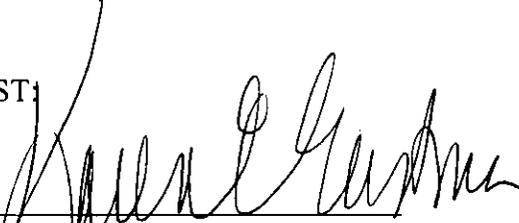
ARTICLE V. The Port Authority and the Lessee agree that the letting shall be subject to and in accordance with, and the Lessee and the Port Authority each for itself agrees that it will perform all the obligations imposed upon it by, the Terms and Conditions (Sections 1 through 34) hereof and the following endorsements and attachments, all annexed hereto and made a part hereof, with the same effect as if the same were set forth herein in full:

<u>TITLE</u>	<u>NUMBER</u>	<u>DATE</u>
Newark Liberty International Airport Special Endorsements Exhibit A Schedule E Schedule F Schedule G	Standard Endorsement No. 19.3	

ARTICLE VI. The within, together with the said Terms and Conditions, endorsements and attachments, constitutes the entire agreement of the Port Authority and the Lessee 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.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Port Authority and the Lessee hereto have executed these presents as of the date first written above.

ATTEST:


Secretary

THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY

David Kagan
Assistant Director


Business Properties & Airport Development
(name)
(title)

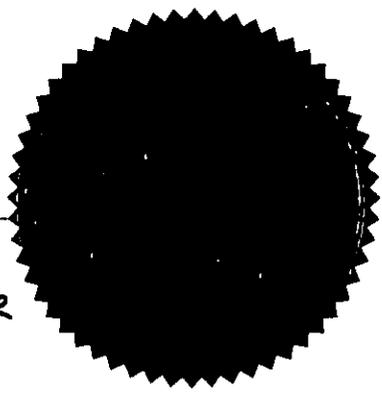
ATTEST:


(name)
Secretary

BRITISH AIRWAYS PLC

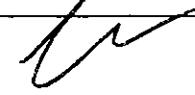


(name) WILLIAM WALSH
(title) CHIEF EXECUTIVE OFFICER
(Corporate Seal)





Neil Evans
SVP FINANCE

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

JJL

(c) No statement or provision in the said Rules and Regulations shall be deemed a representation or promise by the Port Authority that the services or privileges described shall be or remain available, or that the charges, prices, rates or fees stated therein shall be or remain in effect throughout the letting, all of the same being subject to change by the Port Authority from time to time whenever it deems a change advisable.

SECTION 4. *Method of Operation*

(a) In the performance of its obligations hereunder and in the use of the Premises the Lessee shall conduct its operations in an orderly and proper manner, so as not to annoy, disturb or be offensive to others near the Premises or at the Facility and within twenty four hours remove the cause of any objection made by the Port Authority relative to the demeanor, conduct or appearance of any of the employees of the Lessee or others on the Premises with the consent of the Lessee.

(b) The Lessee shall not allow any garbage, debris or other waste materials (whether solid or liquid) to collect or accumulate on the Premises and the Lessee shall remove from the Premises and from the Facility all garbage, debris and other waste materials (whether solid or liquid) arising out of its operations hereunder. Any such material which may be temporarily stored shall be kept in suitable waste receptacles, the same to be made of metal and equipped with tight-fitting covers, and in any case to be designed and constructed to contain safely the waste material placed by the Lessee therein. The receptacles shall be provided and maintained by the Lessee and shall be kept covered except when being filled or emptied. The Lessee shall use extreme care when effecting removal of all such material, shall effect such removal at such times and by such means as first approved by the Port Authority, and shall in no event make use of any facilities or equipment of the Port Authority except with the prior consent thereof.

(c) The Lessee shall not do or permit to be done anything which may interfere with the effectiveness or accessibility of the utility, mechanical, electrical and other systems installed or located anywhere at the Facility.

(d) The Lessee shall not commit any nuisance or permit its employees or others on the Premises with its consent to commit or create or continue or tend to create any nuisance on the Premises or in or near the Facility.

(e) The Lessee shall take all reasonable measures to keep the sound level of its operations as low as possible and to eliminate vibrations tending to damage the Premises or the Facility or any part thereof.

(f) The Lessee shall not cause or permit to be caused or produced upon the Premises, to permeate the same or to emanate therefrom, any unusual, noxious or objectionable smokes, gases vapors or odors.

(g) The Lessee shall not do or permit to be done any act or thing at the Facility which shall or might subject the Port Authority to any liability or responsibility for injury to any person or persons or damage to any property.

(h) The Lessee shall not overload any floor, roof, land surface, bulkhead, pavement, landing, pier or wharf at the Facility, and shall repair, replace or rebuild any such, including but not limited to supporting members, damaged by overloading. For the purpose of this paragraph (h), any placing on the Premises of a load per square foot in excess of the number of pounds avoirdupois, if any, stated in any Special Endorsement hereto shall constitute overloading, but an overload may be created by a lesser weight. Nothing in this paragraph or elsewhere in this Agreement shall be or be construed to be a representation by the Port Authority of the weight capacity of any part of the Facility.

(i) The Lessee shall not do or permit to be done any act or thing upon the Premises or at the Facility which (1) will invalidate or conflict with any fire insurance policies covering the Premises or any part thereof, or the Facility, 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 permitted by this Agreement, or (3) which will increase the rate of any fire insurance, extended coverage or rental insurance on the Facility or any part thereof or on the contents of any building thereon. The Lessee shall promptly observe, comply with and execute the provisions of any and all present and future rules and regulations, requirements, orders and directions of the National

Fire Protection Association and, if the Premises are located in New York, of the Insurance Services Office of New York, or, if the Premises are located in New Jersey, of the Insurance Services Office of New Jersey, 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 this Agreement relating to construction by the Lessee, make any and all structural and non-structural improvements, alterations or repairs of the Premises that may be required at any time hereafter by any such present or future rule, regulation, requirement, order or direction. If by any reason of any failure on the part of the Lessee to comply with the provisions of this paragraph any fire insurance, extended coverage or rental insurance rate on the Premises or any part thereof, or on the Facility or any part thereof, shall at any time be higher than it otherwise would be, then the Lessee shall pay to the Port Authority that part of all premiums paid by the Port Authority which shall have been charged because of such violation or failure by the Lessee.

(j) From time to time and as often as required by the Port Authority, the Lessee shall conduct pressure, water-flow, and other appropriate tests of the fire extinguishing system and fire-fighting equipment on the Premises whether furnished by the Port Authority or by the Lessee. The Lessee shall keep all fire-fighting and fire extinguishing equipment well supplied with a fresh stock of chemicals and with sand, water or other materials as the case may be for the use of which such equipment is designed, and shall train its employees in the use of all such equipment, including in such training periodic drills.

SECTION 5. *Signs*

(a) Except with the prior consent of the Port Authority, the Lessee shall not erect, maintain or display any advertising, signs, posters or similar devices at or on the Premises or elsewhere at the Facility.

(b) Upon demand by the Port Authority, the Lessee shall remove, obliterate, or paint out any and all advertising, signs, posters and similar devices placed by the Lessee on the Premises or elsewhere on the Facility and in connection therewith at the expiration or earlier termination of the letting, shall restore the Premises and the Facility to the same condition as at the commencement of the letting. In the event of a failure on the part of the Lessee so to remove, obliterate or paint out each and every sign or piece of advertising and so to restore the Premises and the Facility, the Port Authority may perform the necessary work and the Lessee shall pay the costs thereof to the Port Authority on demand.

SECTION 6. *Indemnity*

(a) The Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, employees and representatives, from and against (and shall reimburse the Port Authority for the Port Authority's costs and expenses including legal expenses, whether those of the Port Authority's Law Department or otherwise, incurred in connection with the defense of) all claims and demands of third persons, including but not limited to claims and demands for death or personal injuries, or for property damages, arising out of the use or occupancy of the Premises by the Lessee or by others with its consent, or out of any other acts or omissions of the Lessee, its officers, employees, guests, representatives, customers, contractors, invitees or business visitors on the Premises, or arising out of the acts or omissions of the Lessee, its officers and employees elsewhere at the Facility, claims and demands of the party from which the Port Authority derives its rights in the Facility for indemnification arising by operation of law or through agreement of the Port Authority with such party.

(b) If so directed, the Lessee shall at its own expense defend any suit based on any claim or demand referred to in the foregoing paragraph (a) (even if such claim or demand is groundless, false or fraudulent), and in handling such it shall not, without obtaining the prior written consent of 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 governmental nature or the provisions of any statutes respecting the Port Authority.

SECTION 7. Maintenance and Repair

(a) The Lessee shall at all times keep the Premises clean, and in an orderly condition and appearance, together with all the fixtures, equipment and personal property of the Lessee located in or on the Premises.

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

(c) With respect to all parts of the Premises, including without limitation such of the following as are or may be during the Term located in or on the Premises; fences, the exterior and interior of the building walls the exterior and interior and operating mechanisms of and attachments to windows and skylights, screens, roofs, foundations, steel work, columns, the exterior and interior and operating mechanisms of and attachments to doors, partitions, floors, ceilings, inside and outside paved and unpaved areas, glass of every kind, and the utility, mechanical, electrical and other systems, the Lessee shall take the same good care of the Premises that would be taken by a reasonably prudent owner who desired to keep and maintain the same so that at the expiration or termination of the letting and at all times during the letting, the same (or a reconstruction of all or any part thereof) will be in as good condition as at the commencement thereof (or, in the case of improvements made during the letting hereunder, in as good condition as at the time of the installation or construction thereof), except for reasonable wear which does not adversely affect the watertight condition or structural integrity of the building or other structures on the Premises or adversely affect the efficient or the proper utilization of any part of the Premises. To that end, the Lessee shall make frequent periodic inspections and, from time to time as the necessity therefor arises and regardless of the cause of the condition requiring the same, the Lessee shall perform all necessary preventive maintenance including but not limited to painting (the exterior of the building, areas of joint or common use and areas visible to the general public to be painted in colors which have been approved by the Port Authority), and, except under circumstances as set forth in paragraph (a) of Section 8 of these Terms and Conditions, the Lessee shall make all necessary repairs and replacements and do all necessary rebuilding with respect to all parts of the Premises, all of which shall be in quality equal to the original in materials and workmanship and regardless of whether such repairs and replacements are structural or non-structural, ordinary or extraordinary, foreseen or unforeseen. The Lessee shall commence to perform each of its obligations hereunder within twenty days after notice from the Port Authority and shall thereafter continue the same to completion with reasonable diligence.

(d) The obligation of the Lessee as set forth in paragraphs (b) and (c), of this Section, in the event of damage or destruction covered by any contract of insurance under which the Port Authority is the insured, is hereby released to the extent that the loss is recouped by actual payment to the Port Authority of the proceeds of such insurance; *provided, however*, that, if this release shall invalidate any such policy of insurance or reduce, limit or void the rights of the Port Authority thereunder, then the release shall be void and of no effect.

SECTION 8. Casualty

(a) In the event that, as a result of a casualty insured against in favor of the Port Authority under the standard form of fire insurance policy and extended coverage endorsement carried by it on any structure, building or portion of a building which is or is a part of the Premises, the same is damaged (without the fault of the Lessee, its officers, employees, or others on or at the Premises with its consent) so as to render it untenable in whole or substantial part, then

(1) if, in the opinion of the Port Authority, the necessary repairs or rebuilding can be completed within ninety (90) days after the occurrence of the damage, the Port Authority shall repair or rebuild with due diligence, and the rental hereunder shall be abated as provided in this Agreement, for the period from the occurrence of the damage to the completion of the repairs or rebuilding, whether or not the work of repair or rebuilding is actually completed within the said ninety (90) days; or

(2) if, in the opinion of the Port Authority, such repairs or rebuilding cannot be completed within ninety (90) days after the occurrence of the damage or if one or more of the structures or buildings which are a part of the Premises or the entire Premises require rebuilding, then the Port Authority shall have options: (i) to proceed with due diligence to repair or to rebuild as necessary or (ii) to terminate the letting as to the damaged structure or structures, building or buildings or portion thereof only; or (iii) to cancel this Agreement and terminate the letting as to the entire Premises; and the rental payable under this Agreement shall be abated, as provided in this Agreement, either, as the case may require, for the period from the occurrence of the damage to the completion of repairs and rebuilding, or for the period from the occurrence of the damage to the effective date of termination, for the area or areas involved.

(b) "Substantial part" shall mean for the purpose of this Section at least ^{Exemption (2.a.)} of the usable floor space in the structure or building or part thereof comprising the Premises, or, if there is more than one structure or building on the Premises, at least ^{Exemption (2.a.)} of the aggregate usable floor space comprising the Premises in all of the structures and buildings covered by insurance.

(c) The parties hereby stipulate that if the Premises are in New Jersey neither the provisions of Titles 46:8-6 and 46:8-7 of the Revised Statutes of New Jersey nor those of any other similar statute shall extend or apply to this Agreement and if the Premises are in New York, 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.

(d) In the event of damage to or a partial or total destruction of the Premises, the Lessee shall within five (5) days of the occurrence commence to remove all of its damaged property and all debris thereof from the Premises or from the portion thereof destroyed and thereafter shall diligently continue such removal and if the Lessee does not perform its obligation hereunder, the Port Authority may remove such debris and dispose of the same and may remove such property to a public warehouse for deposit or may 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 9. *Assignment and Sublease*

(a) The Lessee covenants and agrees that it will not sell, convey, transfer, assign, mortgage or pledge this Agreement or any part thereof, or any rights created thereby or the letting thereunder or any part thereof.

(b) The Lessee shall not sublet the Premises or any part thereof.

(c) If the Lessee assigns, sells, conveys, transfers, mortgages, pledges or sublets in violation of subdivisions (a) or (b) of this Section or if the Premises are occupied by anybody other than the Lessee, the Port Authority may collect rent from any assignee, sublessee or anyone who claims a right to this Agreement or letting or who occupies the Premises and shall apply the net amount collected to the rental herein reserved; and no such collection shall be deemed a waiver by the Port Authority of the covenants contained in subdivisions (a) and (b) of this Section nor an acceptance by the Port Authority of any such assignee, sublessee, claimant or occupant as tenant, nor a release of the Lessee by the Port Authority from the further performance by the Lessee of the covenants contained herein.

(d) The Lessee further covenants and agrees that it will not use or permit any person whatsoever to use the Premises or any portion thereof for any purpose other than as provided in Article IV of this Agreement.

SECTION 10. *Condemnation*

(a) In any action or other proceeding by any governmental agency or agencies for the taking for a public use of any interest in all or part of the Premises, or in case of any deed, lease or other conveyance in lieu thereof (all of which are in this Section referred to as "taking or conveyance"), the Lessee shall not be entitled to assert any claim to any compensation, award or part thereof made or to be made therein or therefor or any claim to any consideration or rental or any part thereof paid therefor, or to institute any action or proceeding or to assert any claim against such agency or agencies or against the Port Authority for any such taking or conveyance, it being understood and agreed between the parties hereto that the Port Authority shall be entitled to all compensation or awards made or to be made or paid, and all such consideration or rental, free of any claim or right of the Lessee.

(b) In the event that all or any portion of the Premises is required by the Port Authority to comply with any present or future governmental law, rule, regulation, requirement, order or direction, the Port Authority may by notice given to the Lessee terminate the letting with respect to all or such portion of the Premises so required. Such termination shall be effective on the date specified in the notice. The Lessee hereby agrees to deliver possession of all or such portion of the Premises so required upon the effective date of such termination 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. No taking by or conveyance to any governmental authority as described in paragraph (a) of this Section, nor any delivery by the Lessee nor taking by the Port Authority pursuant to this paragraph, 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.

(c) In the event that the taking or conveyance covers the entire Premises, or in the event that the letting is terminated with respect to the entire Premises pursuant to paragraph (b) of this Section, then this Agreement shall, as of the date possession is taken by such agency or agencies from the Port Authority, or as of the effective date of such termination, cease and determine in the same manner and with the same effect as if the said date were the original date of expiration hereof.

(d) In the event that the taking or conveyance covers a part only of the Premises, or in the event that the letting is terminated pursuant to paragraph (b) of this Section with respect to a part only of the Premises, then the letting as to such part shall, as of the date possession thereof is taken by such agency or agencies, or as of the effective date of such termination, cease and determine in the same manner and with the same effect as if the Term had on that date expired, and the basic rental shall be abated as provided hereinafter.

(e) In the event that the taking or conveyance or the delivery by the Lessee or taking by the Port Authority pursuant to paragraph (b) of this Section covers Exemption (2.a.) or more of the total usable area of the Premises including both open and enclosed space, then the Lessee and the Port Authority shall each have an option exercisable by notice given within ten (10) days after such taking or conveyance to terminate the letting hereunder, as of the date of such taking, and such termination shall be effective as if the date of such taking were the original date of expiration hereof.

SECTION 11. *Construction by the Lessee*

Except with the prior consent of the Port Authority, the Lessee shall not erect any structures, make any improvements or do any other construction work on the Premises or alter, modify, or make additions, improvements or repairs to or replacements of, any structure now existing or built at any time during the letting, or install any fixtures, and in the event any construction, improvement, alteration, modification, addition, repair or replacement is made with or without such consent and unless the consent of the Port Authority shall expressly provide otherwise, the same shall immediately become the property of the Port Authority, and the Lessee shall have no right to remove the same either during the letting or at the expiration thereof unless the Port Authority, at any time prior to the expiration of the Term, or any extension or renewal thereof, or within sixty (60) days after expiration or earlier termination of the Term, shall give notice to the Lessee to remove the same, or to cause the same to be changed to

the satisfaction of the Port Authority, in which case the Lessee agrees to remove the same, or change it in compliance with such notice. In case of any failure on the part of the Lessee to comply with such notice, the Port Authority may effect the removal or change, and the Lessee hereby agrees to pay the cost thereof to the Port Authority upon demand.

SECTION 12. *Additional Rent and Charges*

(a) If the Port Authority has paid any sum or sums or has incurred any obligations or expense which the Lessee has agreed to pay or reimburse the Port Authority for, or if the Port Authority is required or elects to pay any sum or sums or incurs any obligations or expense by reason of the failure, neglect or refusal of the Lessee to perform or fulfill any one or more of the conditions, covenants or agreements contained in this Agreement or as a result of an act or omission of the Lessee contrary to the said conditions, covenants and agreements, the Lessee shall pay to the Port Authority 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 basic rental as set forth in Article III hereof.

(b) For all purposes under this Section and in any suit, action or proceeding of any kind between the parties hereto, any receipt showing any payment of sum or sums by the Port Authority for any work done or material furnished shall be *prima facie* evidence against the Lessee that the amount of such payment was necessary and reasonable. Should the Port Authority elect to use its operating and maintenance staff in performing any work and to charge the Lessee with the cost of same, any time report of any employee of the Port Authority showing hours of labor or work allocated to such work, or any stock requisition of the Port Authority showing the issuance of materials for use in the performance thereof shall likewise be *prima facie* evidence against the Lessee that the amount of such charge was necessary and reasonable.

(c) The term "cost" in this Agreement shall mean and include: (1) Payroll costs, including contributions to the Retirement System, or the cost of participation in other pension plans or systems, insurance costs, sick leave pay, holiday, vacation and authorized absence pay; (2) Cost of materials and supplies used; (3) Payments to contractors; (4) Any other direct costs; and (5) Exemption (2.a.) of the sum of the foregoing.

SECTION 13. *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 or otherwise.

(b) Without limiting the generality of the foregoing, the Port Authority, by its officers, employees, agents, representatives, and contractors, and furnishers of utilities and other services, shall have the right, for its own benefit, for the benefit of the Lessee, or for the benefit of others than the Lessee at the Facility, to maintain existing and future utility, mechanical, electrical and other systems and to enter upon the Premises at all reasonable times to make such repairs, replacements or alterations as may, in the opinion of the Port Authority, be deemed necessary or advisable and, from time to time, to construct or install over, in or under the Premises new systems or parts thereof, and to use the Premises for access to other parts of the Facility 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 the access may be had to the system or part thereof for its inspection, maintenance or repair, and, if the Lessee shall fail to so move such property after direction from the Port Authority to do so, the Port Authority may move it and the Lessee hereby agrees to pay the cost of such moving upon demand.

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

(e) At any time and from time to time during ordinary business hours within the three (3) months next preceding the expiration of the letting, the Port Authority, by its agents and employees, whether or not accompanied by prospective lessees, occupiers or users of the Premises, shall have the right to enter thereon for the purpose of exhibiting and viewing all parts of the same and during such three- month period the Port Authority may place and maintain on the Premises, the usual "To Let" signs, which signs the Lessee shall permit to remain without molestation.

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

(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 14. *Limitation of Rights and Privileges Granted*

(a) The Premises are let to the Lessee and the Lessee takes the same subject to all the following: (i) easements, restrictions, reservations, covenants and agreements if any, to which the Premises may be subject, rights of the public in and to any public street (ii) rights, if any, of any enterprise, public or private which is engaged in furnishing heating, lighting, power, telegraph, telephone, steam, or transportation services and of the municipality and State in which the Premises are located, (iii) permits, licenses, regulations and restrictions, if any, of the United States, the municipality or State in which the Premises are located, or other governmental authority

(b) No greater rights or privileges with respect to the use of the Premises or of the Facility 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.

(c) Nothing in this Agreement contained shall grant to the Lessee any rights whatsoever in the air space above the roof of the building or buildings or portion of a building or buildings, if any are included in the Premises, (except to the extent required in either case for the performance of any of the obligations of the Lessee hereunder), or more than twenty feet (20') above the present ground level of any open area included in the Premises.

SECTION 15. *Prohibited Acts*

(a) Unless otherwise expressly permitted so to do, 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

TERMS AND CONDITIONS

SECTION 1. *Ingress and Egress*

The Lessee shall have the right of ingress and egress between the Premises and the city streets outside the Facility. Such right shall be exercised by means of such pedestrian or vehicular ways to be used in common with others having rights of passage within the Facility, as may from time to time be designated by the Port Authority for the use of the public. The use of any such way shall be subject to the rules and regulations of the Port Authority which are now in effect or which may hereafter be promulgated for the safe and efficient operation of the Facility. The Port Authority may, at any time, temporarily or permanently close, or consent to or request the closing of, any such way or any other area at, in or near the Facility presently or hereafter used as such, so long as a means of ingress and egress as provided above remains available to the Lessee. The Lessee hereby releases and discharges the Port Authority, and all municipalities and other governmental authorities, and their respective successors and assigns, of and from any and all claims, demands, or causes of action which the Lessee may now or at any time hereafter have against any of the foregoing, arising or alleged to arise out of the closing of any way or other area, whether within or outside the Facility. The Lessee shall not do or permit anything to be done which will interfere with the free access and passage of others to space adjacent to the Premises or in any streets, ways and walks near the Premises.

SECTION 2. *Governmental and Other Requirements*

(a) The Lessee shall procure from all governmental authorities having jurisdiction of the operations of the Lessee hereunder, all licenses, certificates, permits or other authorization which may be necessary for the conduct of such operations.

(b) The Lessee shall promptly observe, comply with and execute the provisions of any and all present and future governmental laws, rules, regulations, requirements, orders and directions which may pertain or apply to its operations or the use and occupancy of the Premises hereunder, and in addition shall make all improvements, repairs and alterations which may be so required.

(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 in or near the Facility and proper operation by the Lessee. Such provision herein is not to be construed as a submission by the Port Authority to the application to itself of any such requirements.

SECTION 3. *Rules and Regulations*

(a) The Lessee covenants and agrees to observe and obey (and to compel its officers, employees and others on the Premises with its consent to observe and obey) the Rules and Regulations of the Port Authority as now supplemented and now in effect, and such further reasonable rules and regulations (including amendments and supplements thereto) for the government of the conduct and operations of the Lessee as may from time to time during the letting be promulgated by the Port Authority for reasons of safety, health, or preservation of property, or for the maintenance of the good and orderly appearance of the Premises, or for the safe or efficient operation of the Facility. The Port Authority agrees that, except in cases of emergency, it will give notice to the Lessee of every such further rule or regulation at least five (5) 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 by either delivery of a copy, or by publication in a newspaper published in the Port of New York District or by making a copy available at the office of the Secretary of the Port Authority.

not included in the above categories, or of any equipment or device for the furnishing to the public of service of any kind, including without limitation telephone pay-stations.

(b) The Port Authority, by itself or by contractors, lessees or permittees, shall have the exclusive right to install, maintain and receive and retain the revenues from all coin-operated or other machines or devices for the sale of merchandise of all types, or for the rendering of services, which may be operated on the Premises; *provided, however,*

that no such machine or device shall be installed except upon the request of the Lessee. This provision shall not be construed to confer upon the Lessee any right to have such machine installed except at the sole discretion of the Port Authority.

SECTION 16. Termination

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

(1) The Lessee shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or

(2) By order or decree of a court the Lessee shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or, if the Lessee is a corporation, by any of its stockholders, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof; or

(3) 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 thirty (30) days after the filing thereof; or

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

(5) The Lessee, if a corporation, shall, without the prior 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

(6) If the Lessee is a partnership, and the said partnership shall be dissolved as the result of any act or omission of its partners or any of them, or by operation of law or the order or decree of any court having jurisdiction, or for any other reason whatsoever; or

(7) 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, 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 fifteen (15) days; or

(8) The Lessee shall voluntarily abandon, desert or vacate the Premises or discontinue its operations at the Premises or at the Facility 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 from conducting its operations on the Premises, regardless of the fault of the Lessee; or

(9) Any lien shall be filed against the Premises because of any act or omission of the Lessee and shall not be discharged within twenty (20) days; or

(10) The Lessee shall fail duly and punctually to pay the rental or to make any other payment required hereunder when due to the Port Authority; or

(11) 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 ten (10) days after its 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 ten (10) days after receipt of notice and continues such performance without interruption except for causes beyond its control);

then upon the occurrence of any such event or at any time thereafter during the continuance thereof, the Port Authority may by five (5) days' notice terminate the letting and the Lessee's rights hereunder, 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) If any of the events enumerated in paragraph (a) of this Section shall occur prior to the commencement of the letting, the Lessee shall not be entitled to enter into possession of the Premises, and the Port Authority, upon the occurrence of any such event, or at any time thereafter, during the continuance thereof, by twenty-four (24) hours' notice, may cancel the interest of the Lessee under this agreement, such cancellation to be effective upon the date specified in such notice.

(c) 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. 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 17. *Right of Re-entry*

The Port Authority shall, as an additional remedy upon the giving of a notice of termination as provided in Section 16 of these Terms and Conditions, have the right to re-enter the Premises and every part thereof upon the effective date of termination without further notice of any kind, and may regain and resume possession either with or without the institution of summary or any other legal proceedings or otherwise. Such re-entry, or regaining or resumption of possession, however, shall not in any manner affect, alter or diminish any of the obligations of the Lessee under this Agreement, and shall in no event constitute an acceptance of surrender.

SECTION 18. *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 19. *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 16 of these Terms and Conditions, or the interest of the Lessee shall have been cancelled pursuant thereto, or in the event that the Port Authority has re-entered, regained or resumed possession of the Premises in accordance with the provisions of Section 17 of these Terms and Conditions, all of the obligations of the Lessee under this Agreement shall survive such termination or cancellation, re-entry, regaining or resumption of possession and shall remain in full force and effect for the full term of the letting, through the Expiration Date, as originally fixed in Article II hereof, and the amount or mounts 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) an account of the Lessee's rental obligations, shall be the sum of the following:

(1) The amount of the total of all annual rentals, less the installments thereof prior to the effective date of termination except that the credit to be allowed for the installment paid 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 a 30-day month; and

(2) An amount equal to all expenses incurred by the Port Authority in connection with regaining possession and restoring and reletting the Premises, for legal expenses, boiler insurance premiums, if any, putting the Premises in order, including without limitation cleaning, decorating and restoring (on failure of the Lessee to restore), maintenance and brokerage fees.

SECTION 20. *Reletting by the Port Authority*

The Port Authority, upon termination or cancellation pursuant to Section 16 of these Terms and Conditions, or upon any re-entry, regaining or resumption of possession pursuant to Section 17 of these Terms and Conditions, 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 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 Section 16 of these Terms and Conditions, or upon re-entry, regaining or resumption of possession pursuant to Section 17 of these Terms and Conditions have the right to repair and to make structural or other changes in the Premises, including changes which alter the character of the Premises and the suitability thereof for the purposes 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 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 Premises or portion thereof during the balance of the term of the letting, through the Expiration Date, 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 itself during such period actually use and occupy, all expenses, costs and disbursements incurred or paid by the Port Authority in connection therewith. No such reletting or such use and occupancy shall be or be construed to be an acceptance of a surrender.

SECTION 21. Remedies to Be Nonexclusive

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 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 22. Surrender

(a) The Lessee covenants and agrees to yield and deliver peaceably to the Port Authority possession of the Premises on the date of the cessation of the letting, whether such cessation be by termination, expiration or otherwise, promptly and in the same condition as at the commencement of the letting, reasonable wear arising from use of the Premises to the extent permitted elsewhere in this Agreement, excepted.

(b) Unless the same are required for the performance by the Lessee of its obligations hereunder, the Lessee shall have the right at any time during the letting to remove from the Premises, and, on or before the expiration or earlier termination of the letting, shall so remove its equipment, removable fixtures and other personal property, and all property of third persons for which it is responsible, repairing all damage caused by such removal. If the Lessee shall fail to remove such 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 may retain the same in its own possession and in either event may sell the same at public auction, the proceeds of which shall be applied: first, to the expenses of removal, including repair required thereby, and of 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, repair, storage and sale shall exceed the proceeds of sale, the Lessee shall pay such excess to the Port Authority upon demand. The Lessee shall indemnify the Port Authority against all claims based on Port Authority action hereunder.

SECTION 23. 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 24. Notices

(a) All notices, permissions, requests, consents and approvals given or required to be given to or by either party shall be in writing, and all such notices and requests shall be (i) personally delivered to the party or to the duly designated officer or representative of such party, or (ii) delivered to an office or residence of such party, officer or representative during regular business hours, or (iii) delivered to an office or the residence of such party, officer or representative, or (iv) delivered to the Premises, or (v) forwarded to such party or representative at the office or residence address by registered mail or by a nationally recognized overnight courier service. The Lessee shall designate an office within the Port of New York District and an officer or representative whose regular place of business is at such office. Until further notice, the Port Authority hereby designates its Executive Director, and the Lessee designates the person whose name appears on the first page of this Agreement as their respective officers or representatives 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, the address of which is set forth on the first page of this Agreement, as their respective offices where notices and requests may be served.

(b) If any notice is mailed or delivered, the giving of such notice shall be complete upon receipt or, in the event of a refusal by the addressee, upon the first tender of the notice to the addressee or at the address thereof.

SECTION 25. General

(a) Wherever in this Agreement the Lessee agrees or is required to do or has the right to do, any act or thing, the following shall apply:

(1) If the Lessee is a corporation, its obligation shall be performed by it and its rights shall be exercised only by its officers and employees or

(2) If the Lessee is an unincorporated association, or a "Massachusetts" or business trust, its obligations shall be performed by and its rights shall be exercised only by it acting only through the medium of its members, trustees, officers and employees or

(3) If the Lessee is a partnership, its obligations shall be performed and its rights shall be exercised by its partners and employees only or

(4) If the Lessee is an individual, his obligations shall be performed and his rights shall be exercised by himself and his employees only or

(5) If the Lessee is a limited liability company, its obligations shall be performed by and its rights shall be exercised by it acting only through the medium of its managers, members and employees;

(6) None of the provisions of this paragraph (a) shall be taken to alter, amend or diminish any obligation of the Lessee assumed in relation to its invitees, business visitors, agents, representatives, contractors, customers, guests, or other persons firms or corporations doing business with it or using or on or at the Premises with its consent.

(b) If more than one individual or other legal entity is the Lessee under this Agreement, each and every obligation hereof shall be the joint and several obligation of each such individual or other legal entity.

(c) Unless otherwise stated in Article IV on page 2 of this Agreement, the rights of user thereby granted to the Lessee with respect to the Premises shall be exercised by the Lessee only for its own account and, without limiting the generality of the foregoing, shall not be exercised as agent, representative, factor, broker, forwarder, bailee, or consignee without legal title to the subject matter of the consignment.

(d) The Lessee's representative, hereinbefore specified in this Agreement, (or such substitute as the Lessee may hereafter designate in writing) shall have full authority to act for the Lessee in connection with this Agreement and any things done or to be done hereunder, and to execute on the Lessee's behalf any amendments or supplements to this Agreement or any extension thereof.

(e) The Section headings in these Terms and Conditions and in the endorsements, if any, attached hereto are inserted only as a matter of convenience and for reference, and they in no way define or limit or describe the scope or intent of any provision hereof.

(f) All payments required of the Lessee by this Agreement shall be sent to the following address: The Port Authority of New York and New Jersey, P. O. Box 95000-1517, Philadelphia, Pennsylvania 19195-1517, or made via the following wire transfer instructions: Bank: Commerce Bank; Bank ABA Number: 031201360; Account Number: Exemption (1) or sent to such other address, or via such other wire transfer instructions, as may hereafter be substituted therefor. If the commencement date of the letting under this Agreement is other than the first day of a calendar month, the basic rental for the portion of the month during which the letting is effective shall be the amount of the monthly installment prorated on a daily basis using the actual number of days in the month, and if the expiration or termination date of the letting is other than the last day of a calendar month, the basic rental for the portion of the month during which the letting is effective shall be the amount of the monthly installment similarly

prorated.

(g) This Agreement does not constitute the Lessee the agent or representative of the Port Authority for any purpose whatsoever. Neither a partnership nor any joint adventure is hereby created, notwithstanding the fact that all or a portion of the rental to be paid hereunder may be determined by gross receipts from the operations of the Lessee hereunder.

(h) The phrase "utility, mechanical, electrical and other systems" shall mean and include (without limitation thereto) the following: machinery, engines, dynamos, boilers, elevators, escalators, incinerators and incinerator flues, systems for the supply of fuel, electricity, water, gas and steam, plumbing, heating, sewerage, drainage, ventilating, air conditioning, communications, fire-alarm, fire-protection, sprinkler, telephone, telegraph and other systems, fire hydrants, fire hoses, and their respective wires, mains, conduits, lines, tubes, pipes, equipment, motors, cables, fixtures and other equipment.

(i) All designations of time herein contained shall refer to the time-system then officially in effect in the municipality wherein the Premises are located.

SECTION 26. *Premises*

(a) The Lessee acknowledges that it has not relied upon any representation or statement of the Port Authority or its Commissioners, officers, employees or agents as to the condition of the Premises or the suitability thereof for the operations permitted on the Premises by this Agreement. The Lessee, prior to the execution of this Agreement, has thoroughly examined the Premises and has found them to be in good order and repair and determined them to be suitable for the Lessee's operations 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 and the Lessee further agrees that before any use it will immediately correct any such unsafe or improper condition.

(b) The Port Authority shall not be liable to the Lessee, or to any person, for injury or death to any person or persons whomsoever, or damage to any property whatsoever at any time in the Premises or elsewhere at the Facility, including but not limited to any such injury, death or damage from falling material, water, rain, hail, snow, gas, steam, or electricity, whether the same may leak into, or fall, issue, or flow from any part of the Facility, or from any other place or quarter.

(c) If permission is given to the Lessee to enter into the possession of the Premises or to occupy space other than the Premises prior to the date specified in Article II as the commencement of the Term, the Lessee agrees that such possession or occupancy shall be deemed to be under all the terms, covenants, conditions and provisions of this Agreement except as to the covenant to pay rent and except as may be expressly provided otherwise by the written instrument, if any, giving such possession or occupancy; in either case, rent shall commence on the date specified in this Agreement, and in the event of possession of the Premises, the date of such possession shall be the date of commencement of the Term hereunder.

SECTION 27. *Postponement*

If the Port Authority shall not give possession of the Premises on the date fixed in Article II as the Commencement Date, by reason of the fact that the Premises or any part thereof are in the course of construction, repair, alteration or improvement or by reason of the fact that the occupant thereof failed or refused to deliver possession to the Port Authority, or by reason of any cause or condition beyond the control of the Port Authority, the Port Authority shall not be subject to any liability for the failure to give possession on said date. No such failure to give possession on the Commencement Date shall in any wise affect the validity of this Agreement or the obligations

of the Lessee hereunder, nor shall the same be construed in any wise to extend the Term beyond the date stated in Article II as the Expiration Date. However, the rent shall not commence until possession of the Premises is tendered by the Port Authority to the Lessee; the tender shall be made by notice given at least five (5) days prior to the effective date of the tender, and in the event that such notice of tender is not given for possession to commence on or before one hundred eighty-five (185) days after the date stated in Article II as the Commencement Date, then this Agreement shall be deemed cancelled, except that each party shall and does hereby release the other party of and from any and all claims or demands based on this Agreement, or a breach or alleged breach thereof.

SECTION 28. *Force Majeure*

(a) The Port Authority shall not be liable for any failure, delay or interruption in performing its obligations hereunder due to causes or conditions beyond its control, including without limitation strikes, boycotts, picketing, slow-downs, work stoppages or labor troubles of any other type (whether affecting the Port Authority, its contractors, or subcontractors). Further, the Port Authority shall not be liable unless the failure, delay or interruption shall result from failure on the part of the Port Authority to use reasonable care to prevent or reasonable efforts to cure such failure, delay or interruption.

(b) The Port Authority shall be under no obligation to supply any service or services if and to the extent and during any period that the supplying of any such service or services 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.

(c) No abatement, diminution or reduction of the rent or other charges payable by the Lessee, shall be claimed by or allowed to the Lessee for any inconvenience, interruption, cessation or loss of business or other loss caused, directly or indirectly, by any present or future laws, rules, requirements, orders, directions, ordinances or regulations of the United States of America, or of the state, county or city governments, or of any other municipal, governmental or lawful authority whatsoever, or by priorities, rationing or curtailment of labor or materials, or by war or any matter or thing resulting therefrom, or by any other cause or causes beyond the control of the Port Authority, nor shall this Agreement be affected by any such causes.

SECTION 29. *Brokerage*

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

SECTION 30. *Non-liability of Individuals*

No Commissioner, officer, agent or employee s of the Port Authority shall be charged personally by the Lessee with any liability, or held liable to the Lessee under any term or provision of this Agreement, or because of its execution or attempted execution, or because of any breach, or attempted or alleged breach, thereof.

SECTION 31. *Right to Audit Books and Records*

(a) (i) The Lessee shall permit and/or cause to be permitted in ordinary business hours

during the Term and for one year thereafter the examination and audit by the officers, employees and representatives of the Port Authority of all the records and books of account of the Lessee (including without limitation all corporate records and books of account which the Port Authority in its sole discretion believes may be relevant in connection with the Lessee's use and occupancy of the Premises within ten (10) days following any request by the Port Authority from time to time and at any time to examine and audit any such corporate records and books of account.

(ii) In the event that upon conducting an examination and audit as described in this Section the Port Authority determines that unpaid amounts are due to the Port Authority by the Permittee (hereinafter referred to as the "Audit Findings"), the Lessee shall be obligated, and hereby agrees, to pay to the Port Authority a service charge in the amount equal to Exemption (2.a.) of the Audit Findings. Each such service charge shall be payable immediately upon demand (by notice, bill or otherwise) made at any time therefor by the Port Authority. Such service charge(s) shall be exclusive of, and in addition to, any and all other moneys or amounts due to the Port Authority by the Lessee under this Agreement or otherwise. No acceptance by the Port Authority of payment of any unpaid amount or of any unpaid service charge shall be deemed a waiver of the right of the Port Authority of payment of any late charge(s) or other service charge(s) payable under the provisions of this Agreement with respect to such unpaid amount. Each such service charge shall be and become fees, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the fees to be paid hereunder. Nothing in this Section is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) any rights of the Port Authority under this Agreement, including without limitation the Port Authority's rights to terminate this Agreement or (ii) any obligations of the Lessee under this Agreement.

SECTION 32. *Late Charges*

If the Lessee should fail to pay any amount required under this Agreement when due to the Port Authority or if any such amount is found to be due as the result of an audit, then, in such event, the Port Authority may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount for each late charge period (hereinbelow described) during the entirety of which such amount remains unpaid, each such late charge not to exceed an amount equal to Exemption (2.a.) of such unpaid amount for each late charge period. There shall be twenty-four (24) late charge periods on a calendar year basis; each late charge period shall be for a period of at least fifteen (15) calendar days except one late charge period each calendar year may be for a period of less than fifteen (15) (but not less than thirteen (13)) calendar days. Without limiting the generality of the foregoing, late charge periods in the case of amounts found to have been owing to the Port Authority as the result of Audit Findings shall consist of each late charge period following the date the unpaid amount should have been paid under this Agreement. Each late charge shall be payable immediately upon demand made at any time therefor by the Port Authority. 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 payable under this Agreement. 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. Nothing in this Section is intended to, or shall be deemed to, affect; alter, modify or diminish in any way (i) any rights of the Port Authority under this Agreement, including without limitation the Port Authority's rights to terminate this Agreement or (ii) any obligations of the Lessee under this Agreement. In the event that any late charge imposed pursuant to this Section shall exceed a legal maximum applicable to such late charge, then, in such event, each such late charge payable under this Agreement shall be payable instead at such legal maximum.

SECTION 33. *Waiver of Trial by Jury*

The Lessee waives its right to trial by jury in any summary proceeding or action that may hereafter be instituted by the Port Authority against the Lessee in respect of the Premises and/or in any action that may be brought by the Port Authority to recover fees, damages, or other sums due and owing under this Agreement. The Lessee

specifically agrees that it shall not interpose any claims as counterclaims in any summary proceeding or action for non-payment of rents, fees or other amounts which may be brought by the Port Authority unless such claims would be deemed waived if not so interposed.

SECTION 34. *Effect of Use and Occupancy of Premises after Expiration or Termination*

Without in any way limiting the provisions set forth in the Sections of this Agreement entitled "*Termination*", "*Right of Re-entry*" and "*Survival of the Obligations of the Lessee*", unless otherwise notified by the Port Authority in writing, in the event the Lessee remains in possession of the Premises after the expiration or termination of the Term, as it may be extended from time to time, in addition to any damages to which the Port Authority may be entitled under this Agreement or other remedies the Port Authority may have by law or otherwise, the Lessee shall pay to the Port Authority a rental for the period commencing on the day immediately following the Expiration Date or the effective date of such termination, as the case may be, and ending on the date that the Lessee shall surrender and completely vacate the Premises, at an annual rate equal to twice the sum of (i) the annual rate of rental in effect on the date of such expiration or termination, plus (ii) all items of additional rent and other periodic charges, if any, payable with respect to the Premises by the Lessee at the annual rate in effect during the three-hundred-sixty-five (365) day period immediately preceding such date. Nothing herein contained shall give, or be deemed to give, the Lessee any right to remain in possession of the Premises after the expiration or termination of the letting under this Agreement. The Lessee acknowledges that the failure of the Lessee to surrender, vacate and yield up the Premises to the Port Authority on the effective date of such expiration or termination will or may cause the Port Authority injury, damage or loss. The Lessee hereby assumes the risk of such injury, damage or loss and hereby agrees that it shall be responsible for the same and shall pay the Port Authority for the same whether such are foreseen or unforeseen, special, direct, consequential or otherwise and the Lessee hereby expressly agrees to indemnify and hold the Port Authority harmless against any such injury, damage or loss.

* * * * *

Notwithstanding any other provision of this Permit, the permission hereby granted shall in any event terminate with the expiration or termination of the lease of Newark Liberty International Airport from the City of Newark to the Port Authority under the agreement between the City and the Port Authority dated October 22, 1947, as the same from time to time may have been or may be supplemented or amended. Said agreement dated October 22, 1947 has been recorded in the Office of the Register of Deeds for the County of Essex on October 30, 1947 in Book E-110 of Deeds at pages 242, et seq. No greater rights and privileges are hereby granted to Permittee than the Port Authority has power to grant under said agreement as supplemented or amended as aforesaid.

“Newark Liberty International Airport” or “Airport” shall mean the land and premises in the County of Essex and State of New Jersey, which are westerly of the right of way of the Central Railroad of New Jersey and are shown upon the exhibit attached to the said agreement between the City and the Port Authority and marked “Exhibit A”, as contained within the limits of a line of crosses appearing on said exhibit and designated “Boundary of terminal area in City of Newark”, and lands contiguous thereto which may have been heretofore or may hereafter be acquired by the Port Authority to use for air terminal purposes.

The Port Authority has agreed by a provision in its agreement of lease with the City covering the Airport to conform to the enactments, ordinances, resolutions and regulations of the City and of 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, to the extent that the Port Authority finds it practicable so to do. The Permittee shall, within forty-eight (48) hours after its receipt of any notice of violation, warning notice, summons, or other legal process for the enforcement of any such enactment, ordinance, resolution or regulation, deliver the same to the Port Authority for examination and determination of the applicability of the agreement of lease provision thereto. Unless otherwise directed in writing by the Port Authority, the Permittee shall conform to such enactments, ordinances, resolutions and regulations insofar as they relate to the operations of the Permittee at the Airport. In the event of compliance with any such enactment, ordinance, resolution or regulation on the part of the Permittee, acting in good faith, commenced after such delivery to the Port Authority but prior to the receipt by the Permittee of a written direction from the Port Authority, such compliance shall not constitute a breach of this Permit, although the Port Authority thereafter notifies the Permittee to refrain from such compliance. Nothing herein contained shall release or discharge the Permittee from compliance with any other provision hereof respecting governmental requirements.

STANDARD ENDORSEMENT NO. 19.3
PARTICULAR FACILITY
Newark Liberty International Airport
08/02

SPECIAL ENDORSEMENTS

1. Premises "As Is".

The Port Authority shall deliver the Premises to the Lessee in their "as is" condition. The Lessee agrees to and shall take the Premises in such "as is" condition and the Port Authority shall have no obligation hereunder for refurbishing work or preparation of any portion of the Premises for the Lessee's use.

2. Basic Rental.

(a) *Basic Rental*. Commencing on the Rent Commencement Date (as defined below), and throughout the remainder of the Term, the Lessee agrees to pay an annual basic rental to the Port Authority for the Premises as follows:

(i) For the portion of the Term from the Rent Commencement Date through the day preceding the first (1st) anniversary of the Rent Commencement Date, at the annual rate of
Exemption (2.a.)

(ii) For the portion of the term from the first (1st) anniversary of the Rent Commencement Date through the day preceding the second (2nd) anniversary of the Rent Commencement Date, at the annual rate of
Exemption (2.a.)

(iii) For the portion of the Term from the second (2nd) anniversary of the Rent Commencement Date through the day preceding the third (3rd) anniversary of the Rent Commencement Date, at the annual rate of
Exemption (2.a.)

(iv) For the portion of the Term from the third (3rd) anniversary of the Rent Commencement Date through the day preceding the fourth (4th) anniversary of the Rent Commencement Date, at the annual rate of
Exemption (2.a.)

; and

(v) For the portion of the Term from the fourth (4th) anniversary of the Rent Commencement Date through the day preceding the fifth (5th) anniversary of the Rent Commencement Date, at the annual rate of

Exemption (2.a.)

; and

(vi) For the portion of the Term from the fifth (5th) anniversary of the Rent Commencement Date through the day preceding the sixth (6th) anniversary of the Rent Commencement Date, at the annual rate of

Exemption (2.a.)

and

(vii) For the portion of the Term from the sixth (6th) anniversary of the Rent Commencement Date through the day preceding the seventh (7th) anniversary of the Rent Commencement Date, at the annual rate of

Exemption (2.a.)

; and

(viii) For the portion of the Term from the seventh (7th) anniversary of the Rent Commencement Date through the day preceding the eighth (8th) anniversary of the Rent Commencement Date, at the annual rate of

Exemption (2.a.)

and

(ix) For the portion of the Term from the eighth (8th) anniversary of the Rent Commencement Date through the day preceding the ninth (9th) anniversary of the Rent Commencement Date, at the annual rate of

Exemption (2.a.)

; and

(x) For the portion of the Term from the ninth (9th) anniversary of the Rent Commencement Date through the Expiration Date, at the annual rate of

Exemption (2.a.)

; provided, however,

that if the Expiration Date is later than the day preceding the tenth (10th) anniversary of the Rent Commencement Date, the basic rental for the period from the tenth (10th) anniversary of the Rent Commencement Date through the Expiration Date shall be pro-rated as provided in the following paragraph (b).

(b) *Payment in Monthly Installments.* The Lessee shall pay the annual basic rentals provided in paragraph (a) of this Special Endorsement in advance in equal monthly installments, commencing on the Rent Commencement Date and on the first day of each and every month thereafter, through the Expiration Date. If any installment of the annual basic rental payable hereunder shall be for less than a full calendar month, then the rental payment for the portion of

the month said payment is due shall be the monthly installment prorated on a daily basis using the actual number of days in such month, on the basis of a 365-day year.

(c) *Definition.*

"Rent Commencement Date" shall mean (x) the first anniversary of the Commencement Date or (y) the date of the issuance of a Permit to Occupy with respect to the Premises (as provided in Special Endorsement 3(f) below), whichever is earlier.

(d) *Payments.* All payments required of the Lessee by this Agreement shall be in accordance with Section 25(f) of the Terms and Conditions of this Agreement.

3. The Improvement Work.

(a) *The Improvement Work.* The Lessee covenants to the Port Authority that it will make or cause to be made, at its sole cost and expense, the refurbishment, alterations, additions and improvements of and to the Premises as are necessary in order to construct and operate a first-class passenger lounge at the Premises (collectively, the **"Improvement Work"**). The Lessee shall submit to the Port Authority for its approval a construction application in the form supplied by the Port Authority and containing such terms and conditions as the Port Authority may include (the **"Construction Application"**), setting forth in detail and by appropriate plans and specifications the work proposed by the Lessee, and the manner of and time periods for performing the same. The Lessee shall perform the Improvement Work in accordance with the Construction Application, as approved by the Port Authority (which approval shall constitute the "prior consent", required pursuant to Section 11 of the Terms and Conditions hereof, to the Improvement Work), and subject to the terms and provisions of this Agreement. In the event of any inconsistency between the provisions of this Agreement and those in the Construction Application, the provisions of this Agreement shall control.

(b) *Consultants and Contractors.* The Lessee shall be responsible at its sole cost and expense for retaining all architectural, engineering and other technical consultants and services as may be directed by the Port Authority and for developing, completing and submitting detailed plans and

specifications for the Improvement Work. All plans and specifications submitted by the Lessee to the Port Authority shall bear the seal of a qualified architect or professional engineer and shall be in sufficient detail for a contractor to perform the work. The Lessee shall not engage any contractor or permit the use of any subcontractor unless and until each such contractor or subcontractor has been approved by the Port Authority, and the Lessee upon request shall furnish the Port Authority with a copy of its proposed contract with its contractor. The Lessee shall include in each such contract or subcontract such provisions as the Port Authority may require. The Lessee or its contractors and subcontractors shall obtain and maintain in force insurance in such coverages and performance bonds in such amounts as the Port Authority may specify. All of the Improvement Work shall be done in accordance with the Construction Application, including the final plans and specifications, approved by the Port Authority, and shall be subject to inspection by the Port Authority during the progress of the Improvement Work and after the completion thereof, and the Lessee shall redo or replace at its own expense any work not done in accordance therewith. Upon completion of the Improvement Work, the Lessee shall supply the Port Authority with as-built plans and drawings in form and number requested by the Port Authority. Notwithstanding the submission by the Lessee to the Port Authority of the contracts to be entered into by the Lessee or the incorporation therein of Port Authority requirements or recommendations, and notwithstanding any rights the Port Authority may have reserved to itself hereunder, the Port Authority shall have no liabilities or obligations of any kind to any contractors engaged by the Lessee or to others in connection with any proposed or actual contracts entered into by the Lessee for the Improvement Work or for any other matter in connection therewith; and the Lessee hereby releases and discharges the Port Authority, its Commissioners, officers, representatives, and employees of and from any and all liability, claim for damages or losses of any kind, whether legal or equitable, or from any action or cause of action arising or alleged to arise out of the performance of any of the Improvement Work pursuant to the contracts between the Lessee and its contractors.

(c) *Commencement of Improvement Work.* No Improvement Work may be commenced by the Lessee until the Construction Application, including the final plans and specifications, have been finally approved by the Port Authority for the entire Improvement Work, and the Lessee is specifically

permitted in writing by the Port Authority to commence the Improvement Work. Upon receipt by the Lessee of said written permission from the Port Authority, the Lessee shall commence construction of the Improvement Work as soon as possible and shall expeditiously continue such construction until completion.

(d) *Lessee Solely Responsible for Plans and Specifications.* The Lessee shall be solely responsible for the plans and specifications used by it, and for the adequacy or sufficiency of such plans, specifications and all the improvements, alterations, installations and decorations depicted thereon or covered thereby, regardless of the consent thereto or approval thereof by the Port Authority or the incorporation therein of any Port Authority requirements or recommendations. The Port Authority shall have no obligations or liabilities in connection with the performance of the improvements, alterations, installations and decorations constituting the Improvement Work, whether performed by the Lessee or on its behalf, or the contracts for the performance thereof entered into by the Lessee. Any warranties extended or available to the Lessee in connection with the Improvement Work shall be for the benefit of the Port Authority as well as the Lessee.

(e) *Title to Improvement Work.* Title to the Improvement Work shall pass to the City of Newark as the same or any part is erected, constructed or installed, and shall be and remain at all times in the City of Newark, and the Improvement Work shall be deemed to be a part of the Premises when constructed, erected or installed on the Premises.

(f) *Completion of Construction.* The Lessee shall be obligated to complete the construction of the Improvement Work by the Rent Commencement Date. When the Improvement Work has been completed, the Lessee shall deliver to the Port Authority a certificate to such effect signed by an authorized officer of the Lessee and also signed by the Lessee's licensed architect or engineer, certifying that the Improvement Work has been performed strictly in accordance with the approved Construction Application and the approved plans and specifications, data and materials forming a part thereof and the provisions of this Agreement and in compliance with all applicable laws, ordinances and governmental rules, regulations, orders and directives. Thereafter, the Improvement Work will be inspected by the Port Authority, and if the same has been completed as certified by the Lessee and the Lessee's licensed architect

or engineer, as aforesaid, a certificate to such effect (a "Permit to Occupy") shall be delivered to the Lessee by the Port Authority, subject to the condition that all risks thereafter with respect of the Improvement Work and any liability therefor for negligence or other reason shall be borne by the Lessee.

(g) *Risks, Claims.* All of the Improvement Work shall be performed by the Lessee strictly in accordance with the following:

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

(i) Risk of loss or damage to all or any part of the Improvement Work prior to the completion thereof and the risk of loss or damage to any property of the Port Authority arising out of or in connection with the performance of the Improvement Work. In the event of such loss or damage, the Lessee shall forthwith repair, replace and make good the Improvement Work and the property of the Port Authority without cost or expense to the Port Authority.

(ii) The risk of all claims and demands, just or unjust, of third persons (including employees, officers, and agents of the Port Authority) arising or alleged to arise out of the performance of the Improvement Work and for all expenses incurred by the Port Authority in the defense, settlement or satisfaction thereof, including without limitation claims and demands for death, for personal injury or for property damage, direct or consequential.

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

governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority.

(2) The Lessee shall pay or cause to be paid when due all claims lawfully made against it by its contractors, subcontractors, materialmen and workmen and all claims lawfully made against it by other third persons arising out of or in connection with or because of the performance of the Improvement Work, and the Lessee shall cause its contractors and subcontractors to pay all such claims lawfully made against them; provided, however, that nothing herein contained shall be construed to limit the right of the Lessee to contest any claim of a contractor, subcontractor, materialman, workman and/or other person, and no such claim shall be considered to be an obligation of the Lessee within the meaning of this Special Endorsement unless and until the same has been finally adjudicated. The Lessee shall use its best efforts to resolve any such claims and shall keep the Port Authority fully informed with respect thereto. The Lessee shall indemnify the Port Authority against all claims, damages or losses that may arise or result therefrom, including interest thereon, and costs and expenses including attorneys' fees and penalties or fines. Nothing herein contained shall be deemed to constitute consent to the creation of any lien or claim against the Premises or to create any rights in said third persons against the Port Authority.

(h) *Schedule E*. Without limitation as to any of the terms and conditions of this Agreement, the Lessee understands and agrees that it will put into effect prior to the commencement of any of the Improvement Work an affirmative action program and a Minority Business Enterprise Program (MBE) and a Women-owned Business Enterprise program (WBE) in accordance with the provisions of Schedule E attached hereto and hereby made a part hereof. The provisions of said Schedule E shall be applicable to the Lessee and the Lessee's contractors, and the Lessee shall include the provisions of said Schedule E within all of its Improvement Work contracts so as to make said provisions and undertakings the direct obligation of the Improvement Work contractor or contractors and subcontractors. The Lessee shall, and shall require its contractors and subcontractors to, furnish to the Port Authority such data, including but not limited to compliance reports, as the Port Authority may request at any time and from time to time regarding the affirmative action MBE and WBE programs of the Lessee and its contractors and subcontractors and the Lessee shall also

require that its contractors and subcontractors make and put into effect such modifications and additions thereto as may be directed by the Port Authority to effectuate the goals of affirmative action and the MBE and WBE programs.

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

(j) *Asbestos.* The Lessee understands that if the Premises contain asbestos, the Lessee, in connection with the performance of the Improvement Work, will be required to remove or encapsulate any asbestos located within the Premises, as directed by the Port Authority. Without limiting the generality of any of the provisions of this Special Endorsement, the Lessee shall obtain the Port Authority's prior approval as to the method and manner in which the Lessee performs any asbestos work, and shall obtain any additional insurance coverage as the Port Authority may specify covering the performance of such work. The Lessee shall also conform to any Port Authority requirements imposed in connection with the removal and disposal of asbestos from the Facility.

4. Port Authority Funding of Improvement Work.

(a) *Port Authority Funding.* The Port Authority shall fund up to ^{Exemption (2.a.)} of the cost of the Improvement Work (such funding by the Port Authority, the "**Port Authority Funding**"), as more specifically provided in this Special Endorsement.

(b) *Certain Definitions.*

"**Construction Commencement Date**" shall mean the first date any contractor of the Lessee enters upon any portion of the Premises to perform any portion of the Improvement Work.

"**Construction Costs**" shall mean the following costs actually paid by the Lessee, to the extent that the inclusion of the same is permitted by sound accounting practices consistently applied:

(i) amounts actually paid to independent contractors for work actually performed and labor actually furnished and materials actually delivered in

connection with the performance of the Improvement Work; and

(ii) amounts actually paid in connection with the Improvement Work for engineering, architectural, professional and consulting services, construction management and supervision of construction, provided, however, that payments under this paragraph shall not exceed fifteen percent (15%) of the amounts paid under the preceding subdivision (i) (such 15% limitation, the "**Soft Cost Limitation**");

provided, and only to the extent, that such work is performed by the Lessee in accordance with all the terms and provisions of (x) this Agreement and (y) the final Construction Application(s) (including the final plans and specifications) as approved by the Port Authority pursuant to Special Endorsement No. 3 above. Notwithstanding the foregoing, "Construction Costs" shall not include:

(iii) the costs of construction work that, although performed pursuant to an approved plan or specification, is not incorporated in the final plans and specifications for the Improvement Work as approved by the Port Authority, or the cost of altering such construction work; or

(iv) any amounts paid for or in connection with any trade fixtures or other personal property of the Lessee.

"**Construction Payment**" shall mean each payment made by the Port Authority to the Lessee for Construction Costs.

"**Construction Payment Amount**" shall mean the aggregate amount of all Construction Payments (including any Subsequent Construction Payments, as provided in Special Endorsement 5(c) below) made by the Port Authority to the Lessee at any time during the term of this Agreement, together with the Accrued Amount accumulated thereon.

"**Construction Payment Date**" shall mean the date of each Construction Payment.

"**Final Construction Certificate**" shall have the meaning provided in paragraph (c)(3) of this Special Endorsement.

"**Final Date**" shall mean the last day of the twelfth month following the month in which the Final Construction Certificate is delivered to the Port Authority.

"Soft Cost Limitation" shall have the meaning provided in the definition of "Construction Costs" above.

(c) *Certification of Construction Costs.*

The Port Authority shall reimburse the Lessee for Construction Costs, subject to and in accordance with the terms and provisions hereinafter set forth.

(1) On the twentieth day of the calendar month following the month in which the Construction Commencement Date occurs, and on the twentieth day of each calendar month thereafter up to and including the calendar month following the Final Date, the Lessee shall deliver to the Port Authority a certificate which shall be signed by a responsible fiscal officer of the Lessee, sworn to before a notary public, and shall:

(i) certify the amounts of actual payments made by the Lessee and the amounts actually due and payable from the Lessee to its independent contractors for work actually performed and labor and materials actually furnished for the Improvement Work;

(ii) certify the amounts of actual payments made by the Lessee and the amounts due and payable from the Lessee in connection with the Improvement Work for engineering, architectural, professional, consulting services, construction management and supervision of construction;

(iii) certify all due and payable amounts included by the Lessee in previous certificates against which a Construction Payment has been made by the Port Authority to the Lessee and which have been paid by the Lessee since the submission of each such previous certificate, and shall have attached there to or included therein such verification as shall be required by the Port Authority, that such amounts have been paid;

(iv) certify the total cumulative payments made by the Lessee from the commencement of the Improvement Work to the date of each certificate;

(v) contain a representation by the Lessee that the Lessee will apply the Construction Payment only against expenses actually incurred as Construction Costs and for no other purpose whatsoever;

(vi) certify that the amounts, payments and expenses therein set forth constitute Construction Costs;

(vii) certify that the work for which payment is requested has been accomplished, that the amounts requested have been paid or are due and payable to the Lessee's contractors, and, subject to the concurrence of the Port Authority, that such work is in place and has a value of not less than the amount requested to be paid;

(viii) certify that each portion of the Improvement Work covered by such certificate has been performed in accordance with the terms of this Agreement;

(ix) have attached thereto reproduction copies or duplicate originals of the invoices of such independent contractors and other persons (whether such invoices are paid or unpaid) and for such invoices which have been paid, an acknowledgement by such independent contractors and other persons of the receipt by them of such amounts and payments; and

(x) contain such further information and documentation with respect to the Lessee's costs as the Port Authority may from time to time require, which information, documentation and certification shall be given on such forms as may be adopted by the Port Authority.

(2) In addition to the foregoing, the Lessee shall furnish to the Port Authority information concerning Construction Costs and timing of the performance of the Improvement Work as may be requested by the Port Authority from time to time and at any time, including without limitation the following:

(i) The Lessee's original detailed Construction Costs projections, accompanied by a certification signed by an independent engineering consultant or independent licensed architect, to the effect that the Construction Costs projections submitted by the Lessee are accurate, and that the same represent reasonable prices for the work in question;

(ii) Reports of the full-time resident engineer or licensed architect and reports of the Lessee's chief architect, which reports or log must

contain reports as to activity conducted in connection with the Improvement Work for each and every day that such activity occurred from the commencement of the work to the date of submission;

(iii) A certification signed by the Lessee's architect or architects certifying the value of work in place, both on and off the site; and

(iv) Accurate, readable and complete copies of all change orders, extra work authorizations, design change authorizations and purchase orders in connection with the Improvement Work.

(3) The Lessee shall mark as "final" its final certificate covering the Improvement Work (the "**Final Construction Certificate**"). The Final Construction Certificate shall have attached thereto or included thereon, with respect to amounts withheld by the Lessee that have been deducted from a Construction Payment and have subsequently been paid by the Lessee, such verification as shall be required by the Port Authority that such withheld and deducted amounts have been paid by the Lessee, and to the extent such withheld and deducted amounts have been so paid, such withheld and deducted amounts shall be included in the amount of the final Construction Payment. After submitting the Final Construction Certificate, the Lessee shall submit no further certificate hereunder.

(d) *Construction Payments.*

(1) Subject to the provisions of subdivisions (i) through (iv) below, within thirty (30) days after receipt of certificates duly submitted by the Lessee satisfying in full the requirements set forth in paragraph (c) this Special Endorsement, the Port Authority shall pay to the Lessee the amounts paid by the Lessee as certified in such certificates, to the extent that such amounts or any portion thereof have not theretofore been included in any prior Construction Payment.

(i) In the event this Agreement is not in full force and effect, or the Lessee shall be under a notice of termination with respect to this Agreement, or in default under any term or provision hereof, the Port Authority shall have the right, in its discretion, to withhold the payment of any Construction Payment to the Lessee, provided, that no payment or withholding of a Construction Payment shall

be or be deemed to be a waiver of any rights of the Port Authority with respect to the termination of this Agreement, with respect to any default of the Lessee under any term or provision hereof, with respect to the withholding or payment of future Construction Payments, or with respect to any determination as to the usability of any item of work.

(ii) It is hereby understood and agreed that nothing in this paragraph shall be or be deemed to be for the benefit of any contractor of the Lessee.

(iii) It is further understood that at the election of the Port Authority no payment will be made if the Port Authority's inspection or audit does not substantiate the contents of any such certificate and until such matters have been resolved to the satisfaction of the Port Authority; notwithstanding the foregoing, the Port Authority shall have no obligation to conduct any such inspection or audit.

(iv) No Construction Payment shall be made by the Port Authority to the Lessee until all due and payable amounts included on all previously submitted certificates have been paid by the Lessee and the payment thereof verified to the satisfaction of the Port Authority (unless such amounts are being withheld by the Lessee and the amount so withheld shall have been deducted from the amount of a Construction Payment).

(2) If for any reason the construction of the Improvement Work or any portion thereof is not performed in accordance with the terms and provisions of (x) this Agreement and (y) the Construction Application(s) (including the final plans and specifications) as finally approved by the Port Authority, it is understood and agreed that the Port Authority shall not be obligated to make any Construction Payments, and the Construction Payment Amount shall not include any amount for such work or any costs in connection with the removal, restoration, modification, correction or change required to cause such work to comply with such terms and provisions, and in the event that the Port Authority shall have made a Construction Payment for such work, the Port Authority shall have the right to withhold and credit future Construction Payments against any such amount or, upon demand of the Port Authority, the Lessee shall pay to the Port Authority the amount of any

such Construction Payment or portion thereof covering such work.

(3) The entire obligation of the Port Authority under this Agreement for Construction Costs shall be limited in amount to a total sum of _____, ^{Exemption (2.a.)} and limited in time to Construction Costs adequately documented and covered by certificates of the Lessee submitted in accordance with paragraph (c) of this Special Endorsement no later than the Final Date.

(4) The Lessee shall promptly submit to the Port Authority further information, including without limitation its estimate of the amounts and times of the various payments it will be making for Construction Costs as the Port Authority may from time to time and at any time request, and shall be available itself or cause its architect or engineer to be available for, consultation in connection with payment certificates submitted pursuant to paragraph (c) of this Special Endorsement.

(5) Without limiting any other provision of this Agreement, the Port Authority shall have the right at any time and from time to time by its agents, employees and representatives to audit and inspect during regular business hours the books, records and other data of the Lessee relating to the cost of the Improvement Work, it being understood that the Port Authority shall not be bound by any prior audit conducted by it.

(6) The Lessee shall keep such books, records and other data within the Port of New York District and shall maintain such books, records and other data for five (5) years after the Lessee has delivered the Final Construction Certificate.

(7) If the Lessee has included in any portion of the cost of the Construction work any item as having been incurred, but which in the opinion of the Port Authority was not so incurred, or which in the opinion of the Port Authority is not an item properly chargeable to such element of cost under sound accounting practice, or does not represent an appropriate division of the costs of a particular contract which are required to be designated according to time of performance or delivery, and the parties have been unable to resolve their differences within 90 days after the Port Authority gave its notice objecting to the same, the Port Authority's decision as to the nature of the items in question shall be final.

(8) The Soft Cost Limitation shall not be applied for the purpose of calculating the proper amount of Construction Payments, and the Construction Payment Amount, until the Lessee has submitted the Final Construction Certificate. To the extent that any payment(s) by the Port Authority have exceeded the Soft Cost Limitation, the amount of such excess shall be promptly refunded to the Port Authority upon demand.

5. Additional Rental.

(a) *Certain Definitions.*

"Accrued Amount" shall mean the monthly amount, calculated on the last day of each calendar month, equal to the product obtained by multiplying Exemption (2.a.) and the amount of the Construction Investment Amount (including any previously calculated Accrued Amount) during said month, for each month during the period commencing on the first Construction Payment Date and ending on the day preceding the Additional Rental Commencement Date.

"Additional Rental Commencement Date" shall mean the earlier occurring of (x) the first anniversary of the Commencement Date or (y) the first day of the month following the month containing the date of issuance of a Permit to Occupy (the **"Completion Date"**).

"Additional Rental Factor" shall mean the factor or factors derived in accordance herewith from time to time by the application of the following formula:

Exemption (2.a.)

Where n (a power) equals the number of calendar months (expressed in whole numbers) from the Additional Rental Commencement Date to the Expiration Date.

"Additional Rental Period" shall mean the period commencing on the Additional Rental Commencement Date and ending on the Expiration Date.

"Reimbursement Amount" shall mean the Construction Payment Amount and the sum of the Accrued Amount determined

for the day preceding the Additional Rental Commencement Date.

(b) *Payment of Additional Rental.*

In consideration of the Port Authority Funding, the Lessee shall pay to the Port Authority a monthly additional rental the ("**Additional Rental**") as follows:

Commencing on the Additional Rental Commencement Date, the Lessee shall pay to the Port Authority an Additional Rental in an amount determined for and payable on the first day of each and every calendar month occurring during the Additional Rental Period equal to the product obtained by multiplying the Reimbursement Amount by the Additional Rental Factor.

(c) *Subsequent Construction Payments.*

(1) In the event the Additional Rental Commencement Date shall precede the Final Date and the Port Authority shall make any Construction Payment(s) to the Lessee on or after the Additional Rental Commencement Date (each such payment, a "**Subsequent Construction Payment**"), then, a factor shall be calculated with respect to each such Subsequent Construction Payment (a "**Subsequent Construction Payment Factor**") using the formula set forth in the definition of "Additional Rental Factor" above, except that "n" (a power) shall equal the number of calendar months (expressed in whole numbers) from (x) the date of such Subsequent Construction Payment, if such date is the first day of a calendar month, or (y) the first day of the calendar month following the date of such Subsequent Construction Payment, if such date is not the first day of a calendar month, as the case may be, to the Expiration Date.

(2) As a part of the payment of Additional Rental due as provided in this Special Endorsement and in addition to the foregoing, the Lessee shall pay to the Port Authority on the first day of each and every calendar month during the Additional Rental Period subsequent to the payment of each Subsequent Construction Payment, an amount equal to the product obtained by multiplying (x) the amount of each Subsequent Construction Payment and (y) the Subsequent Construction Payment Factor applicable to such Subsequent Construction Payment; such amount to be payable as a part of the Additional Rental payments and to be deemed a part thereof for all purposes of this Agreement.

(3) As a part of the payment of Additional Rental due as provided in this Special Endorsement and in addition to the foregoing, the Lessee shall pay to the Port Authority an amount equal to the product obtained by multiplying (A) the amount of each Subsequent Construction Payment made on other than the last day of a month, and (B) the number of days in the period from the date of such Subsequent Construction Payment is made to and including the last day of the calendar month in which such Subsequent Construction Payment is made; and (C) the quotient derived from dividing ^{Exemption (2.a.)} such amount to be payable as part of the Additional Rental payment due on the first day of the month following the month in which such Subsequent Construction Payment is made.

(d) *Refund of Overpayments.* In the event that a Port Authority audit shall disclose that the Lessee has expended Construction Costs which total less than the total of all Construction Payments made to the Lessee hereunder up to the time of such audit, then, upon demand of the Port Authority, the Lessee shall immediately refund to the Port Authority an amount equal to the difference between the amount of Construction Costs expended by the Lessee, as disclosed by the Port Authority audit, and the aforesaid amount of the total of all Construction Payments made to the Lessee; and effective from and after such date of such refund, the Construction Payment Amount shall be reduced by the amount of such payment, and the Additional Rental payable by the Lessee shall be adjusted appropriately hereunder.

6. Termination Without Cause.

(a) *Termination Without Cause.*

Notwithstanding the provisions of Article II of this Agreement, each of the Port Authority and the Lessee shall have the right to terminate this Agreement and the letting hereunder, without cause, at any time on thirty (30) days' notice to the other. In the event of termination pursuant to this Special Endorsement, this Agreement and the letting hereunder shall cease and expire as if the effective date of termination stated in the notice were the date originally stated for the expiration of this Agreement, as such date may hereafter be extended. In no event shall any such termination release or relieve the Lessee from any obligations or liabilities accruing on or prior to the effective date of termination or maturing on that date.

(b) *Termination by Lessee - Repayment of Construction Payment Amount/Acceleration of Additional Rent.*

(1) In the event that the Lessee terminates this Agreement pursuant to the foregoing paragraph (a) of this Special Endorsement No. 6, and the effective date of termination is prior to the Additional Rental Commencement Date, the Lessee shall, on the effective date of termination, repay to the Port Authority the entirety of the Construction Payment Amount outstanding as of such date, with interest ~~at~~ ^{exemption (2.4)} *per annum* on the amount of each Construction Payment made, calculated from the date of each such Construction Payment to the effective date of termination.

(2) In the event that the Lessee terminates this Agreement pursuant to the foregoing paragraph (a) of this Special Endorsement No. 6, and the effective date of termination is on or after the Additional Rental Commencement Date, Additional Rental (including without limitation all Accrued Amounts) shall immediately be accelerated, and the Lessee shall, on the effective date of termination, pay to the Port Authority all amounts of Additional Rental that would have been due if the term of this Agreement had continued until the Expiration Date.

(3) The Lessee shall not be entitled to reimbursement by the Port Authority of any amount of its Improvement Capital Investment in the event the Lessee exercises its termination rights under this Special Endorsement.

(c) *Termination by Port Authority - Reimbursement of Unamortized Improvement Capital Investment.*

(1) In the event that:

(x) at any time during the Term the Port Authority terminates the letting pursuant to the preceding paragraph (a) of this Special Endorsement entitled "*Termination Without Cause*", and the Premises are vacated by the Lessee in strict accordance with and pursuant to such termination, and

(y) the Lessee has completed the Improvement Work without using any of the Port Authority Funding, then, in such event, the Port Authority shall reimburse the Lessee for the Lessee's Unamortized Improvement Capital Investment (as defined in paragraph (b) below) in the Premises as of the effective date of the termination. The Port Authority may elect to credit any amount due the Lessee

pursuant to this Special Endorsement against any amounts owing from the Lessee to the Port Authority under this Agreement.

(2) For purposes of this Agreement, the Lessee's Improvement Capital Investment shall be the lesser of
Exemption (2.a.) or an amount equal to the sum of the amounts described in subparagraphs (i) and (ii) of the definition of Improvement Capital Investment, below; 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 be all as described in and required pursuant to the definition of Improvement Capital Investment below.

(b) *Certain Definitions.*

"Improvement Capital Investment" shall mean:

(i) the amounts paid by the Lessee to independent contractors for work actually performed and labor and materials actually furnished, inclusive of sales, use and like taxes, where applicable, in connection with the Improvement Work; and

(ii) the payments made and expenses incurred by the Lessee in connection with the Improvement Work for engineering, architectural, professional and consulting services, and the supervision of construction, inclusive of sales, use and like taxes where applicable; it being understood that payments under this item (ii) shall not exceed fifteen percent (15%) of the sum of the amounts described in the foregoing item(i);

and further, in each case, as the aforementioned amounts and payments described in the foregoing items (i) and (ii) above 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 (x) set forth, in reasonable detail, the amounts paid to specified independent contractors, the payments made to other specified persons and the other expenses incurred by the Lessee, which have not previously been reported in certificates delivered to the Port Authority, (y) 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 (z) certify that the

amounts and payments therein set forth constitute the Lessee's Improvement Capital Investment arising out of the performance of the Improvement Work. The Lessee shall keep a separate accounting of the Lessee's Improvement Capital Investment, which accounting shall be kept at all times within the Port of New York District for a period of two (2) years after the final costs of all the Improvement Work have been submitted by the Lessee to the Port Authority or the end of the Term, whichever is later, and shall be subject to the audit and inspection of the Port Authority, its representatives and employees.

"Unamortized Improvement Capital Investment" shall mean, for purposes of this Agreement, the amount of the Lessee's Improvement Capital Investment in the Premises arising out of the performance by the Lessee of the Improvement Work, after deduction therefrom of an amount equivalent to an allowance for depreciation and amortization; such allowance to be computed on a straight-line basis from the Rent Commencement Date to the end of the average useful life thereof (as determined under generally accepted accounting principles) or the Expiration Date, whichever is the shorter. In no event shall the Lessee's Unamortized Improvement Capital Investment include any amounts paid for in connection with any equipment, trade fixtures or other personal property of the Lessee. 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 and otherwise under the provisions of Section 168(a) of Title 26 USCA or similar legislation hereafter enacted.

7. Insurance.

(a) *Obligation to Maintain.* In addition to any other insurance required under this Agreement, the Lessee in its own name as insured and with the Port Authority as an additional insured shall maintain and pay the premium or premiums during the term of this Agreement on a policy or policies of commercial general liability insurance covering bodily injury liability, including death and property damage liability, none of the foregoing to contain care, custody or control exclusions, and providing for coverage in the minimum amounts set forth below:

	<u>Minimum Limit</u>
Commercial General Liability	\$2,000,000
Combined single limit per occurrence for death, bodily injury and property damage liability	
Liquor Liability	\$2,000,000

(b) *Certain Requirements.* Each policy of insurance required by this Agreement shall be written by a company or companies acceptable to and approved by the Port Authority. Each policy of insurance shall include blanket protective coverage and shall contain a contractual liability endorsement covering the indemnification obligations assumed by the Lessee pursuant to this Agreement. Each policy of insurance, except for the Workers' Compensation and Employers Liability Insurance policies, shall also contain an ISO standard "separation of insureds" clause or a cross liability endorsement providing that the protections afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third person shall pertain and apply with like effect with respect to any claim or action against the Lessee by the Port Authority, and against the Port Authority by the Lessee, but such endorsement shall not limit, vary, change or affect the protections afforded the Port Authority as an additional insured, or under the contractual endorsement referred to in this paragraph.

(c) *Port Authority Review.* Notwithstanding any minimum insurance coverage limits provided in this Agreement, it is specifically understood and agreed that the Port Authority shall have the right to review all insurance coverages and policies required by the Port Authority for adequacy of terms, conditions and limits, and upon notice to the Lessee, given from time to time and at any time, to require the Lessee to amend or modify the insurance coverage, or to require such other or additional insurance, in such reasonable amounts, against such other insurance hazards, as the Port Authority may deem required, and the Lessee shall promptly comply therewith and shall promptly submit a certificate or certificates evidencing the same to the Port Authority. If at any time any of the insurance policies shall be or become unsatisfactory to the Port Authority as to form or substance, or if any of the carriers issuing such policies shall be or become unsatisfactory to

the Port Authority, the Lessee shall promptly obtain a new and satisfactory policy in replacement.

(d) *Evidence of Insurance.* A certified copy of each policy or a certificate evidencing the existence thereof, or a binder, shall be delivered to the Port Authority upon execution and delivery of this Agreement by the Lessee to the Port Authority. Each policy, certificate or binder delivered shall bear the endorsement of or be accompanied by evidence of payment of the premium thereon. In the event any binder is delivered, it shall be replaced within thirty (30) days by a certified copy of the policy or a certificate. Each such copy or certificate shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified without giving thirty (30) days' written advance notice thereof to the Port Authority. Each such copy or certificate shall contain a provision that the insurer shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority. Any renewal policy shall be delivered to the Port Authority at least thirty (30) days prior to the expiration of each expiring policy, except for any policy expiring after the date of expiration of this Agreement. If the Port Authority at any time so requests, the Lessee shall make available to the Port Authority at a location in the Port of New York District, during normal business hours, the original or a certified copy of the entirety of each of the said policies and shall, upon request, deliver to the Port Authority a certified copy of such portions of said policies pertaining to the coverage hereunder as the Port Authority shall request.

8. Amendments to Terms and Conditions. The Terms and Conditions of this Agreement are hereby modified as follows:

(a) Paragraph (b) of Section 5 is amended by deleting, at the end of the first sentence thereof, the words "commencement of the letting" and substituting in lieu thereof the words "completion of construction of the Improvement Work".

(b) Paragraph (a) of Section 9 is amended by adding at the end thereof the following:

" , excepting only claims and demands arising from the sole negligence or willful misconduct of the Port Authority, its Commissioners, officers, employees, representatives, agents and contractors."

(c) Paragraphs (a) and (b) of Section 9 are each amended by adding at the end thereof the words "without the Port Authority's prior written consent".

(d) Paragraph (a) of Section 15 is amended by deleting the words "Unless otherwise expressly permitted so to do" at the beginning thereof and substituting in lieu thereof the words "Except as provided in Article IV and Special Endorsement No. 9 with respect to the Lessee's passengers, invitees and guests".

(e) Paragraph (b) of Section 15 is deleted in its entirety.

(f) Paragraph (a) of Section 22 is amended and restated as follows:

"(a) The Lessee covenants and agrees to yield and deliver peaceably to the Port Authority possession of the Premises on the date of the cessation of the letting, whether such cessation be by termination, expiration or otherwise, promptly and in the same condition as at the completion of construction of the Improvement Work, subject to reasonable wear arising from use of the Premises but also subject to the Lessee's obligations of maintenance and repair set forth in Section 7 above of these Terms and Conditions."

(g) Paragraph (b) of Section 26 is amended by adding at the end thereof the following:

" , excepting only such injury, death or damage resulting from the sole negligence or willful misconduct of the Port Authority, its Commissioners, officers, employees, representatives, agents and contractors."

(h) Section 30 is amended and restated as follows:

"SECTION 30. *Non-liability of Individuals*

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

It shall be unnecessary to physically mark the Terms and Conditions to indicate the foregoing modifications.

9. Authorized Operator.

Without limiting the generality of Article IV of this Agreement, the Lessee agrees that all food, alcoholic or non-alcoholic beverages and similar items sold to the Lessee's passengers, invitees and guests as provided hereunder shall be obtained by the Lessee from an operator which has been authorized by the Port Authority to operate establishments for the sale of food, alcoholic and non-alcoholic beverages and similar items for consumption in passenger terminal facilities at the Airport. All monies paid or payable to such operator for such sales shall be included in the gross receipts of said operator.

10. Use of Name.

(a) *Port Authority Approval.* Any name, designation or any service mark proposed to be used or displayed at the Premises or at Terminal B for the Lessee's operations therein shall be approved in advance in writing by the Port Authority, and the Lessee shall have the right to use and display the name, designation or mark only so long as this Agreement is in force and effect.

(b) *Port Authority Names.* The Lessee shall not use or make any reference, by advertising or otherwise, to the names "The Port Authority of New York and New Jersey", "Port Authority" or any simulation or abbreviation of any such names, or any emblem, picture or reproduction of the Facility, for any purpose whatsoever. Furthermore, the Lessee shall not make use of or originate any material intended for publication or visual or oral presentation using the names "Newark Liberty International Airport" or "Newark International Airport" without the consent of the Port Authority.

11. Use of Premises by Others.

(a) *Use by Other International Airlines.* The Lessee agrees and covenants to the Port Authority that its use and operation of the Premises shall not be strictly and solely for its own passengers, invitees and guests in connection with its business of transportation of persons by aircraft, but that it shall also use good faith efforts to make the

Premises available, at all times other than when the Premises are being actively used by the Lessee, to other international airlines operating at the Airport (the "**Other International Airlines**") in connection with their business of transportation of persons by aircraft.

(b) *No Discrimination.* The Lessee shall make the Premises available to the Other International Airlines on a fair, equal and non-discriminatory basis. Accordingly, none of the Other International Airlines (x) shall be given a preferential right to use the Premises, (y) shall be provided with or granted more frequent or more comprehensive rights, privileges or opportunities to use the Premises than any other airline or (z) shall receive better or more favorable terms or conditions in connection with its use of the Premises than any other airline. The Lessee may charge only reasonable fees to the Other International Airlines in connection with their use of the Premises. For purposes of this Agreement, "reasonable fees" as used in the foregoing sentence shall mean an amount that enables the Lessee to recoup its costs, including capital investment recovery, reasonable profit, and external and internal management and overhead expenses in connection with operating the Premises during the periods of use by Other International Airlines.

(c) *Lounge Agreements.* The Lessee hereby represents to the Port Authority that, aside from agreements with Other International Airlines for use of the Premises, the Lessee has not, as of the date hereof, entered into any agreement with another airline with respect to the use of, or sharing of costs at, the Premises or the financing of the Improvement Work (any such agreement, a "**Lounge Agreement**"). The Lessee covenants that any Lounge Agreement which it may enter into shall be subject and subordinate to the terms and provisions of this Agreement and shall be of no force or effect whatsoever until consented to in writing in advance by the Port Authority, and the Lessee shall cause any Lounge Agreement to provide the same; provided, however, that a Lounge Agreement which provides for one-time usage by such other airline, or usage on other than a continuous or ongoing basis by such other airline, shall not require the prior written consent of the Port Authority. Each Lounge Agreement shall be made available for review by Port Authority employees, agents or representatives upon request.

(d) *No Port Authority Obligation.* Nothing in this Special Endorsement shall impose, or be construed to impose, upon the Port Authority any obligation to enforce, specify the terms of, or consent to any agreement entered into

between the Lessee and the Other International Airlines in connection with their use of the Premises, or to consent to any Lounge Agreement, or shall create any liability for any failure by the Port Authority to do so.

(e) *No Third Party Beneficiary.* Nothing in this Agreement shall, or is intended to, make any third person an express or implied beneficiary of this Agreement, it being intended that this Agreement shall bind and inure to the benefit only of the Port Authority and the Lessee as parties hereof.

12. Security Deposit.

(a) The Lessee hereby agrees that this Agreement comprises one of the "Agreements", as such term is defined in that certain security agreement entered into between the Port Authority and the Lessee, made as of December 1, 2006 and identified by Port Authority Agreement No. AX-803 (as amended and supplemented, the "**Security Agreement**"), and that a breach or failure to perform or comply with any of the terms or conditions of the Security Agreement, including, without limitation, failure to provide a letter of credit in accordance with the terms and provisions of the Security Agreement valid and available to the Port Authority or any failure of any banking institution issuing a letter of credit to make one or more payments as provided in such letter of credit, shall constitute a breach of this Agreement and of the Security Agreement, thereby entitling the Port Authority to immediately exercise any and all rights and remedies available to it, including, without limitation, the right to terminate this Agreement for cause.

(b) The Lessee agrees that the amount of the security to be provided pursuant to the Security Agreement shall, effective as of the Rent Commencement Date, be increased from \$130,000 to \$160,000.

13. Services and Utilities.

(a) *Services and Utilities.* The Lessee understands that services and utilities including heat, ventilation, air-cooling, electricity, gas, hot and cold water, high temperature hot water and chilled water of various characteristics and amounts will be furnished in Passenger Terminal B at the Airport by the airlines utilizing such terminal building (such airlines, collectively, the

"Airlines") pursuant to their agreements with the Port Authority. The Lessee shall not be charged for the following utilities or services furnished to the Premises: heat, ventilation and air-cooling, hot and cold water and electricity for the operation in the Premises solely of flight information display screens, lighting fixtures (bulbs to be supplied by the Lessee), food refrigeration equipment, portable ice-making equipment, dishwashing equipment, clocks, water coolers and small tabletop office machinery including patron-operated facsimile machines, to the extent any of the foregoing items shall be located in and can be accommodated under the conditions at the Premises. The supply of such utilities or services will be subject and limited to the capacity of the existing plant, equipment, mains, pipes, wires, conduits, outlets and vents, and be of such a character and provided during such periods and times as the same are furnished at Terminal B generally. No failure, delay or interruption in any of the above services shall be construed to be an eviction of the Lessee, shall be grounds for any diminution or abatement of the rentals payable hereunder or shall constitute grounds for any claim by the Lessee for damages, consequential or otherwise, against the Port Authority or its officers or employees.

(b) *Temporary Discontinuation.* The Lessee understands that the Port Authority by its officers, employees, agents, representatives or contractors or by the Airlines or their contractors or by the furnishers of utilities or other services to the Premises or to others at the Facility shall have the right to temporarily discontinue the supply of any of the above utilities or services in order to allow repairs, alterations, changes or improvements in the Premises or elsewhere at the Facility, including all systems for the supply of services for the benefit of the Lessee or for the benefit of others than the Lessee at the Facility. Nothing contained herein shall be construed to impose upon the Port Authority any obligation to supply any utility or services or to repair, alter, or make changes or improvements or shall create any liability upon the Port Authority for any failure to do so.

(c) *Conservation.* The Lessee shall not waste or dissipate such utilities or services by any act or omission, including but not limited to the permitting of outside doors or windows to remain open and, to the maximum extent feasible, shall conserve such as are supplied.

(d) *Limitation of Liability.* The provisions of paragraph (b) of Section 28 of the Terms and Conditions

shall be in addition to the aforesaid limitations and qualifications and shall apply to the supply of any utilities or services. Any failure, delay or interruption, including, without limitation, any failure, delay or interruption due to any circumstance expressed or referenced in this Special Endorsement, in supplying said utilities or services shall not relieve the Lessee of any obligation hereunder and (unless resulting from the negligence of the Port Authority and continuing for a period of five (5) days after notice to the Port Authority) shall not be grounds for any claim by the Lessee for damages, consequential or otherwise.

(e) *Extermination.* The Lessee shall pay the Port Authority upon demand the actual cost of extermination service, if any, provided in the Premises by or at the request of the Port Authority, but the foregoing shall not impose any obligation on the Port Authority to furnish such service.

14. Labor Disturbances.

(a) If any type of strike, boycott, picketing, work stoppage, slowdown or other labor activity is directed against the Lessee at the Facility or against any of the Lessee's operations pursuant to this Agreement which in the opinion of the Port Authority adversely affects or is likely to adversely affect the operation of the Facility or the operations of other lessees or permittees thereat, whether or not the same is due to the fault of the Lessee or is caused by the employees of the Lessee or of others, the Port Authority shall have the right at any time during the continuance thereof by notice to the Lessee to suspend the Lessee's operations hereunder effective at the time specified in the notice and during such suspension the Lessee shall cease its activities and operations in the Premises and shall take such steps to secure and protect the Premises as shall be necessary or desirable. The period of suspension shall end (subject to subparagraph (b) below) not later than 24 hours after the cause thereof has ceased or been cured. The exercise by the Port Authority of the right of suspension hereunder shall not affect or in any way limit the Port Authority's rights of termination as set forth elsewhere in this Agreement.

(b) In the event any such labor activity shall continue for a period of five (5) consecutive days or more, and regardless of whether or not the Port Authority has

exercised its right to suspend hereunder, the Port Authority shall have the right at any time subsequent to such five (5) day period to terminate this Agreement and the letting on five (5) days' written notice to the Lessee. In the event of termination by the Port Authority hereunder this Agreement and the letting hereunder shall cease and expire on the effective date of termination stated in the notice with the same force and effect as if such date were the original expiration date of the letting hereunder.

15. Schedule G.

In its operations hereunder, the Lessee shall comply with the provisions of Schedule G attached hereto and hereby made a part hereof.

16. 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 be excluded on the grounds of race, creed, color, national origin or sex 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 its covered suborganizations to provide assurances to the Lessee that they will similarly undertake affirmative action programs and that they will require assurances to the same effect from their suborganizations, as required by 14 CFR Part 152, Subpart E.

(b) In addition to and without limiting the generality of any of the provisions of this Agreement, the Lessee for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the grounds of race, creed, color, national origin or sex shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises, (2) that in the construction of any improvements on, over or under the Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, national origin or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee shall

use the Premises in compliance with 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.

(c) The Lessee shall include the provisions of paragraph (a) of this Special Endorsement in every agreement or concession it may make pursuant to which any person or persons, other than the Lessee, operate 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.

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

(e) 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 Special Endorsement and the Lessee shall reimburse the Port Authority for any loss or expense incurred by reason of such noncompliance.

(f) Nothing contained in this Special Endorsement 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 (c) hereof, or any right to perform any construction on the Premises.

17. Federal Airport Aid.

(a) The Lessee shall:

(1) Furnish good, prompt and efficient service hereunder;

(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 Special Endorsement and in the Special Endorsement hereof entitled "*Business Development and Method of Operation*", is therefore a special consideration and inducement to the execution of this Agreement by the Port Authority, and the Lessee further covenants and agrees that if the Administrator of the Federal Aviation Administration or any other governmental officer or body having jurisdiction over the enforcement of the obligations of the Port Authority in connection with the Federal Airport Aid, shall make any orders, recommendations or suggestions respecting the performance by the Lessee of such covenants, promises and obligations, the Lessee will promptly comply therewith, at the time or times when and to the extent that the Port Authority may direct.

18. Business Development and Method of Operation.

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

(b) The principal purpose of the Port Authority in the making of this Agreement is to make available on the Airport a passenger lounge, 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 Article IV hereof relating to the use of the Premises, the Lessee hereby warrants and agrees that it will conduct a first class operation and will furnish all necessary or proper fixtures, equipment, personnel (including licensed personnel as necessary), supplies, materials and facilities, for the operation of a first class passenger lounge and that it will furnish the foregoing promptly, efficiently and adequately to meet all demands therefor, on a fair, equal and non-discriminatory basis to all users thereof, and at charges which are fair, reasonable and non-discriminatory, provided that reasonable and non-discriminatory discounts, rebates, or other similar types of price reductions may be made to volume purchasers.

(c) 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.

(d) 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. All individuals employed by the Lessee at the Airport shall meet the requirements for Airport workers (including without limitation the relevant Transportation Security Administration requirements) and

shall be required to qualify for and obtain the appropriate identification media issued by the Port Authority for workers at the Airport.

INITIALED:	
For the Port Authority	For the Lessee
LSB	ME

Exhibit A
Premises

Exemption (4)

SCHEDULE E

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

Part I. Affirmative Action Guidelines - Equal Employment Opportunity

I. As a matter of policy the Port Authority hereby requires the Lessee and the Lessee shall require the Contractor, as hereinafter defined, to comply with the provisions set forth hereinafter in this Schedule E and in the Section of the Lease entitled "Non Discrimination of Port Authority Agreement No. ANC-120 (herein called the "Lease") with British Airways PLC (herein and in the Lease called the "Lessee"). The provisions set forth in this Part I are similar to the conditions for bidding on federal government contract adopted by the Office of Federal Contract Compliance and effective May 8, 1978.

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

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

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

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

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

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

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

(c) As used in these specifications:

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

(2) "Minority" includes:

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

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

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

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

(d) Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the construction work involving any construction trade, it shall physically include in each subcontract in excess of exemption (2.a) those provisions which include the applicable goals for minority and female participation.

(e) The Contractor shall implement the specific affirmative action standards provided in subparagraphs (1) through (I6) of Paragraph (h) hereof. The goals set

forth above are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the premises. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

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

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

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

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

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

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

(3) Maintain a current file of the names, addresses and telephone number of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

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

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

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

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

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

(9) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations and to State-certified minority referral agencies serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

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

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

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

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

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

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

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

(i) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (subparagraphs (1)-(16) of Paragraph (h) above). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under Paragraph (h) hereof provided that: the Contractor actively participates in the group, makes good faith efforts to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes good faith efforts to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's non-compliance.

(j) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority

and non-minority. Consequently, the Contractor may be in violation hereof if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation hereof if a specific minority group of women is underutilized).

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

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

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

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

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

(p) Nothing herein provided shall be construed as a limitation upon the application of any laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

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

**PART II MINORITY BUSINESS ENTERPRISES/WOMEN-OWNED
BUSINESS ENTERPRISES**

As a matter of policy the Port Authority requires the Lessee and the Lessee shall itself and shall require the general contractor or other construction supervisor and each of the Lessee's contractors to use every good faith effort to provide for meaningful participation by Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs) in the construction work pursuant to the provisions of this Schedule E. For purposes hereof, "Minority Business Enterprise" "(MBE)" shall mean any business enterprise which is at least fifty-one percentum owned by, or in the case of a publicly owned business, at least fifty-one percentum of the stock of which is owned by citizens or permanent resident aliens who are minorities and such ownership is real, substantial and continuing. For the purposes hereof, "Women-owned Business Enterprise" "(WBE)" shall mean any business enterprise which is at least fifty-one percentum owned by, or in the case of a publicly owned business, at least fifty-one percentum of the stock of which is owned by women and such ownership is real, substantial and continuing. A minority shall be as defined in paragraph II(c) of Part I of this Schedule E. "Meaningful participation" shall mean that at least seventeen percent (17%) of the total dollar value of the construction contracts (including subcontracts) covering the construction work are for the participation of Minority Business Enterprises and Women-owned Business Enterprises, of which at least twelve percent (12%) are for the participation of Minority Business Enterprises. Good faith efforts to include meaningful participation by MBEs and WBEs shall include at least the following:

- (a) Dividing the work to be subcontracted into smaller portions where feasible.
- (b) Actively and affirmatively soliciting bids for subcontracts from MBEs and WBEs, including circulation of solicitations to minority and female contractor associations. The Contractor shall maintain records detailing the efforts made to provide for meaningful MBE and WBE participation in the work, including the names and addresses of all MBEs and WBEs contacted and, if any such MBE or WBE is not selected as a joint venturer or subcontractor, the reason for such decision.
- (c) Making plans and specifications for prospective construction work available to MBEs and WBEs in sufficient time for review.
- (d) Utilizing the list of eligible MBEs and WBEs maintained by the Port Authority or seeking minorities and women from other sources for the purpose of soliciting bids for subcontractors.
- (e) Encouraging the formation of joint ventures, partnerships or other similar arrangements among subcontractors, where appropriate, to insure that the Lessee and Contractor will meet their obligations hereunder.
- (f) Insuring that provision is made to provide progress payments to MBEs and WBEs on a timely basis.
- (g) Not requiring bonds from and/or providing bonds and insurance for

MBEs and WBEs, where appropriate.

Certification of MBEs and WBEs hereunder shall be made by the Office of Business and Job Opportunity of the Port Authority. If the Contractor wishes to utilize a firm not already certified by the Port Authority, it shall submit to the Port Authority a written request for a determination that the proposed firm is eligible for certification. This shall be done by completing and forwarding such form as may be then required by the Port Authority. All such requests shall be in writing addressed to the Office of Business and Job Opportunity, the Port Authority of New York and New Jersey, One World Trade Center, 63 East, New York, New York 10048 or such other address as the Port Authority may specify by notice to the Lessee. Certification shall be effective only if made in writing the Director in charge of the Office of Business and Job Opportunity of the Port Authority. The determination of the Port Authority shall be final and binding.

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

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

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

INITIALED:	
For the Port Authority	For the Lessee
JED	S NE

SCHEDULE F

LOCAL BUSINESS ENTERPRISE & EMPLOYMENT OPPORTUNITY

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

PART I. Local Business Enterprise

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

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

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

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

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

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

PART II. Local Employment Opportunity

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

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

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

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

INITIALED:	
For the Port Authority	For the Lessee
	

SCHEDULE G

AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PARTICIPATION

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

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

Qualification as an ACDBE

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

An ACDBE must be a small business concern whose average annual receipts for the preceding three (3) fiscal years does not exceed Exemption (2.a.) and it must be (a) at least Exemption (2.a.) owned and controlled by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least Exemption (2.a.) of the stock is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially or economically disadvantaged individuals who own it. The personal net worth standard used in determining eligibility for purposes of

part 23 is Exemption (2.a.)

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

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

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

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

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

General

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

INITIALED:	
For the Port Authority	For the Lessee
JED	SME

(Port Authority Acknowledgment)

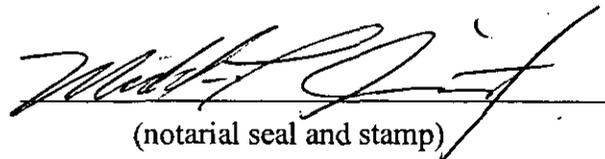
STATE OF NEW YORK)

)ss.:

COUNTY OF NEW YORK)

On the 8th day of November in the year 2010, before me, the undersigned, a Notary Public in and for said state, personally appeared David Kagan

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (~~are~~) subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


(notarial seal and stamp)

MICHAEL F. SCHMIDT
Notary Public, State of New York
No. 01SC6118149
Qualified in New York County
Commission Expires November 1, 2012

(Corporate Acknowledgment - British Airways PLC)

STATE OF *New York*)

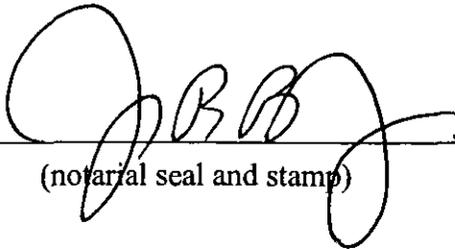
)ss.:

COUNTY OF *Queens*)

On the *29th* day of *October* in the year 2010, before me, the undersigned, a Notary Public in and for said state, personally appeared

Neil Evans EVP

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



(notarial seal and stamp)

JAMES B. BLANEY
Notary Public, State of New York
No. 02BL4918672
Qualified in New York County
Commission Expires 09/14/2016

④