PRA #17264

A Public Records Access request has been submitted.

Request By:	Keenan English
Signature:	Keenan English
Request date:	08/14/2016
Address:	[redacted]
Email:	[redacted]
Phone number:	[redacted]
Personal Information Request:	YES
Records seeking:	Lease Agreement between Port Authority of New York and New Jersey and LaGuardia Gateway Partners. I am doing a case study on the public private partnership of LaGuardia Airport for my master's program. Thank you.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY **PRA #17264**
PUBLIC RECORD ACCESS FORM

Action by (print / type name):

Danny Ng , Freedom of Information Administrator

Signature: Date: 08/18/2016

On behalf of the Secretary of the Port Authority, as Records Access Officer and Custodian of Government Records of the Port Authority.

- [x] The requested records are being made available.
- [ ] Any responsive records that may exist are currently in storage or archived, and a diligent search is being conducted. The Port Authority will respond by:
- [ ] A diligent search has been conducted, and no records responsive to your request have been located.
- [ ] The requested records that have been located are not being made available, as they are exempt from disclosure for the following specific reasons:
- [ ] Some requested records that have been located are being made available. The remainder are exempt from disclosure for the following specific reasons:
- [ ] The request does not reasonably describe or identify specific records; therefore, the Port Authority is unable to search for and locate responsive records. Please consider submitting a new request that describes or identifies the specific records requested with particularity and detail.
- [x] Other:

Material responsive to your request can be found on the Port Authority's website at http://corpinfo.panynj.gov/documents/17264-LPA/. Paper copies of the available records are available upon request. Exemptions applied for on-going negotiations, competitive disadvantage and impairment of present or imminent contract awards.

This form is promulgated by the Port Authority pursuant to the Port Authority Public Records Access Policy and is intended to be construed consistent with the New York Freedom of Information Law and the New Jersey Open Public Records Act. It is intended to facilitate requests for Port Authority public records and does not constitute legal advice.

Port Authority Lease No. AGB-104

REDACTED

LAGUARDIA AIRPORT CENTRAL TERMINAL BUILDING

LEASE AGREEMENT

dated June 1, 2016

between

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY,
as Lessor

and

LAGUARDIA GATEWAY PARTNERS, LLC,
as Lessee

ARTICLE 1 DEFINITIONS; PROJECT DOCUMENTS 3
Section 1.1 Definitions 3
Section 1.2 Construction and Interpretation of Agreement 68
Section 1.3 Project Documents; Order of Precedence 70
Section 1.4 Responsibility for Related Parties 71
ARTICLE 2 TERM 72
Section 2.1 Term, Generally 72
Section 2.2 Partial Termination 72
ARTICLE 3 LEASE AND USE OF THE PREMISES 72
Section 3.1 Lease of Premises 72
Section 3.2 Condition of Premises 73
Section 3.3 Liens 75
Section 3.4 Use of Premises 76
Section 3.5 Rights of Entry and Oversight by the Port Authority 80
Section 3.6 Ingress to and Egress from the Premises 82
Section 3.7 Quiet Enjoyment 83
Section 3.8 Cooperation with Respect to Transition of Operations 84
Section 3.9 [redacted] 85
Section 3.10 Allocation of Pre-closing Costs and Revenues 85
ARTICLE 4 RENTAL 85
Section 4.1 Permitted O&M Expenses 86
Section 4.2 Base Rent 86
Section 4.3 First Additional Rent 87
Section 4.4 [redacted] 87
Section 4.5 Early Payment 91
Section 4.6 Force Majeure Event 91
Section 4.7 Tax Treatment; Rental Allocation 91
Section 4.8 Treatment of IRC 179D Deduction 92
ARTICLE 5 SUBLEASES 93
Section 5.1 Subleases Generally 93
Section 5.2 Air Transportation-Related Subleases 99
Section 5.3 Concession Subleases 102

Section 5.4 Exempt Subleases 108
Section 5.5 Assignment of Subleases 108
Section 5.6 Submittals 109
ARTICLE 6 THIRD-PARTY CONTRACTORS AND SERVICES 109
Section 6.1 Surface Carriers 109
Section 6.2 In-Flight Meals 110
Section 6.3 Handling Services 111
Section 6.4 Other Third-Party Service Contractors 112
Section 6.5 Permits and Payment of Fees 112
Section 6.6 Club Rooms 113
ARTICLE 7 UTILITIES; SERVICES TO THE LESSEE 115
Section 7.1 Services to the Lessee 115
Section 7.2 Lessee's Obligations Relating to Utilities 116
Section 7.3 Utility Rights Reserved to the Port Authority 117
Section 7.4 Utility Rights Reserved to the City 118
ARTICLE 8 SUBMITTALS; OPEN DIALOGUE AND COOPERATION; OTHER REDEVELOPMENTS 119
Section 8.1 Submittals Generally 119
Section 8.2 Schedules of Submittals 120
Section 8.3 Time for Submittals 121
Section 8.4 Review Process 122
Section 8.5 Open Dialogue and Cooperation; Design and Construction Working Group 123
Section 8.6 [redacted] 124
ARTICLE 9 PORT AUTHORITY FUNDING 126
Section 9.1 Port Authority Funding for New Facilities and the Demolition Facilities 126
Section 9.2 Disbursement Procedures for Port Authority Funding for New Facilities and the Demolition Facilities 129
Section 9.3 Application and Availability of Port Authority Funding for New Facilities and the Demolition Facilities 134
Section 9.4 Port Authority Funding for New Improvements and the Central Hall 134

Section 9.5 Application and Availability of Port Authority Funding for New Improvements and the Central Hall 136
Section 9.6 Adjustments for Contract Compensation 136
Section 9.7 Maintaining of Records; Accounting of Payments Received 137
Section 9.8 No Waiver 137
ARTICLE 10 DESIGN AND CONSTRUCTION 137
Section 10.1 Obligations of the Lessee 137
Section 10.2 Nonconforming Work 142
Section 10.3 Conditions to Design NTP 143
Section 10.4 Conditions to Construction NTPs 144
Section 10.5 Partial Completion 146
Section 10.6 Substantial Completion 150
Section 10.7 Final Acceptance 155
Section 10.8 Design and Construction Warranties 158
Section 10.9 Suspension of D&C Work 160
Section 10.10 Port Authority Inspections of Construction Work Generally; No Duty to Inspect or Police 161
Section 10.11 Coordination of the Work 161
Section 10.12 Parking Deficiency 162
Section 10.13 Hydrant Fueling 163
ARTICLE 11 OPERATIONS AND MAINTENANCE 164
Section 11.1 Operations and Maintenance Work 164
Section 11.2 Operations and Maintenance Work Standards and Requirements 164
Section 11.3 Annual Budget and Forecasts 165
Section 11.4 Financial Statements and Other Information 166
Section 11.5 Organization Chart 167
Section 11.6 Signs 167
Section 11.7 Obstruction Lights 168
Section 11.8 Major Maintenance 168
Section 11.9 Asset Preservation Schedule 169
Section 11.10 Major Maintenance Reserve Requirements 169
Section 11.11 Major Maintenance Performance Security 171

Section 11.12 Handback Requirements 171

ARTICLE 12 CONTRACTORS, SUPPLIERS AND LEAD PERSONNEL 175

Section 12.1 Relationship with Contractors and Suppliers 175

Section 12.2 Lead Personnel 175

Section 12.3 Certain Public Policy Requirements 176

Section 12.4 Labor Harmony 176

ARTICLE 13 PORT AUTHORITY AND LESSEE CHANGES; DIRECTIVE LETTERS; SAFETY COMPLIANCE ORDERS 177

Section 13.1 Port Authority Changes 177

Section 13.2 Directive Letters 179

Section 13.3 Lessee Changes 179

Section 13.4 Performance During Negotiation of Proposed Port Authority Change or Lessee Change Request 181

Section 13.5 Safety Compliance Orders 181

ARTICLE 14 [redacted]; DELAY EVENTS 182

Section 14.1 [redacted] 182

Section 14.2 Delay Events 192

Section 14.3 Crane Directive 197

Section 14.4 Waiver 200

ARTICLE 15 COMPLIANCE WITH LAW 201

Section 15.1 Compliance with Law Generally; Governmental Approvals 201

Section 15.2 Port Authority Rules and Regulations 203

Section 15.3 Compliance with General Manager's Bulletins, Directives and Instructions 204

Section 15.4 [Reserved 205

Section 15.5 FAA Grants 205

Section 15.6 Terminal Security Program Obligations 206

Section 15.7 OFAC 210

Section 15.8 Non-Discrimination 210

Section 15.9 Employment – Affirmative Action – Equal Opportunity 211

Section 15.10 Minority Business Enterprises, Women-Owned Business Enterprises and Local Business Enterprises Commitment 212

Section 15.11 Airport Concession Disadvantaged Business Enterprises Commitment 213
Section 15.12 [redacted] 213
ARTICLE 16 ENVIRONMENTAL, HEALTH AND SAFETY REQUIREMENTS 214
Section 16.1 General Obligations 214
Section 16.2 Sustainability 218
Section 16.3 Specific Environmental Planning Requirements 218
Section 16.4 Waste Management 220
Section 16.5 Dewatering 224
Section 16.6 Backfill; Reuse of Excavated Materials 225
Section 16.7 Pesticides and Herbicides 227
Section 16.8 Indoor Environmental Quality 227
Section 16.9 Acoustics 227
Section 16.10 Maintenance and Inspection Requirements 228
Section 16.11 Storage Tank Systems 228
Section 16.12 Hazardous Materials 230
Section 16.13 Handback Environmental Report and Exit Baseline Report 236
Section 16.14 Environmental Notices, Submittals and Reports 239
Section 16.15 Environmental Status Reports 242
Section 16.16 Enforcement and Administration 243
Section 16.17 Exclusions, Risk Allocation and Remedies 246
ARTICLE 17 ASSIGNMENTS 249
Section 17.1 Restrictions on Assignments 249
Section 17.2 Restrictions on Terminal Operator Change in Control 253
Section 17.3 Standards and Procedures for Port Authority Approval of Assignments 256
Section 17.4 [redacted] 257
Section 17.5 Submittals 259
ARTICLE 18 LENDERS' RIGHTS AND REMEDIES; REFINANCING 259
Section 18.1 Leasehold Mortgages 259
Section 18.2 Recognized Mortgagee 262
Section 18.3 Notices 262

Section 18.4 Recognized Mortgagee's Right to Cure 263
Section 18.5 Assignment of Leasehold Mortgage 264
Section 18.6 Foreclosure 264
Section 18.7 New Agreement 266
Section 18.8 Port Authority's Right to Pay Off Lessee Debt 267
Section 18.9 Statement of Estimated Liabilities 268
Section 18.10 Refinancing Requirements 268
Section 18.11 Equity Funding 270
Section 18.12 Non-Merger 271
ARTICLE 19 PRINCIPAL LESSEE DOCUMENTS 271
Section 19.1 Contracts 271
Section 19.2 Construction Security 277
Section 19.3 Delivery of Changed Principal Lessee Documents 277
Section 19.4 No Increased Termination Liabilities 277
Section 19.5 Replacement of D&C Contractor or Concessions Manager 277
Section 19.6 Concessions Management Contract 278
Section 19.7 Seconded Terminal Operator Personnel 279
ARTICLE 20 INSURANCE 279
Section 20.1 Required Insurance 279
Section 20.2 Other Requirements as to Insurance Policies 284
Section 20.3 Nature of Insurers 289
Section 20.4 Review by the Port Authority 289
Section 20.5 Settlement of Losses 289
Section 20.6 Separate Insurance 289
Section 20.7 Defense Costs 290
Section 20.8 Contesting Denial of Coverage 290
Section 20.9 Lender Insurance Requirements 290
Section 20.10 Notices 290
Section 20.11 Compliance with Insurance Policies 291
Section 20.12 Port Authority's Right to Insure 291
Section 20.13 Inflation Adjustment 291
Section 20.14 Uninsured or Underinsured Loss 292

ARTICLE 21 INDEMNITY 292
Section 21.1 Indemnification by the Lessee 292
Section 21.2 Indemnification by the Port Authority 294
Section 21.3 Defense of Third-Party Claims 294
Section 21.4 Losses Net of Insurance; Reductions and Subrogation 295
Section 21.5 Indemnity in Favor of the City 296
ARTICLE 22 REPRESENTATIONS AND WARRANTIES 296
Section 22.1 Lessee Representations and Warranties 296
Section 22.2 Port Authority Representations and Warranties 300
ARTICLE 23 LESSEE EVENTS OF DEFAULT 303
Section 23.1 Event of Default 303
Section 23.2 Remedial Plan 306
Section 23.3 Remedies of the Port Authority Upon Event of Default 307
Section 23.4 Survival of Rental Obligations of the Lessee 309
Section 23.5 Re-letting by the Port Authority 310
Section 23.6 Remedies to be Non-Exclusive 311
Section 23.7 Surrender 311
Section 23.8 Waiver of Redemption 311
ARTICLE 24 GROUNDS FOR TERMINATION BY THE LESSEE; OTHER TERMINATION 311
Section 24.1 Grounds for Termination 311
Section 24.2 Termination Rights of the Lessee 314
Section 24.3 Lessee Debt 318
Section 24.4 Timing of Payment of Port Authority Termination Sum or Unamortized Costs Termination Sum 318
Section 24.5 Exclusivity of Remedy 319
ARTICLE 25 EARLY TERMINATION OF THE BASIC LEASE 319
ARTICLE 26 CONDEMNATION 320
Section 26.1 Condemnation by the Port Authority 320
Section 26.2 Condemnation by a Governmental Entity 320
ARTICLE 27 ACTIONS UPON TERMINATION 321
Section 27.1 Actions Upon Termination 321

Section 27.2 Termination Transition Plan 322
Section 27.3 Handback of Premises 322
Section 27.4 Transfer of Personal Property 323
Section 27.5 Exclusive Termination Rights 323
Section 27.6 Acceptance of Surrender of Lease 323
ARTICLE 28 RIGHT TO PERFORM THE LESSEE'S OBLIGATIONS 324
Section 28.1 Right to Perform the Lessee's Obligations 324
Section 28.2 Reimbursement by the Lessee 325
ARTICLE 29 LIMITATIONS ON THE LESSEE'S RIGHT TO RELY 326
Section 29.1 Rights of the Port Authority 326
Section 29.2 No Duty or Obligation 326
Section 29.3 No Relief or Waiver 326
Section 29.4 Limited Right to Rely on Certain Notices and Certificates by the Port Authority 327
ARTICLE 30 MAINTENANCE AND INSPECTION OF RECORDS 327
Section 30.1 Maintenance and Inspection of Records; Ownership 327
Section 30.2 Audit; Inspection 329
Section 30.3 Semi-Annual Meetings; Information Sharing 330
ARTICLE 31 INTELLECTUAL PROPERTY 331
Section 31.1 Intellectual Property 331
Section 31.2 Maintenance of Data 332
Section 31.3 Lessee's Intellectual Property Indemnity 332
Section 31.4 Use of Design Documents and Construction Documents by the Port Authority 333
Section 31.5 Naming Rights 333
ARTICLE 32 REQUESTING AIRLINES AT LGA AIRPORT 334
Section 32.1 General 334
Section 32.2 Response to Requesting Airline and Port Authority Determination 334
Section 32.3 Notice to Provide Accommodations to a Requesting Airline 336
Section 32.4 Operation and Consents Related to Accommodations 337
Section 32.5 Non-Compliance with a Notice to Provide Accommodations 337
Section 32.6 No Waiver 338

Section 32.7 No Abrogation 338
ARTICLE 33 DISPUTE RESOLUTION PROCEDURES 338
Section 33.1 General 338
Section 33.2 Litigation 339
Section 33.3 Chief Engineer's Jurisdiction 339
Section 33.4 Disputes with Respect to Other Redevelopments 340
Section 33.5 Board Approval 341
Section 33.5 Conduct During Pendency of Dispute 342
Section 33.7 Joinder of Actions 342
Section 33.8 Costs of Dispute Resolution 342
Section 33.9 Notice Requirements 342
ARTICLE 34 CONSEQUENTIAL LOSSES; DOUBLE RECOVERY; NON-EXCLUSIVE REMEDIES; PAYMENTS BY THE PORT AUTHORITY 344
Section 34.1 Consequential Losses 344
Section 34.2 No Double Recovery 344
Section 34.3 Remedies to be Non-Exclusive 344
Section 34.4 Payments by the Port Authority 344
ARTICLE 35 MISCELLANEOUS 345
Section 35.1 Entire Agreement 345
Section 35.2 Amendments 345
Section 35.3 Waiver 345
Section 35.4 Relationship between the Parties 346
Section 35.5 Successors and Assigns 346
Section 35.6 Designation of Representatives; Cooperation With Representatives 346
Section 35.7 Survival 347
Section 35.8 Limitation on Third-Party Beneficiaries 347
Section 35.9 Submission to Jurisdiction 348
Section 35.10 Waiver of Right to Trial by Jury 348
Section 35.11 Governing Law 348
Section 35.12 Notices and Communications 348
Section 35.13 Severability 350

Section 35.14 Counterparts 350
Section 35.15 Non-liability of Individuals 350
Section 35.16 Late and Service Charges 350
Section 35.17 Public Release of Information 351
Section 35.18 Confidentiality 351
Section 35.19 Brokerage 353
Section 35.20 Governmentally-Owned Property; Waiver of Depreciation 353

Exhibits

Exhibit 1	Existing Facilities Map
Exhibit 2	Assigned Terminal B Facilities Agreements
Exhibit 3	Existing Airline Subleases
Exhibit 4	Port Authority Governmental Approvals
Exhibit 5	Disclosed Environmental Reports
Exhibit 6	Additional Environmental Requirements
Exhibit 7	[redacted]
Exhibit 8	[Reserved]
Exhibit 9	Initial Designation of Authorized Representatives
Exhibit 10	LaGuardia Terminal B Site Diagram
Exhibit 11-A	Form of Handback Performance Security
Exhibit 11-B	Form of Major Maintenance Performance Security
Exhibit 12	Certain Public Policy Requirements
Exhibit 13	Affirmative Action, Equal Opportunity, Minority Business Enterprise, Women-Owned Business Enterprise Requirements
Exhibit 14	Local Business Enterprise and Employment Opportunity
Exhibit 15	Airport Concession Disadvantaged Business Enterprise (ACDBE) Participation
Exhibit 16-A	Form of Port Authority Funding Disbursement Request Certificate
Exhibit 16-B	Form of Request for Payment for Port Authority Funding for the New Improvements and the Central Hall
Exhibit 16-C	[redacted]
Exhibit 17	[redacted]
Exhibit 18	[redacted]
Exhibit 19-A	[redacted]
Exhibit 19-B	[redacted]
Exhibit 19-C	[redacted]
Exhibit 20	[redacted]
Exhibit 21	[redacted]
Exhibit 22	[redacted]
Exhibit 23	Form of Lessee Assignment and Assumption Agreement
Exhibit 24	[redacted]
Exhibit 25	Disclosed Existing Facilities Operations and Maintenance Information
Exhibit 26-A	[redacted]
Exhibit 26-B	[redacted]
Exhibit 26-C	[redacted]
Exhibit 27	Adjustments to Contract Compensation
Exhibit 28-A	[redacted]
Exhibit 28-B	Existing Leased Property
Exhibit 28-C	Permanent Rights of Access
Exhibit 28-D	New Facilities Sites
Exhibit 28-E	Temporary Rights of Access
Exhibit 28-F	Central Hall Site
Exhibit 29	Independent Insurance Consultant
Exhibit 30	Wage and Benefits Requirements

Exhibit 31 [redacted]
Exhibit 32 Available Documents
Exhibit 33 Central Hall Provisions
Exhibit 34 [redacted]
Exhibit 35-A [redacted]
Exhibit 35-B [Reserved]
Exhibit 36 Budgeted Disposal Locations
Exhibit 37 Lessee Damages Determination
Exhibit 38 [redacted]
Exhibit 39 Form of Concession Sublessee Certification

THE LAGUARDIA AIRPORT CENTRAL TERMINAL BUILDING

LEASE AGREEMENT

This LEASE AGREEMENT (this "**Agreement**") dated June 1, 2016 is entered into by and between The Port Authority of New York and New Jersey, a municipal corporate instrumentality and political subdivision of the States of New York and New Jersey, created and existing by virtue of the Compact of April 30, 1921, made by and between the States of New York and New Jersey, and thereafter consented to by the Congress of the United States (the "**Port Authority**"); and LaGuardia Gateway Partners, LLC, a Delaware limited liability company (the "**Lessee**"). The Port Authority and the Lessee are hereinafter sometimes referred to individually as a "**Party**" and collectively as the "**Parties**".

RECITALS

(a) LaGuardia Airport ("**LGA Airport**") is located on approximately 650 acres at Flushing Bay in the Borough of Queens in the State of New York, on the north shore of Long Island.

(b) The Existing Terminal B Facilities (as defined herein) located within the Premises (as defined herein) opened to the public in 1964 with a design capacity of 8 million annual air passengers (enplaned and deplaned), were expanded from approximately 750,000 to 835,000 square feet and otherwise modernized in the 1990s, but are currently inefficient based on current passenger and industry standards, past their useful life and undersized for current and projected passenger demand.

(c) The Port Authority wishes to replace the Existing Terminal B Facilities with the New Terminal B Facilities (as defined herein) and make certain other modifications to the Premises as set forth more fully herein and enter into this Agreement with the Lessee for the primary purpose of letting the Premises to the Lessee and in connection therewith, establish the requirements for the design, construction and finance by the Lessee of the Construction Project (as defined herein) and maintenance and operation of the Terminal B Facilities by the Lessee.

(d) The Premises are leased to the Port Authority pursuant to the Amended and Restated Agreement of Lease of the Municipal Air Terminals, dated November 2004, between the City of New York, a municipal corporation of the State of New York (the "**City**") and the Port Authority (the "**Basic Lease**"), as set forth more fully in the Basic Lease.

(e) On October 26, 2012, the Port Authority issued a Request for Qualifications (collectively with all subsequently issued addenda thereto, the "**RFQ**") regarding a proposed future solicitation for the design, construction and finance by the Lessee of the Construction Project and maintenance and operation of the Terminal B Facilities by the Lessee.

(f) In July 2013, pursuant to the process outlined in the RFQ, the Port Authority selected four (4) respondents to be "**Prequalified Teams**" and "**Proposers**" that would be eligible to submit proposals in response to the Request for Proposals issued by the Port

Authority based on their respective financial and technical qualifications as detailed in their responses to the RFQ.

(g) In August 2013, the Port Authority issued the Request for Proposals comprised of various documents and addenda thereto (collectively and as amended from time to time, the "**RFP**") to the Prequalified Teams.

(h) Following the issuance of the RFP, an Airport Advisory Panel (the "**Advisory Panel**") was created to advise the Governor of New York and the Port Authority on the modernization of LGA Airport. The Advisory Panel has made certain preliminary recommendations for future consideration regarding potential future improvements at LGA Airport, including an overarching vision to unify the current disparate central area terminals into a single, unified, architecturally consistent facade (the "**Advisory Panel's Recommendations**").

(i) On May 28, 2015, pursuant to the evaluation process outlined in the RFP, the Port Authority selected the consortium comprised of Vantage Airport Group Ltd., Skanska Infrastructure Development Inc. and Meridiam Infrastructure North America Corporation as the "**Preferred Proposer**" under the RFP. The Port Authority based its decision on the overall evaluation of the compliant proposals received from the Proposers and the Port Authority's conclusion that the Preferred Proposer is best suited to meet the Port Authority's objectives with respect to the Construction Project and the Terminal B Facilities.

(j) On June 24, 2015, January 27, 2016 and March 31, 2016, respectively, the Port Authority issued Post-Selection Phase Addendum #1 to the RFP ("**ITP Addendum #1**"), Post-Selection Phase Addendum #2 to the RFP ("**ITP Addendum #2**") and Post-Selection Phase Addendum #3 to the RFP ("**ITP Addendum #3**"). Under ITP Addendum #1, ITP Addendum #2 and ITP Addendum #3, the Preferred Proposer agreed, among other things, to perform certain preliminary design and planning work to evaluate the incorporation of the Advisory Panel's Recommendations and any cost and schedule impact on its proposal.

(k) On June 16, 2015, the Equity Members formed LaGuardia Gateway Partners, LLC, a Delaware limited liability company, to enter into the PNTP Agreement, the Interim Agreement, this Agreement and all other Project Documents to which it shall be a party.

(l) On March 21, 2016, the Preferred Proposer submitted a Finalized Proposal setting forth its committed proposal with respect to the Construction Project and the Terminal B Facilities.

(m) On March 24, 2016, the Port Authority's Board of Commissioners issued the "LaGuardia Airport Redevelopment Program – Authorization of the LaGuardia Redevelopment Program and Lease Agreement for the New Terminal B, Central Hall and Supporting Infrastructure Project", which authorizes the Port Authority, amongst other things, to enter into this Agreement.

(n) On April 12, 2016, the Port Authority and the Preferred Proposer entered into the Interim Agreement.

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, the Parties hereby agree as follows:

ARTICLE 1

DEFINITIONS; PROJECT DOCUMENTS

Section 1.1 Definitions

As used in this Agreement or any other Project Document, the following terms have the respective meanings set forth below. Unless expressly provided otherwise, all references to Articles, Sections and Exhibits refer to the Articles, Sections and Exhibits of or attached to this Agreement, as applicable.

179D Deduction has the meaning set forth in Section 4.8(a).

[redacted]

Acceptable Credit Support means (a) any standby letter of credit, in substantially the form attached hereto as Exhibit 11-A (*Form of Handback Performance Security*) or Exhibit 11-B (*Form of Major Maintenance Performance Security*), as applicable, issued by an Eligible LC Issuer; (b) any guaranty, in form and substance acceptable to the Port Authority, from a guarantor acceptable to the Port Authority; or (c) any cash collateral pursuant to documentation acceptable to the Port Authority.

Accommodations means and includes:

(a) use by a Requesting Airline of Gate(s) and Gate Related Premises, on an exclusive or non-exclusive basis, for its scheduled passenger flight operations;

(b) Utilities, janitorial services, security, maintenance and repair and other services and facilities necessary or desirable in connection with the use described in clause (a) of this definition; and

(c) relocation of one or more of the scheduled flight operations of any Airline Sublessee within the Existing Terminal B Facilities or the New Terminal B Facilities, as applicable, to accommodate such Requesting Airline.

Accommodations Notice Period has the meaning set forth in Section 32.3(a).

Account Balances means all amounts in any bank account held by or on behalf of the Lessee (excluding the Handback Reserve Fund), or the value of any letter of credit issued in substitution for any such amount in a bank account previously held by the Lessee (excluding the Handback Performance Security and the Handback Reserve Fund).

ACDBE has the meaning set forth in Section 5.3(b).

ACDBE Concession Sublease means any Concession Sublease with an ACDBE pursuant to Section 5.3 (*Concession Subleases*).

ACM has the meaning set forth in Section 16.4(b)(ii).

[redacted]

Additional ACM means (1) ACM in the roof of Building 30 (as described in Asbestos and Regulated Materials Inspection Report, Building 30, LaGuardia Airport, Queens, New York, by TRC Engineers, Inc., dated November 23, 2015) and any Unknown ACM in such Building 30, and (2) any ACM comprising or otherwise present in electric utility conduits or non-fiber-optic communications conduits that are Disclosed Facilities and are not expressly identified as containing ACM in the Available Documents. All such utility and non-fiber optic cable conduits shall be presumed to be Additional ACM without sampling or analysis.

Additional ACM Allowance means an amount of Eleven Million One Hundred Thirty Thousand, Three Hundred Sixty-Seven Dollars ($11,130,367.00) to be allocated for Additional ACM Costs.

Additional ACM Costs means the Lessee's costs and expenses directly related to the removal of Additional ACM, including costs and expenses for sampling, containment, removal, abatement and disposal that are required by Environmental Law and necessary to complete the Construction Work.

Advisory Panel has the meaning set forth in the recitals to this Agreement.

Advisory Panel's Recommendations has the meaning set forth in the recitals to this Agreement.

Aeronautical User means any provider of services (including Handling Services and repair and servicing of Aircrafts) to any air carrier in the Premises.

Aeronautical User Sublease means any Sublease between the Lessee and an Aeronautical User pursuant to Section 5.2 (*Air Transportation-Related Subleases*).

Aeronautical User Sublessees has the meaning set forth in Section 5.1(h).

Affiliate of any Person means any entity which, directly or indirectly, through one or more intermediaries, (a) has a ten percent (10%) or more voting or economic interest in such Person or (b) Controls, is Controlled by, or is Under Common Control With such Person.

Affiliate QTO has the meaning set forth in Section 17.2(a)(ii).

Agreement has the meaning set forth in the introductory paragraph to this Agreement, including all the exhibits and forms (including the Requirements and Provisions for Work and the Lessee's Proposal Commitments).

Air Terminal Highway System shall mean those portions of LGA Airport designated and made available temporarily or permanently by the Port Authority to the public for general or limited highway use.

Aircraft means airplanes, helicopters and every other contrivance now or hereafter used for the navigation of or flight in air or space.

Aircraft Operator means (a) a Person owning one or more Aircraft which are not leased or chartered to any other Person for operation, or (b) a Person to whom one or more Aircraft are leased or chartered for operation whether the Aircraft so owned, leased or chartered are military or non-military, or are used for private business, pleasure or governmental business, or for carrier or non-carrier operations, or for scheduled or non-scheduled operations or otherwise. "Aircraft Operator" shall not mean the pilot of an Aircraft unless he or she is also the owner or lessee thereof or a Person to whom it is chartered.

Airline Amount means, as of any Calculation Date, the amount of any rates and charges downward adjustment, if any, to be made available to Airline Sublessees pursuant to applicable Airline Subleases with respect to the immediately preceding Calculation Period.

Airline Requested Change means a request during the Construction Period by one or more Airline Sublessees or any Scheduled Aircraft Operator who is a prospective airline sublessee to modify the scope of any portion of the Construction Project or the performance of any portion of the D&C Work, including design changes and re-sequencing or re-phasing of the Construction Work.

Airline Sublease means any Sublease between the Lessee and a Scheduled Aircraft Operator pursuant to Section 5.2 (*Air Transportation-Related Subleases*).

Airline Sublessees has the meaning set forth in Section 5.1(h).

Airline Terminal Rates means the rates payable by Airline Sublessees for the use of the Existing Terminal B Facilities or the New Terminal B Facilities, as applicable, including aprons.

Airport Operating Certificate means the airport operating certificate issued by the FAA pursuant to 14 C.F.R. Part 139 with respect to LGA Airport.

Airport Performance Measurement Program means the Port Authority's Airport Performance Measurement Program established in the Customer Care Standards to measure performance by the Lessee of the Operations and Maintenance Work, as described in more detail in Section 3.0 of the Operational Requirements.

Airport Premises means the land shown in stipple and stipple diagonal hatching on the LaGuardia Terminal B Site Diagram, situated at LGA Airport in the County of Queens, City and

State of New York, together with (a) all buildings, structures, fixtures, improvements and other property and facilities of the Port Authority located therein, thereon or thereunder (including the Existing Facilities), and (b) all structures, improvements, additions, buildings, installations and facilities to be located, constructed or installed, or which may be located, constructed or installed therein, thereon or thereunder (including the New Facilities), and (c) the equipment permanently affixed or permanently located therein, such as electrical, plumbing, sprinkler fire protection and fire alarm, heating, steam, sewage, drainage, cooling, refrigerating, telephone and other communications, gas and other systems, and their pipes, wires, mains, lines, tubes, conduits, equipment and fixtures and all paving, drains, culverts, ditches and catch basins (the items described in clauses (a), (b) and (c), collectively, the "**Assets**"); provided, however, that the Airport Premises shall not include the Utility Systems.

Airport Security Program or **ASP** has the meaning set forth in Section 15.6(a)(i).

Airside Snow and Ice Operations Manual means the Airside Snow and Ice Operations Manual (submitted as part of the "Airside Apron Management Plan"), subject to Port Authority Approval, as described in Section 9.0 of the Operational Requirements.

AirTrain Station means a facility and its appurtenances used to load and unload passengers to and from light or heavy rail vehicles or its functional equivalent, which is, depending on the context, projected, designed, constructed and operated in or in the vicinity of the Central Hall.

[redacted]

Alternative Solutions Report has the meaning set forth in Sections 3.2.1 and 3.2.3 of the General Conditions.

Annual Budget has the meaning set forth in Section 11.3(a).

Applicable Issuer means the issuer of an issue of Tax-Exempt Bonds.

Applicable Law means any statute, law, code, regulation, ordinance, rule, common law, judgment, judicial or administrative order, decree, directive, or other requirement having the force of law or other governmental restriction (including those resulting from the initiative or referendum process) or any similar form of decision of or determination by any Governmental Entity (including any applicable regulation, order or statement of policy of the Administrator of the FAA or any other governmental officer or body having jurisdiction over the enforcement of the obligations of the Port Authority under Federal law or arising from the applications described in Section 15.5(a)), including any Environmental Law, which is applicable to the Construction Project, the Construction Site, the Premises, the Temporary Rights of Access, the Work or the relevant Person during the Term, whether taking effect before or after the Lease Commencement Date, in each case, as amended, revised, supplemented or otherwise modified from time to time. For the avoidance of doubt, the term "Applicable Laws" includes FAA Grant Assurances and the Airport Operating Certificate but excludes the Applicable Standards.

[redacted]

Applicable Standards means all applicable codes, standards, regulations, manuals, references, guidelines, policies, specifications, recommendations, handbooks and advisory circulars referenced within this Agreement and the Requirements and Provisions for Work, including the Rules and Regulations and other such codes, standards, regulations, manuals, guidelines, policies, specifications, recommendations, handbooks, advisory circulars, references and similar documents described in Part C of the Requirements and Provisions for Work, in each case, as amended, revised, supplemented or otherwise modified from time to time.

Applicable Standards Change means (a) any repeal (in whole or in part) of, amendment or modification to, or written change in interpretation of, any of the Applicable Standards, in each case, after the date that is thirty (30) days prior to the Proposal Due Date or (b) the adoption or enactment of any new Applicable Standard after the date that is thirty (30) days prior to the Proposal Due Date, in each case in clauses (a) and (b), that materially alters the Applicable Standards in effect thirty (30) days prior to the Proposal Due Date; provided, that no Safety Compliance Order, Directive Letter, General Manager Directive or Change in Law shall constitute an Applicable Standards Change; and provided, further, that the issuance of any Lessee Governmental Approval is not an Applicable Standards Change unless and to the extent that a change in a Lessee Governmental Approval or a new Governmental Approval is required by an Applicable Standards Change in connection with the D&C Work.

Appraisal means the Appraisal Report of LaGuardia Airport Terminal Building Replacement Project, prepared by Rushton Atlantic, LLC, and dated as of May 31, 2016.

Approved Alternative Cleanup Standard has the meaning set forth in Section 16.12(l).

Approved Disposal Location has the meaning set forth in Section 16.4(d). All Budgeted Disposal Locations are Approved Disposal Locations.

Archaeological Allowance means the amount of One Hundred Thousand Dollars ($100,000) to be allocated to the monitoring of Archaeological Remains within the Construction Site.

Archaeological Remains means antiquities, fossils, coins, articles of value, precious minerals, cultural artifacts, human burial sites, paleontological and human remains and other similar remains of archaeological or paleontological interest discovered on any part of the Premises or the areas subject to the Temporary Rights of Access.

Architect of Record or **AOR** means the licensed professional architect in the State of New York employed by the Lead Designer responsible for preparing Final Design Documents, all specifications, certification of all shop drawings and providing Record Documents with respect to the Construction Project.

Area-Wide Contamination has the meaning set forth in Section 16.12(e).

As-Built Drawings means the as-built drawings prepared by the Lessee in compliance with Sections 9.2, 9.5 and 9.6 of the Design and Construction Requirements.

Asset Inventory Report means the report to be prepared by the Lessee in accordance with Sections 2.1 and 3.2 of the Maintenance Requirements, subject to Port Authority Approval.

Asset Preservation Schedule means the five (5)-year asset preservation schedule included in each Capital Asset Management Plan and each update thereof, each subject to Port Authority Comment, consisting of a rolling, forward-looking maintenance services program that describes planned preventative and predictive maintenance taking into account both known and uncertain parameters and the Asset Preservation Work, including Routine Maintenance that the Lessee is planning to undertake as of the date of publication of each Capital Asset Management Plan, as described in more detail in Section 2.1 of the Maintenance Requirements.

Asset Preservation Work means all Operations and Maintenance Work described in Sections 2.0 and 2.1 of the Maintenance Requirements.

Assets has the meaning set forth in the definition of "**Airport Premises**."

Assigned Terminal B Facilities Agreements means such Existing Airline Subleases and other existing agreements listed on Exhibit 2 (*Assigned Terminal B Facilities Agreements*), assigned to the Lessee by the Port Authority and assumed by the Lessee pursuant to an assignment and assumption agreement, as of the Lease Commencement Date.

Assignment has the meaning set forth in Section 17.1(e)(i).

Authorized Representative has the meaning set forth in Section 35.6 (*Designation of Representatives; Cooperation with Representatives*).

Available Documents means (i) the documents included in Part IV of the RFP, including the Disclosed Environmental Reports and the Disclosed Existing Facilities Operations and Maintenance Information and (ii) the documents listed in Exhibit 32 (*Available Documents*). The Available Documents do not constitute Project Documents.

Base Rent has the meaning set forth in Section 4.2(a).

Basic Lease has the meaning set forth in the recitals to this Agreement.

Best Management Practice means the exercise of the degree of skill, diligence, prudence and foresight that would reasonably and ordinarily be expected from time to time from a skilled and experienced designer, engineer, constructor, maintenance contractor, operator, consultant, analyst or the Lessee seeking in good faith to comply with its contractual obligations, complying with all Applicable Laws, Governmental Approvals and Applicable Standards, and engaged in the same type of undertaking under similar circumstances and conditions. Best Management Practice is not static but rather will change over time; provided, however, that Best Management Practice with respect to any particular activity will be determined at the time when such particular activity is performed.

Bond-Financed Assets means those assets (or portions thereof) to which proceeds of the Tax-Exempt Bonds are allocated in accordance with the books and records of the Applicable Issuer (with the consent of the Port Authority if the Applicable Issuer is not the Port Authority, which consent shall not be unreasonably withheld), and includes the Series 2016A Bond-Financed Assets.

[redacted]

Books and Records has the meaning set forth in Section 30.1(a).

Budgeted Disposal Locations means the locations identified in Exhibit 36 (*Budgeted Disposal Locations*) that are approved by the Port Authority for the disposal of Excavated Materials.

Building 30 Fit-Out has the meaning set forth in Section 10.1(a)(xiii).

Business Day means any day that is not a Saturday, Sunday or other day on which (a) the Port Authority is officially closed for business, (b) banks located in the City are required or authorized by law or executive order to close or (c) the New York Stock Exchange is closed.

Busing Support Payments has the meaning set forth in Section 10.12(b).

Bylaws means the By-Laws of the Port Authority in effect on the Lease Commencement Date, as may be amended from time to time.

[redacted]

Calculation Date means each June 30th and December 31st following the End of Funding Date.

Calculation Period means the six (6)-month period following each Calculation Date and ending on the succeeding Calculation Date.

Calendar Year means the consecutive twelve (12)-month period starting on January 1 and ending on December 31.

Capital Asset Management Plan means the Capital Asset Management Plan, subject to Port Authority Comment, as described in Section 2.1 of the Maintenance Requirements.

Cash Available for Distribution or **CAFD** means, as of any Calculation Date, all cash, cash equivalents and liquid investments held by or on behalf of the Lessee as of such Calculation Date in the Post-Substantial Completion Revenue Account after making the payments and transfers required by clauses *First* through *Ninth*, inclusive, of Section 5.03(b) of the Collateral Agency Agreement; provided; that, as it relates to the first Calculation Date on which the Restricted Payment Conditions are satisfied, the Distributable Unused Contingency Amount shall be deducted from the Cash Available for Distribution.

[redacted]

Central Electrical Substation means the existing central electrical substation, located north of the existing taxi hold areas between the Existing Terminal B Facilities and Terminal C, which will be decommissioned and demolished by the Lessee as part of the Construction Project after a new East End Substation is built and commissioned for operation by the Port Authority.

Central Hall means a non-exclusive, central arrivals/departure hall to be located between the New Terminal B Facilities and the future redeveloped Terminal C at LGA Airport that will not preclude the future development of one or more of the following: an automated people mover and/or moving walkway, an AirTrain Station, conference and meeting room capacity, retail, food and beverage space and a hotel and related facilities. The Central Hall is included in the Construction Project but it is not deemed a New Facility (nor a New Improvement) for the purposes of this Agreement.

Central Hall Amendment has the meaning set forth in Section 2 of Exhibit 33 (*Central Hall Provisions*).

Central Hall Design and Construction Requirements means those Design and Construction Requirements set forth as Section 1 of the Central Hall Technical Requirements.

Central Hall General Conditions means the General Conditions set out in Part A of the Requirements and Provisions for Work for the Central Hall.

Central Hall Milestone Payments has the meaning set forth in Section 9.4(a).

[redacted]

Central Hall Site means the land on which the Central Hall will be constructed, located as indicated on Exhibit 28-F (*Central Hall Site*). Following Substantial Completion, Exhibit 28-F (*Central Hall Site*) shall be amended (if necessary) to reflect the final design of the Construction Project and any revisions required with respect to the Central Hall Site or the Premises in connection therewith.

Central Hall Substantial Completion means the occurrence of all events and satisfaction of all conditions set forth in Section 10.6(b) with respect to the Central Hall, as evidenced by the issuance of a Certificate of Central Hall Substantial Completion by the Port Authority to the Lessee.

Central Hall Substantial Completion Date means the date upon which the Lessee achieves Central Hall Substantial Completion.

Central Hall Substantial Completion Notice has the meaning set forth in Section 10.6(c).

Central Hall Technical Requirements means the Technical Requirements set forth as Part B of the Requirements and Provisions for Work for the Central Hall.

Certificate of Central Hall Substantial Completion has the meaning set forth in Section 10.6(b).

Certificate of Final Acceptance has the meaning set forth in Section 10.7(a).

Certificate of Substantial Completion has the meaning set forth in Section 10.6(a).

C.F.R. means the Code of Federal Regulations.

CH Annual Budget has the meaning set forth in Section 4.5 of Exhibit 33 (*Central Hall Provisions*).

CH Capital Asset Management Plan and Budget has the meaning set forth in Section 4.3 of Exhibit 33 (*Central Hall Provisions*).

CH Cost and Revenue Report has the meaning set forth in Section 4.7 of Exhibit 33 (*Central Hall Provisions*).

CH O&M Expenses has the meaning set forth in Section 4.2 of Exhibit 33 (*Central Hall Provisions*).

CH Renewal Work has the meaning set forth in Section 4.3 of Exhibit 33 (*Central Hall Provisions*).

CH Renewal Work Plan has the meaning set forth in Section 4.3 of Exhibit 33 (*Central Hall Provisions*).

CH Renewal Work Schedule has the meaning set forth in Section 4.3 of Exhibit 33 (*Central Hall Provisions*).

Change in Law means (a) any repeal (in whole or in part) of, or amendment or modification to, any Applicable Law by the Federal government, the State of New York, the City or any respective agency or political subdivision thereof (any such Applicable Law, a "**Qualifying Applicable Law**"), or any written change in interpretation or application of, any Qualifying Applicable Law, in each case, after the date that is thirty (30) days prior to the Proposal Due Date, or (b) the adoption or enactment of any new Qualifying Applicable Law after the date that is thirty (30) days prior to the Proposal Due Date, in each case in clauses (a) and (b), that materially alters any existing Qualifying Applicable Law or any existing interpretation or application of, any such Qualifying Applicable Law in effect thirty (30) days prior to the Proposal Due Date; excluding, however, (i) any repeal of, or amendment or modification to, or written change in interpretation or application of, a Qualifying Applicable Law, or any new Qualifying Applicable Law, in each case, that is passed or adopted but not yet effective as of thirty (30) days prior to the Proposal Due Date, (ii) any repeal of, or amendment or modification to, or written change in interpretation or application of, or the adoption or enactment of, state tax laws of general application (it being understood that any change in state tax laws shall not be deemed of general application if it is solely directed at, and the effect of which is solely borne by, the Lessee or non-airline terminal operators at airports operated by the Port Authority), (iii) any repeal of, or amendment or modification to, or written change in interpretation or application of, or adoption or enactment of, state labor laws and (iv) any Lessee Governmental Approval, unless and to the extent that a change in a Lessee Governmental Approval or a new Governmental Approval is required by a Change in Law in connection with the D&C Work.

Chief Engineer means the Chief Engineer of the Port Authority.

CHRP means, as the context requires, the Existing CHRP or the New CHRP.

CHRP Operations Manual means the operations manual for the Existing CHRP prepared by the Lessee in accordance with Section 7.1 of the Operational Requirements and subject to Port Authority Approval.

City has the meaning set forth in the recitals to this Agreement.

Civil Aircraft Operator shall mean a Person engaged in civil transportation by Aircraft or otherwise operating Aircraft for civilian purposes, whether governmental or private. If any

such Person is also engaged in the operation of Aircraft for military, naval or air force purposes, he or she shall be deemed to be a Civil Aircraft Operator only to the extent that he or she engages in the operation of Aircraft for civilian purposes.

Claim means any and all claims, disputes, allegations, causes of action, demands, suits or proceedings alleging or seeking damages, injuries, liabilities, obligations, losses, costs and expenses.

Code means the Internal Revenue Code of 1986, as amended.

Collaboration Portal means the collaborative program website maintained by the Port Authority to store, share and distribute all documentation related to the RFP.

Collateral Agency Agreement or **CAA** means the Collateral Agency Agreement dated as of May 1, 2016 among the Lessee, The Bank of New York Mellon, as Collateral Agent and securities intermediary, The Bank of New York Mellon, as bond trustee, and The Bank of New York Mellon, as Deposit Account Bank.

Collateral Agent means the financial institution listed or otherwise designated to act as trustee or agent on behalf of or at the direction of the Lenders pursuant to the Financing Documents with respect to any Lessee Debt or any financing documents relating to a Refinancing permitted under this Agreement.

[redacted]

Completed Value Insurance means builder's risk insurance where the limit of coverage is set by the estimated value of the Construction Project as of the Substantial Completion Date.

Comprehensive Concessions Plan has the meaning set forth in Section 5.3(b).

Comprehensive Terminal Plan has the meaning set forth in Section 5.2(a).

Concessions Management Contract means any Contract entered into by the Lessee for the performance of concessions management responsibilities at the Existing Terminal B Facilities, the New Terminal B Facilities or the Central Hall, as applicable (irrespective of whether such Contract takes the form of a management agreement, Sublease or otherwise).

Concessions Manager means any counterparty to a Concessions Management Contract.

Concession Sublease means any Sublease between the Lessee and the operator of a concession at the Existing Terminal B Facilities, the New Terminal B Facilities or the Central Hall, as applicable, pursuant to Section 5.3 (*Concession Subleases*).

Concession Sublessees has the meaning set forth in Section 5.1(h).

Condemnation Termination Notice has the meaning set forth in Section 26.1 (*Condemnation by the Port Authority*).

Conformed Set of TAA Design Documents means, with respect to Partial Completion of any portion of the Construction Project, three (3)[1] sets of drawings and specifications to be submitted to the Port Authority with a request for Partial Inspection (for Occupancy) (as defined in the TCAP) incorporating all design changes (including any change orders resulting from Port Authority Changes and Lessee Changes) and representing the "final design" condition that has received Port Authority Approval of all changes subsequent to the initial Released for Construction Documents.

Consent to Sublease has the meaning set forth in Section 5.1(b)(i)(B).

Construction Account shall have the meaning assigned to such term in the CAA.

Construction Documents means all shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, test data, inspection reports, engineering reports, survey control data, safety records, construction quality control reports, construction quality assurance reports and samples necessary or desirable for the Construction Work in accordance with the Project Documents.

Construction NTP means any Full Construction NTP, Construction Segment NTP or Notice to Proceed issued by the Port Authority to the Lessee to commence the Construction Work for a specific New Facilities Construction Milestone, as the case may be.

Construction Period means the period from the issuance of the Design NTP until Final Acceptance.

Construction Plan means the plan developed by the Lessee pursuant to Section 3.3.2 of the Design and Construction Requirements, subject to Port Authority Approval, setting out the complete procedures for the implementation of the entire scope of the Construction Work and/or for each Element thereof, including coordination with the Construction Quality Control Plan.

Construction Project has the meaning set forth in Section 10.1(a). For the avoidance of doubt, the Construction Project includes the design and construction by the Lessee of the New Improvements and the Central Hall on behalf of the Port Authority.

Construction Quality Control Plan means the plan developed by the Lessee pursuant to Section 6.2 of the Design and Construction Requirements, subject to Port Authority Approval, that provides a defined approach to how the Lessee will ensure that the materials and the Construction Work comply with the requirements of the Project Documents and how the Lessee will monitor such compliance.

Construction Security has the meaning set forth in Section 19.2 (*Construction Security*).

[1] The Port Authority may require additional sets as reasonably required depending on the size and complexity of the portion of the Construction Project proposed by the Lessee to be subject to Partial Completion.

Construction Segment means any segment or portion of the Construction Work that is designated as such in the Plan for New Improvements Construction Segments or which the Port Authority and the Lessee have otherwise agreed to designate as a separate segment or portion of the Construction Work.

Construction Segment NTP means the Notice to Proceed issued by the Port Authority to the Lessee to commence the Construction Work for a specific Construction Segment.

Construction Site means those portions of the Premises and the areas subject to the Temporary Rights of Access on which the Lessee will perform the Construction Work during the Construction Period, all as indicated in diagonal hatching on Exhibit 28-A [redacted].

Construction Work means all D&C Work related to the building, constructing, making, forming, manufacturing, furnishing, installing, supplying, delivering, landscaping, equipping and completing the Construction Project (including the New Improvements and the Central Hall) and decommissioning, demolishing and removing the Demolition Facilities, all in accordance with the Project Documents, but excluding Design Work and Operations and Maintenance Work.

Contract means any agreement, and any supplement or amendment thereto, between the Lessee, a Contractor or a Supplier and any other Person to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work, at all tiers.

[redacted]

Contractor means any Person with whom the Lessee has entered into any Contract to perform any part of the Work at or on the Premises and any other Person with whom any Contractor has further subcontracted to perform any part of the Work, at all tiers. The term "Contractor" includes the D&C Contractor and the Terminal Operator, if any.

Control (including the terms "**Controlling**," "**Controlled by**" and "**Under Common Control With**") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.

Corrective Action Plan means the Corrective Action Plan meeting the requirements of Section 3.3 of the General Conditions developed by the Lessee with respect to any Nonconforming Work.

CPI means the "Consumer Price Index – for all Urban Consumers" for the New York/Northern NJ/Long Island area (not seasonally adjusted) as published by the U.S. Department of Labor, Bureau of Labor Statistics; provided, however, that if the CPI is changed so that the base year of the CPI changes, the CPI shall be converted in accordance with the conversion factor published by the U.S. Department of Labor, Bureau of Labor Statistics. If the CPI is discontinued or substantially altered, the applicable substitute index will be that chosen by the Secretary of the Treasury for the Department of Treasury's Inflation-Linked Treasuries as described at 62 Federal Register 846-847 (January 6, 1997), or if no such securities are outstanding, will be determined by the Parties in accordance with general market practice at the time.

CPI Adjusted means the annual adjustment (starting with January 1, 2017) of the relevant amount by adding to such amount the product of the relevant amount and the percentage increase in CPI since January 1 of the previous Calendar Year.

CPI Percentage Increase has the meaning set forth in Section 4.2(d)(i).

Critical Path means the longest (in terms of time) unbroken chain or path of logically connected activities in the Preliminary Project Baseline Schedule or, once in effect, the Project Baseline Schedule, ending with Substantial Completion or Final Acceptance, as applicable.

CRWD means the new consolidated receiving and warehouse distribution facility to be constructed and operated by the Lessee.

Current Facilities means the equipment, structures, pipelines, foundations, roads and other improvements existing on the Premises on the Lease Commencement Date, including the Existing Terminal B Facilities, the Central Electrical Substation, the P2 Garage, Hangar 1, the Existing CHRP, the National Grid Gate and Governor Station and frontage roads associated therewith.

Customer Care Standards means The Port Authority of New York and New Jersey Customer Care Airport Standards Manual (5th edition (July 2008), or any subsequent edition).

D&C Contract means any Contract entered into by the Lessee for third party management, direction, supervision or performance of the D&C Work or any significant portion thereof. There may be more than one D&C Contract concurrently in effect.

D&C Contractor means any counterparty to a D&C Contract.

D&C Guarantee means one or more guarantees delivered by a D&C Guarantor guaranteeing the performance of the D&C Contractor's obligations under the D&C Contract.

D&C Guarantor means any Person providing a D&C Guarantee in respect of a D&C Contract.

D&C Letter of Credit means a standby letter of credit, in form and substance reasonably acceptable to the Port Authority, issued by an Eligible LC Issuer in favor of the Collateral Agent as security for the performance of the D&C Contractor's obligations under the D&C Contract; provided, that if the Lessee Debt incurred on the Lease Commencement Date has received a "BBB-" (or higher) or equivalent rating from at least one of the Rating Agencies, such standby letter of credit shall be deemed acceptable to the Port Authority if it is on terms that satisfy the requirements of such Rating Agency and the holders of such Lessee Debt, so long as it provides that it may be transferred by the Lessee to the Port Authority as transferee beneficiary, with rights to draw upon or exercise other remedies thereunder if the Port Authority succeeds to the position of the Lessee under the D&C Contract. D&C Schedule of Submittals has the meaning set forth in Section 8.2(a).

D&C Work means the Design Work and the Construction Work.

Day or **day** means calendar days, unless otherwise expressly specified as a Business Day.

Debarment Regulations means (a) Federal Executive Order no. 12549 (Feb. 18, 1986), (b) Federal Executive Order no. 12689 (Aug. 16, 1989), (c) 31 U.S.C. § 6101 note (Section 2455, Pub. L. 103-355, 108 Stat. 3327) and (d) 49 C.F.R. Part 29 "Government-wide Debarment and Suspension (Nonprocurement)."

Defect means a defect or deficiency in the condition or performance of any component of the Construction Project, whether by design, construction, installation, damage or wear, affecting the condition, use, functionality or operation of any component of the Construction Project, that would cause or have the potential to cause one or more of the following:

(a) a hazard, nuisance or other risk to public or worker health or safety, including the health and safety of Patrons;

(b) a structural deterioration of the affected Asset or any other component of the Construction Project;

(c) damage to a third party's property or equipment;

(d) damage to the Environment to the extent arising from a breach of this Agreement by the Lessee; or

(e) failure of the affected Asset or any component of the Construction Project to meet any of the requirements or standards referred to in Section 11.2 (*Operations and Maintenance Work Standards and Requirements*), including the requirements of the Airport Performance Measurement Program.

Delay Event has the meaning set forth in Section 14.2(a).

Delay Event Notice has the meaning set forth in Section 14.2(b)(i).

Delta means Delta Air Lines, Inc.

Demolition Debris means the solid waste that is created by the demolition, crushing, breaking, excavation, removal, disposal or destruction of the Current Facilities.

Demolition Facilities shall mean (a) the Existing Terminal B Facilities, (b) the Existing CHRP, (c) the Central Electric Substation, (d) the P2 Garage, (e) Hangar 1, (f) the National Grid Gate and Governor Station, (g) frontage roads associated with the P2 Garage, Hangar 1 and the Existing Terminal B Facilities, (h) temporary facilities to support passenger services during construction of the New Terminal B Facilities and (i) other ancillary facilities required to be demolished in accordance with the Requirements and Provisions for Work.

Deposit Account Bank means The Bank of New York Mellon, a New York banking corporation, in its capacity as deposit account bank.

Design and Construction Requirements means the Terminal B Facilities Design and Construction Requirements, the New Improvements Design and Construction Requirements and the Central Hall Design and Construction Requirements.

Design Documents means all Record Documents, all drawings (including plans, profiles, cross-sections, notes, elevations, typical sections, details and diagrams), design criteria, specifications, reports, studies, calculations, electronic files, records and submittals necessary for, or related to, the design of the Construction Project. Design Documents include the Final Design Documents.

Design Guidelines means the LaGuardia Airport Redevelopment Program Design Guidelines (Stage 1 Documents – March 6, 2014).

Design NTP means the Notice to Proceed issued by the Port Authority to the Lessee authorizing the Lessee to proceed with Design Work.

Design Plan means the plan developed by the Lessee pursuant to Section 3.3.2 of the Design and Construction Requirements, subject to Port Authority Approval, that provides complete procedures for the implementation of the entire Design Work.

Design Quality Control Plan means the plan developed by the Lessee pursuant to Section 6.1 of the Design and Construction Requirements, subject to Port Authority Approval, that provides a defined approach for how the Lessee will ensure that the Design Work complies with the requirements of the Project Documents and monitor such compliance.

Design Work means all D&C Work related to the design, redesign, engineering and architecture for the Construction Project (including the New Improvements and the Central Hall)

in accordance with the Project Documents, but excluding Construction Work and Operations and Maintenance Work.

Dewatering Plan has the meaning set forth in Section 16.5(a).

Direct Agreement means any direct agreement or consent and agreement to assignment by and among a Contractor that has entered into a Key Contract with the Lessee (and its Parent Guarantor (as defined in the ITP), if applicable), the Lessee and the Lender (or if there is more than one Lender, the Collateral Agent on behalf of the Lenders).

Directive Letter has the meaning set forth in Section 13.2 (*Directive Letters*).

Disbursement Request has the meaning set forth in Section 9.2(a).

Disbursement Request Certificate has the meaning set forth in Section 9.2(b).

Disclosed Environmental Reports means the reports set forth on Exhibit 5 (*Disclosed Environmental Reports*).

Disclosed Existing Facilities Operations and Maintenance Information has the meaning set forth in Section 22.2(k).

Disclosed Facilities means Current Facilities that are identified in or on, or are apparent upon inspection of, drawings, documents, photographs and other materials included within the Available Documents, or which can reasonably be inferred from the Available Documents, including the presence of wiring, piping, paint, batteries, mobile equipment and storage tanks.

Disclosing Party has the meaning set forth in Section 35.18(d).

Discriminatory Applicable Standards Change means an Applicable Standards Change which applies, or could reasonably be expected to apply, in a manner materially adverse to the Lessee or the Work, or non-airline terminal operators at the airports for which the Port Authority is the airport operator or the terminal operations of such non-airline terminal operators, and does not apply, or could not reasonably be expected to apply, to other Persons.

Discriminatory Change in Law means a Change in Law which applies, or could reasonably be expected to apply, in a manner materially adverse to the Lessee or the Work, or non-airline terminal operators at the airports for which the Port Authority is the airport operator or the terminal operations of such non-airline terminal operators, and does not apply, or could not reasonably be expected to apply, to other Persons.

Dispute means any dispute, disagreement or controversy between the Port Authority and the Lessee concerning their respective rights and obligations under any Project Document, including in respect of any Claim, alleged breach or failure to perform and any remedy.

Dispute Resolution Procedures has the meaning set forth in Section 33.1(a).

[redacted]

Distribution means, whether in cash or in kind, any:

(a) dividend or other distribution or other payment on account of an equity investment in respect of membership interests or partnership interests, or other share capital, including from the proceeds of any Refinancing;

(b) reduction of capital, redemption or purchase of equity interests or shares or any other reorganization or variation to equity investment or other share capital;

(c) payments under any loan agreement, credit agreement or similar agreement evidencing Equity Member Debt (whether of principal, interest, breakage costs or otherwise), including from the proceeds of any Refinancing;

(d) payment, loan, contractual arrangement or transfer of assets or rights directly to the extent (in each case) it was put in place after the Lease Commencement Date and was neither in the ordinary course of business nor on reasonable commercial terms; or

(e) the receipt of any other benefit which is not received in the ordinary course of business and not on reasonable commercial terms.

Distribution Account shall have the meaning assigned to such term in the CAA.

Dollars or **$** refers to the lawful money of the United States of America.

Early Termination means the termination of this Agreement for any reason prior to the Expiry Date (other than any Partial Termination pursuant to Section 2.2 (*Partial Termination*)).

Early Termination Date means the effective date of Early Termination.

East End Substation means a new substation, to be constructed by the Port Authority as a Supporting Project on the east side of LGA Airport, to serve the New Terminal B Facilities, the Central Hall and the East End Terminals.

East End Terminals means Terminal C and Terminal D located at LGA Airport.

East Garage means a new five (5)-story garage on the P4 lot located to the east of the New Terminal B Facilities and south of Terminal C. The East Garage provides approximately 1,100 new parking places.

EDC means the New York City Economic Development Corporation, a local development corporation formed pursuant to Section 1411 of the Not-for-Profit Corporation Law of the State of New York, or such successor entity as may be designated by the City under the Basic Lease.

Element means an individual component, system or subsystem of the Terminal B Facilities or the Demolition Facilities, as applicable.

Eligible LC Issuer means a financial institution that has (a) long-term unsecured debt ratings of at least the following, from at least two (2) of the Rating Agencies: (i) "A" by Standard & Poor's Ratings Services, (ii) "A2" by Moody's Investor Service, Inc. or (iii) "A" by Fitch Ratings, and (b) an office in New York, New York at which a letter of credit issued by it can be presented for payment.

Emergency means any unplanned event affecting the Premises that:

(a) presents an immediate or imminent hazard to Patrons, or a risk of immediate or imminent structural failure, or an immediate or imminent risk of material damage to a third party's property or equipment, or an immediate or imminent risk of a Hazardous Materials Release or a threat to the long-term integrity of any part of the Premises;

(b) has jeopardized the safety of Patrons using the New Terminal B Facilities;

(c) is a declared state of emergency pursuant to state or Federal law; or

(d) is recognized or declared by the Port Authority Police or any Governmental Entity as an Emergency.

End of Funding Date means the last day of the month following the month in which Substantial Completion occurs.

Endangered Species means any animal or plant species listed as endangered or threatened under an Environmental Law or that is protected from harm or harassment under an Environmental Law.

Engineer of Record or **EOR** means the licensed professional engineer in the State of New York employed by the Lead Designer responsible for preparing Final Design Documents, all specifications, certification of all shop drawings and providing Record Documents with respect to the Construction Project.

Environment means air, soils, surface waters, groundwater, land, stream sediments, surface or subsurface strata, biological resources, including endangered, threatened and sensitive species and natural systems, including ecosystems.

Environmental Law shall mean Federal, state, and local laws, statutes, ordinances, rules, regulations, judgments, guidance documents, Governmental Approvals, licenses, authorizations, registrations, plans, directives, agreements, consent orders or consent decrees, and other requirements of Governmental Entities, whether now existing or hereafter enacted or promulgated, as the same have been or may be amended from time to time, including common law causes of action and all applicable judicial and administrative decisions, orders, and decrees, arising out of, relating to or imposing liability or standards of conduct concerning protection of human health, safety or the Environment or Hazardous Materials including the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 *et seq*.), the Hazardous Materials Transportation Act (49 U.S.C. § 5101 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq*.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq*.), the Clean Air Act (42 U.S.C. § 7401 *et seq*.), the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq*.), the Occupational Safety and Health Act (29 U.S.C. § 651 *et seq*.), the Oil Pollution Act (33 U.S.C. § 2701 *et seq*.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq*.), the National Environmental Policy Act (42 USC § 4321 *et seq*.), the State Environmental Quality Review Act (SEQRA) (NY ECL § 8-0101 *et seq*.) and any analogous current or future Federal, state, municipal, city or local laws, including newly-enacted Applicable Laws concerning the Environment or Hazardous Materials, and any amendments or modifications as may be adopted or promulgated from time to time.

Environmental Liabilities means all liabilities and obligations of whatever kind or nature imposed by Environmental Law or arising as a result of a Claim under Environmental Law, whether contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including for investigation, sampling, monitoring, Remedial Action or defense of any Claim, whether or not such is ultimately dismissed, and of any settlement or judgment, any of which arise or are incurred at any time in connection with (a) any actual or alleged violation of any Environmental Law, (b) any actual or alleged use, manufacture, possession, storage, holding, presence, existence, location, release, threatened release, discharge, placement, generation, handling or disposal of Hazardous Materials, or (c) any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the Environment, excluding obligations of the Lessee to perform Work or Remedial Action under this Agreement.

Environmental Management Plan means the plan prepared by the Lessee in accordance with Section 16.1(b) (*Environmental Management Plan*) and approved by the Port Authority.

Environmental Requirements means all requirements under Environmental Laws and under the Applicable Standards pertaining to the protection of the Environment, including the NEPA Documents, together with the other requirements, policies and guidelines of the Port Authority set forth in Exhibit 6 (*Additional Environmental Requirements*), which are applicable to (a) the Premises, (b) the Work performed by the Lessee, the Contractors or others with the consent of the Lessee at the Premises or the Lessee's operations at LGA Airport, (c) the occupancy and use of the Premises by the Lessee, the Sublessees or by others with the Lessee's

consent or (d) any Hazardous Material on, in, under or originating from the Premises, in each case without regard to any exemption from Applicable Law that the Port Authority may be subject to as a result of its status as multi-jurisdictional agency. For the avoidance of doubt, Environmental Requirements include the requirements of Port Authority Governmental Approvals applicable to the Premises or the Work.

Environmental Status Report means a report submitted to the Port Authority by the Lessee once per calendar month or quarter, as required by the Project Documents, and including the information required by Section 16.15(b) (*Environmental Status Reports; Topics*), and such other information as the Port Authority shall reasonably request.

Equity Investment means (a) any form of direct investment by Equity Members, including the purchase of newly issued equity shares in and/or the provision of Equity Member Debt to the Lessee, and (b) any draws by or on behalf of the Lessee of the irrevocable on-demand letter of credit issued by an Eligible LC Issuer for the account of an Equity Member naming the Lessee and/or the Collateral Agent as beneficiary.

Equity Member means any Person that directly holds an equity interest in the Lessee. As of the Lease Commencement Date, the Equity Members are Vantage Airport Group (New York) LLC, Skanska ID LGP, LLC and MI LaGuardia CTB, LLC, as reflected in Exhibit 22 (*Lessee Organization Chart*).

Equity Member Debt means any obligations created, issued or incurred by the Lessee for borrowed money that: (a) is owed to any Equity Member or any Affiliate thereof or of the Lessee and (b) is subordinated in priority of payment and security to all indebtedness held by Persons who are not Equity Members or any Affiliate thereof.

Event of Default has the meaning set forth in Section 23.1 (*Event of Default*).

Event of Default Notice has the meaning set forth in Section 23.3 (*Remedies of the Port Authority Upon Event of Default*).

Excavated Materials means all soil, rock, debris, trash and other solid material excavated from beneath the Premises, as required to complete the Work, but not when excavated outside of the Excavation Zone as part of a Remedial Action that the Lessee is required to perform pursuant to this Agreement in order to remove or remediate a Hazardous Environmental Condition.

Excavation Zone means (a) prior to the Final Acceptance Date, the areas excavated in connection with the performance of the Construction Work, plus a buffer zone of up to ten (10) feet outside such area; provided, that (i) the buffer zone will be limited to five (5) feet on either side of an excavation that is less than ten (10) feet wide, (ii) the buffer zone will be to the nearest property boundary, building or structure if that distance is less than ten (10) feet from the excavation (or five (5) feet if clause (i) above is applicable), and (iii) the depth of the buffer zone is the shallower of average groundwater depth or one (1) foot below the intended bottom depth of the excavation, or (b) after the Final Acceptance Date, the areas excavated in connection with the performance of the Construction Work.

Excepted Contractor means a Contractor performing Work under a Contract with a value of Five Hundred Thousand Dollars ($500,000) or less, individually or in the aggregate.

Excepted Supplier means a Supplier that supplies machinery, equipment, materials, hardware, software, systems or any other appurtenance under a Contract with a value of Five Hundred Thousand Dollars ($500,000) or less, individually or in the aggregate.

[redacted]

Excess Parking Deficiency has the meaning set forth in Section 10.12(b).

Excluded Liabilities has the meaning set forth in Section 3.2(b).

Excluded Payments mean any amounts transferred by or on behalf of the Lessee from the Post-Substantial Completion Revenue Account for the payment of the "O&M Expenses" (as defined in the Collateral Agency Agreement) that do not qualify as Permitted O&M Expenses under the definition of "Permitted O&M Expenses", other than any amounts excluded because of the exception described in clause (h) of the list of exclusions to Permitted O&M Expenses (i.e., the payment of Lessee Damages representing [redacted]).

Exempt Refinancing has the meaning set forth in Section 18.10(a)(iii).

Exempt Sublease has the meaning set forth in Section 5.4(a).

Existing Airline Sublease means each lease agreement, gate use agreement or space permit set forth on Exhibit 3 (*Existing Airline Subleases*).

Existing CHRP means the existing central heating and refrigeration plant serving LGA Airport. The general location of the Existing CHRP at LGA Airport is shown in Exhibit 1 (*Existing Facilities Map*).

Existing Facilities means the Existing Terminal B Facilities and the Existing CHRP.

Existing Leased Property means the Existing Facilities, together with all structures, fixtures and improvements located therein or thereon and the equipment permanently affixed or permanently located therein (but excluding the land on which such facilities are located), located as indicated on Exhibit 28-B (*Existing Leased Property*).

Existing Sublease Amendment has the meaning set forth in Section 5.1(b)(ii).

Existing Terminal B Facilities means the LaGuardia Airport Central Terminal Building (also known as "Terminal B"), including contiguous aircraft ramp areas as shown on Exhibit 1 (*Existing Facilities Map*).

Exit Baseline Report has the meaning set forth in Section 16.13(b).

Expertise Agreement has the meaning set forth in Section 17.2(d).

Expiry Date has the meaning set forth in Article 2 (*Term*).

FAA means the Federal Aviation Administration established under 49 U.S.C. § 101 *et seq*., or any successor agency thereto.

FAA Grant Assurances means certain obligations with respect to the maintenance and operation of airport facilities required by the FAA in connection with any FAA-administered airport financial assistance programs.

Facilities Incidental to the Runways, Ramp and Apron Area, Aircraft Parking and Storage Area and Taxiways means facilities for the purpose of controlling or assisting arrivals, departures and operation of Aircraft using LGA Airport, such as control towers, signals, beacons, wind indicators, flood lights, landing lights, boundary lights, obstruction lights, navigation lights, radio and electronic aids, or other aids to operation, navigation or ground control of Aircraft, whether or not of a type hereinbefore enumerated, and even though located at sites away from the other Public Aircraft Facilities or outside LGA Airport.

Failed PAF Milestone Test has the meaning set forth in Section 9.2(i)(iii).

Federal means of or relating to the central government of the United States of America.

Final Acceptance means the occurrence of all the events and satisfaction of all the conditions set forth in Section 10.7(a).

Final Acceptance Date means the date upon which the Lessee achieves Final Acceptance of the entire Construction Project.

Final Crane Directive means RCNY ("Rules of the City of New York") 33190-01(s)(2), as amended pursuant to an order to be issued by the Commissioner of the New York City Department of Buildings regarding crawler crane safety requirements.

Final Design means, depending on the context: (a) the Final Design Documents; (b) the design concepts set forth in the Final Design Documents; or (c) the process of developing the Final Design Documents.

Final Design Documents means the complete final construction drawings, including plans, profiles, cross-sections, notes, elevations, typical sections, details and diagrams, design criteria, specifications, reports, studies, calculations, electronic files, records and submittals prepared by the Lessee and approved by the Port Authority, necessary or related to construction and maintenance of the Construction Project.

Finalized Proposal has the meaning set forth in the ITP.

Finance Proposal means the finance proposal submitted by the Lessee to the Port Authority in response to the RFP.

Financial Model means the base case financial model delivered by the Lessee to the Port Authority pursuant to the Interim Agreement, as updated on or before the Lease Commencement Date, as such Financial Model may be further updated from time to time pursuant to Section 5.2(b) or at the Port Authority's request in connection with the occurrence of a [redacted] or any proposed Refinancing.

Financing Documents means, collectively, the Funding Agreements and the Security Documents.

Finding of No Significant Impact means a determination by the FAA that the FAA's approval of modifications to the Airport Layout Plan (as defined under Applicable Law administered by the FAA) and Federal funding of such modifications, which are necessary for the Construction Work to proceed, are not likely to have a significant effect on the human environment and therefore an environmental impact statement for the Construction Project does not need to be prepared, as provided in 40 C.F.R. § 1508.13.

First Additional Rent has the meaning set forth in Section 4.3 (*First Additional Rent*).

Float means the amount of time that any given activity or logically connected sequence of activities shown on the Project Baseline Schedule may be delayed before it will affect any Guaranteed New Facilities Construction Milestone Completion Date or the Guaranteed Substantial Completion Date. Such Float is generally identified as the difference between the early completion date and late completion date for all activities as shown on the Project Baseline Schedule.

FOIC has the meaning set forth in Section 35.18(d).

Force Majeure Event means, with respect to each Party, the occurrence and continuing impact of an event, act, omission, condition, or circumstance beyond such Party's reasonable control and due to no fault or negligence of such Party or the Persons for whom such Party is responsible, that prevents or delays such Party from performing any of its obligations pursuant to this Agreement, including, subject to the succeeding sentence, (i) war (including civil war and revolution), invasion, armed conflict, violent act of foreign enemy, military or armed blockade, or military or armed takeover of LGA Airport; (ii) any act of riot, insurrection, civil commotion, act of terror or sabotage; (iii) nuclear explosion or radioactive contamination of the Premises or the areas subject to the Temporary Rights of Access; (iv) fire, explosion, earthquake; (v) hurricane force winds, tornadoes, floods, tsunami, Named Windstorms or snow or ice storms that are not ordinarily encountered at LGA Airport; or (vi) any event as a result of which a state of Emergency has been declared. With respect to the Lessee, an event is not a Force Majeure Event if such event is otherwise specifically dealt with in this Agreement or arises by reason of any of the following:

(a) the negligence or willful misconduct of any Lessee-Related Entity;

(b) any act or omission by any Lessee-Related Entity in breach of the provisions of this Agreement (including the standards required by the Requirements and Provisions for Work);

(c) Delay Events, other than Force Majeure Events with respect to any Lessee-Related Entity;

(d) lack or insufficiency of funds or failure to make required payment of monies or provide required security on the part of any Lessee-Related Entity;

(e) any strike, labor dispute or labor protest directed solely at any Lessee-Related Entity or caused by or attributable to any act (including any pricing or other practice or method of operation) or omission of any Lessee-Related Entity;

(f) an earthquake after Substantial Completion that affects the Premises and that causes ground accelerations below the standards required by the Requirements and Provisions for Work;

(g) floods after Substantial Completion that affect the Premises below the base flood levels specified in the Requirements and Provisions for Work;

(h) market conditions and economic conditions affecting the availability, supply, or cost of labor, equipment and materials, construction equipment and supplies, or commodities, other than as a result of the events described in clauses (i) through (vi) above;

(i) market conditions and economic conditions affecting the Lessee's ability to meet its financial obligations; or

(j) weather conditions, other than the events described in clauses (v) and (vi) above.

Foreclosure Rights mean the right, pursuant to the provisions of Article 18 (*Lender's Rights and Remedies; Refinancing*), to foreclose upon the Leasehold Mortgage and to have this Agreement with respect to the Premises assigned to a Qualified Terminal Operator.

Foreign Object Debris (FOD) Prevention Manual means the FOD Prevention Manual (submitted as part of the "Airside Apron Management Plan"), subject to Port Authority Approval, as described in Section 11.0 of the Operational Requirements.

Frontage Roads means those roads within LGA Airport that are adjacent or parallel to the New Terminal B Facilities as shown in Figure 3.3-2 of the Design Guidelines.

Full Construction NTP means the Notice to Proceed issued by the Port Authority authorizing the Lessee to commence Construction Work on the entire Construction Project.

Funding Agreements means, collectively, the Indenture, any Supplemental Indenture executed with respect to the Bonds, the 2016 Bonds, any Additional Bonds, the Series 2016 Notes, any Notes relating to the Additional Bonds, the Building Loan Agreement, the Project Loan Agreement, any Additional Bonds Loan Agreement Supplement, the Collateral Agency Agreement, the DB Direct Agreement, the Manager Direct Agreement, the Equity Contribution Agreement, the D&C Guarantees, the D&C Letter of Credit, and the Manager Guarantee. Solely

for purposes of this definition, capitalized terms used herein but not otherwise defined in this Agreement shall have the respective meanings set forth in the Collateral Agency Agreement.

GAAP means U.S. generally accepted accounting principles.

Gate means an airline passenger Aircraft loading and unloading building gate position at the Existing Terminal B Facilities or the New Terminal B Facilities, as applicable. For the avoidance of doubt, during the Construction Period, "**Gate**" includes either a contact gate or any substituted walkout gate or hardstand Aircraft position used for the loading and unloading of passengers.

Gate Related Premises means as to each Gate in the Existing Terminal B Facilities or the New Terminal B Facilities, as applicable, all related Aircraft ramp and gate position capacity and related passenger terminal space and facilities including, but not limited to, passenger ticketing, passenger check-in, baggage handling and flight information systems, passenger lounge and waiting areas, holding rooms, loading bridges, baggage claims, and such other facilities reasonably required for the functional use of a Gate or Gates.

General Conditions means the Terminal B Facilities General Conditions, the Central Hall General Conditions and the New Improvements General Conditions, as appropriate.

General Manager means the person or persons from time to time designated by the Port Authority to exercise the powers and functions vested in such General Manager by this Agreement; but until further notice from the Port Authority to the Lessee it shall mean the General Manager (or the temporary or acting General Manager) of LGA Airport, or any replacement thereof, or his duly designated representative or representatives.

General Manager Directive has the meaning set forth in Section 15.3 (*Compliance with General Manager's Bulletins, Directives and Instructions*).

Government Mandated Operating Expenses means costs incurred by the Lessee for Operations and Maintenance Work required to be carried out in order for the Premises to be in compliance with any Applicable Law, including any written requirement or directive of the FAA or TSA, at any time during the Term.

Governmental Approval means all approvals, permits, permissions, consents, licenses, certificates (including sales tax exemption certificates), registrations, notices, exemptions, exceptions, waivers, filings and authorizations (whether statutory or otherwise), which are required from time to time under Applicable Law in order to authorize the Port Authority or the Lessee to perform all or any part of the Work or take actions required to complete obligations in connection with the Construction Project, the Operations and Maintenance Work or the lease and management of the Premises and that are issued or authorized by any Governmental Entity, including Port Authority Governmental Approvals but excluding, for the avoidance of doubt, any Port Authority Approval.

Governmental Entity or **Governmental Agency** means Federal, state, municipal and other governmental authorities, boards and agencies of any state, nation or government, except that such term shall not be construed to include the Port Authority.

Gross CH Revenues means, for any period, all revenue (without duplication) received by or on behalf of the Lessee as an agent of the Port Authority pursuant to Exhibit 33 (*Central Hall Provisions*) of this Agreement with respect to the operation of the Central Hall.

Gross Revenues means, for any period all revenue (without duplication) received by or on behalf of the Lessee during such period, including proceeds from any business interruption insurance, Lessee Damages received by the Lessee (but excluding such damages representing [redacted]), revenue derived from any third-party concession, lease (including any Sublease) or contract, and any other receipts otherwise arising or derived from or paid or payable in respect of the Premises, but excluding any Port Authority Funding received by the Lessee, proceeds of borrowings, equity contributions to the Lessee, proceeds of condemnation proceedings and asset sales to the extent that such proceeds are not reinvested in replacement property, and insurance payments other than proceeds from business interruption insurance; provided, that for the purposes of determining [redacted], Lessee Damages shall not be included in Gross Revenues. For avoidance of doubt, Gross CH Revenues shall not be included in Gross Revenues.

Groundwater is groundwater occurring beneath the Premises or the areas subject to the Temporary Rights of Access, including groundwater flowing onto or under the Premises or the areas subject to the Temporary Rights of Access, during or as a result of the Work.

Guaranteed Final Acceptance Date means the later of (i) November 5, 2022, as such date may be adjusted only as expressly permitted under this Agreement, and (ii) the date that is three (3) months after the Substantial Completion Date.

[redacted]

Guaranteed Substantial Completion Date means July 8, 2022, as such date may be adjusted only as expressly permitted under this Agreement.

Handback Amount has the meaning set forth in Section 11.12(c).

Handback Environmental Amount has the meaning set forth in Section 16.13(a).

Handback Environmental Report has the meaning set forth in Section 16.13(a).

Handback Maintenance Services Plan means the plan, subject to Port Authority Approval, prepared by or on behalf of the Lessee in accordance with Section 3.2 of the Maintenance Requirements.

Handback Performance Security has the meaning set forth in Section 11.12(d)(ii).

Handback Requirements has the meaning set forth in Section 11.12(a).

Handback Reserve Fund means the account established by the Lessee pursuant to Section 11.12(d).

Handling Services means collectively, those services commonly known as "Ramp Services," which include, Aircraft ground handling, interior and exterior Aircraft cleaning, baggage loading and unloading from Aircraft, the transportation of passengers to and from Aircraft for the purpose of enplanement and deplanement and the performance of ground services incidental to flight, such as pre-flight briefing of air crews, and those services commonly known as "Passenger Handling Services," which include passenger ticketing, passenger assistance and passenger information services.

Hangar 1 means the hangar that currently houses American Airlines' baggage handling system. The general location of Hangar 1 at LGA Airport is shown in Exhibit 1 (*Existing Facilities Map*).

Hangar 2 means the hangar identified as Hangar 2 at LGA Airport shown in Exhibit 1 (*Existing Facilities Map*).

Hangar 4 means the hangar identified as Hangar 4 at LGA Airport shown in Exhibit 1 (*Existing Facilities Map*).

HASP has the meaning set forth in Section 16.3(d) (*Health and Safety Plan*).

Hazardous Environmental Condition means the presence of any Hazardous Materials on, in or under the Premises or the areas subject to the Temporary Rights of Access in soil or Groundwater, in concentrations or in quantities that are required to be removed or remediated under Environmental Law or by a Governmental Entity pursuant to Environmental Law, or otherwise in accordance with the requirements of the Project Documents, but excludes Hazardous Materials in the Current Facilities, Excavated Materials or Demolition Debris.

Hazardous Materials means (a) any toxic substance or hazardous waste, hazardous substance or hazardous material, or any pollutant or contaminant; (b) radon gas, asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of Federal, state or local safety guidelines, whichever are more stringent; (c) petroleum and any by-products, fractions, derivatives and constituents thereof, of any kind and in any form, including oil, petroleum, fuel, fuel oil, sludge, crude oil, gasoline, kerosene, and mixtures of, or waste materials containing, any of the foregoing; and (d) any other gas, material or chemical which is or may hereafter be defined as or included in the definition of "hazardous substances,"

"toxic substances," "hazardous materials," "hazardous wastes" or words of similar import under any Environmental Law.

Hazardous Materials Release means any spill, leak, emission, release, discharge, injection, escape, leaching, dumping or disposal of Hazardous Materials into the soil, air, surface water, Groundwater or indoor or outdoor environment.

Headhouse Phase Completion Date has the meaning set forth in Section 9.2(i)(iii).

Holdback Eligible Elements has the meaning set forth in Section 9.2(i)(iv).

Hydrant Fueling Operations Commencement has the meaning set forth in Section 10.13(a).

Hydrant Fueling System has the meaning set forth in Section 10.13(a).

Incremental Environmental Damages means the additional out-of-pocket costs, expenses and lost revenues meeting the requirements of Section 14.1 [redacted] and any adjustments to the Project Baseline Schedule authorized with respect to a Delay Event under Section 14.2 (*Delay Events*) arising as a result of the performance by the Lessee of its obligations under Article 16 (*Environmental, Health and Safety Requirements*), in excess of the costs, expenses, lost revenue and time that would have been incurred in the absence of the occurrence of specific conditions or events for which Incremental Environmental Damages are authorized hereunder, subject in all respects to the conditions and limitations set forth in Article 14 [redacted] *Delay Events*).

Indemnified Party means a Lessee Indemnified Party or a Port Authority Indemnified Party.

Indemnified Payment has the meaning set forth in Section 21.4(b).

Indemnifying Party has the meaning set forth in Section 21.3(b).

Indoor Air Quality Management Plan has the meaning set forth in Section 16.8 (*Indoor Environmental Quality*).

In-Flight Meals has the meaning set forth in Section 6.2(a).

Initial O&M Period means the period from the Lease Commencement Date continuing until commencement of operation of any portion of the New Facilities.

In-Kind Rent has the meaning set forth in Section 4.7(a).

Institutional Lender means (i) the United States of America, any state or commonwealth thereof or any agency or instrumentality of any of them, any municipal agency, public benefit corporation or public authority, advancing or insuring mortgage loans or making payments which, in any manner, assist in the financing, development, operation and maintenance

of projects, (ii) any (A) savings bank, savings and loan association, commercial bank, trust company (whether acting individually or in a fiduciary capacity) or insurance company organized and existing under the laws of the United States of America or any state or commonwealth thereof, (B) foreign insurance company or commercial bank qualified to do business as an insurer or commercial bank as applicable under the laws of the United States of America (if such qualification is necessary in connection with the acquisition of Lessee Debt), (C) pension fund, foundation or university or college or other endowment fund or (D) real estate investment fund, infrastructure investment fund, investment bank, pension advisory firm, mutual fund, investment company or money management firm, (iii) any "qualified institutional buyer" under Rule 144(A) under the Securities Act or any other similar law hereinafter enacted that defines a similar category of investors by substantially similar terms, (iv) a Governmental Entity acting (directly or through a trust or other single purpose vehicle controlled by it) as a conduit for the purpose of issuing private activity bonds authorized by law for the benefit of the Lessee or (v) any other financial institution or entity designated by the Lessee and approved by the Port Authority; provided, however, that each such entity or combination of such entities, if the Institutional Lender shall be a combination of such entities, shall have individual or combined assets, as the case may be, of not less than $1,000,000,000 and in no event shall be a Prohibited Party.

Insurance Proceeds means all proceeds from insurance payable to the Lessee (or that should have been payable to the Lessee but for the Lessee's breach of any obligation under the Agreement to take out or maintain such insurance) on or after the Early Termination Date.

Integrated Security Approach Work Plan means the Integrated Security Approach Work Plan, subject to Port Authority Approval and review and approval by the TSA, as described in Section 2.3 of the Operational Requirements.

Intellectual Property means any and all patents, trademarks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United States or any other part of the world together with all or any goodwill relating or attached thereto, which is created, brought into existence, acquired, used or intended to be used by any Lessee-Related Entity for the purposes of carrying out the Work and/or otherwise for the purposes of this Agreement.

Interim Agreement means the Interim Agreement, dated April 12, 2016, by and between the Port Authority and the Preferred Proposer.

IRS means the U.S. Internal Revenue Service or any successor agency.

Itinerant Aircraft has the meaning provided in Section 3.4(f).

ITP means the Instructions to Proposers, forming Part I of the RFP.

ITP Addendum #1 has the meaning set forth in the recitals to this Agreement.

ITP Addendum #2 has the meaning set forth in the recitals to this Agreement.

ITP Addendum #3 has the meaning set forth in the recitals to this Agreement.

JCDecaux Agreement means that certain contract for advertising sales at the Port Authority facilities (Port Authority Contract Number R000007920), dated September 1, 2005, between JCDecaux Airports, Inc. and the Port Authority (as amended from time to time prior to the Lease Commencement Date).

Key Contract means:

(a) any D&C Contract with the Lead Contractor;

(b) any O&M Contract with the Terminal Operator, if any;

(c) any Performance Security; and

(d) any Concessions Management Contract with a Concessions Manager, if any.

Known ACM means ACM, as indicated by sampling results, estimated quantities and locations provided in the Available Documents, including any "presumed" or assumed quantities and locations identified in the Available Documents.

Known Hazardous Materials means Known ACM, Known LCP and Known PCB within or comprising a component of the Current Facilities; any other Hazardous Materials contained in or comprising a component of Disclosed Facilities; Hazardous Materials existing in soil or Groundwater and disclosed or identified in the Available Documents; and any Demolition Debris or Excavated Materials originating from any of the foregoing. For purposes of Sections 16.5 (*Dewatering*) and 16.12 (*Hazardous Materials*), and notwithstanding Section 16.17(b)(i), Known Hazardous Materials include any Hazardous Materials disclosed in the Available Documents as being present in soil or Groundwater, at concentrations anywhere within the range between the lowest and highest concentrations detected at any location, regardless of the proximity of such sampling to the area where such soil or Groundwater is located. Notwithstanding the foregoing, any Hazardous Materials present in Excavated Materials or Demolition Debris that may lawfully be disposed of at the Budgeted Disposal Locations shall be considered Known Hazardous Materials for which Incremental Environmental Damages are not authorized under any Section of this Agreement.

Known LCP means LCP that is identified in the Available Documents, plus all paint that is present on any painted metal surface, *except* paint that has been sampled and determined to be free of lead, as disclosed in the Available Documents.

Known PCB means oil or other materials in equipment that is disclosed in the Available Documents as containing or likely to contain polychlorinated biphenyls in excess of 50 ppm, plus any PCBs in ballasts or light fixtures identified in the Available Documents.

Labor Troubles has the meaning set forth in Section 12.4(a).

LaGuardia Terminal B Site Diagram means the diagram attached hereto as Exhibit 10 (*LaGuardia Terminal B Site Diagram*).

LCP has the meaning set forth in Section 16.4(b)(i).

Lead Contractor means the entity, whether a single entity or a joint venture, that will be primarily responsible for performing the Construction Work.

Lead Designer means the entity, whether a single entity or a joint venture, that will be primarily responsible for the completion of the Design Work and ensuring conformance with the design criteria, if these tasks are not the responsibility of the Lead Contractor.

Lead Firm means any Lead Contractor, Lead Designer, Concessions Manager or Terminal Operator.

Lead Personnel has the meaning set forth in Section 12.2(a).

Lease Commencement Date means June 1, 2016.

Leasehold Mortgage means, depending on the context, (i) collectively, any and all leasehold mortgages with respect to the rights of the Lessee under this Agreement entered into on the Lease Commencement Date to secure the obligations of the Lessee under the Financing Documents, or (ii) collectively, any and all leasehold mortgages entered into in connection with any Refinancing permitted under this Agreement, in each case in favor of the Collateral Agent.

LEED or **Leadership in Energy & Environmental Design** means an internationally recognized program that provides building owners and operators with a framework, developed by the USGBC, for identifying and implementing practical and measurable green building design, construction, operations and maintenance solutions and third-party verification of green buildings based on the satisfaction of certain prerequisites and earned points required to achieve different levels of certification.

LEED Gold Certification is the gold certification established by the LEED Rating System for New Construction & Major Renovation.

LEED Silver Certification is the silver certification established by the LEED Rating System for New Construction & Major Renovation.

Lenders means, collectively, each bank or financial institution, or any other Person that has provided a commitment to underwrite or provide Lessee Debt or any guaranty (excluding any guaranty of Lessee Debt provided by an Equity Member or an Affiliate thereof) or credit enhancement in respect thereof, together with their respective successors and assigns.

Lessee has the meaning set forth in the introductory paragraph to this Agreement.

Lessee Assignment and Assumption Agreement has the meaning set forth in Section 18.6(a).

Lessee Change has the meaning set forth in Section 13.3(a).

Lessee Change in Control has the meaning set forth in Section 17.1(e)(ii).

Lessee Change Request has the meaning set forth in Section 13.3(a).

[redacted]

Lessee Debt means, at the relevant time, the aggregate of (without double counting), any bona fide indebtedness of the Lessee (including bonds, bank debt, guaranties and credit support, subordinated indebtedness and all such obligations arising under such indebtedness) for or in respect of funds borrowed (including bona fide indebtedness with respect to any financial insurance issued for funds borrowed) or for the value of goods or services rendered or received in the performance of the Work, the repayment of which may be secured by one or more Leasehold Mortgages. Lessee Debt includes (i) principal, capitalized interest, interest by virtue of original issue discount, accrued interest (including default interest under the Financing Documents), (ii) customary and reasonable lender, financial insurer, agent and trustee fees, costs, expenses and premiums and reimbursement obligations owed to lenders, financial insurers, agents and trustees, with respect thereto, (iii) payment obligations under interest rate and inflation rate hedging agreements or other derivative facilities with respect thereto, (iv) reimbursement obligations with respect thereto, (v) lease financing obligations and (vi) prepayment premiums or penalties, make-whole payments or other prepayment amounts or breakage costs. Lessee Debt excludes any increase in indebtedness to the extent resulting from an agreement or other arrangement the Lessee enters into or first becomes obligated to repay after the occurrence of an event of termination giving rise to an obligation of the Port Authority to pay termination compensation, including the Lessee's receipt of a Port Authority Termination Notice or the Port Authority's receipt of a Lessee Termination Notice; provided, that subject to the following provisions of this definition, Lessee Debt will include any increase in indebtedness resulting from a Refinancing that has complied with the requirements of Section 18.10 (*Refinancing Requirements*). In addition, no indebtedness will constitute Lessee Debt unless and until the Port Authority has been provided with written notice thereof and copies of any related Financing Documents, in accordance with this Agreement, and the Port Authority has approved such Lessee Debt to the extent required under this Agreement; provided, however, that Lessee Debt incurred on the Lease Commencement Date shall be deemed approved by the Port Authority.

Lessee Governmental Approvals means any Governmental Approval required for the performance of the Work that is not a Port Authority Governmental Approval, including any amendment or modification to, or plan submitted under, a Port Authority Governmental Approval.

Lessee Indemnified Party(ies) means the Lessee, the Equity Members and each officer, director, manager and member (if the Lessee is a limited liability company), general partner (if the Lessee is a limited partnership or a general partnership), agent, employee and authorized representative of the foregoing.

Lessee-Related Entity means (a) the Lessee, (b) Equity Members, (c) Contractors and Suppliers, (d) any other Persons performing any of the Work for or on behalf of the Lessee, (e) any other Persons for whom the Lessee may be legally or contractually responsible, and (f) the employees, agents, officers, directors, shareholders, managers and members (if the Lessee is a limited liability company), partners (if the Lessee is a limited partnership or a general partnership), authorized representatives, consultants, successors, assigns and invitees of any of the foregoing.

Lessee Requisition has the meaning set forth in Section 9.2(b)(iv).

Lessee Tax-Exempt Bonds means any Tax-Exempt Bonds to the extent that the proceeds of such Tax-Exempt Bonds are treated for federal income tax purposes as loaned to the Lessee; the term "Lessee Tax-Exempt Bonds" includes the Series 2016A Bonds.

Lessee Termination Notice has the meaning set forth in Section 24.2(a).

[redacted]

Lessee's Final Design means the Final Design prepared by the Lessee and Signed and Sealed in compliance with the Requirements and Provisions for Work, consistent with the Lessee's Initial Design and subject to Port Authority Comment.

Lessee's Impact Statement has the meaning set forth Section 13.1(c).

Lessee's Initial Design means the conceptual design of the Construction Project forming part of the Lessee's Proposal Commitments.

[redacted]

LGA Airport has the meaning set forth in the recitals to this Agreement.

LGA Resident Engineer means the Port Authority's Resident Engineer Office for LGA Airport.

Lien means any pledge, lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security instrument and the filing of or agreement to file any financing statement under the applicable State's Uniform Commercial Code).

Local Business Enterprise means a business entity located within the County of Queens in the State of New York.

Long Stop Deadline means the date that is 365 days after the Guaranteed Substantial Completion Date (as such date may be adjusted only as expressly permitted under this Agreement).

Losses means any loss, damage, injury, liability, obligation, cost, response cost, expense (including the fees and expenses of attorneys (whether those of the Port Authority Law Department or otherwise), accountants and expert witnesses incurred in connection with the enforcement of any provision of this Agreement), fee, charge, judgment, penalty, or fine, including as a result of any injury to or death of persons, or damage or loss of property.

Maintenance Requirements means those Maintenance Requirements set forth as Section 3 of the Terminal B Facilities Technical Requirements and Section 3 of the Central Hall Technical Requirements, as appropriate.

Major Governmental Approvals means the:

(a) Finding of No Significant Impact issued by the FAA with respect to the New Terminal B Facilities, including any required reevaluation or supplemental Finding of No Significant Impact required to commence construction of the New Terminal B Facilities; and

(b) Approval from City's Department of Parks & Recreation or the City.

Major Maintenance means maintenance, repair, renewal, refurbishing, re-lifting, reconstruction or replacement of any portion or component of the New Facilities of a type which is not normally included as a Permitted O&M Expense, including Upgrades, but excluding any D&C Work and Routine Maintenance.

Major Maintenance Performance Security has the meaning set forth in Section 11.11(a).

Major Maintenance Reserve Fund has the meaning set forth in Section 11.10(a)(i).

MarketPlace Agreement means that certain Agreement of Lease dated September 19, 1994, between the Port Authority and MarketPlace LaGuardia Limited Partnership (as amended from time to time prior to the Lease Commencement Date).

MarketPlace Consents to Sublease means those certain consents to sublease entered into by and among the Port Authority, MarketPlace LaGuardia Limited Partnership and the Concession Subleases operating pursuant to the MarketPlace Agreement (as amended from time to time prior to the Lease Commencement Date), as assigned to the Lessee by the Port Authority and assumed by the Lessee pursuant to an assignment and assumption agreement, as of the Lease Commencement Date.

Material Portion means, with respect to the Premises, such portion of the Premises as when so taken would leave remaining a balance of the Premises, due either to the area so taken or the location of the part so taken in relation to the part not so taken, that would not under economic conditions and after performance by the Lessee of all covenants, agreements, terms and provisions contained herein or required by law to be observed or performed by the Lessee, permit the restoration of the Premises so as to enable the Lessee to operate, maintain and develop the Premises in accordance with the requirements of this Agreement, including Section 3.2

(*Condition of Premises*), and to continue to carry on its normal operations at LGA Airport without using such part taken. For the avoidance of doubt, the Central Hall will not be deemed, in and of itself, to be a Material Portion of the Premises.

Maximum Aggregate PAF Holdback Amount has the meaning set forth in Section 9.2(i).

MBE has the meaning set forth in Section 15.10(a).

Metro Area has the meaning set forth in Section 5.3(g)(i)(A).

Milestone means each of the payment milestones set forth on (i) the New Improvements Payment and Milestone Schedule with respect to each of the New Improvements and (ii) the Central Hall Payment and Milestone Schedule with respect to the Central Hall, unless expressly specified that it relates to only one of the foregoing items.

Milestone Payments has the meaning set forth in Section 9.4(a).

Month or **month** means a time period comprised of one calendar month and pertaining to the invoice period defined for that period.

Named Windstorm means a storm or weather disturbance that is named by the National Oceanic and Atmospheric Administration's National Hurricane Center of the National Weather Service (or similar body) as a "Tropical Storm," "Hurricane" or "Major Hurricane" until such time as the storm or weather disturbance is downgraded by such body to a "Tropical Depression" or less severe category of storm or weather disturbance.

National Grid means The Brooklyn Union Gas Company d/b/a National Grid NY, or any successor entity.

National Grid Gate and Governor Station means the gate and governor station at LGA Airport operated by National Grid. The general location of the National Grid Gate and Governor Station is shown on Map CP062 provided as a Reference Document (as defined in the Terminal B Facilities General Conditions).

NEPA Documents means the following:

1. Department of Transportation, Federal Aviation Administration, Eastern Region, Written Reevaluation and Record of Decision for the Environmental Assessment for the Central Terminal Building Redevelopment Program at LaGuardia Airport, Queens New York, December 30, 2015;

2. Department of Transportation, Federal Aviation Administration, Finding of No Significant Impact, Record of Decision, December 10, 2015; and

3. Central Terminal Building Redevelopment Program at LaGuardia Airport, Final Environmental Assessment and Section 4(f) Evaluation, prepared for U.S. Department of Transportation, Federal Aviation Administration, November 2014 (signed December 9, 2014).

[redacted]

[redacted]

New Agreement has the meaning set forth in Section 18.7(a).

New CHRP means the new central heating and refrigeration plant to be constructed by the Lessee.

New Facilities has the meaning set forth in Section 10.1(a)(x).

[redacted]

New Facilities Construction Milestone Completion Date means, with respect to any New Facilities Construction Milestone, the date on which the Lessee actually achieves Partial Completion with respect to such New Facilities Construction Milestone.

New Facilities Sites means the land on which the New Facilities will be constructed, all located as indicated on Exhibit 28-D (*New Facilities Sites*). Following Substantial Completion, Exhibit 28-D (*New Facilities Sites*) shall be amended (if necessary) to reflect the final design of the Construction Project and any revisions required with respect to the New Facilities Sites or the Premises in connection therewith.

New Improvements has the meaning set forth in Section 10.1(a)(xvii). For the avoidance of doubt, the New Improvements will be designed and constructed by the Lessee on behalf of the Port Authority and the Lessee shall have no right or obligation to operate or maintain any of the New Improvements after each such New Improvement is completed and turned over to the Port Authority.

New Improvements Design and Construction Requirements means those Design and Construction Requirements set forth as Section 1 of the New Improvements Technical Requirements.

New Improvements General Conditions means the General Conditions set out in Part A of the Requirements and Provisions for Work for the New Improvements.

New Improvements Milestone Payments has the meaning set forth in Section 9.4(a).

[redacted]

New Improvements Specifications has the meaning set forth in the ITP.

New Improvements Technical Requirements means the Technical Requirements set forth as Part B of the Requirements and Provisions for Work for the New Improvements.

New Pedestrian Walkway has the meaning set forth in Section 10.1(a)(vi).

New Terminal B Facilities means the new LaGuardia Airport Central Terminal Building (also known as "Terminal B") to be constructed by the Lessee (the "**New Terminal B**"), including contiguous aircraft ramp and apron areas, new contiguous Frontage Roads and supporting buildings and site Utilities.

New Terminal B has the meaning set forth in the definition of "New Terminal B Facilities."

NOI has the meaning set forth in Section 16.3(b) (*Stormwater Pollution Prevention Plan*).

Nonconforming Work means any D&C Work that does not conform to the requirements of the Project Documents.

Non-Qualifying Safety Compliance means any and all improvements, repair, reconstruction, rehabilitation, restoration, renewal, replacement and changes in configuration or procedures with respect to the Construction Project or the Premises to correct a specific safety condition of the Construction Project or the Premises that (a) a Governmental Entity has reasonably determined to exist by investigation or analysis (for greater clarity, including such conditions that exist despite compliance by the Lessee with the relevant Safety Standards) or (b) the Port Authority has reasonably determined to be required by the then-current Safety Standards, but in the case of this clause (b), excluding any conditions the remediation of which would constitute Qualifying Safety Compliance.

Non-Qualifying Safety Compliance Order means a written order or directive issued by the Port Authority to the Lessee pursuant to Section 13.5 (*Safety Compliance Orders*) to implement Non-Qualifying Safety Compliance.

Notice has the meaning set forth in Section 35.12(a).

Notice of Termination Service Date has the meaning set forth in Section 23.3(a).

Notice to Proceed or **NTP** means any written notice issued by the Port Authority to the Lessee, in accordance with this Agreement, authorizing the Lessee to proceed with the Work described therein.

Notice to Provide Accommodations has the meaning set forth in Section 32.3(a).

NYCDEP means the New York City Department of Environmental Protection, or any successor.

NYSDEC means the New York State Department of Environmental Conservation, or any successor.

NYTP Agreement means that certain Telecommunications Network Access Agreement dated August 26, 1999, by and between New York Telecom Partners, LLC, and the Port Authority (as amended from time to time prior to the Lease Commencement Date).

O&M Contract has the meaning set forth in Section 17.2(a)(i).

O&M Manual means the "Operations and Maintenance Manual" to be prepared by the Lessee and submitted to the Port Authority as set forth in Section 3.2 of the Maintenance Requirements.

O&M Period means the period (a) commencing when both (i) the New Facilities are in full operation and (ii) operation of all portions of the Existing Facilities has permanently ceased, and (b) continuing until the first to occur of the Expiry Date or the Early Termination Date.

O&M Quality Control Plan means the "Maintenance Quality Control Plan" developed by the Lessee pursuant to Section 4.1 of the Maintenance Requirements.

O&M Quality Reports means the reports developed by the Lessee pursuant to Section 4.1 of the Maintenance Requirements.

O&M Schedule of Submittals has the meaning set forth in Section 8.2(b).

Occupants has the meaning set forth in Section 16.1(f).

OFAC has the meaning set forth in Section 15.7 (*OFAC*).

OIG has the meaning set forth in Section 19.1(d).

Open Book Basis means allowing the Port Authority to review all underlying assumptions and data associated with the Financial Model, [redacted], Net Cost Saving, pricing or compensation (whether of the Lessee or the Port Authority) or adjustments thereto, including assumptions as to costs of the Work, schedule, composition of equipment spreads, equipment rates, labor rates, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, inflation and deflation rates, Gross Revenues and other items reasonably required by the Port Authority to satisfy itself as to the reasonableness and accuracy of the amount.

Operating Authorization or **Slot** means an "operating authorization" or "Slot" for one landing or takeoff at LGA Airport during a specific time period, subject to a scheduling order issued by the FAA for LGA Airport, as defined in the Final Order, Operating Limitations at New York LaGuardia Airport, Docket No. FAA 2006-25755 issued December 13, 2006, published in the Federal Register at 71 Fed. Reg. 77,854 (Dec. 27, 2006), as such order has been and may be amended, re-codified or replaced from time to time, and in any subsequent similar scheduling order or rule or regulation for LGA Airport issued by the FAA or any other Federal agency with appropriate jurisdiction, as such order, rule or regulation may be amended, recodified or replaced from time to time.

Operational Readiness and Transition Plan means the operational readiness and transition plan prepared by the Lessee in accordance with Section 3.3.11 of the Terminal B Facilities Design and Construction Requirements, as such plan may be further revised and updated, in each case, subject to Port Authority Approval.

Operational Requirements means the Operational Requirements set forth in Section 2 of the Terminal B Facilities Technical Requirements and Section 2 of the Central Hall Technical Requirements, as appropriate.

Operations and Maintenance Work means all Work related to the operation, management, administration and maintenance of the Terminal B Facilities and the Central Hall, including Asset Preservation Work and Major Maintenance and any repair, modification, reconstruction, rehabilitation, restoration, renewal and replacement of the Terminal B Facilities and the Central Hall, all as required under this Agreement, the Requirements and Provisions for Work and the other Project Documents, but excluding the D&C Work. Operations and Maintenance Work includes the operation and maintenance of (a) the Existing Terminal B Facilities prior to demolition thereof, (b) temporary facilities to support passenger services during construction of the New Terminal B Facilities, (c) the New Terminal B Facilities, (d) the New Pedestrian Walkway, (e) the Existing CHRP prior to demolition thereof, (f) the New CHRP, (g) the CRWD, (h) the portion of the new hydrant aircraft fueling infrastructure located within the New Terminal B Facilities' ramp and (i) the Central Hall.

OSHA means the United States Occupational Safety and Health Administration.

[redacted]

Other Party has the meaning set forth in Section 35.18(d).

Oversight means any monitoring, inspecting, sampling, measuring, administering, spot checking, attending, observing, testing, investigating, auditing, reviewing any Submittal and conducting any other oversight by the Port Authority respecting any part or aspect of the Work or this Agreement.

P2 Garage means the existing five-story P2 parking lot containing approximately 2,700 parking spaces serving the Existing Terminal B Facilities, scheduled for demolition by the Lessee in accordance with the Requirements and Provisions for Work for the Terminal B Facilities upon completion of the East Garage by the Port Authority. The general location of the P2 Garage at LGA Airport is shown in Exhibit 1 (*Existing Facilities Map*).

[redacted]

PAF Account has the meaning set forth in Section 9.1(c).

PAF Holdback Amount has the meaning set forth in Section 9.2(i)(iii).

PAF Holdback Period has the meaning set forth in Section 9.2(i)(iii).

PAF Holdback Period Termination Date has the meaning set forth in Section 9.2(i)(iii).

PAF Milestone has the meaning set forth in Section 9.1(b).

PAF Milestone Test has the meaning set forth in Section 9.2(i).

Parking Deficiency Plan of Action has the meaning set forth in Section 10.12(b).

Parking Plan has the meaning set forth in Section 10.12(a).

Partial Completion means the occurrence of all events and satisfaction of all conditions set forth in Section 10.5(c) with respect to a Construction Segment or a New Facilities Construction Milestone, as applicable, as evidenced by the issuance of a Temporary Certificate of Authorization to Occupy or Use by the Port Authority to the Lessee for such portion of the Construction Project.

Partial Termination has the meaning set forth in Section 2.2 (*Partial Termination*).

Partial Termination Date has the meaning set forth in Section 2.2 (*Partial Termination*).

Partial Termination Notice has the meaning set forth in Section 2.2 (*Partial Termination*).

Party and **Parties** have the respective meanings set forth in the introductory paragraph to this Agreement.

Passenger Facility Charges or **PFCs** means passenger facility charges governed by 14 C.F.R. Part 158, imposed by a public agency on passengers enplaned at a commercial service airport it controls.

Patron means (a) any user of LGA Airport, including (i) passengers of planing and deplaning Aircraft and (ii) employees of any of the Sublessees and Scheduled Aircraft Operators who have arrangements with Airline Sublessees and (b) any other user of or service provider to LGA Airport.

PCB has the meaning set forth in Section 16.4(b)(i).

Performance Security means the Construction Security and any other performance security provided under the Key Contracts.

[redacted]

Perimeter Intrusion Detection System (PIDS) means the multi-sensor, layered security system, designed to protect airport perimeters against unauthorized entry twenty-four hours a day, seven days a week, in all weather conditions. The Perimeter Intrusion Detection System (PIDS) is currently installed and operational at LGA Airport and will, in accordance with Section 10.11(b), either be replaced by the Lessee as part of the D&C Work, as described in Section 24.0 of the Design and Construction Requirements, or by the Port Authority.

Permanent Rights of Access means those certain easements, rights of way and other agreements for access and use of those portions of the Airport Premises shown on Exhibit 28-C (*Permanent Rights of Access*) for ingress and egress on foot and in vehicles, Utilities and other purposes during the Term and as set forth in this Agreement or otherwise granted by the Port Authority to the Lessee. Following Substantial Completion, Exhibit 28-C (*Permanent Rights of Access*) shall be amended (if necessary) to reflect the final design of the Construction Project and any revisions required with respect to the Permanent Rights of Access or the Premises in connection therewith.

Permitted O&M Expenses means, in respect of any period, any expenditure by the Lessee incurred or paid (and calculated in accordance with GAAP, as applicable) in performing Operations and Maintenance Work (other than Operations and Maintenance Work with respect to the Central Hall) that would be customarily and properly included as an operation and maintenance cost, and as would reasonably be incurred by a prudent operator in the conduct of or relating to the operation of a first-class airline terminal, including (a) wages, salaries, fringe benefits and other payroll costs or remuneration (including reimbursement of employee expenses) paid to or for employees employed for the benefit of the Operations and Maintenance

Work (provided, that compensation paid to executives of the Terminal Operator shall only constitute Permitted O&M Expenses to the extent that such compensation is market-based), (b) the cost of Routine Maintenance, repairs, improvements, alterations and changes related to the areas in the Premises, including payments to Contractors and Suppliers for cleaning, rubbish removal, snow removal, facility maintenance, equipment maintenance, extermination and other cleaning and maintenance services furnished by such Contractors and Suppliers, (c) payments for electricity, water, sewer rents and other fuel and Utility services, (d) the cost of provision, maintenance, repair and replacement of fixtures, furniture, furnishings, operating supplies, equipment and tools, (e) (i) the cost of any insurance carried by the Lessee with respect to the Premises or the Operations and Maintenance Work or with respect to any accident or casualty occurring with respect thereto and (ii) the cost of any such accident or casualty paid for by the Lessee to the extent such accident or casualty is not reimbursed by insurance proceeds and such accident or casualty was not caused by the gross negligence or willful neglect of the Lessee, (f) the costs of (i) telephone, telegraph, postage, messenger service and other communications services and (ii) trucking and other shipping services, (g) payments for rental of leased equipment and supplies, (h) payments to third parties for legal, accounting, architectural, engineering, space planning and other professional services and other professional fees paid to third parties, (i) advertising and promotional expenses paid to third parties, (j) Taxes actually paid by the Lessee including excise taxes, New York City sales and use tax and taxes on utilities or on the provision of utility services but excluding New York State Corporation Franchise tax, New York City General Corporation tax and New York City Unincorporated Business tax, (k) costs and fees incurred in connection with the obtaining and maintaining in effect of any Governmental Approval from any Governmental Entity and filing any reports or requests for review with any Governmental Entity, (l) any fees, charges, penalties, judgments or other amounts assessed against the Lessee by any Governmental Entity except as expressly excluded below, (m) costs and fees incurred in the development, implementation and operation of computer systems, (n) costs incurred by the Lessee, including reasonable attorney's fees, for adjudication, arbitration, mediation or other dispute resolution mechanisms used to resolve disputes between the Lessee and the Port Authority or third parties, (o) amounts payable to third parties for services provided as part of the Operations and Maintenance Work, including financial services and any other services, (p) amounts refunded to Sublessees and other third parties with respect to amounts overpaid by such Persons, (q) amounts payable in respect of the Lessee's indemnification obligations to the Port Authority or third parties unless such obligation results from the willful misconduct, negligence, or other culpable act, error or omission of the Lessee, (r) Base Rent and, except as otherwise explicitly set forth in the proviso in Section 4.3 (*First Additional Rent*), First Additional Rent, (s) subject to clauses (i)-(m) below (which clauses (i)-(m) shall be deemed excluded from fees and other amounts payable to the Terminal Operator under the O&M Contract solely for the purposes of this definition of "Permitted O&M Expenses" and related provisions of this Agreement), fees and other amounts that are payable to the Terminal Operator under the O&M Contract, (t) prior to any Partial Termination, the annual management fee payable to the Lessee for operating and maintaining the Central Hall pursuant to Exhibit 33 (*Central Hall Provisions*), (u) Government Mandated Operating Expenses; provided, that such Government Mandated Operating Expenses were not incurred as a direct result of a breach by the Lessee of any of its obligations under this Agreement or non-compliance by the Lessee with any Applicable Law or Applicable Standards, but only to the extent such expenses

exceed the Government Mandated Operating Expenses that the Lessee would have incurred had the Lessee complied with this Agreement, Applicable Law or Applicable Standards, as the case may be, and (v) any other amounts specified in this Agreement to constitute or be payable as Permitted O&M Expenses.

Notwithstanding the above, and without otherwise limiting the generality thereof, the following shall be excluded or deducted from the Permitted O&M Expenses:

(a) transfer, gains, franchises, inheritance, estate and income Taxes imposed upon any Affiliate or any Person other than the Lessee;

(b) legal, accounting, tax-related and other professional fees, charges and disbursements paid or incurred by the Lessee or any Affiliate in connection with the legal, accounting, tax-related (excluding Taxes set forth in clause (j) above) or other interests of Affiliates of the Lessee;

(c) excluding the fees described in clauses (s) and (t) above, any allocation of overhead, charges, fees or disbursements for goods or services provided by any Affiliate of the Lessee;

(d) any other fee, payment or disbursement to an Affiliate of the Lessee (excluding any fee, payment or disbursement pursuant to an arm's length agreement on terms not less favorable to the Lessee than if the Lessee had entered into an agreement for similar fees, payments or disbursements with a third party);

(e) penalties assessed against the Lessee for the failure to cure a violation of any Applicable Law or Applicable Standards in circumstances in which Lessee's violation, or failure to cure such violation, was caused by the willful misconduct or gross negligence of the Lessee;

(f) any costs or charges for goods or services provided or performed in connection with common area maintenance, concession marketing and other services that (i) have been incurred by the Lessee or (ii) have been directly reimbursed by a Concession Sublessee, Airline Sublessee, Aeronautical User Sublessee or other sub-tenant or permittee as a separate item of additional rent or fee, except, in each case, to the extent the revenues associated with such cost or charge are included in Gross Revenues;

(g) any payment, fee, disbursement or other cost, or part thereof, to any third party contractor, agent, supplier, or other party whatsoever, that is above the fair market value under the circumstances for the good or service that is being provided except to the extent incurred pursuant to an arrangement previously entered, into at fair market value;

(h) any payment of Lessee Damages representing [redacted] pursuant to Section 14.1 [redacted]

(i) the amount of any penalty assessed with respect to the Terminal Operator management fee in accordance with Exhibit 34 [redacted];

(j) any amounts or costs incurred by the Lessee arising or resulting from the Lessee's indemnification obligations under Section 14.1 of the O&M Contract;

(k) with respect to any year during the O&M Period, any costs, losses or other amounts incurred or absorbed by the Lessee or otherwise not reimbursed to the Lessee representing liabilities in excess of the "Annual Manager Cap" (as defined in the O&M Contract);

(l) any costs and expenses incurred by the Lessee in the exercise of its remedies under the O&M Contract or otherwise arising from a dispute between the Terminal Operator and the Lessee (in each case, including attorneys' fees); and

(m) any interest or penalties under the O&M Contract due from the Lessee to the Terminal Operator.

Person or **Persons** means any natural person, corporation, joint venture, limited liability company, company, voluntary association, partnership, trust, unincorporated organization or Governmental Entity or other type of entity.

PFC Applications has the meaning set forth in Section 9.1(b).

PFC Eligible D&C Work has the meaning set forth in Section 9.1(b).

PFC Eligible Project Costs means costs identified in the PFC Funding Plan (as agreed between the Parties) that are expected to be "Allowable Costs" (as such term is defined in 14 C.F.R. Part 158) in connection with the D&C Work with respect to New Facilities and the Demolition Facilities.

PFC Funding means amounts received by the Port Authority from Passenger Facility Charges to be used for the purpose of funding PFC Eligible Project Costs as set forth in Article 9 (*Port Authority Funding*) that have been approved by the FAA in connection with a PFC Application.

PFC Funding Plan has the meaning set forth in Section 9.1(b).

PFC Regulations means all Federal regulations and requirements applicable to Passenger Facility Charges, including 14 C.F.R. Part 158.

Phased Construction O&M Period means the period from commencement of operation of any portion of the New Facilities (i.e., from the end of the Initial O&M Period) and continuing until such time as both (a) the New Facilities are in full operation and (b) operation of all portions of the Existing Facilities has permanently ceased (i.e., until the commencement of the O&M Period).

Phased Occupancy Area means any one or more spaces that is or are the subject of a separate TAA package and which area is to be handed over to any Sublessee for the purposes of tenant fit-out upon satisfaction by the Lessee of the requirements set forth in Section 10.5(c)(ii).

PIDS Work has the meaning set forth in Section 9.6(b).

Plan for New Improvements Construction Segments has the meaning set forth in Section 10.5(i).

PNTP Agreement means the Preliminary Notice to Proceed Agreement, dated as of July 15, 2015, by and between the Lessee and the Port Authority (as amended by Amendment No. 1 to Preliminary Notice to Proceed Agreement, dated as of October 21, 2015, and as further amended by Amendment No. 2 to Preliminary Notice to Proceed Agreement, dated as of April 12, 2016), with respect to the PNTP Work.

PNTP Work has the meaning set forth in the PNTP Agreement.

Port Authority has the meaning set forth in the introductory paragraph to this Agreement.

Port Authority Approval means the right, pursuant to the procedures set forth in Section 8.4(a), of the Port Authority to review and approve or disapprove (or partially approve or disapprove) Submittals requiring the approval of the Port Authority as set forth in this Agreement, the D&C Schedule of Submittals, the O&M Schedule of Submittals or as provided in the Requirements and Provisions for Work or the other Project Documents. Except as expressly provided otherwise, any reference in the Project Documents to a matter requiring approval or consent of, or a signature from, the Port Authority shall be deemed to provide that the matter is subject to Port Authority Approval.

Port Authority Change means any change in the Work (but, for clarity, not any change to any Rules and Regulations) by the Port Authority that the Lessee is required to implement pursuant to Section 13.1 (*Port Authority Changes*) and Section 13.2 (*Directive Letters*).

Port Authority Comment means the right, pursuant to the procedures set forth in Section 8.4(b), of the Port Authority to review and comment on the Submittals as to which such review and comment is permitted as set forth in this Agreement, the D&C Schedule of Submittals, the O&M Schedule of Submittals or as provided in the Requirements and Provisions for Work or the other Project Documents. Any reference in the Project Documents to a matter requiring or permitting a Submittal to the Port Authority that is not subject to Port Authority Approval shall be deemed to provide that the matter is subject to Port Authority Comment, except (i) where such reference expressly provides that the Submittal is for informational purposes only (or words of similar effect); (ii) with respect to any Submittal required to be provided by the Lessee to the Port Authority hereunder that (A) by its nature would not customarily be expected to warrant a response from the Port Authority or (B) the Lessee has expressly designated in writing to be for informational purposes only and is not otherwise subject to Port Authority Comment or Port Authority Approval hereunder, unless, in the case of clause (A) or (B), the Port Authority, in its reasonable discretion, informs the Lessee within fifteen (15)

days of receipt of the applicable Submittal that it intends to respond to such Submittal, or has previously responded to the same or a substantially similar Submittal; (iii) as provided in Sections 8.3(c) and 8.4(d); or (iv) as otherwise expressly provided in this Agreement or the other Project Documents with respect to a specific item.

Port Authority Funding means funding provided by the Port Authority, whether PFC Funding or amounts from other sources available to the Port Authority, to be applied to the payment of, as applicable, (a) PFC Eligible Project Costs incurred in connection with the performance of PFC Eligible D&C Work with respect to the improvements identified in the PFC Funding Plan and (b) costs incurred in connection with the performance of D&C Work for the New Improvements and the Central Hall.

Port Authority Governmental Approvals means each of the Governmental Approvals listed in Exhibit 4 (*Port Authority Governmental Approvals*) and includes Major Governmental Approvals.

Port Authority Indemnified Party(ies) means the City, EDC and the Port Authority, each Commissioner of the Port Authority and each officer, director, agent, employee and authorized representative of the City, EDC and the Port Authority.

Port Authority Police means the public safety staff employed by the Port Authority responsible for the safety and security of travelers and tenants in all of the Port Authority land, sea, air and rail facilities.

Port Authority Termination Notice has the meaning set forth in Section 23.3(a).

Port Authority Termination Sum has the meaning set forth in Section 24.2(b).

Port of New York District means the area of about 1,500 square miles in the States of New York and New Jersey centering about New York Harbor. The Port of New York District includes the Cities of New York and Yonkers in the State of New York, and the Cities of Newark, Jersey City, Bayonne, Hoboken and Elizabeth in the State of New Jersey, and over 200 other municipalities including all or part of seventeen (17) counties, in the States of New York and New Jersey.

Post-Substantial Completion Revenue Account shall have the meaning assigned to such term in the CAA.

Pre-Existing Hazardous Materials means Hazardous Materials existing on the Lease Commencement Date on, in or under the Premises (including in the Current Facilities or, as applicable, Excavated Materials and Demolition Debris) or on, in or under the areas subject to the Temporary Rights of Access.

Pre-Handback Inspections has the meaning set forth in Section 11.12(b).

Pre-Substantial Completion Revenue Account shall have the meaning assigned to such term in the CAA.

Preferred Proposer has the meaning set forth in the recitals to this Agreement.

Preliminary Project Baseline Schedule means the logic-based critical path schedule for all D&C Work attached hereto as Exhibit 31 [redacted], as required by the Requirements and Provisions for Work, that is submitted with the Preferred Proposer's Technical Proposal and updated prior to the Lease Commencement Date as part of the Finalized Proposal, and is the basis of the Project Baseline Schedule. For the avoidance of doubt, the Preliminary Project Baseline Schedule will include the scheduled New Facilities Construction Milestone Completion Dates, the scheduled Substantial Completion Date and the scheduled Final Acceptance Date.

Premises means those portions of the Airport Premises consisting of:

(a) the New Facilities Sites;

(b) the New Facilities and all other structures, improvements, additions, buildings, installations and facilities which may be located, constructed or installed on the New Facilities Sites, and the equipment permanently affixed or permanently located therein;

(c) prior to the Partial Termination Date (if applicable), the Central Hall and the Central Hall Site; and

(d) the Permanent Rights of Access;

provided, however, that during the Initial O&M Period and the Phased Construction O&M Period, in addition to those portions of the Airport Premises set forth above, the "Premises" shall also include those portions of the Airport Premises consisting of the Existing Leased Property.

Premium Space Operator has the meaning set forth in Section 6.6(b).

Prequalified Teams or **Proposers** has the meaning set forth in the recitals to this Agreement.

Principal Lessee Documents means each Key Contract, each Financing Document, and the Construction Coordination Agreement, dated as of June 1, 2016, by and among the Port Authority, the Lessee and Delta.

Principal Port Authority Documents means each Project Document to which the Port Authority is a party.

Procured Liability Policies has the meaning set forth in Section 20.1(f) (*Liability*).

Prohibited Party means any Person who is:

(a) debarred, suspended, proposed for debarment with a final determination still pending, declared ineligible or voluntarily excluded (as such terms are defined in any of the Debarment Regulations) from participating in procurement or nonprocurement transactions with the Federal government or any department, agency or instrumentality thereof pursuant to any of the Debarment Regulations;

(b) indicted, convicted or had a civil or administrative judgment rendered against such Person for any of the offenses listed in any of the Debarment Regulations and no event has occurred and no condition exists that is likely to result in the debarment or suspension of such Person from contracting with the Federal government or any department, agency or instrumentality thereof;

(c) listed on the "Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs" issued by the U.S. General Services Administration;

(d) located within, or doing business or operating from, a country or other territory subject to a general embargo administered by OFAC;

(e) designated on the OFAC list of "Specially Designated Nationals";

(f) otherwise targeted under economic or financial sanctions administered by the United Nations, OFAC or any other Federal economic sanctions authority or any divestment or sanctions program of the State of New York or New Jersey;

(g) a banking institution chartered or licensed in a jurisdiction against which the United States Secretary of the Treasury has imposed special measures under Section 311 of the USA PATRIOT Act;

(h) located within or is operating from a jurisdiction that has been designated as non-cooperative with international anti-money laundering principles by the Financial Action Task Force on Money Laundering;

(i) a financial institution against which the United States Secretary of the Treasury has imposed special measures under Section 311 of the USA PATRIOT Act;

(j) a "senior foreign political figure" or a prohibited "foreign shell bank" within the meaning of 31 C.F.R. § 103.175; or

(k) an entity with whom the Port Authority is engaged in litigation relating to performance of contract or business practices (unless the Port Authority has first waived (in the Port Authority's sole discretion) by written notice to the transferring equity holder, with a copy to the Lessee, the prohibition on a transfer to such Person during the continuance of the relevant litigation).

Project Baseline Schedule means the logic-based critical path schedule for all D&C Work as required by the Requirements and Provisions for Work, as the same is revised and updated in accordance with the Project Documents. Any reference in this Agreement to the Project Baseline Schedule shall mean any Project Baseline Schedule then in effect or the Preliminary Project Baseline Schedule if the initial Project Baseline Schedule is not yet in effect. For the avoidance of doubt, the Project Baseline Schedule will include the scheduled New Facilities Construction Milestone Completion Dates, the scheduled Substantial Completion Date and the scheduled Final Acceptance Date.

Project Costs means the costs and expenses actually incurred by or on behalf of the Lessee directly in connection with the D&C Work and any Upgrades, together with reasonable and documented professional and advisory fees and Lessee overhead and administrative expenses.

Project Director means the individual designated and employed or otherwise retained by the Lessee, as approved in writing by the Port Authority, in the position to take full day-to-day responsibility for the prosecution of the Work and who will act as a single point of contact on all matters on behalf of the Lessee.

Project Documents means this Agreement, with all the exhibits and forms (including the Requirements and Provisions for Work and the Lessee's Proposal Commitments), any amendments to or replacement of the foregoing undertaken in accordance with the terms hereof or thereof and any other document that the Port Authority and the Lessee may deem to be a "**Project Document**" from time to time after the date hereof. The Available Documents do not constitute Project Documents.

Project Executive means the individual designated by the Lessee and approved in writing by the Port Authority in the position to take ultimate responsibility for the Work.

Project Integrity Monitor means a private independent organization with legal, auditing, accounting, engineering and investigative expertise (and its subcontractors and sub-consultants) hired by the Port Authority to assist the Port Authority in its fraud prevention efforts pursuant to Section 1.7 of the General Conditions.

Project Management and Execution Plan means the document prepared by the Lessee in accordance with Section 3.3.1 of the Design and Construction Requirements and approved by the Port Authority describing the D&C Work necessary to manage the development, design and construction of the Construction Project, and containing the component parts, plans and documentation required under the Project Documents.

Project Plan for Safety Management means the plan prepared by the Lessee in accordance with Section 3.3.4 of the Design and Construction Requirements and approved by the Port Authority.

Project Plan for Security Management means the plan prepared by the Lessee in accordance with Section 3.3.5 of the Design and Construction Requirements and approved by the Port Authority.

Project Specific Constraints means the project specific constraints applicable to the Construction Project with which the Lessee's Final Design shall comply, as described in Section 14.3 of the Design and Construction Requirements.

Projected Parking Deficiencies has the meaning set forth in Section 10.12(a).

Proposal Due Date means May 20, 2014.

Public Aircraft Facilities means the following facilities, as they may from time to time be provided and maintained by the Port Authority at LGA Airport for public and common use, including use by Civil Aircraft Operators, for the following purposes and which (except during the continuation of a Force Majeure Event) are usable for such purpose regardless of whether or not they are actually used or usable in whole or in part by the Lessee:

(a) Public Aircraft Parking and Storage Area;

(b) Public Ramp and Apron Area;

(c) Runways;

(d) Taxiways; and

(e) Facilities Incidental to the Runways, Ramp and Apron Area, Aircraft Parking and Storage Area and Taxiways.

Public Aircraft Parking and Storage Area means areas at LGA Airport for public and common use for the purpose of parking and storing Aircraft, for the purpose of servicing Aircraft with fuel and lubricants and other supplies for use thereon, and for the purpose of making minor or emergency repairs to Aircraft.

Public Landing Area means the area of land at LGA Airport including Runways, Taxiways and the areas between and adjacent to Runways and Taxiways, designated and made available from time to time by the Port Authority for the landing and taking off of Aircraft.

Public Ramp and Apron Area shall mean the area adjacent to the Public Landing Area designated and made available from time to time by the Port Authority for common use for the loading or unloading of passengers or cargo to or from Aircraft using the Public Landing Area.

Punch List means any itemized list of Construction Work which remains to be completed, corrected, adjusted, or modified, the existence, correction and completion of which will have no material or adverse effect on the normal, uninterrupted and safe use and operation of the New Facilities, the New Improvements or the Central Hall, as agreed between the Lessee and the Port Authority.

Punch List Items means items on the Punch List.

Qualified Disposal Locations means, with respect to any waste material containing Hazardous Materials and shipped off the Premises or the areas subject to the Temporary Rights of Access for disposal, a disposal location that is (a) regulated by a state or Federal agency and subject to licensing or permit requirements and regulatory oversight, and is authorized to receive the specific wastes that are transported to it, (b) not subject to material notices of violation of Environmental Laws or pending litigation concerning Environmental Liabilities, and (c) not listed on the "National Priorities List" established pursuant to CERCLA.

Qualified Terminal Operator or QTO shall mean a Person who is not a Prohibited Party and who has been determined by the Port Authority, acting at its sole discretion, to be a qualified terminal operator. In determining whether to issue such determination, the Port Authority shall only consider whether such Person has: (x) sufficient experience or personnel, or access to sufficient experience or personnel of an Affiliate Under Common Control With it, with sufficient experience in operating and maintaining airline passenger terminals on a basis consistent with the standards and requirements set forth in this Agreement, (y) a reputation for honesty, integrity and reliability and (z) the financial capability to operate and maintain the Terminal B Facilities on a basis consistent with the standards set forth in this Agreement, with such Person being deemed to have such requisite financial capability if such Person has or is projected to have sufficient capital (or access to capital), whether by virtue of cash on hand, sponsor support commitments, projected revenues, any combination thereof, or otherwise, to meet all of such Person's operations and maintenance expenses and, with respect to the Lessee, obligations to make rental and other payments to the Port Authority in respect of the Premises for the one (1) year period following the date on which such Person would become a Qualified Terminal Operator; provided, that at the election of the Recognized Mortgagee with respect to any Person selected to be a successor or assignee of the Lessee by such Recognized Mortgagee pursuant to Section 18.6(a), the ability to pay Second Additional Rent shall not be taken into account for purposes of this clause (z). As of the Lease Commencement Date, each of the Vantage Management Entity and the Vantage Member Entity is a QTO.

Qualifying Applicable Law has the meaning set forth in the definition of "**Change in Law**."

Qualifying Safety Compliance means any and all improvements, repair, reconstruction, rehabilitation, restoration, renewal, replacement and changes in configuration or procedures with respect to the Construction Project or the Premises to correct a specific safety condition of the Construction Project or the Premises that the Port Authority has reasonably determined (by investigation or analysis) to exist despite the Lessee's compliance with the Safety Standards.

Qualifying Safety Compliance Order means a written order or directive issued by the Port Authority to the Lessee pursuant to Section 13.5 (*Safety Compliance Orders*) to implement Qualifying Safety Compliance.

Rating Agency means any of Standard & Poor's Corporation, Moody's Investor Services, Inc., Fitch Investors Services, Inc. or any of their respective successors.

RCRA means the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq*.), and any analogous state law or regulation implementing RCRA, including any state law or regulation that regulates wastes as "hazardous wastes" under state law or regulations that are not Federal "hazardous wastes."

RCRA Allowance means the amount of $10,000,000 included in the Soil Disposal Cost Budget representing the assumed cost of transportation and disposal of Excavated Materials that are regulated as hazardous wastes under RCRA.

RCRA Soil Disposal Costs means Soil Disposal Costs for the transportation and off-site disposal of Excavated Materials that are regulated as hazardous wastes under RCRA.

Reasonable Efforts means all those steps in the power of the relevant Party that are capable of producing the desired result, and which a prudent, determined and reasonable person desiring to achieve that result would take; provided, that subject to its other express obligations under this Agreement, the relevant Party shall not be required to expend funds except for those necessary to meet the reasonable costs reasonably incidental or ancillary to the steps to be taken by the relevant Party (including its reasonable travel expenses, correspondence costs and general overhead expenses).

Reasonably Expected Economic Life means, for any asset, the Lessee's reasonably expected economic life for that asset based on one or more of the following: (1) the "asset depreciation range" midpoint life of the asset, as set forth by the IRS, (2) in the case of buildings, IRS Revenue Procedure 62-21, and (3) the Appraisal (provided, that the economic life in such case shall not be longer than the reasonable expectations of the Lessee and the Port Authority based upon the particular asset, the circumstances of use and other factors that may impact the useful life of the asset).

Recognized Mortgagee has the meaning set forth in Section 18.2(a).

Record Documents has the meaning as set forth in the TCAP.

Recoverable Costs means an amount equal to one hundred fifteen percent (115%) of:

(a) the costs of any assistance, action, activity or work undertaken by the Port Authority in connection with its exercise of Oversight for which the Lessee is liable or is required to reimburse the Port Authority under this Agreement, including the charges of third-party experts, consultants and contractors;

(b) third-party costs the Port Authority incurs to procure any such third-party experts, consultants or contractors; and

(c) reasonable fees and costs of attorneys, financial advisors, engineers, architects, insurance brokers and advisors, investigators, airline and airport consultants, risk management consultants, other consultants, and expert witnesses, as well as court costs and other litigation costs, in connection with any such assistance, action, activity or work, including in connection with investigating and defending claims

by, and resolving disputes with, and enforcing or pursuing remedies against, third-party contractors.

Recovery Schedule means the recovery schedule prepared by the Lessee in accordance with Sections 10.1(f)(vi) and (vii).

Reference Month has the meaning set forth in Section 4.2(d)(ii).

Refinancing means at any time after the Lease Commencement Date:

(a) the incurrence by the Lessee of any Lessee Debt other than the Lessee Debt incurred pursuant to the Financing Documents taking effect as of the Lease Commencement Date, secured or unsecured, including issuance of any reimbursement agreement respecting a letter of credit; and

(b) any other arrangement put in place by the Lessee or another person which has an effect similar to clause (a) of this definition, excluding, however, any capitalization of interest or accretion of principal or other committed increases on any Lessee Debt incurred or committed on or prior to the Lease Commencement Date.

Regulatory Manifest means a document identified as a "manifest" that is required to be completed and provided to transporters of regulated hazardous waste materials pursuant to RCRA.

Related Equity Member has the meaning set forth in Section 17.1(e)(iii).

Released For Construction Documents means all drawings, specifications, revisions thereto and any other items necessary to construct the Construction Project, Signed and Sealed, and, to the extent required by this Agreement, the other Project Documents or the D&C Schedule of Submittals, have received Port Authority Approval.

Released PAF Holdback Amounts has the meaning set forth in Section 9.2(i)(v).

Remaining Service Life has the meaning set forth in Section 3.1 of the Maintenance Requirements.

Remedial Action means any response action pursuant to the Environmental Requirements to investigate, contain, remove, remediate or abate a Hazardous Environmental Condition, including the transport, processing, storage, handling and disposal of any Hazardous Materials, together with any reporting, record keeping and restoration associated with such activities; provided, however, that "Remedial Action" shall not include actions by Lessee to satisfy the requirements of this Agreement with respect to Excavated Material, Demolition Debris or Hazardous Materials in the Current Facilities that are removed, handled, generated and disposed of in performing Construction Work or the generation, handling, treatment or disposal of Hazardous Materials in connection with Operations and Maintenance Work.

Remedial Action Debris means all soil, rock, debris, trash and other material excavated or removed from the Premises or the areas subject to the Temporary Rights of Access as a result of a Remedial Action, including any liquid waste materials that cannot be treated and disposed of under the SPDES Permit, but not including Demolition Debris or Excavated Materials.

Remedial Action Plan means the plan developed by the Lessee outlining Remedial Actions to be taken by the Lessee.

Remediation Completion Report has the meaning set forth in Section 16.12(i).

Rental Tax Treatment has the meaning set forth in Section 4.7(b).

Requesting Airline means any Scheduled Aircraft Operator (a) that possesses, has an unconditional right to possess, or a contractual option for, subject to no other condition than acquisition of a right to use a Gate at LGA Airport, an Operating Authorization, or the right to use an Operating Authorization, which "Requesting Airline" has made a request of the Port Authority to make Accommodations available to it at the Existing Terminal B Facilities or the New Terminal B Facilities, as applicable, or (b) which the Port Authority has determined must be accommodated at the Existing Terminal B Facilities or the New Terminal B Facilities, as applicable, as provided for in Article 32 (*Requesting Airlines at LGA Airport*).

Requirements and Provisions for Work means the Requirements and Provisions for Work for the Terminal B Facilities, the Requirements and Provisions for Work for the Central Hall and the Requirements and Provisions for Work for the New Improvements.

[redacted]

Reserved Uses has the meaning set forth in Section 5.3(f)(i).

Restricted Payment Conditions shall have the meaning assigned to such term in the CAA.

Retained Water System Property has the meaning set forth in Section 7.4(a).

RFP has the meaning set forth in the recitals to this Agreement.

RFQ has the meaning set forth in the recitals to this Agreement.

Risk Management Plan means the plan prepared by the Lessee in accordance with Section 3.3.6 of the Design and Construction Requirements and approved by the Port Authority.

Roadway Network has the meaning set forth in Section 10.1(a)(xiii).

Routine Maintenance means the maintenance required to preserve the current condition of assets that is routine in nature and includes matters that are typically included as an annually recurring cost in airport and terminal buildings maintenance budgets, as more particularly described in Section 2.1 of the Maintenance Requirements and in the System-by-System Maintenance Requirements.

Rules and Regulations means the rules, regulations, policies, manuals and publications, standards, practices or guidelines issued or published by the Port Authority, with which the Lessee is required to comply (including any of the foregoing resulting from any directive or requirement by the FAA, the TSA or any other Governmental Entity), that are referenced within this Agreement and the Requirements and Provisions for Work, including those described in Part C of the Requirements and Provisions for Work, in each case, as may be amended, revised, supplemented or otherwise modified from time to time.

Runways (including approaches thereto) means the portion of LGA Airport used for the purpose of the landing and taking off of Aircraft.

Safety Compliance means Qualifying Safety Compliance and Non-Qualifying Safety Compliance.

Safety Compliance Order means Qualifying Safety Compliance Orders and Non-Qualifying Safety Compliance Orders.

Safety Standards means those standards referenced in Section 4.0 of the General Conditions and the other provisions of the Requirements and Provisions for Work that the Port Authority considers to be important measures to protect public safety or worker safety. As a matter of clarification, provisions of the Requirements and Provisions for Work primarily directed at durability of materials or equipment, where the durability is primarily a matter of life cycle cost rather than protecting public or worker safety, are not Safety Standards.

Scheduled Aircraft Operator means a Civil Aircraft Operator engaged in transportation by an Aircraft operated wholly or in part on regular flights to and from LGA Airport in accordance with published schedules, but so long as the Federal Aviation Act of 1958, or any similar Federal statute providing for the issuance of Foreign Air Carrier Permits or Certificates of Public Convenience and Necessity or substantially similar permits or certificates, is in effect, no Person shall be deemed to be a Scheduled Aircraft Operator within the meaning of this Agreement unless it also holds such a permit or certificate.

[redacted]

Second Additional Rent Payment Account shall have the meaning assigned to such term in the CAA.

Seconded Terminal Operator Personnel has the meaning set forth in Section 19.7 (*Seconded Terminal Operator Personnel*).

Section 467 Allocated Rent has the meaning set forth in Section 4.7(a).

Security Documents means, collectively, any agreement, document or instrument entered into or delivered by the Lessee that creates a Security Interest in favor of the Collateral Agent for the benefit of the Secured Parties (including, without limitation, the Project Leasehold Mortgage, the Building Leasehold Mortgage, the Borrower Security Agreement, the Assignment of Leases and Rents, the Account Control Agreement, the Assignment of Building Loan Agreement and Project Loan Agreement, and the Assignment of Project Documents). Solely for purposes of this definition, capitalized terms used herein but not otherwise defined in this Agreement shall have the respective meanings set forth in the Collateral Agency Agreement.

Self-perform or **self-perform** has the meaning set forth in Section 17.2(a).

Semi-Annual Testing Date has the meaning set forth in Section 9.1(b).

Series 2016A Bonds means the $2,260,380,000 New York Transportation Development Corporation Special Facilities Bonds, Series 2016A (Tax-Exempt) (AMT) (LaGuardia Airport Terminal B Redevelopment Project).

Series 2016A Bond-Financed Assets means the portions of the assets comprising (i) the New Facilities and related facilities (but excluding the New Improvements and Central Hall), and (ii) the Existing Leased Property, to which proceeds of the Series 2016A Bonds are allocated in accordance with the books and records of the Applicable Issuer (with the consent of the Port Authority if the Applicable Issuer is not the Port Authority, which consent shall not be unreasonably withheld).

Service Line means (a) a Utility line, the function of which is to directly connect the improvements on an individual property to another Utility line located off such property, which other Utility line connects more than one such individual line to a larger system, or (b) any cable or conduit that supplies an active feed from a Utility owner's facilities to activate or energize the Port Authority's or a local agency's lighting and electrical systems, communications systems and/or irrigation systems.

Signed and Sealed means the signature and seal of the Engineer of Record or the Architect of Record, as appropriate, on a document indicating that the licensee takes professional responsibility for the work and, to the best of the licensee's knowledge and ability, the work represented in the document is accurate, in conformance with applicable codes at the time of submission and has been prepared in conformity with normal and customary standards of practice and with a view to the safeguarding of life, health, property and public welfare. The Engineer of Record or the Architect of Record, as applicable, certifies that the documents have been signed and sealed in accordance with laws, rules and regulations of the State of New York.

Signing and Wayfinding Airports Standards Manual means The Port Authority of New York and New Jersey's Signing and Wayfinding Airports Standards Manual, the latest edition in effect at the time compliance is due.

Soil Disposal Cost means direct, out-of-pocket Project Costs that are reasonably and necessarily paid or incurred by the Lessee exclusively for the transportation and off-site disposal of Excavated Materials that are required to be excavated and disposed of off-Premises to complete the Construction Work, and not for other purposes, including Remedial Action, by assigning such Excavated Materials to the appropriate Material Category (as set forth in Exhibit 36 (*Budgeted Disposal Locations*) as such Exhibit may be modified by the Parties) and applying the Budgeted Tipping Fees (as set forth in Exhibit 36 (*Budgeted Disposal Locations*) as such Exhibit may be modified by the Parties) to actual amounts of Excavated Materials transported and disposed of off-site.

Soil Disposal Cost Budget means the amount of Seventy-Three Million Six Hundred Seventy-Four Thousand Two Hundred Thirty-Six Dollars ($73,674,236.00), which includes the RCRA Allowance of Ten Million Dollars ($10,000,000.00).

Soil Erosion and Sediment Control Plan has the meaning set forth in Section 16.3(c) (*Erosion Control Plan*).

SPCC Plan means the plan to be prepared by the Lessee setting forth the measures the Lessee shall take in response to a spill of any petroleum products stored or used on the Premises, as set forth in Section 16.3(a) (*Spill Prevention, Control and Countermeasures*).

SPDES Permit means the state pollution discharge elimination system permit identified as New York State Department of Environmental Conservation (NYSDEC) State Pollution Discharge Elimination System (SPDES) Permit for Storm Water Discharges at LGA (Permit No. NY-0008133/DEC No. 2-6301-00106/00023), including the NYSDEC-approved Best Management Practice Plan prepared pursuant thereto, as amended.

Special Inspection has the meaning set forth in the TCAP.

Statement of Estimated Liabilities means a statement by the Port Authority setting forth (i) all amounts that (A) are estimated to be due and payable by the Lessee to the Port Authority under this Agreement as of the date of such statement or (B) to the best of the Port Authority's knowledge, are expected to become due and payable by the Lessee under this Agreement on or prior to the date that is thirty (30) days after the date of such statement, (ii) to the extent not included in clause (i) above, all other obligations of the Lessee under this Agreement known to the Port Authority that should have been, but have not been, performed as of the date of such statement and (iii) to the extent not included in clauses (i) or (ii) above, all costs and expenses (including legal fees), taxes, fees, charges and disbursements estimated to be paid or incurred by the Port Authority in connection with any applicable Event of Default, the termination of this Agreement, the recovery of possession from the Lessee, and the preparation, execution and delivery of the New Agreement and related agreements, in each case, to the extent applicable.

Street Prices has the meaning set forth in Section 5.3(g)(i).

Sublease means any sublease, use agreement, license or other agreement between the Lessee and a Sublessee with respect to the use or occupancy of the Premises.

Sublessee has the meaning set forth in Section 5.1(h).

Submittal means any document, work product, request, notice or other written or electronic product or item required under this Agreement, the Requirements and Provisions for Work or other Project Documents to be delivered or submitted to the Port Authority for Port Authority Approval or Port Authority Comment.

Substantial Completion means the occurrence of all events and satisfaction of all conditions set forth in Section 10.6(a) with respect to the entire Construction Project other than the Central Hall, as evidenced by the issuance of a Certificate of Substantial Completion by the Port Authority to the Lessee.

Substantial Completion Date means the date upon which the Lessee achieves Substantial Completion.

Substantial Completion Notice has the meaning set forth in Section 10.6(c).

Successor Recognized Mortgagee means a successor to a Recognized Mortgagee selected and appointed in accordance with the Leasehold Mortgage; provided, that such successor is an Institutional Lender and not a Prohibited Party.

Supplier means any Person not performing work at or on the Premises or the areas subject to the Temporary Rights of Access who supplies machinery, equipment, materials, hardware, software, systems or any other appurtenance to the Premises or the areas subject to the Temporary Rights of Access to the Lessee or to any Contractor in connection with the performance of the Work. Persons who merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other items or persons to or from the Premises or the areas subject to the Temporary Rights of Access shall not be deemed to be performing Work on the Premises or the areas subject to the Temporary Rights of Access.

Supporting Project Milestone means, with respect to each Supporting Project, the date identified on Exhibit 18 [redacted] by which the Port Authority shall complete such Supporting Project.

Supporting Projects means, collectively, the following projects to be performed by the Port Authority:

(a) the demolition of Hangars 2 and 4;

(b) the design and construction of a new East End Substation serving the New Terminal B Facilities and East End Terminals;

(c) the design and construction of a new East Garage; and

(d) the design and construction of the electrical and communication Utility trunk lines as shown on the Contract No. LGA-124.223 Drawings, dated December 20, 2013 – Work Order No. 103.

Surface Carrier has the meaning set forth in Section 6.1(a).

Sustainability Lead has the meaning set forth in Section 16.2(a).

Sustainable Design Guidelines means (a) the "Sustainable Building Guidelines" issued by the Engineering Department of the Port Authority, dated August 15, 2007 and (b) the "Sustainable Infrastructure Guidelines" issued by the Engineering Department of the Port Authority, dated March 23, 2011 (to the extent applicable to the Construction Project).

SWPPP has the meaning set forth in Section 16.3(b) (*Stormwater Pollution Prevention Plan*).

System-by-System Maintenance Requirements means the System-by-System Maintenance Requirements set forth in Section 3.1 of the Terminal B Facilities Technical Requirements.

[redacted]

Tank has the meaning set forth in Section 16.11(a) (*Lessee Responsibility for Tanks and Tank Systems*).

Tank System has the meaning set forth in Section 16.11(a) (*Lessee Responsibility for Tanks and Tank Systems*).

Taxes means Federal, state, local or foreign income, gross receipts, sales, use, excise, transfer, consumer, license, payroll, employment, severance, stamp, business, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the Internal Revenue Code of 1986, as amended), customs, permit, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, registration, value added, alternative or add-on minimum, estimated or other taxes, levies, imposts, duties, fees or charges imposed, levied, collected, withheld or assessed at any time, whether direct or indirect, relating to, or incurred in connection with, the Construction Project, the performance of the Work or act, business, status or transaction of the Lessee, including any interest, penalty or addition thereto, and including Utility rates or rents, in all cases whether disputed or undisputed.

Tax-Exempt Bonds means any obligations the interest on which is excludable from gross income for federal income tax purposes under Section 103(a) of the Code, except for any period that any such obligations shall be held by a "substantial user" or "related person" of facilities provided from the proceeds of such obligations, within the meaning of Section 147(a) of the Code, to the extent that the proceeds of such obligations are allocated to facilities leased by the Lessee under this Agreement. For the avoidance of doubt, the term "Tax-Exempt Bonds" may include any such bonds issued by the Port Authority, to the extent the proceeds of such

bonds have been used (i) to finance construction of improvements in the Existing Leased Property or (ii) as a source of funds for the Port Authority Funding of the PFC Eligible Project Costs incurred in connection with the performance of the PFC Eligible D&C Work with respect to the New Facilities and the Demolition Facilities.

Taxiways means the portion of LGA Airport used for the purpose of the ground movement of Aircraft to, from and between the Runways, the Public Ramp and Apron Area, the Public Aircraft Parking and Storage Area and other portions of LGA Airport (not including, however, any taxi lanes, the exclusive use of which is granted to any other Person by lease, permit or otherwise).

TCAP means The Port Authority of New York and New Jersey's Tenant Construction and Alteration Process Manual (July 2013), and any subsequent edition or replacement thereof.

Technical Proposal means the technical proposal submitted by the Preferred Proposer to the Port Authority in response to the RFP and updated as part of the Finalized Proposal.

Technical Requirements means the Terminal B Facilities Technical Requirements, the New Improvements Technical Requirements and the Central Hall Technical Requirements.

Technology Enhancements means modifications, additions, refinements, substitutions, revisions, replacements and upgrades made to or in place of enforcement systems deployed on or for the New Facilities or the Central Hall or to any other computer systems or other technology used for the operation or maintenance of the New Facilities or the Central Hall, or to any related documentation, that accomplish incidental, performance, structural, or functional improvements. The term specifically includes modifications, updates, revisions, replacements and upgrades made to or in place of software or any related documentation that correct errors or safety hazards or support new models of computer hardware with which the software is designed to operate. Technology Enhancements also include such new models of computer hardware.

Temporary Certificate of Authorization to Occupy or Use has the meaning set forth in the TCAP.

Temporary Crane Directive means the Rules of the City of New York 33190-01(s)(2), as amended by (i) the Mayoral directive on February 7, 2016, effective on February 8, 2016, and (ii) the temporary order issued by the Commissioner of the New York City Department of Buildings on March 15, 2016 regarding crawler crane safety requirements.

Temporary Rights of Access means those certain rights of way and other agreements for access and use of those portions of the Airport Premises shown on Exhibit 28-E (*Temporary Rights of Access*) for ingress and egress, on foot and in vehicles, storage of materials, staging of construction, support, drainage, temporary Utilities and other purposes necessary for the performance by the Lessee of the Construction Work during the Construction Period and consistent with the purposes of this Agreement, including:

(a) the right of access to the New Improvements until such New Improvements are completed and turned over to the Port Authority; and

(b) the right of access to the land on which the Demolition Facilities are located for purposes of demolishing and removing the Demolition Facilities from the Airport Premises.

Temporary Rights of Access also include any other temporary rights or easements which may be granted by the Port Authority to the Lessee from time to time during the Term.

Term has the meaning set forth in Article 2 (*Term*).

Terminal B Facilities means, as the context requires, the Existing Facilities and the New Facilities.

Terminal B Facilities Design and Construction Requirements means those Design and Construction Requirements set forth as Section 1 of the Terminal B Facilities Technical Requirements.

Terminal B Facilities General Conditions means the General Conditions set out in Part A of the Requirements and Provisions for Work for the Terminal B Facilities.

Terminal B Facilities Technical Requirements means the Technical Requirements set forth as Part B of the Requirements and Provisions for Work for the Terminal B Facilities.

Terminal C means the existing terminal known as "Terminal C" at LGA Airport. The general location of Terminal C at LGA Airport is shown in Exhibit 1 (*Existing Facilities Map*).

Terminal D means the existing terminal known as "Terminal D" at LGA Airport. The general location of Terminal D at LGA Airport is shown in Exhibit 1 (*Existing Facilities Map*).

Terminal Operator means any counterparty to an O&M Contract.

Terminal Operator Change in Control has the meaning set forth in Section 17.1(e)(iv).

Terminal Operator Member has the meaning set forth in Section 17.2(a)(i).

Terminal Operator Minimum Share has the meaning set forth in Section 17.2(c)(i).

Terminal Security Program or **TSP** has the meaning set forth in Section 15.6(a)(ii).

Termination Effective Date has the meaning set forth in Section 18.3 (*Notices*).

Termination Notice means any Lessee Termination Notice, Port Authority Termination Notice or Condemnation Termination Notice, as the case may be.

Termination Transition Plan has the meaning set forth in Section 27.2(a).

Third-Party Claims means any Claim asserted against an Indemnified Party by any Person who is not a party to this Agreement.

[redacted]

Time Impact Analysis means a time impact analysis prepared in accordance with Section 3.2 of the General Conditions.

Transfer has the meaning set forth in Section 17.1(e)(v).

Transfer Date means the first Business Day of each month.

Transferee or **transferee** has the meaning set forth in Section 17.3(b)(i).

Tribunal means a court, tribunal, agency, special district, commission or other authority exercising judicial or regulatory functions.

TSA means the Transportation Security Administration created under the Aviation and Transportation Security Act, 49 U.S.C. § 40101 *et seq*., or any successor agency thereto.

Unamortized Costs Termination Sum has the meaning set forth in Section 24.2(d)(i)(G).

Uniform Commercial Code or **UCC** means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of, or remedies with respect to, any collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term "UCC" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for the purposes of the provisions hereof relating to such perfection, priority or remedies.

Unknown ACM means ACM that is not Known ACM or Additional ACM.

Unknown Archaeological Remains means any Archaeological Remains that were neither (a) known to the Lessee nor (b) could reasonably have been identified by an appropriately qualified and experienced contractor or engineer exercising due care and skill and Best Management Practice in the same or equivalent circumstances through review and analysis of the Available Documents or publicly available information.

Unknown Endangered Species means any Endangered Species discovered on the Premises: (a) the continual or habitual presence of which was not identified or described in the Available Documents or publicly available information, or (b) which could not reasonably be expected to be found continually or habitually on the Premises or the areas subject to the Temporary Rights of Access based on a review and analysis of the Available Documents or publicly available information.

Unknown Facility means a Utility, Tank or Tank System present on the Premises or the areas subject to the Temporary Rights of Access which is not identified in the Utility Data or the other Available Documents, excluding any Utility, Tank or Tank System that:

(a) was installed on a part of the Premises or the areas subject to the Temporary Rights of Access after the Lessee was provided with access to the relevant part of the Premises and the areas subject to the Temporary Rights of Access in accordance with the terms of this Agreement;

(b) is a Service Line;

(c) is a Disclosed Facility; or

(d) could reasonably have been identified or discovered by an appropriately qualified and experienced contractor or engineer exercising due care and skill and Best Management Practice in the same or equivalent circumstances, including through review and analysis of the Utility Data or the other Available Documents and the investigations and assumptions on the basis of which the Utility Data or the other Available Documents were prepared;

provided, that any Utility for which the actual centerline location is located at, or less than twenty (20) feet distant from, the horizontal centerline location indicated therefor (without regard to vertical location) in the Utility Data or the other Available Documents, shall in no event constitute an Unknown Facility.

Unknown Geotechnical Conditions means any actual geotechnical, subsurface or latent physical conditions that were neither (a) known to the Lessee nor (b) could reasonably have been identified by an appropriately qualified and experienced contractor or engineer exercising due care and skill and Best Management Practice in the same or equivalent circumstances through review and analysis of the Available Documents or publicly available information.

Unknown Hazardous Materials means Hazardous Materials that are Pre-Existing Hazardous Materials, whether in soil, Groundwater, in the Current Facilities or in Excavated Materials or Demolition Debris, that in any such case are not Known Hazardous Materials.

[redacted]

[redacted]

Upgrades means alterations, improvements, modifications, Technology Enhancements or changes, excluding the completion of Punch List Items and rectification of Nonconforming Work that the Lessee makes to the New Facilities or the Central Hall, as originally designed and constructed, at any time after the Substantial Completion Date, including as part of the Asset Preservation Work.

USGBC means the U.S. Green Building Council, a private 501(c)3, membership-based non-profit organization that promotes sustainability in how buildings are designed, built and operated. USGBC led the effort to develop LEED rating systems and oversees the LEED programs.

Utilities Replacement has the meaning set forth in Section 10.1(a)(xiv).

Utility means a privately, publicly, or cooperatively owned line, facility, or system (including conduits and concrete structures in which utility lines are contained) for transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with the highway drainage, or other similar commodities, including wireless telecommunications, television transmission signals and publicly owned fire and police signal systems, which directly or indirectly serve the public. The necessary appurtenances to each Utility facility shall be considered part of such Utility.

[redacted]

Utility Relocation means the removal, relocation and/or protection in place (including provision of temporary services, as necessary) of any and all Utility facilities that must be removed, relocated and/or protected in place in order to permit construction of the Construction Project.

Utility Restoration has the meaning set forth in Section 7.3(a).

Utility Servicing has the meaning set forth in Section 7.3(a).

Utility Systems has the meaning set forth in Section 7.3(a).

UW has the meaning set forth in Section 16.4(b)(i).

Vantage has the meaning set forth in Section 17.2(d).

Vantage Management Entity has the meaning set forth in Section 17.2(d).

Vantage Member Entity has the meaning set forth in Section 17.2(d).

Warranty has the meaning set forth in Section 10.8(a).

Warranty Period has the meaning set forth in Section 10.8(b).

WBE has the meaning set forth in Section 15.10(a).

West Garage has the meaning set forth in Section 10.1(a)(xv).

[redacted]

Witness and Hold Point Program means the program developed by the Lessee pursuant to Section 6.2 of the Design and Construction Requirements, subject to Port Authority Approval.

Work means the D&C Work and the Operations and Maintenance Work. For the avoidance of doubt, all work and services required to be furnished, performed and provided by the Lessee under the Project Documents shall constitute either D&C Work or Operations and Maintenance Work.

Working Capital Reserve Account shall have the meaning assigned to such term in the CAA.

Section 1.2 Construction and Interpretation of Agreement

(a) The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any Party. The Parties hereto acknowledge and agree that this Agreement has been the subject of arms' length and careful negotiation over a considerable period of time, that each Party has been given the opportunity to independently review this Agreement with legal counsel, and that each Party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or Dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the Party preparing it.

(b) Any references to any covenant, condition, obligation and/or undertaking "**herein**," "**hereunder**" or "**pursuant hereto**" (or language of like import) mean, refer to and include the covenants, conditions, obligations and undertakings existing in this Agreement and any Exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this Agreement. The words "**herein**," "**hereof**" and "**hereunder**" and any other

words of similar import shall be construed to refer to this Agreement in its entirety and not to any particular provision of this Agreement. All terms defined in this Agreement shall be deemed to have the same meanings in all Exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this Agreement, unless the context thereof clearly requires the contrary. All references to this Agreement or any other agreement shall include all exhibits, forms, appendices, addenda, attachments or other documents affixed to or expressly incorporated herein or therein by reference. Unless expressly provided otherwise, all references to Articles, Sections, subsections, clauses and Exhibits refer to the Articles, Sections, subsections, clauses and Exhibits set forth in or attached to this Agreement, as applicable. Unless otherwise stated in this Agreement or the other Project Documents, words which have well-known technical or construction industry meanings are used in this Agreement or the other Project Documents in accordance with such recognized meanings. All references to a subsection or clause "**above**" or "**below**" refer to the denoted subsection or clause within the Section in which the reference appears. Wherever the word "**including**," "**includes**" or "**include**" is used in the Project Documents, it shall be deemed to be followed by the words "without limitation." In the computation of periods of time from a specified date to a later specified date, the word "**from**" means "from and including" and the words "**to**" and "**until**" mean "to but excluding."

(c) As used in this Agreement and as the context may require, (i) the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa; (ii) any definition of or reference to any agreement, instrument or other document shall be construed as referring to such agreement, instrument or other document as amended, supplemented or otherwise modified from time to time (subject to any restrictions on such amendments, supplements or modifications set forth herein); and (iii) any reference to a Person shall be construed to include such Person's successors and assigns.

(d) The use of Section, Article and paragraph headings and a table of contents, and the organization of the various provisions of this Agreement thereunder, are for convenience of reference only and in no way define, limit or describe the scope or intent of any provision hereof.

(e) Any reference to the Port Authority's "**discretion**" in the Project Documents (other than when the term "reasonable discretion" is used) shall be deemed to mean the Port Authority's sole and absolute discretion, which discretion shall not be subject to the Dispute Resolution Procedures set forth in Article 33 (*Dispute Resolution Procedures*).

(f) Any reference to "sampling" for purposes of assessing chemical or physical characteristics shall be interpreted to include the chemical and/or physical analysis and reporting or presentation of data.

(g) Any reference to a day as it relates to any payment to be made hereunder shall, if such day is not a Business Day, mean the next suceeding Business Day.

Section 1.3 Project Documents; Order of Precedence

(a) In the event of any conflict, ambiguity or inconsistency between any terms or provisions of this Agreement, the order of precedence, from highest to lowest, shall, except as provided otherwise in this Section 1.3 (*Project Documents; Order of Precedence*), be as follows:

(i) the main body of this Agreement;

(ii) Exhibits to this Agreement [redacted]; and

(iii) the Lessee's Proposal Commitments.

(b) In the event of any conflict, ambiguity or inconsistency between the General Conditions, the Applicable Standards and/or the Requirements and Provisions for Work (excluding the General Conditions and the Applicable Standards), the order of precedence, from highest to lowest, shall, except as provided otherwise in this Section 1.3 (*Project Documents; Order of Precedence*), be as follows:

(i) General Conditions;

(ii) the Requirements and Provisions for Work (excluding the General Conditions and the Applicable Standards); and

(iii) the Applicable Standards.

(c) If any portion of the Applicable Standards conflicts with or is less stringent than Applicable Laws, such conflicting or less stringent portions of Applicable Standards shall not be deemed "applicable." If any of the Applicable Standards (other than a Rule and Regulation) conflicts with or is less stringent than a Rule and Regulation, such Rule and Regulation will prevail. If any of the provisions of this Agreement conflicts or is inconsistent with any Rule and Regulation, such provision of this Agreement will prevail; provided, that with respect to any conflict or inconsistency directly bearing on public health, welfare or safety, the applicable Rule and Regulation will prevail.

(d) In the event of any conflict, ambiguity or inconsistency between or among any of the provisions in this Agreement, or between two (2) or more Project Documents, having the same order of precedence, the more stringent standard will prevail.

(e) If the Lessee's Proposal Commitments include statements, terms, concepts or designs that can reasonably be interpreted as offering to provide higher quality items than otherwise required by the other Project Documents or to perform services or meet standards in addition to or better than those otherwise required, then the Lessee's obligations hereunder shall include compliance with all such statements, terms, concepts and designs as set forth in the Lessee's Proposal Commitments.

(f) Additional or supplemental details or requirements in a lower priority Project Document shall be given effect except to the extent they irreconcilably conflict with requirements, provisions and practices contained in the higher priority Project Document.

(g) Notwithstanding the order of precedence among Project Documents set forth in this Section 1.3 (*Project Documents; Order of Precedence*), in the event of a Dispute arising from a conflict between the Design and Construction Requirements and the Applicable Standards, the provisions of Section 33.3 (*Chief Engineer's Jurisdiction*) shall apply.

Section 1.4 Responsibility for Related Parties

Subject to the provisions of this Agreement, in respect of the Lessee's performance or non-performance of its obligations under the Project Documents, the Lessee shall be responsible for the acts and omissions of Lessee-Related Entities, and shall be liable for any breaches of this Agreement and the other Project Documents or other obligations arising under this Agreement and the other Project Documents as a result of such acts or omissions of Lessee-Related Entities, as if they were the acts and omissions of the Lessee. The Lessee shall be responsible for the selection of and pricing by any Contractor and Supplier.

ARTICLE 2

TERM

Section 2.1 Term, Generally. The term of this Agreement (the "**Term**") shall commence on the Lease Commencement Date and shall end on the earlier of (a) 11:59 pm New York City time on the 30th day of December 2050, or if earlier, upon the termination of the Basic Lease (the "**Expiry Date**") or (b) the Early Termination Date.

Section 2.2 Partial Termination. The Port Authority shall have the right to partially terminate this Agreement solely with respect to the Central Hall (a "**Partial Termination**"), by prior written notice to the Lessee (the "**Partial Termination Notice**") specifying the date of such Partial Termination (the "**Partial Termination Date**") and delivered not later than six (6) months prior to such Partial Termination Date; provided, that, except as set forth in the following proviso, the Partial Termination Date shall not in any event occur prior to the earlier of (a) the seventh (7th) anniversary of (i) the date of issuance of the Temporary Certificate of Authorization to Occupy or Use with respect to the Central Hall or (ii) the Central Hall Substantial Completion Date, whichever of clause (i) or (ii) occurs earlier and (b) the date of commencement of regularly scheduled operations at the AirTrain Station; and, provided, further, that the Port Authority shall have the right to partially terminate this Agreement pursuant to this Section 2.2 (*Partial Termination*) prior to such date if an Event of Default under Section 23.1(r) for any failure by the Lessee to comply with, perform or observe the Operations and Maintenance Work solely with respect to the Central Hall, has occurred and is continuing. Upon a Partial Termination, except as provided in Part I, Section 4 of Exhibit 33 (*Central Hall Provisions*), all of the Lessee's rights, privileges and obligations with respect to the Central Hall will cease to exist (other than any rights and obligations under this Agreement which, by their terms, survive such Partial Termination).

ARTICLE 3

LEASE AND USE OF THE PREMISES

Section 3.1 Lease of Premises

(a) Subject to Section 3.1(b) and on the terms and conditions set forth in this Agreement, the Port Authority hereby (i) lets to the Lessee, and the Lessee hereby hires and takes: (A) the Existing Leased Property, (B) the New Facilities Sites, (C) the New Facilities, (D) the Central Hall and the Central Hall Site, (E) all other structures, improvements, additions, buildings, installations and facilities which may be located, constructed or installed on the New Facilities Sites and the Central Hall Site and (F) the equipment permanently affixed or permanently located therein, and (ii) grants to the Lessee, and the Lessee hereby hires and takes: (A) the Permanent Rights of Access and (B) the Temporary Rights of Access. In addition to the rights and interests granted hereby to the Lessee, the Port Authority hereby assigns, transfers and otherwise conveys to the Lessee, each of the Assigned Terminal B Facilities Agreements (provided, that no cash received prior to the Lease Commencement Date shall be assigned, transferred or otherwise conveyed to the Lessee, except for cash tendered as

security deposits under the Assigned Terminal B Facilities Agreements by the counterparties thereto), and the Lessee shall accept each such grant, assignment, transfer and conveyance.

(b) Subject to the terms and conditions of this Agreement, the Lessee takes the Premises subject to all easements, encumbrances, restrictions, reservations, covenants and agreements to which the Premises may be subject as of the Lease Commencement Date, including the following: (i) the Basic Lease; (ii) rights of the public in and to any public street; (iii) rights, if any, of any enterprise, public or private, which is engaged in furnishing lighting, power, telegraph, telephone, steam or other Utility services, and of the City, and of the State of New York; and (iv) Governmental Approvals, if any, of the United States, the City, the State of New York or of any other Governmental Entity.

(c) In accordance with Section 7.2 of the Basic Lease, (i) the rights granted under this Agreement to the Lessee shall be subject and subordinate to the terms of the Basic Lease and to any interest superior under the Basic Lease to that of the Port Authority's under the Basic Lease; (ii) the Lessee shall not pay Base Rent or other sums required to be paid under this Agreement more than one (1) month in advance from when due (excluding security and other deposits required under this Agreement); (iii) the Lessee upon the termination of the Basic Lease (if such termination is prior to the scheduled expiration or Early Termination of this Agreement) will, at the City's option, either attorn to, or enter into a direct lease on identical terms with, the City; (iv) the Lessee is providing the indemnity set forth in Section 21.4 (*Indemnity in Favor of the City*); (v) the Lessee agrees to not use the Premises or any other portion of LGA Airport for any use other than as permitted under the Basic Lease; (vi) the Lessee shall use, operate and maintain the Premises in a manner consistent with the Port Authority's obligations under Section 28 of the Basic Lease solely with respect to the Premises; (vii) failure to comply with the provisions of this Section 3.1(c) constitutes an Event of Default; and (viii) the City shall be named as an additional insured or loss payee, as applicable, pursuant to Article 20 (*Insurance*).

(d) Nothing contained in this Agreement shall grant to the Lessee any rights whatsoever in the air space above the Premises above the heights of the structures thereon as set forth in the Final Design Documents or as otherwise required for the performance of any of the obligations of the Lessee hereunder.

(e) It is the intent of the Parties that the Lessee shall have the right to use the Premises as provided in this Agreement as lessee and that the Port Authority is in no way assigning, transferring or otherwise conveying title of the Premises to the Lessee.

(f) The Parties acknowledge that the Premises constitute non-residential real property.

Section 3.2 Condition of Premises

(a) Subject to (i) the Port Authority's indemnification set forth in Section 21.2 (*Indemnification by the Port Authority*), (ii) the [redacted] and Delay Events set forth in Sections 14.1 [redacted] and 14.2 (*Delay Events*), (iii) the Excluded

Liabilities described in Section 3.2(b) and (iv) Section 3.8(d), the Lessee hereby agrees to accept the Premises "as is" in the condition as of the Lease Commencement Date and, to assume all responsibility for any and all risks, costs and expenses of any kind whatsoever caused by, arising out of or in connection with the condition of the Premises, whether any aspect of such condition existed prior to, on or after the Lease Commencement Date, and to indemnify and hold harmless the Port Authority Indemnified Parties for all such risks, responsibilities, costs and expenses to the extent required pursuant to Section 21.1 (*Indemnification by the Lessee*).

(b) Except with respect to any Excluded Liabilities arising due to any act or omission of any Lessee-Related Entity, the liabilities assumed by the Lessee shall not include any debts, liabilities and obligations, whether such debts, liabilities or obligations are initially charged to the Port Authority, the Lessee or any other Person, with respect to any of the following (collectively, the "**Excluded Liabilities**"):

(i) the Port Authority's obligations under this Agreement;

(ii) any Claims or Liens arising out of the operation or maintenance of the Current Facilities and incurred or accrued during the period prior to the Lease Commencement Date (including any Claims arising under employment or labor law or under contracts or arrangements with or regarding employees of the Port Authority, including obligations in respect of benefits accrued but not vested at the Lease Commencement Date), except for Claims or Liens relating to Environmental Liabilities, which are governed exclusively by Article 16 (*Environmental, Health and Safety Requirements*);

(iii) any contract to which the Port Authority is a party for the performance of services or the provision of goods or services at the Premises or the Current Facilities which will continue to be retained by the Port Authority;

(iv) any Assigned Terminal B Facilities Agreement, but solely with respect to debts, liabilities and obligations of the Port Authority arising therefrom prior to the Lease Commencement Date;

(v) arising out of utility rights reserved to the Port Authority pursuant to Section 7.3 (*Utility Rights Reserved to the Port Authority*) and utility rights reserved to the City pursuant to Section 7.4 (*Utility Rights Reserved to the City*) and the Retained Water System Property; and

(vi) with respect to any excluded Environmental Liabilities as set forth in Section 16.17(a) (*Exclusions from the Lessee's Environmental Liability*).

(c) 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. The Lessee understands that it will

be its responsibility to furnish and install (subject to the provisions of Article 10 (*Design and Construction*)) all pumps, trade fixtures, accessories, equipment and other property including any necessary removal and demolition and to perform all Work as may be necessary to put the New Facilities in first-class operating condition in comparison to similar facilities at airports of similar size for the purposes set forth in Section 3.4 (*Use of Premises*); provided, that the Lessee shall not be deemed to be in breach of its obligations set forth in this sentence if the Lessee is otherwise in compliance with this Agreement, the other Project Documents, Applicable Law and Applicable Standards.

(d) Available Documents.

(i) Except as expressly provided in Section 22.2(k) or Section 16.1(h) (*Reliance on Available Documents*), and without prejudice to the Lessee's rights and remedies in connection with a breach of the representation in such Sections, the Port Authority does not give any representation, warranty or guarantee as to the relevance, completeness, accuracy or fitness for any purpose of any of the Available Documents and reliance by the Lessee or any Lessee-Related Entity, as applicable, on any of the Available Documents is at its sole risk.

(ii) Without limiting the generality of Section 35.15 (*Non-liability of Individuals*), none of the Port Authority, its officers, representatives, Commissioners, agents or employees shall have any liability in respect of any:

(A) inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in any Available Document;

(B) failure to make available to the Lessee any materials, documents, drawings, plans or other information relating to the Work or the Premises; or

(C) Claims or Losses whatsoever suffered by any Lessee-Related Entity by reason of any use of information contained in, or any action or forbearance in reliance on, any of the Available Documents.

(iii) The Lessee shall not in any way be relieved from any obligation under the Project Documents nor shall it be entitled to claim against the Port Authority on grounds that any information included in the Available Documents is incorrect or insufficient.

(iv) Nothing in this clause (d) shall limit any of the Lessee's rights and remedies and any of the Port Authority's obligations otherwise expressly provided in this Agreement.

Section 3.3 Liens

The Lessee shall not do any act or thing that will create, and will not permit any other Lessee-Related Entity to do any act or thing that will create, any Lien against the Premises, the areas subject to the Temporary Rights of Access or LGA Airport (other than the Lessee's

leasehold interest therein created by this Agreement and the Lenders' Lien with respect thereto). Subject to Sections 9.2(b)(v), 9.2(f) and 10.7(a)(xi), the Lessee shall, within thirty (30) days after receipt of notice of the filing of any Lien against the Premises, the areas subject to the Temporary Rights of Access, LGA Airport or any part thereof because of any act or omission of the Lessee or any Lessee-Related Entity, cause the Lien to be discharged of record by payment, deposit bond, order of a court of competent jurisdiction or otherwise and may in good faith contest any Lien (subject to providing any necessary bond or other security required by Applicable Law) which, in the case of water and sewer charges, shall include the filing of a complaint administratively according to NYCDEP and New York City Water Board (or any successor) administrative procedures.

Section 3.4 Use of Premises

(a) The Lessee hereby agrees to and shall use and operate the Premises (other than the Central Hall, the CHRP and the CRWD) as an airline passenger terminal and related purposes, including the use and occupancy of (i) Scheduled Aircraft Operators, (ii) Sublessees, (iii) Governmental Agencies and (iv) the Port Authority, in each instance in accordance with, pursuant to and subject to the terms of this Agreement. The specific provisions relating to the use and operation of the Central Hall are set forth in Exhibit 33 (*Central Hall Provisions*). In connection with such use and operation of the Premises, the Lessee hereby agrees to perform the Operations and Maintenance Work.

(b) It is understood and agreed that, subject to Section 3.4(f), the Premises (other than the Central Hall and the CHRP) shall be used by Scheduled Aircraft Operators who are Airline Sublessees pursuant to Section 5.2 (*Air Transportation-Related Subleases*) or who have arrangements with an Airline Sublessee, solely in connection with their business of transportation by Aircraft, for the following purposes and for activities reasonably required for such purposes:

(i) for the reservation of space and the sale of tickets for transportation by Aircraft operated by each Airline Sublessee or Scheduled Aircraft Operator who has arrangements with an Airline Sublessee;

(ii) for the reservation of space and the sale of tickets for transportation by other Scheduled Aircraft Operators but only as an incident to or in connection with transportation performed or to be performed by an Airline Sublessee or a Scheduled Aircraft Operator who has arrangements with an Airline Sublessee, or as an incident to or in connection with the cancellation of such transportation, or for the accommodation or convenience of the incoming or outbound passengers of an Airline Sublessee or a Scheduled Aircraft Operator who has arrangements with an Airline Sublessee at the Premises. The occasional reservation of space and the sale of tickets for transportation by other Scheduled Aircraft Operators shall not be deemed to be prohibited by this Section 3.4(b)(ii);

(iii) for the clearance, checking and rendering of service by each Airline Sublessee or Scheduled Aircraft Operator who has arrangements with an Airline

Sublessee to its passengers and for the furnishing of information service to its passengers and the general public;

(iv) for providing lounges, rooms or space for the special handling of or the furnishing of special services by, each Airline Sublessee or Scheduled Aircraft Operator who has arrangements with an Airline Sublessee to its passengers, guests, or invitees, subject to and except as otherwise provided in Section 5.2 (*Air Transportation-Related Subleases*) and Section 6.6(a);

(v) for the handling of baggage by each Airline Sublessee or Scheduled Aircraft Operator who has arrangements with an Airline Sublessee of its passengers, including baggage and parcels such passengers decide to send as air cargo;

(vi) for the handling of unclaimed baggage and lost and found articles;

(vii) for the conduct of operations, communications, reservations and administrative office functions and activities in connection with air transportation performed by each Airline Sublessee or Scheduled Aircraft Operator who has arrangements with an Airline Sublessee;

(viii) for the preparation, packaging and storage of food, beverages and commissary supplies to be consumed on Aircraft operated to and from the Premises by each Airline Sublessee or Scheduled Aircraft Operator who has arrangements with an Airline Sublessee;

(ix) for the storage of repair parts, supplies and other personal property owned or leased by each Airline Sublessee or by a Scheduled Aircraft Operator who has arrangements with an Airline Sublessee, and for the performance of minor repairs to personal property of such Airline Sublessee or such Scheduled Aircraft Operator;

(x) for the storage of such automotive fuel and lubricants as may be approved by the Port Authority;

(xi) for use as crew quarters to be used by personnel of each Airline Sublessee or Scheduled Aircraft Operator who has arrangements with an Airline Sublessee, during layovers between flights and for the establishment of lounges for employees of such Airline Sublessee or such Scheduled Aircraft Operator;

(xii) for the loading and unloading of passengers, baggage, mail, air cargo and commissary supplies of each Airline Sublessee or Scheduled Aircraft Operator who has arrangements with an Airline Sublessee; provided, however, that the use of the Premises for the unloading and loading of passengers and their baggage from ground transportation vehicles shall be subject to limitations and restrictions, from time to time, as set forth in Section 6.1 (*Surface Carriers*);

(xiii) for the parking and storage of Aircraft and ramp equipment operated by each Airline Sublessee or Scheduled Aircraft Operator who has arrangements with an Airline Sublessee;

(xiv) for the fueling and routine servicing of Aircraft and ramp equipment operated by each Airline Sublessee or Scheduled Aircraft Operator who has arrangements with an Airline Sublessee and for the maintenance of said ramp equipment;

(xv) for the performance of emergency or turn-around Aircraft maintenance on Aircraft operated by each Airline Sublessee or Scheduled Aircraft Operator who has arrangements with an Airline Sublessee;

(xvi) for the training of personnel employed or to be employed by each Airline Sublessee or Scheduled Aircraft Operator who has arrangements with an Airline Sublessee or other persons engaged in commercial transportation by Aircraft; provided, that unless consented to by the Port Authority, neither the Lessee nor any Airline Sublessee or Scheduled Aircraft Operator who has arrangements with an Airline Sublessee shall engage in the training of Persons employed by others or to be employed by others if the training of such Persons is in competition with any concessionaire, permittee or licensee of the Port Authority at LGA Airport (other than another Person engaged in the business of transportation by Aircraft);

(xvii) for the temporary storage of baggage and mail;

(xviii) for the occasional and temporary storage of air cargo; and

(xix) for any other use approved in advance by the Port Authority in writing.

(c) It is understood and agreed that the Existing Facilities and the New Facilities shall be used by Aeronautical User Sublessees solely in connection with airline passenger terminal-related services at the Premises and for activities reasonably required for such purposes and for such purposes and activities only.

(d) It is understood and agreed that the Existing Terminal B Facilities and the New Terminal B Facilities shall be used by Concession Sublessees solely in connection with retail sales of goods and services at the Premises and for activities reasonably required for such purposes and for such purposes and activities only.

(e) It is understood and agreed that the Premises (other than the Central Hall) may be used by the Lessee and its agents, Contractors, employees and authorized representatives in the performance of the Work and for its administrative offices. The Lessee may conduct airport-related training programs for its employees at the Premises. Such programs may include employees of Lessee-Related Entities.

(f) The Port Authority hereby grants to the Lessee the privilege of permitting the occasional use of the Premises (other than the Central Hall) by non-scheduled commercial carriers for the sole purpose of discharging or picking up passengers, business guests and other

invitees of the Lessee or scheduled commercial carriers that have been diverted to LGA Airport due to their being precluded from normal arrival at another airport ("**Itinerant Aircraft**"). In connection with its use of LGA Airport, all operations of such Itinerant Aircraft shall be in compliance with all the terms and provisions of this Agreement and with the Rules and Regulations. As between the Port Authority and the Lessee, the Lessee shall be fully responsible for all acts and omissions of said Itinerant Aircraft in connection with the use by the Itinerant Aircraft of LGA Airport. The Port Authority shall have the right to cancel the privilege granted to the Lessee herein, in whole or in part, or with respect to any particular Itinerant Aircraft at any time and from time to time and without cause upon thirty (30) days' written notice to the Lessee, and upon the effective date of such notice the Lessee shall no longer have the right to permit all or any specific Itinerant Aircraft, as specified in such notice, to use the Premises as hereinabove provided, but the same shall not affect this Agreement or any of the terms, rentals, fees, provisions or agreements hereof, all of which shall continue in full force and effect. For the avoidance of doubt, the Lessee shall not have the right to charge or collect flight fees or parking and storage fees for Itinerant Aircraft parked or stored in the Public Aircraft Facilities in connection with the occasional use of the Premises by Itinerant Aircraft in accordance with this Section 3.4(f).

(g) The Lessee may use the Premises (other than the Central Hall) for any other purpose or activity, in addition to those specified in this Section 3.4 (*Use of Premises*), for which the Premises are expressly authorized to be used by any other provision of this Agreement, including for the performance of the Work required under this Agreement, and for activities reasonably required for such purposes and for such purposes and activities only.

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

(i) Neither this Agreement, nor anything contained herein, including this Section 3.4 (*Use of Premises*), shall or shall be deemed to grant to the Lessee any right, privilege or permission to perform any sale, service or any other activity other than as is expressly provided herein and upon the terms and conditions hereof, including the obligation to make the payments called for in this Agreement.

(j) The Lessee hereby acknowledges that this Agreement does not grant to it any right and the Lessee does not have any right to use or permit the use of any portion of the Premises for the landing or taking off of helicopters, rotary wing, tilt-rotor or other similar Aircraft, except as may be necessary in the event of an emergency, with notice to the Port Authority. In the event that the Port Authority determines that approval for such use will be given at any time hereafter, the same shall be granted only in accordance with such terms and conditions, including but not limited to fees, charges and rights of user, as the Port Authority may set forth in a supplement to this Agreement, which is duly executed by the Lessee and the Port Authority. The Lessee shall comply with any directive by the Port Authority or the FAA to permit the use of the Premises by commercial carriers or other aircraft in the case of an emergency.

(k) In connection with the lease of the Premises pursuant to Section 3.1 (*Lease of Premises*), the Port Authority hereby grants to the Lessee the exclusive right to, and the Lessee accepts such right and acknowledges its obligation to, (i) maintain and operate the Existing Facilities and the New Facilities, (ii) maintain and operate the Central Hall and (iii) charge, collect and retain revenues derived from the operation of the Existing Facilities and the New Facilities (but not of the Central Hall), in each case, in accordance with and subject to the terms and conditions of this Agreement.

Section 3.5 Rights of Entry and Oversight by the Port Authority

(a) The Port Authority, by its officers, employees, agents, authorized representatives, designees, designers and contractors, shall have the right at all reasonable times upon reasonable prior notice (which may be given orally) to enter upon the Premises and the areas subject to the Temporary Rights of Access (i) for the purpose of conducting Oversight (including performing periodic evaluations of, *inter alia*, any aspect of the Operations and Maintenance Work, D&C Work and condition and code conformance of electrical, mechanical, structural and fire and life safety systems) and observing the performance by the Lessee of its obligations under this Agreement and the other Project Documents (including the Lessee's obligations to comply with the Requirements and Provisions for Work and Rules and Regulations), (ii) for the purpose of providing additional customer-related services to the Patrons at LGA Airport (including customer care representatives) and (iii) for the doing of any act or thing that the Port Authority may, pursuant to the express provisions of this Agreement be entitled or obligated to do, or pursuant to Applicable Law, be obligated to do; provided, that in the case of an Emergency, the Port Authority need not give the Lessee prior notice of its intention to enter any area of the Premises or the areas subject to the Temporary Rights of Access; and provided, further, that the Port Authority's Oversight will not excuse, or affect the Port Authority's right to rely on, the Lessee's performance of its obligations pursuant to this Agreement. Notwithstanding anything herein to the contrary, in the event that the Port Authority determines that additional customer-related services should be provided to the Patrons of LGA Airport pursuant to sub-clause (ii) of this Section 3.5(a), prior to entering upon the Premises in connection with the provision of such services, the Port Authority shall consult with the Lessee with respect to the scope and substance of such proposed services and shall provide the Lessee an opportunity to elect to provide such services in lieu of the Port Authority, subject to such terms and conditions as may mutually be agreed between the Parties. The Lessee shall have the right to have an authorized representative present during each entry on the Premises or the areas subject to the Temporary Rights of Access by the Port Authority.

(b) Nothing in this Section 3.5 (*Rights of Entry and Oversight by the Port Authority*) shall or shall be construed to impose upon the Port Authority any obligation to construct or maintain or to make repairs, replacements, alterations or additions, or shall create any liability for any failure to do so. As between the Lessee and the Port Authority, 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 occurring on or about the Premises or the areas subject to the Temporary Rights of Access or for any injury or damage to the Premises or the D&C Work (except as expressly provided in this

Agreement and other than those injuries or damages occasioned by the willful misconduct or gross negligence of the Port Authority, its employees, agents and authorized representatives).

(c) At any time and from time to time during ordinary business hours within the twenty-four (24) months preceding the Expiry Date, the Port Authority, through and by its agents and employees, whether or not accompanied by prospective tenants, occupiers or users of the Premises, shall have the right to enter the Premises or the areas subject to the Temporary Rights of Access for the purpose of exhibiting and viewing all parts of the same; provided, that the Port Authority shall give the Lessee reasonable prior oral notice of its intention to enter the Premises or the areas subject to the Temporary Rights of Access to exercise the rights described in this Section 3.5(c). The Lessee shall have the right to have an authorized representative present during each such entry.

(d) If, during the last month prior to the Expiry Date or Early Termination Date, as applicable, the Lessee shall have removed all or substantially all of its property from the Premises, the Port Authority may immediately enter and alter, renovate and redecorate the Premises except to the extent doing so unreasonably interferes with (i) the Lessee's ability to satisfy the Handback Requirements or (ii) the Lessee's or its Sublessees' use and occupancy of the Premises.

(e) The exercise of any or all of the foregoing rights by the Port Authority and/or its agents in accordance with the provisions of this Section 3.5 (*Rights of Entry and Oversight by the Port Authority*) shall not be or be construed to be an eviction of the Lessee nor be made the grounds for any abatement of rental or any payments due to the Port Authority hereunder nor any claim or demand for damages, consequential or otherwise.

(f) The Port Authority, in its capacity as landlord hereunder, agrees that it will not, and will cause each director, officer, employee, agent or contractor not to, unreasonably interfere with the Work or the use and occupancy of the Premises by the Lessee or its Sublessees or invitees in the course of performing Oversight and otherwise exercising its rights of entry hereunder and will use Reasonable Efforts to minimize the effect and duration of any disruption to or impairment of the Work or the use and occupancy of the Premises; provided, that the Port Authority's exercise of its rights in accordance with the terms and conditions of this Agreement shall not by itself constitute interference with the Work or the use and occupancy of the Premises. The Lessee shall cooperate fully with the Port Authority to facilitate any such entry and the performance of Oversight by the Port Authority.

(g) Nothing in this Section 3.5 (*Rights of Entry and Oversight by the Port Authority*) is intended to derogate from the Port Authority's rights under Section 10.10 (*Port Authority Inspections of Construction Work Generally; No Duty to Inspect or Police*).

(h) The Port Authority shall be compensated for the Oversight services and functions it has the right or obligation to perform or cause to be performed under this Agreement, including the monitoring, review, approval, administration and audit of the D&C Work. Such compensation shall be in an amount equal to Three Million Dollars ($3,000,000) per Calendar Year during the Construction Period, which amount shall be pro-rated for the first

and last years of the Construction Period based on the ratio of the number of days in such year that fall within the Construction Period to the total number of days in such Calendar Year; provided, that (i) any Oversight costs associated with any Port Authority Change or Directive Letter shall be for the account of the Port Authority only, and (ii) the compensation provided for in this Section 3.5(h) shall not limit any further amounts that may be payable to the Port Authority pursuant to Section 3.5(i) or Section 8.4(c) as a result of increased levels of Oversight with respect to the Work.

(i) If, at any time, the Lessee has failed to perform any of the Work in any material respect (individually or in the aggregate), then, in addition to and without limiting any other remedies available pursuant to this Agreement and the other Project Documents, but subject to Section 3.5(j) and without duplication, the Port Authority, with prior written notice to the Lessee, shall be entitled to increase the Port Authority's Oversight of the Work in such manner and to such level as the Port Authority deems appropriate, until such time as the Lessee has demonstrated to the Port Authority's reasonable satisfaction that the Lessee will resume performance of, and is capable of performing, the Work in compliance with this Agreement. If the Port Authority increases or otherwise changes the manner of its Oversight pursuant to this Section 3.5(i), then the Lessee shall pay and reimburse the Port Authority within thirty (30) days after receipt of written demand therefor and reasonable supporting documentation, all Recoverable Costs associated with the increased or changed level of Oversight.

(j) Prior to any increase in the Port Authority's Oversight of the Work as permitted under Section 3.5(i), the Lessee may submit a cure plan describing specific actions that the Lessee will undertake to improve its performance and avoid the need for increased Oversight, which the Port Authority may accept or reject at its sole discretion. If the Port Authority accepts any such cure plan, the Port Authority shall not increase its Oversight of the Work that is the subject of the cure plan so long as the Lessee is in compliance with such cure plan.

Section 3.6 Ingress to and Egress from the Premises

(a) The Lessee, the Sublessees, any Scheduled Aircraft Operator who has arrangements with an Airline Sublessee, any Itinerant Aircraft and their respective officers, authorized representatives, employees, customers, patrons, invitees, designees, Contractors and Suppliers, shall have the right of ingress and egress between the Premises, the areas subject to the Temporary Rights of Access, the Air Terminal Highway System and city streets or public ways outside the Premises by means of roadways existing on the Lease Commencement Date or roadways to be built as part of the Construction Project, the Supporting Projects or otherwise, in each case, which may be provided in common with others having rights of passage to the Premises from the city streets or public ways outside the Premises; provided, however, that the Port Authority may, upon reasonable prior notice to the Lessee, from time to time substitute other reasonably equivalent means of ingress and egress that do not materially and adversely affect the Lessee's performance of the Work; and provided, further, however, that the foregoing right of ingress and egress shall not apply to the areas between the Premises, the areas subject to the Temporary Rights of Access, the Air Terminal Highway System and the city streets or public ways outside the Premises by means of any mode of transportation or any vehicle which may be otherwise limited or restricted by any Applicable Laws,

Governmental Approvals or Applicable Standards, it being understood that the foregoing restriction regarding modes of transportation or vehicles shall not apply to modes of transportation or vehicles used for reasons of safety or health.

(b) The Lessee, its Airline Sublessees and any Scheduled Aircraft Operator who has arrangements with an Airline Sublessee, and any Itinerant Aircraft shall have the right to use the Public Landing Area solely for the landing and taking off of Aircraft and incidental purposes, and the right of ingress and egress between the Premises and the Public Landing Area at LGA Airport, by means of existing Taxiways to be used in common with others having rights of passage thereon; provided, however, that the Port Authority may from time to time, upon reasonable prior notice to the Lessee, substitute other reasonably equivalent means of ingress and egress as provided in Section 3.6(c).

(c) The use of all roadways and Taxiways shall be subject to Applicable Law and Applicable Standards. In addition to the rights of closure granted above, the Port Authority may, at any time, temporarily or permanently close, or consent to or request the closing of, any such roadway, Taxiway and any other area at LGA Airport presently or hereafter used as such, so long as (i) a means of ingress and egress reasonably equivalent to that provided in Sections 3.6(a) and 3.6(b) remains available to the Lessee and (ii) such closure, taking into account the availability of reasonably equivalent means of ingress and egress, does not materially and adversely affect the performance of the Work. The Lessee hereby releases and discharges the Port Authority, its successors and assigns, of and from any and all Claims concerning the adequacy of ingress or egress which the Lessee may now or at any time hereafter have against any of the foregoing, arising or alleged to arise out of the closing of any street, roadway, Taxiway or other area used as such, whether within or outside LGA Airport; provided, that a reasonably equivalent means of ingress and egress is available to the Lessee and such closure, taking into account the availability of reasonably equivalent means of ingress and egress, does not materially and adversely affect the performance of the Work.

Section 3.7 Quiet Enjoyment

The Lessee, so long as it pays all rentals hereunder and performs all of the covenants, conditions and provisions of this Agreement on its part to be performed, shall and may peacefully and quietly have and enjoy the Premises throughout the Term, except as otherwise expressly set forth in this Agreement. The Port Authority will, at all times during the Term, defend (a) the Port Authority's leasehold interest in the Premises and LGA Airport granted pursuant to the Basic Lease; and (b) the leasehold interest granted to the Lessee hereunder, or any portion thereof, in each case, against any Person claiming any leasehold interest adverse to the Port Authority or the Lessee in the Premises, or any portion thereof, as applicable, except where such adverse interest arises as a result of the act or omission by the Lessee or any other Lessee-Related Entity in breach of the provisions of this Agreement or the negligence, willful misconduct or violation of Applicable Law or Applicable Standards by the Lessee or any other Lessee-Related Entity.

Section 3.8 Cooperation with Respect to Transition of Operations

(a) The Lessee and the Port Authority agree to cooperate with each other, and to exercise Reasonable Efforts to cause their respective contractors and employees to cooperate with each other, fairly, reasonably and in good faith in connection with the transition of operations and maintenance of the Existing Facilities from the Port Authority to the Lessee. The Parties will cooperate and coordinate with each other with respect to activities undertaken pursuant to the Operational Readiness and Transition Plan and to identify and coordinate their efforts so as to interfere as little as possible with the existing operations and maintenance of the Existing Facilities.

(b) The Port Authority will cooperate fully with the Lessee to facilitate the implementation of the applicable portion of the Operational Readiness and Transition Plan, including, at the reasonable request of the Lessee, (i) making available the most recent information regarding the operating and safety and informational technology systems located at the Existing Facilities, including the maintenance and condition of such systems and other related equipment and facilities; (ii) providing reasonable training to the Lessee's and/or its Contractor's employees regarding the use and maintenance of the operating and safety and informational technology systems and other equipment and facilities located at the Existing Facilities; (iii) assigning the applicable warranties to the Lessee where reasonably practicable and transferring applicable operating manuals, designs, plans, policies and other documents to the Lessee with respect to the systems, equipment and facilities located at the Existing Facilities; (iv) informing the Port Authority's existing contractors and vendors regarding the transition of operations from the Port Authority to the Lessee and seeking their cooperation with respect thereto; and (v) providing technical advice and support to the Lessee and/or its Contractors with respect to the operation and maintenance of the Existing Facilities during and/or following such transition. The Port Authority will also cooperate with the Lessee to facilitate coordination of work schedules with the Lessee and/or its Contractors as appropriate to avoid or minimize the effect and duration of any disruption to the operations and maintenance of the Existing Facilities.

(c) The Lessee shall have no obligation to employ any former, present or future employee of the Port Authority. Subject to the foregoing, at the request of the Lessee, the Port Authority shall provide to the Lessee, for up to six (6) months following the Lease Commencement Date (which six (6)-month period can be extended by the Lessee, with the prior written agreement of the Port Authority, for up to an additional six (6) months), the technical services (in the form of technical advice and/or the provision of information) of a Port Authority employee(s) (the specific employee(s) to be approved by the Port Authority) now employed at the Premises and having relevant operational knowledge of the Existing Facilities. The Lessee shall compensate the Port Authority for the provision of all such services in an amount equal to the Port Authority's documented cost thereof, including pro rata employment costs and related overhead expenses that are reasonably allocable to the time spent by any such employees in providing transition services to the Lessee, as agreed upon in advance by the Lessee and the Port Authority, which amounts shall be billed to the Lessee as soon as reasonably practicable following the end of each month and shall be payable by the Lessee within thirty (30) days of receipt of any such billing statement. Such services shall be

provided upon such other reasonable terms and conditions as the Port Authority and the Lessee shall agree.

(d) Notwithstanding anything else in this Agreement or the other Project Documents to the contrary, the Lessee shall not be held responsible for any non-compliance with the Operational Requirements with respect to the Existing Facilities, and no such non-compliance shall constitute a breach of this Agreement or the other Project Documents by the Lessee or form the basis of an Event of Default; provided, that (i) such non-compliance was not, in whole or in part, caused by the Lessee or any Lessee-Related Entity and (ii) the Lessee performs the Operations and Maintenance Work with respect to the Existing Facilities so as to maintain the Existing Facilities in substantially the same condition as existed at the time the Lessee assumed possession and control thereof on the Lease Commencement Date.

[redacted]

Section 3.10 Allocation of Pre-closing Costs and Revenues

The Port Authority shall be entitled to all revenues with respect to the Existing Facilities and the Premises and shall be responsible for all charges, costs and expenses with respect thereto that shall have accrued as of 11:59 p.m. on the day immediately preceding the Lease Commencement Date. Any amounts payable to or owed by the Port Authority pursuant to this Section 3.10 (*Allocation of Pre-closing Costs and Revenues*) shall be paid on the Lease Commencement Date; provided, that, if final amounts cannot be determined as at the Lease Commencement Date for any items contemplated by this Section 3.10 (*Allocation of Pre-closing Costs and Revenues*), then the Port Authority and the Lessee shall allocate such items on a fair and equitable basis as soon as revenue statements, invoices or bills are available, with final adjustment to be made as soon as reasonably possible after the Lease Commencement Date.

ARTICLE 4

RENTAL

In consideration of the rights granted to the Lessee under this Agreement, the Lessee agrees to pay, fund or apply rentals and other amounts, as applicable, as provided below:

Section 4.1 Permitted O&M Expenses

The Lessee shall pay Permitted O&M Expenses as and when such amounts shall become due and payable. The payment of Permitted O&M Expenses shall be senior and prior to the payment of any Lessee Debt or any debt service thereof.

Section 4.2 Base Rent

(a) For the period from the Lease Commencement Date to and including the Expiry Date, the Lessee shall pay to the Port Authority a rental equal to Fifteen Million Dollars ($15,000,000) per annum, as such amount may be adjusted annually in accordance with Section 4.2(b) (the "**Base Rent**"). The Base Rent shall be payable by the Lessee:

(i) in advance on the Lease Commencement Date and monthly thereafter on the first day of each calendar month until the earlier of (A) December 31, 2019 and (B) the date on which the O&M Period commences, in an amount equal to one-twelfth (1/12) of the annual Base Rent; provided, that if the Lease Commencement Date shall be other than the first day of a calendar month, the first monthly installment of Base Rent shall be the monthly installment prorated by the fraction consisting of the number of days elapsed from the Lease Commencement Date to the last day of the calendar month in which the Lease Commencement Date occurred, divided by the actual number of days in such month; and provided, further, that if the date on which the O&M Period commenced (if earlier than December 31, 2019) shall be other than the first day of a calendar month, the last monthly installment of Base Rent shall be the monthly installment prorated for the number of days elapsed in such calendar month from the first day of the month in which the O&M Period commenced to the date on which the O&M Period commenced, divided by the actual number of days in such month; and

(ii) in advance on the first day of each calendar month, beginning the earlier of January 1, 2020 or the day immediately following the date on which the O&M Period commenced, to and including the Expiry Date, in an amount equal to one-twelfth (1/12) of the annual Base Rent; provided, that if the first day of such rental period pursuant to this Section 4.2(a)(ii) shall be other than the first day of a calendar month, the first monthly installment of the Base Rent due and payable pursuant to this Section 4.2(a)(ii) shall be the monthly installment prorated by the fraction consisting of the number of days elapsed from the day immediately following the date on which the O&M Period commenced to the last day of such month, divided by the actual number of days in such month.

(b) From the period commencing on the earlier of (i) January 1, 2020 and (ii) the day immediately following the date on which the O&M Period commenced, to and including the Expiry Date, the Base Rent may be adjusted on January 1 of each Calendar Year by the greater of (x) a percentage composed of the CPI Percentage Increase (but not to exceed six percent (6%) in any Calendar Year), and (y) two percent (2%) per annum, as multiplied by the amount due and payable for the immediately preceding Calendar Year.

(c) The Base Rent shall be payable as a Permitted O&M Expense. Other than as provided in Section 4.8(b) of Exhibit 33 (*Central Hall Provisions*), the Base Rent is not subject to setoff or reduction.

(d) For the purposes of this Section 4.2 (*Base Rent*), the following capitalized terms shall have the meaning set forth herein:

(i) "**CPI Percentage Increase**" means, with respect to any Calendar Year, the annual percentage increase, if any, in the CPI yielded by dividing (x) the amount of the increase, if any, in the CPI for the Reference Month of the year that is two (2) years prior to such Calendar Year, as compared to the CPI for the Reference Month of the year that is immediately preceding such Calendar Year, by (y) the CPI for the earlier of the two (2) Reference Months.

(ii) "**Reference Month**" means, with respect to any year, the month of November.

Section 4.3 First Additional Rent

In the event that the Lessee has entered into a Leasehold Mortgage, the Lessee hereby agrees to pay the Port Authority Five Hundred Thousand Dollars ($500,000) for each such mortgage on December 1st of each Calendar Year commencing in the Calendar Year in which Substantial Completion shall occur, and thereafter on December 1st of each Calendar Year until all amounts secured by such mortgage have been repaid in full and such mortgage shall have been released (the "**First Additional Rent**"). The First Additional Rent shall be payable as a Permitted O&M Expense; provided, however, that so long as any principal and interest remains outstanding under the Funding Agreements or in connection with any Refinancing, for purposes of any priority of payment arrangement hereunder or under the Funding Agreements or any documents entered into in connection with any Refinancing, First Additional Rent shall not be deemed to be a Permitted O&M Expense for such purposes and shall be paid from all Gross Revenues available immediately following the payment in full of scheduled principal and interest under the Funding Agreements or in connection with any Refinancing.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Section 4.5 Early Payment

The Lessee shall not pay Base Rent, First Additional Rent, Second Additional Rent or any other sums required to be paid under this Agreement more than one (1) month in advance of the due date thereof (excluding security and other deposits required under this Agreement).

Section 4.6 Force Majeure Event

For the avoidance of doubt, the occurrence and continuation of a Force Majeure Event shall not excuse the Lessee from the payment of Base Rent, First Additional Rent or Second Additional Rent when due and payable pursuant to this Article 4 (*Rental*).

Section 4.7 Tax Treatment; Rental Allocation

(a) The Parties intend that the Lessee for its purposes, including for federal income tax purposes, (so that the Lessee may cost effectively access the financing contemplated in the Financing Documents and construct the Construction Project to the benefit of the Lessee and the public), will treat the Lessee's obligation to finance, develop, design and construct the portion of the New Facilities and related facilities funded by the Lessee as rent ("**In-Kind Rent**"). The Port Authority, as a federally tax-exempt entity, does not intend to take a federal income tax position contrary to the Lessee's treatment of the In-Kind Rent as rent for federal income tax purposes. Subject to full compliance with applicable provisions of the Internal Revenue Code and the Treasury Regulations (including Treasury Regulations section 1.467-1(c)(2)(ii)(A)(2)), In-Kind Rent under this Agreement is payable on the dates such facilities are scheduled (in the Financial Model) to be placed in service and shall be allocated (in such amounts equal to the Lessee's projected capitalized cost to fund such facilities), together with the Base Rent (but excluding any CPI Percentage Increase in excess of the minimum annual two percent (2%)) and First Additional Rent, over the Term ("**Section 467 Allocated Rent**") on a straight-line basis.

(b) The Port Authority expresses no opinion and makes no representation, express or implied, as to the treatment for federal income tax purposes (including under Section 467 or any other provision of the Code) of the provisions of Section 4.7(a), the treatment of In-Kind Rent as rent for federal income tax purposes, and any allocation thereof over the Term, or the inclusion of such provisions in this Agreement (collectively, the "**Rental Tax Treatment**");

and the Lessee acknowledges that the Port Authority has agreed to the Rental Tax Treatment at the request of the Lessee.

(c) The Parties agree that the Rental Tax Treatment shall not affect the amounts and timing of the installments of rental actually payable by the Lessee, as set forth in this Agreement, and shall not affect (or be deemed to affect) the manner in which the Port Authority accounts for or reports such rental payments.

(d) Without limitation as to the generality of the provisions of Section 21.1 (*Indemnification by the Lessee*) of this Agreement, the Lessee hereby agrees to indemnify, hold harmless and defend the Port Authority Indemnified Parties from and against all claims, damages, losses, liabilities, obligations, penalties, actions, causes of action, judgments, suits, costs, expenses, or disbursements (including, without limitation, reasonable attorneys' and consultants' fees and expenses (including all costs and expenses of the Port Authority in connection therewith)), in connection with or resulting from the Rental Tax Treatment (but excluding any claim by a third party to benefit directly from the Rental Tax Treatment), and the Lessee shall, upon demand by any Indemnified Party, pay to such Indemnified Party all reasonable costs and expenses incurred by such Indemnified Party in enforcing any rights under this Agreement, including this Section 4.7(d). If so directed, the Lessee shall at its own expense defend any investigation, suit or other proceeding, whether administrative or judicial, 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.

Section 4.8 Treatment of IRC 179D Deduction

(a) Upon receipt of documentation that satisfies the requirements of Section 179D of the Code, the Port Authority shall designate the Lessee, within the meaning of Section 179D(d)(4) of the Code, as the person primarily responsible for designing the New Facilities and any related facility qualifying as an "energy efficient commercial building property" as defined in Section 179D(c) of the Code, and shall allocate one hundred percent (100%) of the allowable deduction (a "**179D Deduction**") to the Lessee pursuant to the procedures set forth in IRS Notice 2008-40. Notwithstanding any such allocation, the Lessee shall pay to the Port Authority a portion of the monetary value generated from any such 179D Deduction. The Lessee shall provide prior written notice to the Port Authority of its intent to take the 179D Deduction. Subject to this Section 4.8 (*Treatment of IRC 179D Deduction*), the Port Authority and the Lessee (or its authorized designee) shall enter into a written agreement memorializing the terms agreed with respect to the 179D Deduction, including the method of determining the monetary value of the 179D Deduction and the method of sharing such value.

(b) The Lessee (or its authorized designee) shall provide information reasonably requested by the Port Authority in connection with the taking of a 179D Deduction, including the calculation and estimated value of the 179D Deduction. The Port Authority shall be under no obligation to allow the Lessee (or its authorized designee) to take a 179D Deduction or to

cooperate with the Lessee (or its authorized designee) or to take any action whatsoever in connection with the taking by the Lessee (or its authorized designee) of a 179D Deduction if the Port Authority determines in its sole discretion that a 179D Deduction could result in an adverse tax, accounting, financial or other commercial consequence to the Port Authority, or could be inconsistent with Applicable Law (including the Code, the Treasury Regulations promulgated under the Code and any Revenue Procedure, Revenue Ruling, advice, statement, notice, announcement or proclamation, or other applicable guidance, written advice, or statements of the IRS, and any applicable court decisions interpreting federal income tax law) or with other arrangements or agreements to which the Port Authority is a party.

(c) The Lessee shall be solely responsible for all costs and expenses incurred in connection with the pursuit of a 179D Deduction pursuant to this Section 4.8 (*Treatment of IRC 179D Deduction*).

ARTICLE 5

SUBLEASES

Section 5.1 Subleases Generally

(a) Except as otherwise expressly set forth in this Agreement, the Lessee shall not sublet or license the Premises or any portion thereof (including the Central Hall or any portion thereof), or enter into any Sublease (other than an Exempt Sublease) or any amendment or modification to or any extension of an existing Sublease (other than any amendment, modification to or extension of an existing Sublease if such Sublease as so amended, modified or extended would qualify as an Exempt Sublease), in each case, without the prior written consent of the Port Authority; provided, that such consent shall not be unreasonably withheld if such proposed Sublease, or such amendment, modification or extension is accompanied by a certification from the Lessee that: (i) it is consistent with the Comprehensive Terminal Plan or Comprehensive Concessions Plan, as applicable, then in effect, (ii) to the best of the Lessee's knowledge, it contains business terms and provisions that, taken as a whole and consistent with then-existing market conditions, are competitive with the terms and conditions of similarly situated sublessees providing comparable goods and/or services at airports for which the Port Authority is the airport operator, (iii) it does not impose obligations or liabilities (whether or not contingent) on the Port Authority in violation of Section 5.1(i)(vi), (iv) it complies with the provisions of this Article 5 (*Subleases*) (except to the extent that such provisions are inconsistent with clauses (i) and (ii) above) and (v) it does not violate Applicable Law or Applicable Standards; provided, however, that notwithstanding anything to the contrary in this Section 5.1(a), the Lessee shall be required to satisfy (x) all requirements set forth in Section 5.1(b)(ii) with respect to each new Concession Sublease (including any such Concession Sublease that would qualify as an Exempt Sublease) and (y) the requirements set forth in Section 5.1(b)(ii)(C) with respect to each amendment to any currently existing Concession Sublease as of the Lease Commencement Date that significantly expands the subleased space, significantly modifies the rental arrangements thereunder to the Sublessee's benefit or extends the term thereof (including any such amendment to a currently existing Concession Sublease as

of the Lease Commencement Date if such Sublease as so amended would qualify as an Exempt Sublease), in each case, proposed to be entered into by the Lessee.

(b) (i) The Lessee shall submit to the Port Authority all of the following with respect to any proposed Sublease (other than an Exempt Sublease) or any amendment or modification to or extension of an existing Sublease in order to request the Port Authority's approval thereof:

(A) a true and complete copy of the proposed Sublease, or the amendment or modification to, or extension of, an existing Sublease;

(B) a copy of the proposed Consent to Sublease, completed with party names and other contact information, in substantially the form attached hereto as Exhibit 17 [redacted] (the "**Consent to Sublease**");

(C) a term sheet describing the business and financial terms and any obligations or liabilities (whether or not contingent) proposed to be assumed by the Port Authority;

(D) all information and certifications required in Section 5.1(a);

(E) with respect to a new, proposed Sublessee, information, evidence and supporting documentation concerning the identity, financial resources and qualifications of the proposed Sublessee, including financial statements and evidence of the proposed Sublessee's qualification to do business in the State of New York or, if pertaining to an existing Sublessee, either (A) updated information, evidence and supporting documentation or (B) a certification from the Sublessee that no such information, evidence and supporting documentation has changed materially since the previous submission to the Port Authority of the same;

(F) with respect to a new, proposed Sublessee, the organizational documents of such entity;

(G) insurance certificates;

(H) a certificate of the Lessee, signed by an authorized officer thereof, stating that such proposed Sublease or amendment or modification to or extension of an existing Sublease contains the provisions set forth in Exhibit 7 [redacted], as applicable; and

(I) such other information and data as the Port Authority has reasonably requested, prior to the submission of materials required under this Section 5.1(b), in connection with such proposed Sublease.

(ii) Without limiting any other provision in the foregoing, (x) all provisions of this Section 5.1(b)(ii) shall apply to any new Concession Sublease proposed to be

entered into by the Lessee (whether with new Sublessees or Sublessees already operating at the Existing Terminal B Facilities), including any new Concession Sublease that would qualify as an Exempt Sublease, and (y) the provisions of Section 5.1(b)(ii)(C) (but not any other provisions of this Section 5.1(b)(ii)) shall apply to any amendment to any currently existing Concession Sublease as of the Lease Commencement Date that significantly expands the subleased space, significantly modifies the rental arrangements thereunder to the Sublessee's benefit or extends the term thereof, including any amendment to a currently existing Concession Sublease as of the Lease Commencement Date if such Sublease as so amended would qualify as an Exempt Sublease (an "**Existing Sublease Amendment**"):

(A) In order to promote transparency and integrity of the selection of proposed Concession Sublessees, the Lessee shall generally seek to award Concession Subleases pursuant to competitive, multi-bid solicitation processes that include safeguards deemed appropriate by the Lessee to protect against bidder collusion, undue influence, conflicts of interest, and similar improprieties. Such processes will generally require the evaluation of prospective Concession Sublessees on the basis of objective and specified criteria determined by the Lessee, which may include consideration of such factors as minimum qualifications, relevant and/or proven experience and other defined financial and business criteria, and seek to award contracts to the best value, responsive and responsible bidder as determined by the Lessee in good faith. No later than twenty (20) days prior to the effective date of any Concession Sublease that is procured in accordance with this Section 5.1(b)(ii)(A), the Lessee shall provide to the Port Authority a written certification, signed by an authorized officer of the Lessee, confirming the satisfaction of, and compliance by the Lessee with, the requirements set forth in this Section 5.1(b)(ii)(A).

(B) Notwithstanding the foregoing, the Lessee may award or otherwise enter into Concession Subleases in accordance with alternative processes and practices deemed appropriate by the Lessee, including exclusive negotiations with one or more specifically identified individuals or business entities, where the Lessee believes that such processes or practices are supported by a reasonable business justification, including, but not limited to, relevant and/or proven service or experience, technological or other innovation or compatibility, consistency with concessions strategy, continuity of service, proven service or experience, single source availability and other factors relevant in the circumstances. No later than twenty (20) days prior to the effective date of any Concession Sublease that is developed based on an alternative process or practice, the Lessee shall provide written notice to the Port Authority (with a copy to the Port Authority's Chief Ethics and Compliance Officer and General Counsel), which notice shall include a reasonably detailed explanation of the justification for the Lessee's determination to enter into the Concession Sublease based on the alternative process or practice chosen by the Lessee.

(C) With respect to any new, proposed Concession Sublease (whether or not such Sublease was procured through a competitive solicitation process under clause (A) above or based on an alternative process or practice under clause (B) above) and any proposed Existing Sublease Amendment, no later than twenty (20) days prior to the effective date of such Sublease or Existing Sublease Amendment, as the case may be, the Lessee shall cause the proposed, new Concession Sublessee or the Concession Sublessee party to the Existing Sublease Amendment to deliver to the Lessee, and the Lessee shall provide to the Port Authority (with a copy to the Port Authority's Chief Ethics and Compliance Officer and General Counsel), written certifications in the form set forth in Exhibit 39 (*Form of Concession Sublessee Certification*) attached hereto. If the Concession Sublessee is unable to provide such certifications in a timely manner, or if the Port Authority, after disclosing all known relevant facts and information to the Lessee, reasonably determines based on conclusive evidence known to it at the time, that the Concession Sublessee's certifications are not accurate in all material respects, the Port Authority shall have the right to disapprove and cancel the proposed Concession Sublease or the Existing Sublease Amendment, as the case may be, or if the Port Authority's conclusion is reached after the Concession Sublease or the Existing Sublease Amendment, as the case may be, has been executed and takes effect, to terminate such Sublease or Existing Sublease Amendment effective immediately upon notice to the Concession Sublessee and the Lessee. Notwithstanding anything herein, the Concession Sublease or Existing Sublease Amendment may take effect if no written response from the Port Authority is received by the Lessee within such twenty (20)-day period; provided, that the absence of a response from the Port Authority shall not be interpreted as a waiver of the Port Authority's right to terminate the Concession Sublease or Existing Sublease Amendment in accordance with this sub-clause (C). The Port Authority shall have the right at its own expense to conduct an investigation, make inquiries, undergo a vendor integrity check, require a mitigation plan acceptable to the Port Authority or commence any legal action or proceeding, as the Port Authority deems necessary or appropriate, for purposes of verifying compliance with the applicable certifications.

(D) The Lessee shall notify the Port Authority's General Counsel and Chief Ethics and Compliance Officer promptly upon its becoming aware of any activity engaged by any Sublessee that is in violation of its certifications required hereunder.

(c) Without limiting the provisions in Sections 5.1(a) and (b), the Port Authority will, within forty-five (45) days of receipt of all of the materials required in Section 5.1(b) (to the extent required), approve or disapprove (or partially approve or disapprove) any Sublease (other than an Exempt Sublease) or any amendment or modification to or extension of an existing Sublease submitted pursuant to Sections 5.1(a). As a condition to the effectiveness of any Sublease (other than an Exempt Sublease), the proposed Sublessee shall enter into a Consent to Sublease with the Port Authority in substantially the form attached hereto, with any changes thereto that are acceptable to the Port Authority and such Sublessee. For the

avoidance of doubt, no new proposed Sublessee shall be entitled to use or occupy the Premises until the Port Authority has received true, correct and complete copies of the fully executed Sublease and the fully executed Consent to Sublease. With respect to any Sublease for the use of space at the Central Hall, the Lessee shall be compliant with the requirements set forth in Section 3.4(f) in addition to the requirements of this Article 5 (*Subleases*).

(d) Notwithstanding the foregoing requirements of this Section 5.1 (*Subleases Generally*), but subject to the other terms and conditions herein, the Lessee may enter into an Exempt Sublease pursuant to Section 5.4 (*Exempt Subleases*) and any amendment, modification or extension of an existing Sublease if such Sublease as so amended, modified or extended would qualify as an Exempt Sublease pursuant to Section 5.4 (*Exempt Subleases*), in each case, without the prior written approval of the Port Authority.

(e) Without limiting the provisions of Sections 5.1(a) through (d), no amendment or modification to the provisions of any Sublease required to be contained therein pursuant to Section 5.1(i)(ii) and Exhibit 7 [redacted] shall be made without the prior written consent of the Port Authority (such consent not to be unreasonably withheld).

(f) No Sublease shall become effective if, as of the proposed effective date thereof, (i) an Event of Default shall have occurred and be continuing under this Agreement (unless the Lessee is diligently implementing a remedial plan approved by the Port Authority pursuant to Section 23.2 (*Remedial Plan*), in which case this clause (i) shall be deemed not to apply) or (ii) the Port Authority shall have served a Port Authority Termination Notice on the Lessee, unless, in any such case, the Port Authority shall have delivered an express written waiver thereof. Any Sublease or any amendment or modification to or any extension of an existing Sublease not made in accordance with the provisions of this Agreement shall be null and void *ab initio* and of no force or effect, unless the Port Authority shall have delivered an express written waiver of compliance with such provisions.

(g) All Subleases shall terminate automatically one (1) day prior to the Expiry Date or the Early Termination Date, as applicable, unless the same shall expire or terminate on a prior date in accordance with its terms.

(h) Subject to the terms and conditions of this Agreement, the Lessee may enter into Subleases with any of the following Persons, each of whom shall constitute a "**Sublessee**": (i) Scheduled Aircraft Operators in accordance with Section 5.2 (*Air Transportation-Related Subleases*) (such Persons, "**Airline Sublessees**"), (ii) Aeronautical Users in accordance with Section 5.2 (*Air Transportation-Related Subleases*) (such Persons, "**Aeronautical User Sublessees**"), (iii) providers of concession goods and services in accordance with Section 5.3 (*Concession Subleases*) (such Persons, "**Concession Sublessees**"), (iv) Governmental Agencies, (v) with respect to Subleases of portions of the Central Hall only, operators of conference centers, corporate meeting areas, office space rentals and similar facilities, and (vi) such other Persons for such other purposes as are permitted under this Agreement (including Exhibit 33 (*Central Hall Provisions*)).

(i) The Lessee hereby agrees that with respect to each Sublease (including any Exempt Sublease):

(i) the Lessee shall not enter into any Sublease with an Affiliate of the Lessee without the prior written consent of the Port Authority; provided, that such consent shall not be unreasonably withheld if the Lessee demonstrates that such Sublease is pursuant to an arms' length agreement on terms not less favorable to the Lessee than if the Lessee had entered into such Sublease with a third party;

(ii) without the prior written consent of the Port Authority, the Lessee shall not enter into any Sublease unless (A) the proposed Sublease contains all provisions in the form set forth in Part A of Exhibit 7 [redacted] and (B) the proposed Sublessee is able to provide the certifications set forth in paragraph (n) of Part A of Exhibit 7 [redacted];

(iii) as between the Port Authority and the Lessee, all acts and omissions of a Sublessee with respect to obligations undertaken by the Lessee hereunder shall be deemed to be acts and omissions of the Lessee under this Agreement and the other Project Documents and the Lessee shall also be jointly and severally responsible with the Sublessee therefor, as between the Port Authority and the Lessee, including the Lessee's obligations of indemnification and repair;

(iv) in the event that a Sublessee notifies the Lessee of any claim of a breach or default by the Lessee under the applicable Sublease, the Lessee shall promptly notify the Port Authority, in writing, of the assertion of such claim;

(v) the Lessee shall use Reasonable Efforts to enforce the provisions of each Sublease, including the obligation of each Sublessee to pay rent under the applicable Sublease; and

(vi) no Sublease shall or shall purport to obligate the Port Authority to do any act or thing, modify or limit any rights or remedies of the Port Authority, make any representations, warranties, agreements or covenants on behalf of or in the name of the Port Authority, release or discharge the Sublessee or any other person from any obligation or liability on behalf of or in the name of the Port Authority, or cause the Port Authority to be obligated to defend, indemnify or hold harmless the relevant Sublessee or any other person against any potential, threatened or actual claim, cause of action, expense, cost or the like. Any Sublease provision which is inconsistent with or in violation of the foregoing shall be ineffective and unenforceable as against the Port Authority vis-à-vis either or both of the Lessee and the relevant Sublessee.

(j) The Lessee shall install the necessary infrastructure and equipment for the supply of Utilities, including electricity, HVAC, gas and water, to its Sublessees, all such installation to be without charge to the Port Authority, and shall supply its Sublessees with the Utilities necessary for the operations of each Sublessee in accordance with the terms of

Sections 5.2 (*Air Transportation-Related Subleases*) and 5.3 (*Concession Subleases*), as applicable.

(k) Notwithstanding anything else in this Agreement or the other Project Documents to the contrary, the Lessee shall not be held responsible for any non-compliance with the requirements of Articles 5 (*Subleases*) and 6 (*Third-Party Contractors and Services*) and Exhibit 7 [redacted] of this Agreement with respect any Sublease that is an Assigned Terminal B Facilities Agreement, and no such non-compliance shall constitute a breach of this Agreement or the other Project Documents by the Lessee or form the basis of an Event of Default; provided, that (i) such non-compliance was not, in whole or in part, caused by the Lessee or any Lessee-Related Entity, and (ii) the terms and conditions of any such Sublease remain unmodified from the versions thereof at the time the Lessee assumed such agreement from the Port Authority; and, provided, further, that the requirements of clauses (iii)-(v) of Section 5.1(i) shall apply to all Subleases, including any Sublease that is an Assigned Terminal B Facilities Agreement.

Section 5.2 Air Transportation-Related Subleases

(a) The Lessee has submitted, and the Port Authority has approved, on or before the Lease Commencement Date, a comprehensive plan for the operation of the Premises for passenger air transportation-related uses (the "**Comprehensive Terminal Plan**") with respect to the Existing Terminal B Facilities, the New Terminal B Facilities and, to the extent any Airline Sublessees are expected to sublease any portion of the Central Hall, the Central Hall, setting forth, *inter alia*, (i) principles and methodology of Airline Terminal Rates; (ii) assignment and use of Gates, hold rooms, ticket counter positions, office and other space; (iii) Gate and other facility usage standards; (iv) projected Gate utilization; (v) a narrative demonstrating that the principles and methodology of Airline Terminal Rates and the utilization of Gates and other facilities at the Existing Terminal B Facilities and the New Terminal B Facilities comply with FAA rules and regulations (including FAA Grant Assurances); (vi) the structure and level of any common area maintenance fees, marketing fees and utility recoveries to be charged to the Airline Sublessees and Aeronautical User Sublessees; (vii) the integration of the management of all Construction Project construction phasing and sequencing in order to minimize any disruption to the operations of the Airline Sublessees and Aeronautical User Sublessees, and the passengers in recognition of the needs of Airline Sublessees and Aeronautical User Sublessees, and the need for passengers to have a reasonably operational terminal during the Initial O&M Period and the Phased Construction O&M Period; (viii) the migration and relocation of the Airline Sublessees, Aeronautical User Sublessees and their respective functions from the Existing Terminal B Facilities to the New Terminal B Facilities; (ix) the utilization of space by the Airline Sublessees and Aeronautical User Sublessees in the Central Hall; and (x) such other information as the Port Authority may have reasonably requested or reasonably requests from time to time. For the avoidance of doubt, with respect to clause (vi) above, any recovery of common area maintenance fees shall relate only to cost recovery in connection with the relevant common area in which an Airline Sublessee or Aeronautical User Sublessee, as applicable, operates and not to common areas in the Premises which are unrelated to the location in which such Airline Sublessee or

Aeronautical User Sublessee operates and, further, Utility recoveries shall be only on a pass-through basis with no up-charge to such Airline Sublessee or Aeronautical User Sublessee.

(b) At least ninety (90) days prior to the start of each Calendar Year during the Term, the Lessee shall submit to the Port Authority a written statement indicating whether or not there are any updates to the Comprehensive Terminal Plan and if there are, the Lessee shall include in the written statement a reasonably detailed narrative of such updates and provide with such written statement the updated Comprehensive Terminal Plan. To the extent that any updated Comprehensive Terminal Plan or any revised Comprehensive Terminal Plan delivered pursuant to Section 5.2(c), as applicable, sets forth a change to the methodology of Airline Terminal Rates applicable to Airline Subleases or to the methodology of charges applicable to Aeronautical User Subleases, in each case, from the most recently approved Comprehensive Terminal Plan, the Lessee shall submit to the Port Authority an updated Financial Model reflecting such change. In connection with each update to the Comprehensive Terminal Plan, the Lessee shall submit to the Port Authority, no later than forty-five (45) days after the start of each Calendar Year during the Term, records of Gate utilization during the prior Calendar Year and such other information as the Port Authority may have requested or requests from time to time.

(c) In addition to the annual updates to the Comprehensive Terminal Plan delivered pursuant to Section 5.2(b), the Lessee shall submit for Port Authority Approval a revised Comprehensive Terminal Plan with respect to the New Terminal B Facilities only, at least six (6) months but not more than eight (8) months prior to the projected Substantial Completion Date as set forth in the then-current Project Baseline Schedule. Such revised Comprehensive Terminal Plan shall be in substantially the form of the Comprehensive Terminal Plan delivered on the Lease Commencement Date and shall contain the items of information enumerated in Section 5.2(a) (to the extent applicable). Such revised Comprehensive Terminal Plan shall be accompanied by (i) a certificate of the Lessee, signed by a responsible officer thereof, stating that the Lessee reasonably believes that the proposed Comprehensive Terminal Plan (A) is compliant with Applicable Law and Applicable Standards, (B) will deliver at least the same level of service, quality and functionality as the Comprehensive Terminal Plan then in effect and (C) is consistent with the provisions of this Section 5.2 (*Air Transportation-Related Subleases*) and (ii) a written narrative describing in reasonably sufficient detail any material differences between such revised Comprehensive Terminal Plan and the Comprehensive Terminal Plan then in effect.

(d) The Port Authority will approve or disapprove (or partially approve or disapprove) the revised Comprehensive Terminal Plan submitted pursuant to Section 5.2(c) within forty-five (45) days of receipt of such revised Comprehensive Terminal Plan. In the event that the Port Authority disapproves (in whole or in part) such revised Comprehensive Terminal Plan, the Lessee may thereafter submit for Port Authority Approval an appropriately modified revised Comprehensive Terminal Plan. Unless and until a revised Comprehensive Terminal Plan shall have received Port Authority Approval, the Comprehensive Terminal Plan previously approved and then in effect shall continue in effect.

(e) In addition to the Port Authority's approval rights pursuant to Section 5.2(d), the Port Authority shall have the right to disapprove or otherwise reject or require modifications to any updated or revised Comprehensive Terminal Plan to the extent that such updated or revised Comprehensive Terminal Plan, as applicable, or the updated Financial Model delivered to the Port Authority pursuant to Section 5.2(b), sets forth a change to the methodology of Airline Terminal Rates applicable to Airline Subleases or to the methodology of charges applicable to Aeronautical User Subleases, in each case, from the most recently approved Comprehensive Terminal Plan, with respect to the use and occupancy of the Existing Terminal B Facilities or the New Terminal B Facilities, as applicable. Notwithstanding anything herein, the Lessee shall not implement any methodology with respect to Airline Terminal Rates or charges applicable to Aeronautical User Subleases if such methodology is not fair and reasonable or unjustly discriminates among Airline Sublessees or Aeronautical User Sublessees, as applicable, or otherwise violates Section 5.2(f), or the Port Authority reasonably determines that such modifications violate Applicable Law, including the Policy Regarding Airport Rates and Charges, 78 Fed. Reg. 55330 (September 10, 2013), as revised or amended.

(f) The Lessee shall not unjustly discriminate among Airline Sublessees or Aeronautical User Sublessees or refuse to offer any classification, status, or terms of an agreement, to any Airline Sublessee or Aeronautical User Sublessee in the Premises that assumes obligations substantially similar to those already imposed on any other similarly situated Airline Sublessee or Aeronautical User Sublessee, as applicable, in the Premises having such classification status or terms.

(g) If any Airline Sublessee desires to provide any service set forth in Article 6 (*Third-Party Contractors and Services*) for its exclusive use, it shall have the right to do so, individually or through a contractor of its own choice in accordance with Article 6 (*Third-Party Contractors and Services*). Any Airline Sublessee may perform services for itself at the Premises with its own employees and equipment without the payment of any fee to the Lessee or the Port Authority.

(h) The Port Authority shall have such rights to review and audit each Airline Sublessee or Aeronautical User Sublessee and the books and records of each such Airline Sublessee or Aeronautical User Sublessee, in each case, solely with respect to such Airline Sublessee's or Aeronautical User Sublessee's operations at the Existing Terminal B Facilities or the New Terminal B Facilities, as applicable, as the Port Authority deems necessary for purposes of verifying compliance with this Agreement, the applicable Sublease, the Consent to Sublease (if applicable) and Applicable Law. If the books and records of such Airline Sublessee or Aeronautical User Sublessee, as applicable, are kept outside of the Port of New York District, the Lessee shall reimburse, or cause such Airline Sublessee or Aeronautical User Sublessee, as applicable, to reimburse, the Port Authority for the reasonable and documented costs of travel, meals and lodging of any authorized officer, employee or authorized representative of the Port Authority auditing or examining the same to the extent permitted under this Agreement.

Section 5.3 Concession Subleases

(a) The Lessee shall use its Reasonable Efforts to operate the concession program at the Existing Terminal B Facilities at a level of quality at or above the current operations of such concession program and to develop and operate at the New Terminal B Facilities a premier first-class concession program. A "premier first-class" concession program is one that consistently performs above the average of airports of similar size and a similar passenger profile on industry-recognized surveys, including the Port Authority-sponsored surveys, which contain evaluations or ratings of passenger terminal concession programs, or specific components thereof, of the same type or class.

(b) The Lessee has submitted, and the Port Authority has approved, on or before the Lease Commencement Date, a comprehensive plan for the development and operation of the concession program (the "**Comprehensive Concessions Plan**") with respect to the Existing Terminal B Facilities, the New Terminal B Facilities and the Central Hall, setting forth, *inter alia*: (i) the types of concessions to be placed there and the number of each type and the size and designated location and configuration of each concession, as well as the overall plan of the portions of the Existing Terminal B Facilities or the New Terminal B Facilities, as applicable, designated for concession operations; (ii) the minimum rentals required for each type of concession; (iii) the structure and level of any common area maintenance fees, marketing fees and Utility recoveries to be charged to the Concession Sublessees; (iv) the Lessee's plans to provide concession opportunities for Airport Concession Disadvantaged Business Enterprises, as defined in 49 C.F.R. Part 23 (each an "**ACDBE**"); (v) the Lessee's quality and service standards and required hours of operation; (vi) the Lessee's specific plans to monitor and enforce the Port Authority's "Street Pricing" policy, quality and service standards and required hours of operation; (vii) any other basic business terms including any mandatory investment and refurbishing requirements; (viii) a customer service program that incorporates the mission and vision of the Port Authority's Aviation Department as set forth in the Customer Care Standards; (ix) the integration of the management of all Construction Project construction phasing and sequencing in order to minimize any disruption to the operations of the Concession Sublessees and the passengers in recognition of the needs of the Concession Sublessees, and the need for passengers to have a reasonably operational terminal during the Initial O&M Period and the Phased Construction O&M Period; (x) the integration of the management of all Construction Project construction phasing and sequencing in order to minimize any disruption to passenger traffic and demand at the Existing Terminal B Facilities, (xi) the migration and relocation of the Concession Sublessees and their respective functions from the Existing Terminal B Facilities to the New Terminal B Facilities, as applicable; (xii) any non-Aircraft Operator-operated lounges; and (xiii) such other information as the Port Authority may have reasonably requested or reasonably requests from time to time. For the avoidance of doubt, with respect to clause (iii) above, any recovery of common area maintenance fees shall relate only to cost recovery in connection with the relevant common area in which a Concession Sublessee operates and not to common areas in the Premises which are unrelated to the location in which such Concession Sublessee operates and, further, Utility recoveries shall be only on a pass-through basis with no up-charge to the Concession Sublessees.

(c) At least ninety (90) days prior to the start of each Calendar Year during the Term, the Lessee shall submit to the Port Authority a written statement indicating whether or not there are any updates to the Comprehensive Concessions Plan and if there are, the Lessee shall include in the written statement a reasonably detailed narrative of such updates and provide with such written statement the updated Comprehensive Concessions Plan. In connection with each update to the Comprehensive Concessions Plan, the Lessee shall submit to the Port Authority, no later than forty-five (45) days after the start of each Calendar Year during the Term, records of annual gross receipts per concession, square footage per concession, revenue to the Lessee generated by each concession during the prior Calendar Year and such other information as the Port Authority may have requested or requests from time to time. Any update to the Comprehensive Concessions Plan delivered pursuant to this Section 5.3(c), shall be subject to Port Authority Approval. The Port Authority will approve or disapprove (or partially approve or disapprove) any update to the Comprehensive Concessions Plan submitted pursuant to this Section 5.3(c) within fifteen (15) days of receipt of such update. In the event that the Port Authority disapproves (in whole or in part) such update, the Lessee may thereafter submit for Port Authority Approval an appropriately modified update to the Comprehensive Concessions Plan. Unless and until any update to the Comprehensive Concessions Plan shall have received Port Authority Approval, the Comprehensive Concessions Plan previously approved and then in effect shall continue in effect.

(d) In addition to the annual updates to the Comprehensive Concessions Plan delivered pursuant to Section 5.3(c), the Lessee shall submit for Port Authority Approval a revised Comprehensive Concessions Plan with respect to the New Terminal B Facilities only, at least six (6) months but not more than eight (8) months prior to the projected Substantial Completion Date as set forth on the then-current Project Baseline Schedule. Such revised Comprehensive Concessions Plan shall be in substantially the form of the Comprehensive Concessions Plan delivered on the Lease Commencement Date and shall contain the items of information enumerated in Section 5.3(b) (to the extent applicable). Such revised Comprehensive Concessions Plan shall be accompanied by (i) a certificate of the Lessee, signed by a responsible officer thereof, stating that the Lessee reasonably believes that the proposed Comprehensive Concessions Plan (A) is compliant with Applicable Law and Applicable Standards, (B) will deliver at least the same level of service, quality and functionality as the Comprehensive Concessions Plan then in effect and (C) is consistent with the provisions of this Section 5.3 (*Concession Subleases*) and (ii) a written narrative describing in reasonably sufficient detail any material differences between such revised Comprehensive Concessions Plan and the Comprehensive Concessions Plan then in effect.

(e) The Port Authority will approve or disapprove (or partially approve or disapprove) the revised Comprehensive Concessions Plan submitted pursuant to Section 5.3(d) within forty-five (45) days of receipt of such revised Comprehensive Concessions Plan. In the event that the Port Authority disapproves (in whole or in part) such revised Comprehensive Concessions Plan, the Lessee may thereafter submit for Port Authority Approval an appropriately modified revised Comprehensive Concessions Plan. Unless and until the revised Comprehensive Concessions Plan shall have received Port Authority Approval, the Comprehensive Concessions Plan previously approved and then in effect shall continue in effect.

(f) Reserved Uses.

(i) Subject to the proviso at the end of this Section 5.3(f), the Port Authority hereby reserves exclusively to itself and its designees the right to implement, conduct, control and receive any fees, rents or profits, with respect to any and all of the following uses, operations or installations on the Premises (collectively, the "**Reserved Uses**"):

(A) advertising (including, static display, audio-visual display, broadcast and other);

(B) public telephones (sometimes also referred to as "pay phones" or "pay telephones"), pre-paid phone cards, facsimile transmission machines and other communications services and facilities, including any technology or system that substitutes for, replaces or is used in conjunction with the technology commonly known as "Wi-Fi" and also including all Port Authority-owned or operated information and communications technology infrastructure for common LGA Airport use;

(C) "cellphone"/cellular technology and any technology or system that substitutes for, replaces or is used in conjunction with cellphone/cellular technology;

(D) vending machines other than automated retail machines;

(E) ground transportation, including vehicle rentals and taxi dispatchers, but excluding Surface Carriers and other transportation pursuant to Section 6.1 (*Surface Carriers*);

(F) provision of on-airport baggage carts (other than shopping carts made available free of charge to retail shoppers within the portions of the Premises designated for retail operations) or other on-airport baggage-moving devices; and

(G) such further uses, operations or installations that may arise through any technological development that the Port Authority may determine at any time during the Term constitute Reserved Uses;

provided, that with respect to any of the Reserved Uses set forth in clauses (A) through (G) above, each such Reserved Use shall only constitute a Reserved Use to the extent that the Port Authority reserves exclusively to itself and its designees the right to implement, conduct, control or receive any fees, rents or profits, with respect to such Reserved Use at other passenger terminals at airports for which the Port Authority is the airport operator; and provided, further, that notwithstanding the immediately preceding proviso, the Port Authority hereby reserves to itself and its designees the right (and such right shall be deemed to be included in the definition of "**Reserved Uses**") to implement, operate and maintain (i) any public or airline passenger-related transit facilities on any

portion of the Premises, and (ii) facilities and uses not currently contemplated or provided for in this Agreement, including hotel accommodations.

(ii) The Lessee shall retain the right to control the placement of any Reserved Use, except the Reserved Use described in clause (E) of Section 5.3(f)(i) above, within the Premises using its reasonable discretion. The Lessee shall not unreasonably withhold, condition or delay its consent to the placement of the Reserved Use described in clause (G) of Section 5.3(f)(i) above. To the extent placement is agreed, the Parties will cooperate and coordinate with each other with respect to the installation and operation of the Reserved Use described in clause (G) of Section 5.3(f)(i) above so as to minimize interference with the Work and disruption to the operations of the Premises as an airline passenger terminal.

(iii) The Lessee shall be required to incorporate "I Love NY" advertising and the "Taste NY" campaign at the Existing Terminal B Facilities, the New Terminal B Facilities and the Central Hall in accordance with Section 1.9 of the Operational Requirements.

(iv) The Lessee shall be required to coordinate with New York Telecom Partners, LLC regarding the provision of Wi-Fi and cellphone technology at the Existing Terminal B Facilities, the New Terminal B Facilities and the Central Hall in accordance with Sections 24.3.5.3(l) and (m) of the Design and Construction Requirements.

(v) To the extent placement is agreed (other than with respect to the Reserved Use described in clause (E) of Section 5.3(f)(i) for which no consent of the Lessee is required), the Port Authority (and any party specifically authorized thereby) may engage in the Reserved Uses, and may install, operate, maintain and repair the property used in connection therewith, subject to Section 5.3(f)(ii), and the Lessee, at its expense (payable as a Permitted O&M Expense), shall provide the necessary wires and conduits for the supply of electricity and telephone and other communications interconnections for the Reserved Uses.

[redacted]

(vii) If and when the Port Authority elects to provide the other unit terminal operators of other passenger terminals for which the Port Authority is the airport operator a portion of the revenues from the activities set forth in clauses (C) through (G) of Section 5.3(f)(i) above, the Port Authority shall provide a comparable portion of such revenues to the Lessee.

(g) Street Prices.

(i) Each Concession Sublease shall provide that the Concession Sublessee in its operations pursuant to its respective Concession Sublease shall not charge prices to its customers in excess of "**Street Prices**," defined as follows:

(A) if the Concession Sublessee conducts a similar business in off-airport location(s) in the Greater New York City-Northern New Jersey Metropolitan Area (the "**Metro Area**"), "**Street Prices**" shall mean the price regularly charged by the Concession Sublessee for the same or similar item in the Metro Area;

(B) if the Concession Sublessee does not conduct a similar business in off-airport location(s) in the Metro Area, "**Street Prices**" shall mean the average price regularly charged in the Metro Area by similar retailers for the same or similar item;

(C) if neither the Concession Sublessee nor other similar retailers sell a particular item in the Metro Area, "**Street Prices**" shall mean the price regularly charged by the Concession Sublessee or similar retailers for the same or similar item in any other geographic area, with a reasonable adjustment for any cost-of-living variance between such area and the Metro Area; and

(D) if a Concession Sublessee is in the business of selling duty-free goods, "**Street Prices**" shall mean the price regularly charged by the Concession Sublessee or other similar concession operator for the same or similar duty-free item at other major airports serving large urban areas in the Northeast region of the United States, including but not limited to LGA Airport.

(ii) The Lessee shall ensure that notices in form and substance reasonably satisfactory to the Port Authority shall be conspicuously displayed in each Concession Sublessee's space to the effect that the Concession Sublessee adheres to the foregoing "Street Pricing" policy.

(h) The Lessee shall employ or retain a full-time trained professional staff at all times during the Term of sufficient size, expertise, ability, suitability and experience to carry out its responsibilities under this Section 5.3 (*Concession Subleases*).

(i) The Port Authority shall have such rights to review and audit each Concession Sublessee and the books and records of such Concession Sublessee as the Port Authority deems necessary for purposes of verifying compliance with this Agreement, the applicable Concession Sublease, Applicable Law and Applicable Standards. If the books and records of such Concession Sublessee are kept outside of the Port of New York District, the Lessee shall reimburse, or cause such Concession Sublessee to reimburse, the Port Authority for the reasonable documented costs of travel, meals and lodging of any authorized officer, employee or authorized representative of the Port Authority auditing or examining the same to the extent permitted under this Agreement.

(j) The Lessee shall not, without the prior written consent of the Port Authority:

(i) terminate a Concession Sublease with an ACDBE Concession Sublessee; or

(ii) refuse to extend or renew a Concession Sublease with an ACDBE Concession Sublessee;

provided, that the Port Authority agrees that it will not withhold consent to termination of, or refusal to extend or renew, a Concession Sublease with an ACDBE Concession Sublessee if such termination or refusal to extend or renew (A) is based on a non-discriminatory determination by the Lessee of a material violation of the respective ACDBE Concession Sublease by the ACDBE Concession Sublessee (it being understood that a termination of, or refusal to extend or renew, all (and not less than all) of the Concession Subleases operating pursuant to the MarketPlace Agreement, including any ACDBE Concession Subleases, on the basis of the expiration or earlier termination of the MarketPlace Agreement in accordance with its terms, shall be deemed to be based on a non-discriminatory determination by the Lessee of a material violation of such ACDBE Concession Sublease), or (B) is otherwise consistent with the requirements of 49 C.F.R. Part 23.

(k) The Lessee shall not, without the prior written consent of the Port Authority, enter into a Concession Sublease with a non-ACDBE Concession Sublessee for service or space which had been performed or occupied by an ACDBE Concession Sublessee; provided, that the Port Authority agrees that it will not withhold consent if such action is consistent with the requirements of 49 C.F.R. Part 23.

(l) Each Concession Sublease shall also provide, in addition to the provisions required under Section 5.1 (*Subleases Generally*), the provisions set forth in Parts B and C of Exhibit 7 [redacted].

Section 5.4 Exempt Subleases

(a) The prior written approval of the Port Authority shall not be required with respect to any Sublease meeting the following requirements (each such Sublease, an "**Exempt Sublease**"):

(i) with respect to any Sublease (other than any ACDBE Concession Sublease), such Sublease has an aggregate term, including extensions and renewals provided for in such Sublease, of not more than seven (7) years, or such shorter time period as may be required for compliance with any order, rule, policy, guidance or regulation of the FAA;

(ii) with respect to any ACDBE Concession Sublease, such ACDBE Concession Sublease has an aggregate term, including extensions and renewals provided for in such ACDBE Concession Sublease, of not more than five (5) years, or such shorter time period as may be required for compliance with any order, rule, policy, guidance or regulation of the FAA;

(iii) such Sublease is in conformance with the Comprehensive Terminal Plan or the Comprehensive Concessions Plan, as applicable;

(iv) such Sublease complies with the provisions of this Article 5 (*Subleases*); and

(v) such Sublease contains the provisions set forth in Exhibit 7 [redacted], as applicable, in accordance with the provisions of this Article 5 (*Subleases*).

(b) In connection with each Exempt Sublease, the Lessee shall deliver to the Port Authority a certificate of the Lessee stating that such Exempt Sublease is consistent with the Comprehensive Terminal Plan or the Comprehensive Concessions Plan, as applicable, and complies with the provisions of this Article 5 (*Subleases*).

(c) The Lessee shall deliver to the Port Authority, within five (5) days following the execution of each Exempt Sublease, a true, correct and complete copy thereof.

Section 5.5 Assignment of Subleases

(a) The Lessee shall submit to the Port Authority all of the following with respect to any proposed assignment of an existing Sublease (other than an Exempt Sublease) in order to request the Port Authority's approval thereof:

(i) with respect to the proposed assignee Sublessee, information, evidence and supporting documentation concerning the identity of the proposed assignee Sublessee, and evidence of the proposed assignee Sublessee's qualification to do business in the State of New York;

(ii) with respect to the proposed assignee Sublessee, the organizational documents of such entity;

(iii) with respect to the proposed assignee Sublessee, insurance certificates;

(iv) a certificate of the Lessee or the assignee Sublessee, signed by a responsible officer thereof, stating that there is no change to the terms and conditions of the Sublease proposed to be assigned in connection with the proposed assignment;

(v) a copy of the asset purchase agreement or other agreement evidencing such assignment, which agreement may be appropriately redacted; and

(vi) such other information and data as the Port Authority has reasonably requested.

(b) The Port Authority will, within forty-five (45) days of receipt of all of the materials required in Section 5.5(a), approve or disapprove in writing any proposed assignment of an existing Sublease (other than an Exempt Sublease), such approval not to be unreasonably withheld if all information and materials required by Section 5.5(a) have been provided; provided, that if the Port Authority disapproves the proposed assignment, the Port Authority shall provide the Lessee a reasonable period of time to enter into a replacement Sublease with a new Sublessee, in which case such replacement Sublease shall be subject to the approval of the Port Authority as a new Sublease pursuant to Section 5.1 (*Subleases Generally*).

Section 5.6 Submittals

For the avoidance of doubt, the provisions of Sections 8.1 (*Submittals Generally*) through 8.4 (*Review Process*) shall not apply to any submittal required pursuant to this Article 5 (*Subleases*).

ARTICLE 6

THIRD-PARTY CONTRACTORS AND SERVICES

Section 6.1 Surface Carriers

(a) The Lessee or any Airline Sublessee may arrange for the transportation to and from LGA Airport of such Airline Sublessee's passengers and employees (but with respect to transportation for passengers and employees, through pre-arranged services with such Airline Sublessee only) and baggage (and such passengers, employees and baggage only) either directly or by contract with a surface carrier or carriers (each, a "**Surface Carrier**") of its choice; provided, that such Surface Carrier is a permittee or agrees to become a permittee and obtain permit(s) from the Port Authority for providing such services.

(b) The Lessee or any Airline Sublessee may arrange for the transportation to and from LGA Airport of freight and other cargo of such Airline Sublessee either directly or by contract with the surface carrier or carriers of its choice. No permit or fee shall be required to

be paid to the Port Authority by the Lessee, any Airline Sublessee or their respective contractor(s) for the picking up or the delivery of freight or other cargo from or to such Airline Sublessee. No fee shall be paid to the Port Authority by the Lessee, any Airline Sublessee or their respective contractor(s) for the privilege of transporting freight or cargo of such Airline Sublessee on the surface as aforesaid.

(c) The right of the Lessee or any Airline Sublessee to arrange transportation to and from LGA Airport of such Airline Sublessee's passengers, employees and baggage as provided herein shall not be construed as being applicable to any establishment or operation by the Lessee or any Airline Sublessee of facilities outside LGA Airport for the handling of passengers, employees and baggage of any Airline Sublessee arriving at or departing from LGA Airport.

(d) As used in this Section 6.1 (*Surface Carriers*), reference to passengers, employees, baggage, freight or other cargo of any Airline Sublessee shall be construed to mean persons, baggage, freight or cargo transported or to be transported on Aircraft of such Airline Sublessee or any Scheduled Aircraft Operator who has arrangements with an Airline Sublessee.

(e) The Surface Carrier of the Lessee or any Airline Sublessee's choice of any other contractor used by it in connection with the provision of ground transportation hereunder shall not solicit business on the public areas of LGA Airport and the Lessee and such Airline Sublessee shall prohibit any such activity on any area at LGA Airport occupied by the Lessee or its Sublessees. The use, at any time, on any area occupied by the Lessee or its Sublessees or elsewhere at LGA Airport, of hand or standard megaphones, loudspeaker or any electric, electronic or other amplifying devices is hereby expressly prohibited and any advertising or signs shall be subject to continuing Port Authority approval.

(f) Notwithstanding any other term or provision of this Agreement and without limitation thereto, as between the Lessee and the Port Authority only, all acts and omissions of any independent contractor on the Premises and the areas subject to the Temporary Rights of Access under this Agreement and the other Project Documents or elsewhere at LGA Airport in connection with the provision of ground transportation pursuant to this Section 6.1 (*Surface Carriers*) shall be deemed to be acts and omissions of the Lessee under this Agreement and the other Project Documents and the Lessee shall also be jointly and severally responsible with the contractor therefor, as between the Lessee and the Port Authority, including the obligations of indemnification, repair and replacement.

Section 6.2 In-Flight Meals

(a) If the Lessee or any Airline Sublessee desires to prepare at LGA Airport, for the exclusive use of such Airline Sublessee, meals ("**In-Flight Meals**") for consumption by passengers and crew on board Aircraft operated by such Airline Sublessee or any Scheduled Aircraft Operator who has arrangements with such Airline Sublessee and to deliver such meals to such Aircraft it shall have the right to do so, individually or through a contractor of its own choice (which contractor shall not be another person engaged in the business of transportation

by Aircraft); provided, that such contractor is a permittee or agrees to become a permittee and obtain permit(s) from the Port Authority for providing such services. The Parties acknowledge that the term "In-Flight Meals" as used in the industry and in this Section 6.2 (*In-Flight Meals*) is a term of art and includes food, beverages, snacks, non-reusable supplies, materials, dry goods and/or all services rendered in connection therewith.

(b) The Lessee and any Airline Sublessee shall have the further right, either directly or through an independent contractor of its choice satisfactory to the Port Authority or by making such arrangements jointly with one or more other users at LGA Airport, to employ a contractor satisfactory to the Port Authority to prepare outside LGA Airport and to deliver at LGA Airport to Aircraft operated by such Airline Sublessee or any Scheduled Aircraft Operator who has arrangements with such Airline Sublessee, In-Flight Meals for consumption by passengers and crew on board such Aircraft; provided, however, that if the Lessee or any Airline Sublessee employs a contractor, either alone or jointly with one or more other users at LGA Airport, for the preparation outside LGA Airport of In-Flight Meals, then the Lessee or such Airline Sublessee shall cause such contractor to pay to the Port Authority the rate or rates which would be payable to the Port Authority by a regular Port Authority permittee for the off-LGA Airport preparation or delivery, or both, of such In-Flight Meals to Aircraft for consumption by passengers and crews on board such Aircraft.

(c) Notwithstanding any other term or provision of this Agreement and without limitation thereto, as between the Lessee and the Port Authority only, all acts and omissions of any independent contractor on the Premises and the areas subject to the Temporary Rights of Access under this Agreement and the other Project Documents or elsewhere at LGA Airport in connection with the provision of In-Flight Meals pursuant to this Section 6.2 (*In-Flight Meals*) shall be deemed to be acts and omissions of the Lessee under this Agreement and the other Project Documents and the Lessee shall also be jointly and severally responsible with the contractor therefor, as between the Lessee and the Port Authority, including the obligations of indemnification, repair and replacement.

Section 6.3 Handling Services

(a) The Lessee or any Airline Sublessee may arrange for the performance of Handling Services on the Premises either directly or by contract with the contractor of its choice, which contractor shall not be another Aircraft Operator or Operators without the consent of the Port Authority; provided, that such contractor is a permittee or agrees to become a permittee and obtain permit(s) from the Port Authority for providing such services.

(b) The Port Authority hereby grants the Lessee the right to collect any permitting fees payable by a contractor or contractors performing Handling Services pursuant to Section 6.3(a). Any such fees collected by the Lessee shall be credited to Gross Revenues.

(c) Notwithstanding any other term or provision of this Agreement and without limitation thereto, as between the Lessee and the Port Authority only, all acts and omissions of any independent contractor on the Premises and the areas subject to the Temporary Rights of Access under this Agreement and the other Project Documents or elsewhere at LGA Airport in

connection with the provision of Handling Services pursuant to this Section 6.3 (*Handling Services*) shall be deemed to be acts and omissions of the Lessee under this Agreement and the other Project Documents and the Lessee shall also be jointly and severally responsible with the contractor therefor, as between the Lessee and the Port Authority, including the obligations of indemnification, repair and replacement.

Section 6.4 Other Third-Party Service Contractors

(a) The Lessee or any Airline Sublessee may arrange for the performance of any services on the Premises not otherwise covered in Sections 6.1 (*Surface Carriers*), 6.2 (*In-Flight Meals*), 6.3 (*Handling Services*) and 6.6 (*Club Rooms*), either directly or by contract with the contractor of its choice; provided, that such contractor is a permittee or agrees to become a permittee and obtain permit(s) from the Port Authority for providing such services.

(b) If and when the Port Authority elects to provide all other unit terminal operators of other passenger terminals for which the Port Authority is the airport operator a portion of the permitting fees payable by any contractor or contractors performing services pursuant to Section 6.4(a), the Port Authority will provide to the Lessee, or the Port Authority shall grant the Lessee the right to collect, any permitting fees payable by a contractor or contractors performing substantially similar services on the Premises pursuant to Section 6.4(a), which fees shall, in either case, be in amounts reasonably determined by the Port Authority. Any such fees provided or collected by the Lessee shall be credited to Gross Revenues.

Section 6.5 Permits and Payment of Fees

(a) Notwithstanding the foregoing provisions of this Article 6 (*Third-Party Contractors and Services*), the Lessee, any Airline Sublessee and each contractor shall be prohibited from performing any activity or services at LGA Airport for which the Port Authority requires the issuance of a Port Authority permit providing for payment of fees to the Port Authority unless the Lessee, such Airline Sublessee or such contractor obtains such a Port Authority-issued permit if so required by and consistent with Applicable Law and/or Port Authority policy and pays such fees thereunder; provided, however, that if the Lessee, any Airline Sublessee or any contractor performs any such activity or services at LGA Airport without, or prior to, obtaining a Port Authority-issued permit in contravention of this Section 6.5 (*Permits and Payment of Fees*), the Lessee, such Airline Sublessee or such contractor shall pay any such fees due and payable to the Port Authority for any activity or services at LGA Airport performed without, or prior to, obtaining such permit.

(b) In connection with any issuance, revocation, amendment or other modification by the Port Authority of any permit for which the Port Authority requires issuance providing for payment of fees to the Port Authority, the Port Authority shall in good faith take into account the operational impacts on the Terminal B Facilities and shall have the right (but not the obligation) to request an advance analysis from the Lessee with respect to any permitting action that the Port Authority expects may significantly and adversely impact the operations at the Terminal B Facilities.

Section 6.6 Club Rooms

(a) In the event the Lessee provides any rooms or space to any Airline Sublessee for the special handling of or the furnishing of special services to any passengers, guests or invitees of such Airline Sublessee, it shall furnish such rooms or space without cost to the Port Authority. Such rooms or space shall either be operated by the Airline Sublessee itself or by a third-party lounge operator of the Airline Sublessee's choice; provided, that such lounge operator has been issued a permit by the Port Authority granting such lounge operator permission to operate establishments for the sale of food, alcoholic and non-alcoholic beverages and similar items for consumption in passenger terminal facilities at LGA Airport.

(i) With respect to any rooms or space operated by an Airline Sublessee pursuant to this Section 6.6(a), in the event such Airline Sublessee wishes to use its own employees for the serving of food, alcoholic or non-alcoholic beverages and similar items, it may do so and such Airline Sublessee shall not be obligated to pay a fee to the Port Authority or the Lessee for such services. The Lessee agrees that any food, alcoholic or non-alcoholic beverages and similar items sold or served to such Airline Sublessee's passengers, guests or invitees shall be obtained by such Airline Sublessee from a contractor who has been issued a permit by the Port Authority granting such contractor permission to provide such food and beverages. The Lessee shall cause the Airline Sublessee to cause all monies paid or payable to such contractor for such sales to be included in the gross receipts of such contractor.

(ii) With respect to any rooms or space operated by a third-party lounge operator pursuant to this Section 6.6(a), the Lessee agrees that any food, alcoholic or non-alcoholic beverages and similar items sold or served to such Airline Sublessee's passengers, guests or invitees shall be provided by such lounge operator.

(b) In the event the Lessee provides any rooms or space to a Person other than any Airline Sublessee ("**Premium Space Operator**") for the special handling of, or the furnishing of, premium or limited access services to any Patrons of LGA Airport, it shall furnish such rooms or space without cost to the Port Authority; provided, that the Premium Space Operator is a permittee or agrees to become a permittee and obtain permit(s) from the Port Authority for providing such services. Such rooms or space shall either be operated by the Premium Space Operator itself or by a third-party lounge operator of the Premium Space Operator's choice; provided, that such lounge operator has been issued a permit by the Port Authority granting such lounge operator permission to operate establishments for the sale of food, alcoholic and non-alcoholic beverages and similar items for consumption in passenger terminal facilities at LGA Airport.

(i) With respect to any rooms or space operated by a Premium Space Operator pursuant to this Section 6.6(b), in the event such Premium Space Operator wishes to use its own employees for the serving of food, alcoholic or non-alcoholic beverages and similar items, it may do so and such Premium Space Operator shall not be obligated to pay a fee in addition to the permitting fee pursuant to in Section 6.6(b) above to the Port Authority or the Lessee for such services. The Lessee agrees that any food,

alcoholic or non-alcoholic beverages and similar items sold or served to such Premium Space Operator's guests or invitees shall be obtained by such Premium Space Operator from a contractor who has been issued a permit by the Port Authority granting such contractor permission to provide such food and beverages. The Lessee shall cause the Premium Space Operator to cause all monies paid or payable to such contractor for such sales to be included in the gross receipts of such contractor.

(ii) With respect to any rooms or space operated by a third-party lounge operator pursuant to this Section 6.6(b), the Lessee agrees that any food, alcoholic or non-alcoholic beverages and similar items sold or served to such Premium Space Operator's guests or invitees shall be provided by such lounge operator.

(iii) The Port Authority hereby grants the Lessee the right to collect any permitting fees payable by any lounge operator or Premium Space Operator pursuant to this Section 6.6(b). Any such fees collected by the Lessee shall be credited to Gross Revenues.

(c) In the event the Lessee operates any rooms or space for the special handling of, or the furnishing of, premium or limited access services to any Patrons of LGA Airport, it shall furnish such rooms or space at its expense and without cost to the Port Authority. Such rooms or space shall either be operated by the Lessee itself or by a third-party lounge operator of the Lessee's choice; provided, that such lounge operator has been issued a permit by the Port Authority granting such lounge operator permission to operate establishments for the sale of food, alcoholic and non-alcoholic beverages and similar items for consumption in passenger terminal facilities at LGA Airport.

(i) With respect to any rooms or space operated by the Lessee pursuant to this Section 6.6(c), in the event the Lessee wishes to use its own employees for the serving of food, alcoholic or non-alcoholic beverages and similar items, it may do so and the Lessee shall not be obligated to pay a fee to the Port Authority for such services. The Lessee agrees that any food, alcoholic or non-alcoholic beverages and similar items sold or served to its guests or invitees shall be obtained by the Lessee from a contractor who has been issued a permit by the Port Authority granting such contractor permission to provide such food and beverages. The Lessee shall cause all monies paid or payable to such contractor for such sales to be included in the gross receipts of such contractor.

(ii) With respect to any rooms or space operated by a third-party lounge operator pursuant to this Section 6.6(c), the Lessee agrees that any food, alcoholic or non-alcoholic beverages and similar items sold or served to its guests or invitees shall be provided by such lounge operator.

(iii) The Port Authority hereby grants the Lessee the right to collect any permitting fees payable by any lounge operator pursuant to this Section 6.6(c). Any such fees collected by the Lessee shall be credited to Gross Revenues.

ARTICLE 7

UTILITIES; SERVICES TO THE LESSEE

Section 7.1 Services to the Lessee

(a) Except as expressly provided in this Section 7.1 (*Services to the Lessee*), the Port Authority shall not be obligated to perform or furnish any Utilities or Utility services whatsoever in connection with the Construction Project or the use and occupancy of the Premises and the areas subject to the Temporary Rights of Access.

(b) The Port Authority has provided to the Lessee as part of the Available Documents known existing Utility information that shows the approximate location of known Utilities. Without limiting the provisions of Section 14.1 [redacted] and Section 14.2 (*Delay Events*) with respect to Unknown Facilities, the Lessee shall verify existing Utilities affected by the Construction Project in accordance with the requirements of Section 10 of the Design and Construction Requirements before commencing any Work relating to the Utilities described in Section 7.2 (*Lessee's Obligations Relating to Utilities*).

(c) The Port Authority shall sell, furnish and supply to the Lessee for use on the Premises and the Construction Site, and the Lessee agrees to take from the Port Authority and pay for electricity of the same voltage, phase and cycle as provided to other tenants at LGA Airport by the public utility in the vicinity, but limited however, to a maximum of the installed transformer capacity serving each portion of the Premises on the Lease Commencement Date, at a cost equal to the same charge (including demand and similar charges) that would be made by such public utility for the same quantity under the same conditions and in the same service classification.

(d) The Port Authority agrees to sell, furnish and supply to the Lessee for use on the Premises and the Construction Site potable water (of the character furnished by the City) in reasonable quantities as requested by the Lessee through existing and new pipes, mains and fittings at a cost equal to the same charge (including demand and similar charges) that would be made by the City for the same quantity.

(e) The Lessee shall pay to the Port Authority such of the existing and future charges for sewerage services furnished by the City as are presently or may hereafter be imposed or assessed against the Port Authority in respect of the Premises and the Construction Site or its use and occupancy thereof. In the event that the City or the State of New York is now furnishing services with or without charge therefor, which are beneficial to the Lessee in its performance of the Work or its use and occupancy of the Premises, and shall hereafter impose charges or increase existing charges for such services, the Lessee agrees to pay to the Port Authority such of the charges or the increase in charges as may be imposed or assessed against the Port Authority in respect of the Premises and the Construction Site or its use and occupancy thereof.

(f) In the event the Port Authority shall provide extermination service for the enclosed areas of the Premises, the Lessee agrees to utilize the same and to pay its pro rata portion of the cost thereof upon demand; provided, that the Lessee may obtain extermination services from a third-party for the enclosed areas of the Premises if the Port Authority does not provide such services. This Section 7.1(f) does not impose any obligation on the Port Authority to furnish such service.

(g) The Port Authority shall be under no obligation to supply Utility services if and to the extent and during any period that the supplying of any such service or the use of any component necessary therefor shall be prohibited or rationed by any Applicable Law. No failure, delay or interruption in supplying agreed services (whether or not a separate charge is made therefor) shall be or be construed to be an eviction of the Lessee or grounds for any diminution or abatement of rental, or (unless resulting from the gross negligence or willful misconduct of the Port Authority) shall be grounds for any claim by the Lessee for damages, consequential or otherwise. To the extent the Port Authority has actual advance knowledge of any failure, delay or interruption in provision of the agreed services, the Port Authority shall provide the Lessee written notice thereof.

(h) The charges for the electricity and water provided by the Port Authority and the sewage services provided by the City, including any applicable demand and similar charges, shall be payable by the Lessee to the Port Authority within thirty (30) days of the date billed to the Lessee. The quantity of electricity and water consumed and sewage handled shall be measured by the meter or meters installed for the purpose; provided, however, if, for any reason, any meter or meters fail to accurately record the consumption, the consumption during the period such meter or meters are out of service or malfunctioning will be considered to be the same as the consumption for a like period immediately before or after the interruption or malfunctioning, as elected by the Port Authority. In the event meters are not installed to measure the consumption of water under high pressure, the quantity of such water used by the Lessee will be based upon equitable estimates of consumption or handling, as appropriate, which estimates shall be deemed binding on the Lessee.

Section 7.2 Lessee's Obligations Relating to Utilities

(a) The Lessee shall be responsible for obtaining all Utilities (including natural gas) not being furnished by the Port Authority that are necessary for the Work and the operation of the Premises.

(b) Without limiting the generality of the foregoing, the Lessee shall (i) design and construct all required new Utilities and install all necessary electrical and communication wires, cables, conduit and duct banks, and all lines, connections and meters within the Premises, (ii) be responsible for all necessary Utility Relocations, (iii) coordinate with all third-parties owning Utilities affected by the Construction Work (including National Grid with respect to natural gas, the FAA and telecommunication service providers) and execute required agreements with each such third-party, and (iv) perform all other Work relating to the Utilities, in each case, as set forth in the Requirements and Provisions for Work. The Port Authority shall cooperate as reasonably requested by the Lessee, and provide its reasonable assistance in

good faith in connection with the negotiation of any agreements for Utility Relocation and the resolution of any disputes with all third-parties owning Utilities in connection with such agreements.

(c) It is anticipated that from time to time during the Term, new Utilities may be installed that would cross or longitudinally occupy areas of the Premises, or modifications, repairs, upgrades, relocations or expansions of existing Utilities within the Premises may be required. The Lessee shall assist the Port Authority in coordinating with each Utility owner with respect to the installation of new Utilities or the modification, repair, upgrade, relocation or expansion of existing Utilities. Further, the Lessee shall (i) make available upon request the most recent Construction Project design information and/or Record Documents, as applicable, (ii) assist each Utility owner with information regarding the location of other proposed and existing Utilities, (iii) coordinate work schedules with each Utility owner as appropriate to avoid interference with the operation of the Premises, and (iv) at the request of the Port Authority, cooperate and otherwise act in any manner reasonably necessary to facilitate the installation of new Utilities or the modification, repair, upgrade, relocation or expansion of existing Utilities. Any cost or schedule impact of any of the activities described in this Section 7.2(c) to the Construction Work during the Construction Period shall be determined pursuant to the procedures set forth in Section 13.1 (*Port Authority Changes*) for a Port Authority Change.

(d) Throughout the performance of the Operations and Maintenance Work, the Lessee shall monitor Utilities within the Premises (excluding the Utility Systems and the Retained Water System Property) for compliance with applicable Governmental Approvals, Applicable Law and Applicable Standards, and shall use Reasonable Efforts to cooperate with each owner of the Utilities located within the Premises in accordance with the Project Documents.

Section 7.3 Utility Rights Reserved to the Port Authority

(a) The Port Authority, by its officers, employees, agents, authorized representatives, 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 LGA Airport, to maintain existing and future Utility, mechanical, electrical and other systems (all such systems collectively, but excluding the CHRP, and other Utility and other systems for which the Lessee is responsible pursuant to the Project Documents, the "**Utility Systems**") and to enter upon the Premises at all reasonable times to make such repairs, replacements or alterations with respect to such Utility Systems 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 Utility Systems or parts thereof, and to use the Premises for access to other parts of LGA Airport otherwise not conveniently accessible (any such repairs, replacements, installation, construction, alterations or use for access, a "**Utility Servicing**"); provided, however, that in the conduct of such Utility Servicing the Port Authority shall (i) not unreasonably interfere with the Work or the use and occupancy of the Premises by the Lessee, its Contractors, its Sublessees or their respective invitees, (ii) provide reasonable notice of any Utility Servicing (except in cases of Emergency), (iii) restore or cause the restoration of any excavation, demolition or other disruption of the Premises conducted as part of the Utility

Servicing to its original state (the "**Utility Restoration**") within a commercially reasonable period and (iv) not hold the Lessee responsible for the cost of any Utility Servicing or Utility Restoration.

(b) In the event that any personal property or trade fixtures of the Lessee shall obstruct the access of the Port Authority, its officers, employees, agents, authorized representatives, contractors or furnishers of Utilities and other services to any of the Utility Systems, and thus shall interfere with the inspection, maintenance or repair of any Utility System, the Lessee shall move such personal property or trade fixtures, as directed by the Port Authority, in order that access may be had to the Utility System or part thereof for its inspection, maintenance or repair, and, if the Lessee shall fail to so move such property (i) as promptly as possible in the event of an Emergency or (ii) within a reasonable period of time 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 (payable as a Permitted O&M Expense).

Section 7.4 Utility Rights Reserved to the City

(a) The Lessee acknowledges that within LGA Airport there are currently located sewers, water mains, water and wastewater conduits, wastewater treatment facilities, sludge lines, a sludge dock and a sludge tank, power lines, telephone and signal lines, meters and other facilities to which the City retains ownership and control pursuant to the Basic Lease and which will not be part of the Premises and are not subject to this Agreement (the "**Retained Water System Property**"). If in the future the City (i) installs any additional meter or meters on the Premises to measure the amount of water and wastewater consumed, or (ii) relocates or extends the Retained Water System Property, or constructs new sewers to serve areas or property outside of the Premises, the additional meters and the relocated, extended and new portions of the water system will become part of the Retained Water System Property.

(b) The Lessee acknowledges and agrees that the City has the right under the Basic Lease to maintain, repair, restore and replace all portions of the Retained Water System Property. For that purpose, the Lessee agrees to permit the City and its duly designated officials and employees at all reasonable times and on reasonable notice (provided, that, in the event of an Emergency, the City and its duly designated officials and employees will have the right at all times and without prior notice), to enter the Premises with personnel, equipment, trucks and vehicles for the purpose of making inspections, repairs, replacements and restorations of the Retained Water System Property as shall be necessary in the opinion of the City.

(c) The Lessee acknowledges that, during the Term, the City may find it necessary, not only to maintain the existing Retained Water System Property, but also to relocate and extend the Retained Water System Property and to construct and maintain new sewers within the Premises to serve areas or property outside of the Premises. The Lessee shall permit the City to enter the Premises in order to perform such relocation or extension of the existing Retained Water System Property or the construction or extension of new sewers to serve areas or property outside of the Premises, in each case, at the City's cost and in accordance with the

approval of the Port Authority and the Lessee as to the proposed timing and location and in accordance with plans and specifications approved by the Port Authority and the Lessee.

(d) The Lessee shall not, without the prior written approval and supervision of NYCDEP and any other applicable Governmental Entity, construct or demolish or permit the construction or demolition of any building or structure or make or permit the making of any excavation which will interfere with or affect the usefulness of any Retained Water System Property or any other City-owned sewer, water main, water or wastewater conduit, or facility related to a wastewater treatment plant owned and operated by the City or any appurtenant facility thereof or similar facility. In the event it is necessary to extend or relocate any portion of the Retained Water System Property as a result of any construction, fill or excavation done or to be done by the Lessee as part of the Construction Project or on or under the Premises or because any improvement requires additional water and wastewater services, any such extension or relocation shall be done or caused to be done at the sole cost of the Lessee and upon plans and specifications and timelines approved by, and under the supervision of, NYCDEP or the agency of the City succeeding to NYCDEP's jurisdiction. The Lessee shall submit to the Port Authority any request for the approval of NYCDEP required in accordance with this Section 7.4(d). The Port Authority will forward such request to NYCDEP and will forward to the Lessee any response it receives from NYCDEP.

ARTICLE 8

SUBMITTALS; OPEN DIALOGUE AND COOPERATION; OTHER REDEVELOPMENTS

Section 8.1 Submittals Generally

(a) Sections 8.1 (*Submittals Generally*) through 8.4(c) set forth procedures governing those Submittals (including plans, schedules, designs, Design Documents and Construction Documents) that require or permit Port Authority Approval or Port Authority Comment pursuant to this Agreement or the other Project Documents. Section 8.4(d) sets forth procedures with respect to those Submittals that require action by the Port Authority, including signatures, or the supply of information within the possession of the Port Authority regarding Port Authority personnel, operations or history that is not otherwise available to the Lessee.

(b) All Submittals to the Port Authority will be made in the form and in the number of originals and copies required by, and otherwise in conformity with, the requirements set forth herein, in the Requirements and Provisions for Work and other Project Documents.

(c) The Lessee shall schedule, prioritize and coordinate all Submittals to allow an efficient and orderly review and/or approval process of such Submittals. To the extent that the Lessee exceeds any of the time and quantity limits on Submittals set forth herein, in the D&C Schedule of Submittals, the O&M Schedule of Submittals, the Requirements and Provisions for Work or the other provisions of the Project Documents, the Port Authority's time to respond as set forth in Section 8.4 (*Review Process*), the D&C Schedule of Submittals, the O&M Schedule of Submittals, the Requirements and Provisions for Work or the other

provisions of the Project Documents shall be extended by a reasonable time such that the Port Authority may conduct a diligent and thorough review. The Lessee may, in such instance, request the Port Authority to process Submittals in the priority specified by the Lessee, and the Port Authority shall consider such request in good faith.

(d) Notwithstanding anything in this Article 8 (*Submittals; Open Dialogue and Cooperation*) to the contrary, except with respect to the Submittal deadlines and response periods agreed to in the O&M Schedule of Submittals, the Lessee and the Port Authority shall apply the TCAP with respect to all construction, capital improvements, replacement or renovation work performed by the Lessee on the Premises during the O&M Period, including Major Maintenance and refurbishment of concessions on the Premises, and in all such cases, the provisions of Sections 8.2 (*Schedules of Submittals*), 8.3 (*Time for Submittals*) and 8.4 (*Review Process*) shall not apply.

Section 8.2 Schedules of Submittals

(a) The Lessee has developed and delivered to the Port Authority and has received Port Authority Approval of a schedule of its proposed Submittals of Design Documents, Construction Documents and other Submittals required by (i) this Agreement with respect to the D&C Work, (ii) the General Conditions and (iii) the Design and Construction Requirements (which schedule will be updated periodically as necessary, each such updated schedule being subject to Port Authority Approval), including deadlines for submission of each such proposed Submittal and time periods by which the Port Authority will approve or comment on such Submittal, as the case may be, so as to facilitate the Port Authority's coordination and review of such documents (the "**D&C Schedule of Submittals**").

(b) The Lessee has developed and delivered to the Port Authority and has received Port Authority Approval of a schedule of its proposed Submittals required by (i) this Agreement with respect to the Operations and Maintenance Work, (ii) the Operational Requirements, (iii) the Maintenance Requirements and (iv) the System-by-System Maintenance Requirements (which schedule will be updated periodically as necessary, each such updated schedule being subject to Port Authority Approval), including deadlines for submission of each proposed Submittal and time periods by which the Port Authority will approve or comment on such Submittal, as the case may be, so as to facilitate the Port Authority's coordination and review of such documents (the "**O&M Schedule of Submittals**").

(c) In the event of any conflict, ambiguity or inconsistency between or among deadlines for the delivery of a Submittal by the Lessee or response time periods by the Port Authority provided therefor in the D&C Schedule of Submittals or the O&M Schedule of Submittals, as applicable, on the one hand, and in any provision of this Agreement, any other Project Document or the TCAP, on the other hand, the deadlines and response time periods in the D&C Schedule of Submittals and the O&M Schedule of Submittals, as applicable, shall take precedence and prevail.

Section 8.3 Time for Submittals

(a) The Lessee shall submit to the Port Authority each complete Submittal required to be made under the Project Documents within the time period, if any, required by the other provisions of this Agreement, the D&C Schedule of Submittals, the O&M Schedule of Submittals, the Requirements and Provisions for Work and the other provisions of the Project Documents. If no such time period is specified in the other provisions of this Agreement, the D&C Schedule of Submittals, the O&M Schedule of Submittals, the Requirements and Provisions for Work or the other provisions of the Project Documents with respect to a given Submittal, the Lessee shall submit the Submittal to the Port Authority within a time frame that will allow the Lessee to perform the activity that is the subject of the Submittal within the time periods required by the Project Documents, taking into account the time allowed for Port Authority Comment or Port Authority Approval, as applicable.

(b) Except as otherwise set forth herein (including in Section 8.3(c)), any Submittal (including any resubmittal of a Submittal) submitted or made to the Port Authority will be deemed complete and ready for substantive review by the Port Authority at 5:30 p.m. prevailing Eastern time on the tenth (10th) day following its receipt by the Port Authority, unless the Port Authority notifies the Lessee in writing prior to 5:30 p.m. prevailing Eastern time on such tenth (10th) day that such Submittal or resubmittal is incomplete, based on its preliminary non-substantive review, according to the standards set forth in the Project Documents, and sets forth in reasonable detail the incomplete elements of the Submittal or resubmittal. If any Submittal or resubmittal is deemed complete by operation of this Section 8.3(b), such result shall not in any way limit the Port Authority's right to disapprove the same Submittal or resubmittal pursuant to Section 8.4(a). When a Submittal or resubmittal is deemed complete as provided in this Section 8.3(b), the Port Authority will, subject to Section 8.3(c), review and respond to such Submittal or resubmittal as provided in Section 8.4 (*Review Process*).

(c) Notwithstanding anything to the contrary in this Article 8 (*Submittals; Open Dialogue and Cooperation; Other Redevelopments*) and without limiting anything provided in the definition of "Port Authority Comment," the Port Authority may, in its sole discretion, notify the Lessee in writing, within fifteen (15) days of the receipt of a Submittal or resubmittal, that the Port Authority elects not to undertake a review of such Submittal or resubmittal. In such event, the Lessee may proceed to implement the Work that is the subject of such Submittal or resubmittal but without prejudice to the Port Authority's rights to later object to, reject or disapprove such Work on the basis that the Work does not comply with the requirements of the Project Documents. In no event shall such Port Authority election affect the Lessee's obligation to perform the Work in accordance with the requirements of the Project Documents, change the scope of the Work, otherwise reduce or increase the Lessee's obligations under the Project Documents or constitute a waiver of the Port Authority's rights with respect thereto.

Section 8.4 Review Process

(a) In the case of Submittals that are subject to Port Authority Approval, the Port Authority will, subject to Section 8.3(c), respond, within the time period specified in the other provisions of this Agreement, the D&C Schedule of Submittals, the O&M Schedule of Submittals, the Requirements and Provisions for Work or in the other Project Documents with respect to such Submittal or, if no time period is specified, within thirty (30) days after the date on which such Submittal has been deemed complete in accordance with Section 8.3(b), by (i) approving (in whole or in part), certifying, or taking other appropriate action with respect to, the Submittal, as applicable or (ii) disapproving (in whole or in part) such Submittal and providing written notice to the Lessee specifying in reasonable detail the reasons for which it has disapproved the Submittal. Grounds for disapproval may include that (A) the Work that is the subject of the Submittal fails to comply with any applicable covenant, condition, requirement, term or provision of the Project Documents, (B) the Work that is the subject of the relevant Submittal is not to a standard equal to or exceeding Best Management Practice, or (C) the Lessee has not provided all content or information required in respect of the Submittal. If the Port Authority disapproves any Submittal (or a portion thereof) in accordance with the preceding sentence, the Lessee will resubmit the entire Submittal as promptly as reasonably possible (but in any event no later than thirty (30) days from the Port Authority's disapproval). Following receipt by the Port Authority of any resubmittal, and provided that such resubmittal has been deemed complete under Section 8.3(b), the Port Authority will review and respond to such resubmittal by approving or disapproving it (in whole or in part) within the same time period applicable to the initial Submittal, and in the event of disapproval, the process set forth in this Section 8.4(a) shall recommence until the Port Authority approves the entire resubmittal.

(b) With respect to any Submittal that is subject to Port Authority Comment, the Port Authority will, subject to Section 8.3(c), review and provide comments, or notify the Lessee that it has no comments, to such Submittal within the relevant time period specified in the other provisions of this Agreement, the D&C Schedule of Submittals, the O&M Schedule of Submittals, the Requirements and Provisions for Work or in the other Project Documents with respect to such Submittal or, if no time period is specified, within thirty (30) days after the date on which such Submittal has been deemed complete pursuant to Section 8.3(b). The Lessee shall be required to resolve all of the Port Authority's comments that are necessary to bring the Submittal into compliance with Applicable Law and/or Applicable Standards. The Lessee shall also endeavor to accommodate other of the Port Authority's comments unrelated to compliance with Applicable Law or Applicable Standards; provided, however, that the Lessee may proceed to implement the Submittal at its sole election and risk without incorporating all or any portion of such Port Authority comments unrelated to compliance with Applicable Law or Applicable Standards, but without prejudice to the Port Authority's rights to later object to, reject or disapprove the Work on the basis that the Work does not comply with the requirements of the Project Documents. If the Lessee revises the Submittal to address any of the Port Authority's comments, the Lessee shall deliver to the Port Authority as promptly as reasonably possible (but in any event within thirty (30) days after receipt of the Port Authority's comments) the resubmittal and the Port Authority may, within the same review period allotted for the initial Submittal, (i) notify the Lessee in writing that it has no further

comments to the resubmittal or (ii) provide comments to such resubmittal, and in the latter case, the process set forth in this Section 8.4(b) shall recommence.

(c) If the Lessee must submit a Submittal to the Port Authority more than three (3) times due to the Lessee's failure to comply with the requirements of (i) with respect to Port Authority Approval, this Agreement, the other Project Documents, Applicable Law or Applicable Standards, or (ii) with respect to Port Authority Comment, Applicable Law or Applicable Standards, the Port Authority may seek reimbursement from the Lessee for its costs incurred thereafter in reviewing such Submittal (and such reimbursement shall be in addition to the compensation payable by the Lessee to the Port Authority in accordance with clauses (h) and (i) of Section 3.5 (*Right of Entry and Oversight by the Port Authority*)).

(d) With respect to such Submittals that require action by the Port Authority, including signatures, or the supply of information within the possession of the Port Authority regarding Port Authority personnel, operations or history that is not otherwise available to the Lessee, the Lessee shall identify such requested action or information in a cover letter accompanying the Submittal. The Port Authority shall not be obligated to respond to the Lessee's requests for information that is otherwise reasonably available to the Lessee or to which the Port Authority does not have reasonable access; provided, that if the Port Authority does not have reasonable access to the requested information, it will inform the Lessee thereof within thirty (30) days after receipt of the relevant Submittal. To the extent that any Submittal by the Lessee requires the Port Authority to obtain an approval (including any signature) or other response from Governmental Entities that the Lessee cannot independently obtain in its own name without Port Authority participation, the Port Authority shall inform the Lessee thereof within thirty (30) days after receipt of such Submittal, and the date by which the Port Authority's response to such Submittal is due pursuant to this Agreement, the other Project Documents, the D&C Schedule of Submittals or the O&M Schedule of Submittals, shall be extended by such time as is necessary to obtain such approval. Nothing in this Section 8.4 (*Review Process)* relieves the Lessee from its obligation to obtain any Governmental Approval (other than a Port Authority Governmental Approval) required from Governmental Entities (not including the Port Authority).

Section 8.5 Open Dialogue and Cooperation; Design and Construction Working Group

(a) The Lessee and the Port Authority agree to cooperate with each other and engage at all times in an open dialogue with respect to the Work, the Premises, the Supporting Projects and the Perimeter Intrusion Detection System (PIDS). The Lessee and the Port Authority shall work in a diligent and expeditious manner to actively seek to prevent, avoid and mitigate potential impacts to construction schedules, scope of Work and increased costs of construction for the Construction Project, the Supporting Projects and the Perimeter Intrusion Detection System (PIDS), as well as such impacts on the increased costs of Operations and Maintenance Work. Such efforts may include, as appropriate, providing prompt updates to the other Party regarding possible changes to construction progress, seeking acceptable work-arounds to construction activities, identifying new or improved areas of coordination involving construction activities, and considering in good faith any proposed changes to the scope of

work for the Construction Project, the Supporting Projects and the Perimeter Intrusion Detection System (PIDS), as the case may be. In addition, each Party shall provide prior written notice to the other Party as promptly as reasonably possible after it becomes aware that an event or a condition has occurred or is likely to occur that could reasonably be expected to have such impacts, including any such event or condition that could reasonably be expected to become a [redacted] or a Delay Event.

(b) The Lessee and the Port Authority shall establish a design and construction working group to review the development of the Construction Project and all drawings, specifications, calculations, reports and other relevant documentation prior to the submission of any Submittals to the Port Authority with respect to the D&C Work. The working group shall meet on a regular basis in order that the Port Authority will generally be informed of all aspects of the design and construction of the Construction Project and all approval dates for all Submittals with respect to the D&C Work. The meetings shall be on an informal basis to encourage a full discussion of all appropriate issues and shall not supersede the Submittal process set forth in the other sections of this Article 8 (*Submittals; Open Dialogue and Cooperation*), the D&C Schedule of Submittals, the O&M Schedule of Submittals or in the other Project Documents. The working group shall meet in the manner required above until the Construction Project has achieved Final Acceptance.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

ARTICLE 9

PORT AUTHORITY FUNDING

Section 9.1 Port Authority Funding for New Facilities and the Demolition Facilities

(a) Subject to Sections 9.1 (*Port Authority Funding for New Facilities and the Demolition Facilities*), 9.2 (*Disbursement Procedures for Port Authority Funding for New Facilities and the Demolition Facilities*) and 9.3 (*Application and Availability of Port Authority Funding for New Facilities and the Demolition Facilities*), the Port Authority shall make available Port Authority Funding, whether from PFC Funding or from other sources available to the Port Authority, in an aggregate amount set forth in the PFC Funding Plan, up to One Billion Dollars ($1,000,000,000), and such Port Authority Funding shall be available solely to pay for PFC Eligible Project Costs incurred to perform the D&C Work for the Demolition Facilities and the New Facilities, in amounts and within the time periods set forth in the PFC Funding Plan, and for no other purpose. For the avoidance of doubt, the terms and conditions set forth in Sections 9.1 (*Port Authority Funding for New Facilities and the Demolition Facilities*), 9.2 (*Disbursement Procedures for Port Authority Funding for New Facilities and the Demolition Facilities*) and 9.3 (*Application and Availability of Port Authority Funding for New Facilities and the Demolition Facilities*) address only Port Authority Funding to be made available for the purposes set forth in this Section 9.1 (*Port Authority Funding for New Facilities and the Demolition Facilities*).

(b) As of the Lease Commencement Date, the Lessee and the Port Authority shall have developed and mutually agreed to a plan attached hereto as Exhibit 24 [redacted] (as amended from time to time as permitted under this Section 9.1(b), the "**PFC Funding Plan**") that, among other things, sets forth: (i) a detailed breakdown of the major Elements of the D&C Work for the Demolition Facilities and the New Facilities that are proposed to result in PFC Eligible Project Costs ("**PFC Eligible D&C Work**"), (ii) the planned sequencing of each such Element of PFC Eligible D&C Work in the overall design and construction plans, (iii) a timetable indicating the estimated commencement and completion periods of each such Element of PFC Eligible D&C Work in the overall Project Baseline Schedule, (iv) for purposes of determining the Port Authority's obligation to disburse

Port Authority Funding for PFC Eligible D&C Work incurred with respect to the New Facilities and the Demolition Facilities under Section 9.2 (*Disbursement Procedures for Port Authority Funding for New Facilities and the Demolition Facilities*), the percentage completion of each New Facilities Construction Milestone, and of Substantial Completion excluding the D&C Work related to the New Improvements, that is proposed to be achieved on or before each Semi-Annual Testing Date (such percentages on each applicable semi-annual date, a "**PAF Milestone**"), (v) the amount of Port Authority Funding required in each Calendar Year during which the PFC Eligible D&C Work will be performed, together with the aggregate Port Authority Funding amount, and (vi) any other information or data required by the Port Authority or the FAA from time to time in order for the Port Authority to submit responsive applications to the FAA with respect to the PFC Eligible D&C Work ("**PFC Applications**") and obtain final agency decisions with respect to such PFC Applications. As used herein, the "**Semi-Annual Testing Date**" means the last day of the calendar month in which the first anniversary of the Lease Commencement Date occurs, and each six (6) months thereafter; provided, that, after the Headhouse Phase Completion Date (as defined below), the Semi-Annual Testing Date shall mean the day that is the last day of the calendar month occurring six (6) months after the Headhouse Phase Completion Date and each six (6) months thereafter. The PFC Funding Plan may be revised or updated from time to time upon the mutual agreement of the Lessee and the Port Authority. In addition, any PAF Milestone shall be adjusted, as mutually agreed by the Lessee and the Port Authority, to reflect any adjustment of the related Guaranteed New Facilities Construction Milestone Completion Date or the Guaranteed Substantial Completion Date, as applicable, in accordance with Section 13.1, Section 13.3, or Section 14.2(c).

(c) The Lessee agrees and acknowledges that information provided in the PFC Funding Plan will be used to prepare and submit PFC Applications. The Lessee is solely responsible for the completeness and accuracy of information and data relating to the Construction Project and its airline leasing plans that the Lessee or any of its consultants, Contractors, advisors or any other person acting on behalf of the Lessee, provides in order for the Parties to develop a PFC Funding Plan that complies with the PFC Regulations in all respects, and for the Port Authority to prepare responsive PFC Applications. The Lessee shall not be responsible for the completeness and accuracy of any information and data directly provided by, or (other than the Lessee or any of its consultants, Contractors, advisors or any other person acting on behalf of the Lessee) on behalf of, the Port Authority, the Airline Sublessees or their respective consultants. Further, the Lessee shall cooperate and coordinate with the Port Authority and (at the request of the Port Authority) the FAA, in a timely manner, in the preparation, submission and processing of any PFC Application, and the Lessee shall promptly provide further information or data that is required by the Port Authority or the FAA, and be available as and when needed, to process, renew, amend, supplement or otherwise modify any PFC Application. Provided that the Lessee has fully complied with its obligations under this Section 9.1(c), and subject to the requirements set forth in Section 9.2 (*Disbursement Procedures for Port Authority Funding for New Facilities and the Demolition Facilities*), the Port Authority shall pay the amounts requested in any Disbursement Request into a segregated account established by the Port Authority with the Deposit Account Bank as set forth in the Financing Documents to facilitate payment of the Port Authority Funding, whether from PFC Funding or other sources available to the Port Authority, to the D&C

Contractor or other specified Contractors entitled to such payments (the "**PAF Account**"), all in accordance with Section 9.2 (*Disbursement Procedures for Port Authority Funding for New Facilities and the Demolition Facilities*). The Port Authority's obligation to make payment pursuant to the immediately preceding sentence shall not be affected by any delay by the FAA in responding to a PFC Application submitted by the Port Authority or by any FAA decision with respect to a PFC Application that disapproves the application in whole or in part, or authorizes PFC Funding on terms that deviate from the PFC Funding Plan, whether the deviation is in amounts authorized, allocation of funding, timing or otherwise. However, the Port Authority shall not be obligated to make Port Authority Funding available from any non-PFC Funding source for PFC Eligible D&C Work to the extent that it has reasonably determined that the failure of the Port Authority to receive PFC Funding pursuant to a PFC Application for such D&C Work was due solely to the failure of the Lessee to comply with its obligations under this Section 9.1(c).

(d) In addition, the Lessee shall be solely responsible for any delay in the performance of the D&C Work in accordance with the Project Baseline Schedule, including any delay in achieving any Guaranteed New Facilities Construction Milestone Completion Date, the Guaranteed Substantial Completion Date and/or the Guaranteed Final Acceptance Date, and any increase in costs and loss in revenues to the extent resulting from the failure of the Lessee to comply with its obligations under Section 9.1(c).

(e) The Port Authority shall submit one or more PFC Applications to the FAA to obtain approval to apply PFC funds to PFC Eligible Project Costs incurred in connection with PFC Eligible D&C Work for the Demolition Facilities and the New Facilities, it being understood that the Lessee's financing cost component related to any of such D&C Work shall be excluded from the PFC Applications.

(f) The Port Authority will exercise diligent efforts to prepare and submit PFC Applications, and to respond to FAA inquiries relating thereto. If the Port Authority makes any amount of Port Authority Funding available from sources other than PFCs to fund PFC Eligible Project Costs incurred in connection with PFC Eligible D&C Work for the Demolition Facilities and the New Facilities, the Port Authority will be entitled to retain the proceeds of PFC Funding for such PFC Eligible Project Costs subsequently received from the FAA as reimbursement for any such amounts. If, subsequent to any disbursement of Port Authority Funding, the Port Authority or the Lessee determines that Port Authority Funding has been made available in an erroneous amount, the Party that made such determination shall inform the other Party thereof as promptly as possible. In the case of an overfunding, the Lessee shall, as promptly as possible, cause payment to be returned, to the Port Authority in the amount of such overfunding, and in the case of an underfunding, the Port Authority shall, as promptly as possible but in any case, not later than the next disbursement date, make payment in the amount of such underfunding into the PAF Account for disbursement to the D&C Contractor or other specified Contractors.

(g) For purposes of the PFC Applications, the Port Authority will be entitled to rely upon the truth and accuracy of information, estimates, drawings and other data provided by the Lessee; provided, that (i) the use of such information, estimates, drawings and other data will

not constitute a waiver by the Port Authority of any breach of this Agreement by the Lessee or relieve the Lessee of any of its obligations hereunder, and (ii) the Port Authority acknowledges that the information, estimates, drawings and other data may be preliminary when provided and will be accurate to the best of the Lessee's knowledge at the time it is provided.

Section 9.2 Disbursement Procedures for Port Authority Funding for New Facilities and the Demolition Facilities

(a) As a condition to any payment by the Port Authority of Port Authority Funding for PFC Eligible Project Costs incurred in connection with PFC Eligible D&C Work for the Demolition Facilities and the New Facilities, the Lessee shall be obligated to first submit to the Port Authority a disbursement request with respect to such PFC Eligible Project Costs, inclusive of such back-up documentation and detail as shall be acceptable to the Port Authority (a "**Disbursement Request**"). The Lessee may submit a Disbursement Request to the Port Authority at a frequency not to exceed once every month during the period from the issuance of the Design NTP until three (3) months after Final Acceptance. For greater clarity, so long as the Lessee is in compliance with its obligations under Section 9.1(c), it is not a condition to the submission of a Disbursement Request that the PFC Application relevant to such PFC Eligible Project Costs for which payment is being requested be submitted to or approved by the FAA at the time of such request.

(b) The following conditions to payment shall apply with regard to each Disbursement Request. Each Disbursement Request shall be evidenced by a certificate (a "**Disbursement Request Certificate**") of an authorized fiscal officer of the Lessee, in the form attached hereto as Exhibit 16-A (*Form of Port Authority Funding Disbursement Request Certificate*) and sworn to before a notary public and delivered to the Port Authority, which certificate shall be accompanied by the following:

(i) a progress report on the activities performed during the period covered by the Disbursement Request;

(ii) a detailed list of PFC Eligible Project Costs incurred in connection with PFC Eligible D&C Work for the Demolition Facilities and the New Facilities that will be paid with the amount requested in the Disbursement Request, set forth in reasonable detail, and the amounts to be paid to the D&C Contractor or specified Contractors who performed such PFC Eligible D&C Work, and including reproduction copies or duplicate originals of the invoices and other documentation supporting such costs;

(iii) a detailed description of the categories of such PFC Eligible Project Costs incurred (e.g., apron, roadway, terminal headhouse, etc.) that will be reimbursed with the amount requested in the Disbursement Request, together with a further breakdown of each such category that describes the Elements of the PFC Eligible D&C Work, and a certification by the Lessee that the payment requested complies with the PFC Funding Plan;

(iv) subject to Section 9.2(f), a certification by the Lessee that the Construction Project and the Premises, and any and all interests and estates therein, and all improvements and materials placed on the Premises, for which payment has been received by the Lessee, are free and clear of any and all Liens or Claims arising out of or in connection with the performance of the Work by the Lessee or any of the Contractors;

(v) a copy of a release and waiver of Liens, in the form attached hereto as Exhibit 16-C-1 (*Form of Contractor's Lien Waiver*), from each Contractor with a Contract of Five Hundred Thousand Dollars ($500,000) or more in value, individually or in the aggregate, or, subject to Section 9.2(f), if the Lessee is unable to obtain all such waivers, a letter of credit or bond that has received Port Authority Approval to protect the Port Authority, the Construction Project, the Construction Site and the Premises from any and all Claims or Liens; and

(vi) a copy of the signed disbursement requisition provided by the Lessee to the Collateral Agent (in the form required by the Collateral Agency Agreement), requesting disbursement of funds from the accounts held by the Collateral Agent pursuant to the Collateral Agency Agreement (a "**Lessee Requisition**") in payment of amounts set forth in the same invoices for performance of D&C Work that is the basis for the Disbursement Request, including copies of all attachments including a copy of the Lenders' technical advisor certificate.

(c) Subject to Section 9.2(f), no Disbursement Request will be reviewed or processed by the Port Authority until the Port Authority receives a Disbursement Request that complies with Sections 9.2(a) and 9.2(b).

(d) The Port Authority will notify the Lessee (with a copy to the Collateral Agent) of its approval or disapproval of the Disbursement Request that complies with Sections 9.2(a) and 9.2(b) within thirty (30) days following receipt by the Port Authority of such request. Within fifteen (15) Business Days after approval by the Port Authority of a Disbursement Request, the Port Authority will pay the amount specified in such Disbursement Request into the PAF Account for disbursement to the D&C Contractor or other specified Contractors.

(e) If the Port Authority determines that a PFC Eligible Project Cost for which payment is requested pursuant to a Disbursement Request is not identified as a PFC Eligible Project Cost in the PFC Funding Plan, the Port Authority may disapprove the requested funds corresponding to such portion of the Disbursement Request. The Port Authority will notify the Lessee (with a copy to the Collateral Agent) of the reasons for such disapproval, and pay undisputed amounts into the PAF Account within fifteen (15) Business Days after the Port Authority approves the undisputed amounts. Any such disapproved amounts will be made available in a subsequent payment if the reasons for disapproval are satisfied or if it is determined, pursuant to the Dispute Resolution Procedures, that the Port Authority was not entitled to disapprove such Disbursement Request, or a portion thereof (if applicable), in accordance with this Section 9.2(e).

(f) If the Lessee fails to furnish a satisfactory letter of credit or bond as required by Section 9.2(b)(v) above, the Port Authority may withhold from any amount payable under this Agreement, an amount reasonably sufficient to discharge any or all Liens or Claims, and the Port Authority may, in its discretion, (i) with ten (10)-days' prior written notice to the Lessee, discharge any such Lien or Claim with the moneys withheld, whereupon for purposes of this Agreement such moneys shall be deemed to have been paid hereunder or (ii) keep such withheld amount until the statutory period has expired by which any Lien may be created. If the Lessee has furnished a satisfactory letter of credit or bond as required by Section 9.2(b)(v), the Port Authority shall return to the Lessee such letter of credit or bond once the Lien or Claim it secures has been satisfied in full or if such Lien or Claim has not been satisfied in full, upon the expiration of the applicable statutory period (unless the Port Authority, in its discretion, following ten (10)-days' prior written notice to the Lessee, has used such letter of credit or bond to discharge such Lien or Claim in order to protect the Port Authority, the Construction Project and the Premises). This Section 9.2(f) shall also apply if the Lessee fails to provide a satisfactory letter of credit or bond as required by Section 10.7(a)(xi) as a condition to achieving Final Acceptance of the Construction Project.

(g) If, pursuant to the Collateral Agency Agreement, the Collateral Agent delivers notice to the Lessee that any Lessee Requisition is non-compliant with the Collateral Agency Agreement or the Collateral Agent otherwise will not disburse any portion of the requested disbursement from the Construction Account (as defined in the Collateral Agency Agreement) on the requested disbursement date, the Collateral Agent shall provide a written copy of such notice to the Port Authority concurrently with the notice provided to the Lessee. If, with respect to any such non-compliant Lessee Requisition, (i) by the date when payment from the Port Authority would otherwise be due with respect to such Lessee Requisition pursuant to Section 9.2(e) above, the Port Authority has not received written confirmation from the Collateral Agent that the Lessee Requisition has been approved by the Collateral Agent and that withheld amounts to be funded from the Construction Account have been, or simultaneously with the requested disbursement by the Port Authority of withheld Port Authority Funding will be, paid to the D&C Contractor or other specified Contractors, and (ii) the aggregate amount paid by the Port Authority with respect to all Lessee Requisitions for Port Authority Funding related to New Facilities and Demolition Facilities prior to the non-compliant Lessee Requisition exceeds the aggregate amount paid by the Lessee related to New Facilities and Demolition Facilities prior to the non-compliant Lessee Requisition, then the Port Authority may withhold payment of a portion of the amount requisitioned from the Port Authority in such Disbursement Request equal to the percentage of the amount requisitioned from the Construction Account in such Disbursement Request that the Collateral Agent declined to disburse. The Port Authority may withhold such amount until the Port Authority receives the written confirmation from the Collateral Agent described in the preceding sentence, and as soon as reasonably practicable, the Port Authority will pay such released amounts into the PAF Account. Amounts withheld by the Port Authority pursuant to this Section 9.2(g) shall not be deemed due and payable by the Port Authority until the Port Authority has received the written confirmation from the Collateral Agent described in the two immediately preceding sentences.

(h) The Lessee shall keep and maintain, and cause its Contractors to keep and maintain, all records, documentation and other supporting information evidencing the application of Port Authority Funding to the Construction Project in accordance with Section 30.1(b).

(i) PAF Milestone Test

(i) The disbursement of Port Authority Funding for PFC Eligible D&C Work relating to the New Facilities and the Demolition Facilities shall be adjusted in accordance with this Section 9.2(i) (*PAF Milestone Test*).

(ii) On each Semi-Annual Testing Date, the Lessee shall provide to the Port Authority a certification stating whether or not the applicable PAF Milestone Test (as defined below) has been satisfied as of such date, and if not satisfied, a reasonably detailed explanation of the delay in construction or other reasons causing the failure to satisfy the PAF Milestone Test. The Lessee shall have satisfied a "**PAF Milestone Test**" with respect to a Semi-Annual Testing Date if it has demonstrated to the Port Authority's reasonable satisfaction that either (A) the PAF Milestones corresponding to the applicable Semi-Annual Testing Date, together with all PAF Milestones corresponding to each prior Semi-Annual Testing Date, have been achieved on or before the applicable Semi-Annual Testing Date or (B) if the PAF Milestone Test has not been satisfied in accordance with clause (A), then if, notwithstanding that one or more PAF Milestones corresponding to the applicable Semi-Annual Testing Date or any prior date have not been achieved, in the aggregate, the D&C Work for the New Facilities and the Demolition Facilities meets all Critical Path activities and deadlines in the Project Baseline Schedule.

(iii) If neither of sub-clause (ii)(A) nor (ii)(B) of this Section 9.2(i) (*PAF Milestone Test*) has been achieved as of any Semi-Annual Testing Date, then the PAF Milestone Test for such Semi-Annual Testing Date shall be deemed to have failed (a "**Failed PAF Milestone Test**"). During the period immediately following the occurrence of two (2) consecutive Failed PAF Milestone Tests and until the applicable PAF Holdback Period Termination Date (as defined below) (a "**PAF Holdback Period**"), the Port Authority shall be entitled to retain an amount (a "**PAF Holdback Amount**") from each distribution of Port Authority Funding requested in a monthly Disbursement Request submitted during such PAF Holdback Period equal to, subject to the aggregate maximum amounts described in sub-clause (iv) of this Section 9.2(i), (x) prior to the Headhouse Phase Completion Date (as defined below), fifty percent (50%) of the amount requested in such monthly Disbursement Request, and (y) following the Headhouse Phase Completion Date, twenty-five percent (25%) of the amount requested in such monthly Disbursement Request. Notwithstanding anything herein to the contrary, subject to and without limiting sub-clause (v) of this Section 9.2(i), any PAF Holdback Period beginning prior to the date of issuance of a Temporary Certificate of Authorization to Occupy or Use for the terminal headhouse (such date, the "**Headhouse Phase Completion Date**") shall terminate on the Headhouse Phase Completion Date. The aggregate PAF Holdback Amounts shall be retained by the Port Authority until

released into the PAF Account for disbursement to the D&C Contractor or other specified Contractors entitled to such payments in accordance with sub-clause (v) of this Section 9.2(i). Any PAF Holdback Period shall terminate, and the Port Authority shall resume payment of the full amount requested from the Port Authority in subsequent Disbursement Requests (subject to Section 9.2(e)), upon the earlier to occur of: (i) the date of receipt by the Port Authority of the Lessee's certification of the achievement of the applicable PAF Milestone(s) or (ii) the Headhouse Phase Completion Date (the earlier of such dates, a "**PAF Holdback Period Termination Date**"), and a subsequent PAF Holdback Period shall not commence until the occurrence of two (2) subsequent consecutive Failed PAF Milestone Tests.

(iv) The aggregate PAF Holdback Amounts for any PAF Holdback Period occurring prior to the Headhouse Phase Completion Date shall not exceed fifty percent (50%) of the greatest aggregate Port Authority Funding amounts requested by the Lessee over any previous consecutive six (6) months occurring during the applicable PAF Holdback Period (or, for any period ending less than six (6) months after the beginning of the applicable PAF Holdback Period, fifty percent (50%) of the aggregate Port Authority Funding amounts requested by the Lessee during such shorter period). The aggregate PAF Holdback Amounts for any PAF Holdback Period occurring after the Headhouse Phase Completion Date shall not exceed the amount, if any, by which (A) the cumulative remaining PFC Eligible Project Costs for Holdback Eligible Elements (as defined below) to which Port Authority Funding is allocable that may be invoiced through Substantial Completion, exceeds (B) the remaining amount of Port Authority Funding that is available to the Construction Project in accordance with the PFC Funding Plan, including any such amounts constituting PAF Holdback Amounts. "**Holdback Eligible Elements**" are Elements of PFC Eligible D&C Work with a useful life of greater than one hundred twenty-five percent (125%) of the term of this Agreement (as determined by the Appraisal), excluding any Elements of the D&C Work related to the Demolition Facilities.

(v) Commencing on the first disbursement date for Port Authority Funding occurring immediately following the end of a PAF Holdback Period, PAF Holdback Amounts accumulated during the applicable PAF Holdback Period, together with such amounts accumulated in previous PAF Holdback Periods that have not been expended in accordance with this sub-clause (v) (collectively, the "**Released PAF Holdback Amounts**"), shall be available to pay for PFC Eligible Project Costs to which Port Authority Funding is allocable and for which the Lessee has not previously invoiced. Released PAF Holdback Amounts that are not applied to the payment of PFC Eligible Project Costs requisitioned by a Disbursement Request and approved by the Port Authority shall be available to pay for PFC Eligible Project Costs incurred and invoiced in subsequent Disbursement Requests.

(j) For the avoidance of doubt, the provisions of Sections 8.1 (*Submittals Generally*) through 8.4 (*Review Process*) shall not apply to any Disbursement Request or other submittal described in this Section 9.2 (*Disbursement Procedures for Port Authority Funding for New Facilities and the Demolition Facilities*).

Section 9.3 Application and Availability of Port Authority Funding for New Facilities and the Demolition Facilities

The proceeds of Port Authority Funding paid by the Port Authority pursuant to Sections 9.1 (*Port Authority Funding for New Facilities and the Demolition Facilities*) and 9.2 (*Disbursement Procedures for Port Authority Funding for New Facilities and the Demolition Facilities*) shall be applied to pay or reimburse the D&C Contractor or other specified Contractors for PFC Eligible Project Costs incurred by the D&C Contractor or other specified Contractors in connection with the performance of PFC Eligible D&C Work for the Demolition Facilities and the New Facilities in accordance with the PFC Funding Plan.

Section 9.4 Port Authority Funding for New Improvements and the Central Hall

(a) Subject to this Section 9.4 (*Port Authority Funding for New Improvements and the Central Hall*), the Port Authority shall make payments to the Lessee for the performance by the Lessee of the D&C Work with respect to (i) the New Improvements, in accordance with the New Improvements Payment and Milestone Schedule (the "**New Improvements Milestone Payments**") and (ii) the Central Hall, in accordance with the Central Hall Payment and Milestone Schedule (the "**Central Hall Milestone Payments**" and together with the New Improvements Milestone Payments, the "**Milestone Payments**"). Any payment by the Port Authority to the Lessee for the PNTP Work related to the New Improvements completed under the PNTP Agreement (excluding amounts paid by the Port Authority in respect of Port Authority Changes undertaken pursuant to the PNTP Agreement and any Lessee Damages paid in respect of any [redacted] in connection with the PNTP Work) will be deducted from the amount payable by the Port Authority to the Lessee with respect to the New Improvements under this Agreement.

(b) The Lessee acknowledges and agrees that design drawings, cost information (aggregate and itemized) and other information provided in the Finalized Proposal or otherwise provided to the Port Authority from time to time with respect to the design and construction of the New Improvements or the Central Hall (as such information may have been modified from time to time with the mutual agreement of the Port Authority and the Lessee) will be used to prepare and submit PFC Applications for PFC Funding for the New Improvements or the Central Hall, as the case may be. The Lessee represents that such design drawings, cost information and such other information provided (as may have been modified) will be updated, complete and accurate when provided to the Port Authority. Further, the Lessee shall cooperate and coordinate with the Port Authority and (at the request of the Port Authority) the FAA, in a timely manner, in the preparation, submission and processing of any PFC Application for PFC Funding of the New Improvements or the Central Hall, as the case may be, and the Lessee shall promptly provide to the Port Authority updates to previously submitted information, and shall provide further information or data that is required by the Port Authority or the FAA, and be available as and when needed, to process, renew, amend, supplement or otherwise modify any PFC Application. Notwithstanding anything to the contrary, the Port Authority's obligation to make Milestone Payments pursuant to this Section 9.4 (*Port Authority Funding for New Improvements and the Central Hall*) shall not be affected by any FAA decision with respect to a PFC Application for the New Improvements or the Central

Hall, as the case may be, that disapproves the application in whole or in part, or authorizes PFC Funding on terms that deviate from the New Improvements Payment and Milestone Schedule or the Central Hall Payment and Milestone Schedule, whether the deviation is in amounts authorized, allocation of funding, timing or otherwise. For greater clarity, so long as the Lessee is in compliance with its obligations under this Section 9.4(b), it is not a condition to the submission of a written request for any of the Milestone Payments that the PFC Application relevant to such Milestone Payment for which payment is being requested be submitted to or approved by the FAA at the time of such request.

(c) Any Milestone Payment made by the Port Authority pursuant to this Section 9.4 (*Port Authority Funding for New Improvements and the Central Hall*) shall be separate from and in addition to the Port Authority Funding made available for the payment of PFC Eligible Project Costs incurred in connection with PFC Eligible D&C Work for the New Facilities and the Demolition Facilities described in Section 9.1 (*Port Authority Funding for New Facilities and the Demolition Facilities*).

(d) The Lessee may submit to the Port Authority a written request for the Milestone Payments due based upon the Lessee's achievement of specified Milestones, at a frequency not to exceed once every month, all in accordance with the New Improvements Payment and Milestone Schedule and the Central Hall Payment and Milestone Schedule, as applicable. Each such request for payment shall be submitted by the Lessee to the Port Authority, in the form attached hereto as Exhibit 16-B (*Form of Request for Payment for Port Authority Funding for the New Improvements and the Central Hall*), no later than the tenth (10th) day of the month in respect of the immediately preceding month in which the specified Milestone(s) have been achieved. With each such request for payment, the Lessee shall include the monthly progress report for the month for which payment is requested, together with such additional certifications and information reasonably requested by the Port Authority relating to such payment request, and shall otherwise meet all the conditions to payment set forth in Section 9.2(b) to the extent they relate to the New Improvements and the Central Hall, as the case may be. For avoidance of doubt, each such request for payment shall include a copy of the Lessee Requisition required under Section 9.2(b)(vi). The Lessee shall include in its first request for Milestone Payments an additional amount of $52,846,026, which amount the Port Authority has agreed to pay the Lessee by way of a start-up payment. This amount shall be in addition to any other Milestone Payments the Lessee is entitled to request for payment.

(e) The Port Authority will notify the Lessee of its approval or disapproval of the request for payment within thirty (30) days following receipt by the Port Authority of a complete and correct request for payment. Within fifteen (15) Business Days after approval by the Port Authority of such request, the Port Authority will pay such amount (i) to, or to the order of, the Lessee, by payment into one or more Lessee accounts established with the Deposit Account Bank as set forth in the Financing Documents and identified to the Port Authority by the Lessee, or (ii) if the Lessee so requests in writing, directly to the Contractor designated by the Lessee; provided, that notwithstanding such direct payment to the Contractor by the Port Authority, such payment shall be deemed to have been made to the Lessee for the purposes of this Agreement and nothing herein shall be construed to entitle such Contractor to any rights whatsoever under this Agreement or relieve the Lessee from its obligations hereunder. If the

Port Authority disapproves such request in whole or in part, the Port Authority will notify the Lessee of the reasons of such disapproval, and pay undisputed amounts within fifteen (15) Business Days after the Port Authority approves the undisputed amounts. Any such disapproved amounts will be available in a subsequent payment if the reasons for disapproval are satisfied or if it is determined, pursuant to the Dispute Resolution Procedures, that the Port Authority was not entitled to disapprove such request, or a portion thereof (if applicable).

(f) [Reserved]

(g) Without limiting any of the other provisions of this Section 9.4 (*Port Authority Funding for New Improvements and the Central Hall*), to the extent any Milestones included as part of the PNTP Work have not been completed or, if completed, have not been invoiced by the Lessee, prior to the Lease Commencement Date, the Lessee shall complete or invoice, as applicable, such Milestones in accordance with this Agreement and payment therefor will be made by the Port Authority in accordance with this Section 9.4 (*Port Authority Funding for New Improvements and the Central Hall*) (it being understood that such PNTP Work that has been performed by the Lessee and invoiced to the Port Authority but not paid by the Port Authority to the Lessee prior to the Lease Commencement Date shall be payable by the Port Authority at or following the Lease Commencement Date, subject to the requirements set forth in Section 9.4(e)). In addition, the Parties agree that the Lessee's first request for the Milestone Payments hereunder may include an invoice for the full amount that would have been due under the PNTP Agreement for any PNTP Work performed but not invoiced prior to the Lease Commencement Date.

(h) For the avoidance of doubt, the provisions of Sections 8.1 (*Submittals Generally*) through 8.4 (*Review Process*) shall not apply to any request for payment or other submittal described in this Section 9.4 (*Port Authority Funding for New Improvements and the Central Hall*).

Section 9.5 Application and Availability of Port Authority Funding for New Improvements and the Central Hall

The proceeds of Port Authority Funding received pursuant to Section 9.4 (*Port Authority Funding for New Improvements and the Central Hall*) shall be applied to pay the Lessee or its Contractors and Suppliers for costs incurred or paid by the Lessee or its Contractors or Suppliers in connection with the performance of D&C Work for the New Improvements and the Central Hall.

Section 9.6 Adjustments for Contract Compensation

(a) Compensation adjustment relating to the asphalt or cement testing referred to in Part A of Exhibit 27 (*Adjustments to Contract Compensation*) may be made either as an additional payment or as a deduction from a payment by the Port Authority to the Lessee (or to the Contractor designated by the Lessee in accordance with Section 9.4(e) above), all as described in more detail in the New Improvements Specifications.

(b) Solely to the extent that the Perimeter Intrusion Detection System (PIDS) is subcontracted by the Lessee or its Lead Contractor to the Port Authority's PIDS provider, as described in Section 24 of the Design and Construction Requirements and the documents referenced therein (the "**PIDS Work**") in accordance with Section 10.11(b), the compensation adjustment relating to the Lessee's scope of the D&C Work with respect to the Perimeter Intrusion Detection System (PIDS) shall be as set forth on Part B of Exhibit 27 (*Adjustments to Contract Compensation*).

(c) Any payment by the Port Authority pursuant to Section 9.6(a) or Section 9.6(b) shall be included in the request submitted by the Lessee in accordance with Section 9.4(d) for any month in which such D&C Work was performed by the Lessee.

(d) The compensation adjustment relating to the actual cost of monitoring Archaeological Remains may be made either as an additional payment, where such actual costs exceed the Archaeological Allowance, or as a deduction from a payment, where such actual costs are less than the Archaeological Allowance, by the Port Authority to the Lessee (or to the Contractor designated by the Lessee in accordance with Section 9.4(e) above).

Section 9.7 Maintaining of Records; Accounting of Payments Received

(a) The Lessee shall keep and maintain, and cause its Contractors and Suppliers, to keep and maintain, all records, documentation and other supporting information evidencing the requests for payment to the Construction Project in accordance with Section 30.1 (*Maintenance and Inspection of Records; Ownership*).

(b) No later than one hundred and eighty (180) days after Final Acceptance, the Lessee will provide a final accounting to the Port Authority that includes supporting documentation regarding the application of Port Authority Funding to the Construction Project, and the Lessee shall cooperate with the Port Authority to assist the Port Authority with administering the close-out of the Construction Project.

Section 9.8 No Waiver

No approvals by the Port Authority, or payments or disbursements by the Port Authority, will be construed as an acceptance of any D&C Work that is not in accordance with the requirements of the Project Documents.

ARTICLE 10

DESIGN AND CONSTRUCTION

Section 10.1 Obligations of the Lessee

(a) Construction Project. In connection with the lease of the Premises and the grant of the Permanent Rights of Access and the Temporary Rights of Access pursuant to Section 3.1 (*Lease of Premises*), the Port Authority hereby grants to the Lessee the exclusive right to, and the Lessee accepts such right and acknowledges its obligation to, finance, develop, design and

construct the Construction Project, in accordance with and subject to the terms and conditions of this Agreement and other Project Documents. The scope of the D&C Work to be performed by the Lessee includes the following:

(i) the decommissioning and demolition of the Existing Terminal B Facilities;

(ii) the demolition of P2 Garage, Hangar 1 and frontage roads associated therewith and with the Existing Terminal B Facilities;

(iii) the decommissioning and demolition of the Central Electrical Substation;

(iv) the design, construction and demolition of temporary facilities to support passenger services during construction of the New Facilities;

(v) the design and construction of the New Terminal B Facilities replacing the Existing Terminal B Facilities;

(vi) the design and construction of the elevated and at-grade pedestrian walkway connection between the New Terminal B Facilities and the new West Garage (the "**New Pedestrian Walkway**");

(vii) the decommissioning and demolition of the Existing CHRP;

(viii) the design and construction of the New CHRP;

(ix) the design and construction of the CRWD;

(x) the design and construction of such portion of the hydrant aircraft fueling infrastructure that will be located within the contiguous aircraft ramp areas included in the New Terminal B Facilities (such portion of the hydrant aircraft fueling infrastructure, together with the New Terminal B Facilities, the New Pedestrian Walkway, the New CHRP and the CRWD, the "**New Facilities**");

(xi) the demolition and removal of the below grade vaults and above grade masonry walls of the National Grid Gate and Governor Station following National Grid's decommissioning thereof;

(xii) the design and construction of the Central Hall;

(xiii) the fit-out of Building 30 and relocation of Port Authority staff from the Existing Terminal B Facilities to Building 30 (the "**Building 30 Fit-Out**");

(xiv) the design and construction of improvements to the public airport roads and utilities associated with such roadway improvements (the "**Roadway Network**");

(xv) the design and construction of replacement Utilities and new Utilities serving the Existing Facilities and, when constructed, the Existing Facilities and the New Facilities (the "**Utilities Replacement**");

(xvi) the design and construction of a new West Garage and associated toll plaza serving the New Terminal B Facilities (the "**West Garage**"); and

(xvii) airfield modifications between the New Terminal B Facilities contiguous aircraft ramp and apron area and the adjacent taxiways, as depicted on Exhibit 28-E (*Temporary Rights of Access*) (together with the Building 30 Fit-Out, the design and construction of the West Garage and the Roadway Network, and the Utilities Replacement, the "**New Improvements**");

all, as described in more detail in the Requirements and Provisions for Work (collectively, the "**Construction Project**").

Except as otherwise expressly provided in this Agreement or in the Requirements and Provisions for Work, the Construction Project (or any Construction Segment or New Facilities Construction Milestone), once completed, shall become a part of the Premises; provided, that the New Improvements shall not form a part of the Premises. Any PNTP Work performed by the Lessee under the PNTP Agreement prior to the Lease Commencement Date shall, upon execution of this Agreement, be deemed to have been performed by the Lessee pursuant to, and subject to the terms and conditions of, this Agreement.

(b) General Duties. In addition to performing all other requirements of the Project Documents, the Lessee shall:

(i) furnish all design and other services, provide all materials, equipment and labor and undertake all efforts necessary or appropriate (excluding only those materials, services and efforts which the Project Documents expressly specify will be undertaken by the Port Authority or other Persons) to construct the Construction Project and to maintain it during construction and to achieve Substantial Completion by the Guaranteed Substantial Completion Date and Final Acceptance by the Guaranteed Final Acceptance Date;

(ii) ensure that all D&C Work is performed in accordance with the Requirements and Provisions for Work, the Released For Construction Documents and the other Project Documents;

(iii) ensure that the Project Director, or a designated person thereof previously approved by the Port Authority, is present at all times during the performance of any Construction Work to perform the obligations required under the Project Documents;

(iv) comply with, and require that all Contractors, Suppliers and other Persons performing any of the D&C Work comply with, all requirements of all Applicable Laws, Applicable Standards and Governmental Approvals;

(v) cooperate with the Port Authority and Governmental Entities with jurisdiction in all matters relating to the D&C Work, including their review, inspection, testing and oversight of the design and construction (including, demolition activities) of the Construction Project as required herein or by Applicable Law, Applicable Standards and Governmental Approvals; and

(vi) exercise Reasonable Efforts to mitigate any delay and any damages due to delay regardless of the cause of the delay, including by re-sequencing, reallocating, or redeploying the Lessee's and its Contractors' and Suppliers' employees to other work, as appropriate.

(c) D&C Contract(s). The Lessee shall cause the D&C Work to be performed and completed by one (1) or more qualified D&C Contractors pursuant to one (1) or more D&C Contracts. As of the Lease Commencement Date the Lessee has entered into the Design-Build Contract for the LaGuardia Airport Central Terminal Building Replacement Project, dated as of June 1, 2016 with a joint venture among Skanska USA Building Inc., Skanska USA Civil Northeast Inc. and Walsh Construction Company II, LLC, and until Final Acceptance the Lessee shall ensure the initial D&C Contract or a replacement D&C Contract acceptable to the Port Authority in accordance with Section 19.5 (*Replacement of D&C Contractor or Concessions Manager*) remains in full force and effect.

(d) [Reserved].

(e) Performance, Design and Construction Standards. With respect to the Lessee's performance of the D&C Work, subject to the terms and conditions of this Agreement, (i) the Lessee shall comply with, and shall cause the D&C Work and the Construction Project and all components thereof (including the design, engineering, construction, commissioning and completion of the Construction Project, each Construction Segment and each New Facilities Construction Milestone and all facilities and equipment included within the Construction Project) to comply with, Best Management Practices, Applicable Laws, Applicable Standards, Governmental Approvals, the Requirements and Provisions for Work and the other Project Documents, (ii) all engineering and design services shall be provided in accordance with Best Management Practices, Applicable Laws, Applicable Standards, Governmental Approvals, the Requirements and Provisions for Work and the other Project Documents, and (iii) the Construction Project shall be constructed and erected in a good and workmanlike manner in accordance with the preceding clauses (i) and (ii). Except as otherwise expressly provided in this Agreement, the standard of performance set forth in this Section 10.1(e) (*Performance, Design and Construction Standards*) shall apply to all aspects of the D&C Work, and this Section 10.1(e) (*Performance, Design and Construction Standards*) shall be deemed to be incorporated by reference into each provision of the Project Documents describing the D&C Work, the Lessee's obligations to perform, and cause to be performed, the D&C Work, or referring to the "requirements of this Agreement," "requirements of the Project Documents" or words of similar effect.

(f) D&C Work and Project Schedule.

(i) The Preliminary Project Baseline Schedule will be the basis for monitoring the Lessee's performance of the D&C Work until such time as the initial Project Baseline Schedule has been approved by the Port Authority.

(ii) The Lessee and the Port Authority will conduct progress and other meetings in accordance with Section 3.1 of the General Conditions. As part of, and in conjunction with, such meetings, the Lessee will provide the Port Authority with any proposed update of the Project Baseline Schedule in accordance with the Requirements and Provisions for Work. Additionally, the Lessee shall timely submit such reports, plans, updates, records and other items during the course of performing Construction Work as are required by the Requirements and Provisions for Work and the other Project Documents. The Parties further agree to abide by the terms and procedures set forth in the Requirements and Provisions for Work pertaining to project management and coordination matters.

(iii) Except as otherwise expressly provided in this Agreement or the other Project Documents, the Lessee will be financially and legally responsible for all damage to the Premises, LGA Airport and third-party property resulting from the D&C Work. The Port Authority will not be responsible for any construction means and methods of the Lessee or liability ensuing therefrom.

(iv) Whenever required by the Port Authority, the Lessee will provide in writing a general description of the arrangements and methods that the Lessee proposes to adopt for the execution of the D&C Work.

(v) The Lessee will not significantly alter the Project Baseline Schedule, including altering any scheduled New Facilities Construction Milestone Completion Date, the scheduled Substantial Completion Date or the scheduled Final Acceptance Date, or such arrangements and methods described in clause (iv) above, without first informing the Port Authority, and the Lessee will coordinate any such alterations to take into account the Port Authority's resources and the work to be carried out by the Port Authority's separate contractors. If any alteration to the Project Baseline Schedule affects the Critical Path or any scheduled New Facilities Construction Milestone Completion Date, adversely or materially affects the Port Authority's Oversight resources or the work carried out by the Port Authority's separate contractors, the Lessee will not make such alteration without Port Authority Approval.

(vi) If the progress of the D&C Work is more than ninety (90) days behind the then-current Project Baseline Schedule, the Lessee will submit an Alternative Solutions Report in accordance with Section 3.2.3 of the General Conditions that includes a Recovery Schedule, and will reasonably consider revisions to the Project Baseline Schedule proposed by the Port Authority to achieve completion within the timeframe set forth in this Agreement.

(vii) (A) Whenever the Project Baseline Schedule shows any New Facilities Construction Milestone Completion Date(s) occurring after the respective Guaranteed New Facilities Construction Milestone Completion Date(s), or (B) if the Lessee at any time determines that any New Facilities Construction Milestone Completion Date is expected to occur after the applicable Guaranteed New Facilities Construction Milestone Completion Date, the Lessee will, within ten (10) days of the occurrence of any event set forth in clause (A) or (B) above, submit to the Port Authority an Alternative Solutions Report that includes a Recovery Schedule. Such Recovery Schedule shall be subject to Port Authority Approval and shall set forth a reasonably detailed description of the steps which the Lessee intends to take to achieve the affected New Facilities Construction Milestone(s) by the applicable Guaranteed New Facilities Construction Milestone Completion Date(s) or an alternative date or dates. Notwithstanding anything in this Section 10.1(f)(vii), no extension of or delay to the Guaranteed Substantial Completion Date shall be permitted, except as otherwise expressly provided for in this Agreement. The Port Authority will respond within fifteen (15) days of the receipt of such Recovery Schedule. If the Port Authority disapproves the submitted Recovery Schedule (or a portion thereof), the Lessee will resubmit the revised Recovery Schedule within seven (7) days of the disapproval. The Lessee shall diligently implement each approved Recovery Schedule and provide to the Port Authority monthly updates thereto and if the Lessee can demonstrate that, despite use of diligent efforts, the Lessee cannot achieve the Guaranteed New Facilities Construction Milestone Completion Date(s) or such alternative date(s) in accordance with the applicable approved Recovery Schedule, the Lessee shall submit to the Port Authority an amended Alternative Solutions Report and Recovery Schedule for Port Authority Approval and shall diligently implement such Recovery Schedule, in each case, in accordance with this Section 10.1(f)(vii).

(viii) If the Lessee fails to achieve any New Facilities Construction Milestone Completion Date by the corresponding Guaranteed New Facilities Construction Milestone Completion Date, the Lessee shall promptly and diligently enforce its rights and remedies against the D&C Contractor under the D&C Contract with respect to the payment by the D&C Contractor of delay liquidated damages.

(g) The Lessee shall, during the performance of the D&C Work in the vicinity of any ground monitoring wells installed by or on behalf of the Port Authority with respect to the Hangar 2 site, take care not to disturb, damage or destroy such ground monitoring wells. However, given the proximity of the ground monitoring wells to the D&C Work, neither the Lessee nor its Contractors shall have any liability for any disturbance, damage or destruction of such ground monitoring wells unless due to the Lessee's or its Contractors' gross negligence or intentional misconduct.

Section 10.2 Nonconforming Work

(a) The Lessee shall be responsible for the rectification of all Nonconforming Work, including, to the extent necessary, through removal and/or replacement, whether discovered by the Lessee or by the Port Authority.

(b) The Lessee shall prepare and submit for Port Authority Approval a Corrective Action Plan with respect to any Nonconforming Work in accordance with the requirements of Section 3.3 of the General Conditions. The Lessee shall promptly implement the Corrective Action Plan approved by the Port Authority. If the Lessee fails, within thirty (30) days after receipt of written notice from the Port Authority of any Nonconforming Work, to provide a Corrective Action Plan acceptable to the Port Authority regarding correction of such Nonconforming Work or thereafter fails to commence and diligently continue correction of such Nonconforming Work pursuant to such Corrective Action Plan, the Port Authority may, without prejudice to any other remedy the Port Authority may have hereunder or under Applicable Law, correct the same or cause it to be corrected. If the Port Authority corrects, or causes to be corrected, such Nonconforming Work in accordance with Section 28.1 (*Right to Perform the Lessee's Obligations*), the Lessee shall reimburse the Port Authority for an amount equal to one hundred fifteen percent (115%) of all out-of-pocket costs, expenses, damages, penalties and other charges directly paid or incurred by it in connection therewith (together with, but without duplication of, late charges calculated pursuant to Section 35.16(a) (*Late Charges*) in accordance with Section 28.2 (*Reimbursement by the Lessee*)).

(c) Subject to Section 34.1 (*Consequential Losses*), nothing contained in the Project Documents shall in any way limit the right of the Port Authority to assert claims for damages resulting from Defects in the D&C Work for the period of limitations prescribed by Applicable Law, and the foregoing shall be in addition to any other rights or remedies the Port Authority may have hereunder or under Applicable Law.

Section 10.3 Conditions to Design NTP

As of the Lease Commencement Date, the Lessee has satisfied all of the conditions set forth in this Section 10.3 (*Conditions to Design NTP*) and the Port Authority has issued the Design NTP to the Lessee, authorizing commencement of the Design Work. Notwithstanding the Port Authority's issuance of the Design NTP, any Design Work (other than the Design Work included in the PNTP Work) undertaken prior to the issuance of the Design NTP shall be at the Lessee's sole risk and expense. Conditions to the Port Authority's issuance of the Design NTP are:

(a) insurance policies identified in Article 20 (*Insurance*) as being required during the Construction Period (other than builder's risk insurance) have been obtained and are in full force and effect in accordance with Article 20 (*Insurance*) and the Lessee has delivered to the Port Authority verification of such insurance coverage as required by Article 20 (*Insurance*);

(b) the Lessee has, or has caused to be, developed and delivered to the Port Authority and has received Port Authority Approval of (i) the Preliminary Project Baseline Schedule in accordance with the requirements set forth in Section 3.2 of the General Conditions, (ii) the Project Management and Execution Plan in accordance with Section 3.3.1 of the Design and Construction Requirements, (iii) the Design Plan in accordance with Section 3.3.2 of the Design and Construction Requirements and (iv) the Design Quality Control Plan in accordance with Section 6.1 of the Design and Construction Requirements;

(c) the Lessee has satisfied all other requirements of the Project Documents that are required to be satisfied prior to commencement of the Design Work, including delivery to the Port Authority (and receipt, if applicable, of Port Authority Approval or addressing comments provided pursuant to Port Authority Comment) of all Submittals relating to the Design Work required by the Project Management and Execution Plan or the Project Documents, in the form and content required by such Project Management and Execution Plan or the Project Documents;

(d) there exists no court order that restrains, enjoins, challenges or delays performance of the Work;

(e) the Lessee has certified to the Port Authority that all representations and warranties of the Lessee set forth in Section 22.1 (*Lessee Representations and Warranties*) remain true and correct in all material respects (except for such representation and warranties made as of a specified date, which representations and warranties shall remain true and correct as of such specified date); and

(f) there exists no Event of Default for which the Lessee has received notice from the Port Authority, and the Lessee has certified to the Port Authority that there exists no condition, which with the lapse of time or delivery of notice to the Lessee, or both, would constitute an Event of Default.

Section 10.4 Conditions to Construction NTPs

In addition to the conditions set forth in Section 10.3 (*Conditions to Design NTP*) being and remaining satisfied and except as permitted by the PNTP Agreement, the Lessee shall not commence or permit commencement of the Construction Work (i) with respect to any New Facilities Construction Milestone, until the Port Authority's issuance of an individual Construction NTP with respect to that New Facilities Construction Milestone or a Full Construction NTP authorizing the Lessee to commence Construction Work (it being understood that, in the case of a Full Construction NTP, no separate or additional notice to proceed shall be required for the commencement of Construction Work with respect to subsequent New Facilities Construction Milestones) or (ii) with respect to a Construction Segment, until the Port Authority's issuance of a Construction Segment NTP in respect of such Construction Segment (it being understood that the commencement of Construction Work with respect to each Construction Segment, if any, shall be required to be separately authorized by the Port Authority's issuance of a Construction Segment NTP for the relevant Construction Segment, except where a Full Construction NTP has been issued). The Port Authority shall issue the Full Construction NTP or a Construction Segment NTP, as the case may be, within fifteen (15) days after request by the Lessee; provided, that all the conditions of this Section 10.4 (*Conditions to Construction NTPs*) have been and remain satisfied:

(a) the Lessee has, or has caused to be, developed and delivered to the Port Authority and has received Port Authority Approval of (i) the Released For Construction Documents, (ii) the Construction Plan in accordance with Section 3.3.2 of the Design and Construction Requirements, (iii) the Project Plan for Safety Management in accordance with

Section 3.3.4 of the Design and Construction Requirements, (iv) the Project Plan for Security Management in accordance with Section 3.3.5 of the Design and Construction Requirements, (v) the Risk Management Plan in accordance with Section 3.3.6 of the Design and Construction Requirements, (vi) the SWPPP in accordance with Section 16.3(b) (*Stormwater Pollution Prevention Plan*) and Section 7.7 of the Design and Construction Requirements, (vii) the Environmental Management Plan in accordance with Section 16.1(b) (*Environmental Management Plan*) and Section 7.8 of the Design and Construction Requirements, (viii) the Construction Quality Control Plan and the Witness and Hold Point Program in accordance with Sections 6.2 and 6.9 of the Design and Construction Requirements, (ix) roadway circulation diagrams in accordance with Section 6.2.1 of the Operational Requirements and (x) each other Submittal required to be submitted to, and approved by, the Port Authority prior to commencement of the Construction Work as described in the Design and Construction Requirements and the other Project Documents, in each case, for the entire Construction Project, the applicable New Facilities Construction Milestone or the applicable Construction Segment, as the case may be;

(b) all plans, procedures, manuals and reports, including relevant portions of the O&M Manual, for performing Operations and Maintenance Work during the Phased Construction O&M Period have been submitted and, if applicable, approved by the Port Authority as required under the Project Documents;

(c) all Governmental Approvals necessary to begin the Construction Work for the entire Construction Project, the applicable New Facilities Construction Milestone or the applicable Construction Segment, as the case may be, have been obtained and the Lessee has furnished to the Port Authority fully executed copies of such Governmental Approvals;

(d) the Lessee has satisfied all conditions set forth in applicable Governmental Approvals for the Construction Work for the entire Construction Project, the applicable New Facilities Construction Milestone or the applicable Construction Segment, as the case may be, that are required to be so satisfied at such time;

(e) builder's risk insurance policies have been obtained and are in full force and effect in accordance with Article 20 (*Insurance*) and the Lessee has delivered to the Port Authority verification of such insurance coverage as required by Article 20 (*Insurance*);

(f) the Lessee has satisfied all other requirements of the Project Documents that are required to be satisfied prior to commencement of the Construction Work for the entire Construction Project, the applicable New Facilities Construction Milestone or the applicable Construction Segment, as the case may be; and

(g) facilities to be provided by the Lessee for the Port Authority's use, as set forth in Section 1.12 of the General Conditions, are operational.

If the Lessee seeks a Construction Segment NTP or an individual Construction NTP for a New Facilities Construction Milestone without first obtaining a Full Construction NTP, it may at any time thereafter seek a Full Construction NTP subject to satisfying the applicable conditions

for the issuance of a Full Construction NTP. If the Lessee seeks a Full Construction NTP, the Port Authority may, as a condition to the issuance thereof, require the Lessee to provide additional information or obtain subsequent approval from the Port Authority with respect to discrete portions of the Construction Work that the Port Authority determines are not adequately addressed in the materials provided in the Lessee's request for a Full Construction NTP.

Section 10.5 Partial Completion

(a) Without affecting the obligations of the Lessee under Section 10.6 (*Substantial Completion*) to achieve Substantial Completion as evidenced by the Port Authority's issuance of the Certificate of Substantial Completion, the Lessee shall be required to apply for a Temporary Certificate of Authorization to Occupy or Use whenever the Lessee contemplates, in the sequencing of its Construction Work, any New Facilities Construction Milestone or any Construction Segment, as applicable, being completed and made available for use by Patrons and other third parties.

(b) The Lessee shall not, prior to Substantial Completion, use or permit any portion of the Construction Project (whether new construction or modification to existing construction) to be used by Patrons or any other third parties until a Temporary Certificate of Authorization to Occupy or Use has been issued by the Port Authority for the applicable New Facilities Construction Milestone or the applicable Construction Segment; provided, however, if the Lessee subsequently makes any additional, material modifications (other than tenant fit-out) to such portion of the Construction Project, a new Temporary Certificate of Authorization to Occupy or Use will be required before such additional modifications may be brought into use by the Lessee, Patrons, the Port Authority and other third parties. Nothing in this Section 10.5(b) shall be construed to prevent the Lessee or any other Lessee-Related Entities from using any portion of the Premises or the areas subject to the Temporary Rights of Access to perform the D&C Work or tenant fit-out, exercising any of its rights hereunder or fulfilling any of its other obligations hereunder.

(c) The Port Authority will, following the Lessee's request issue a Temporary Certificate of Authorization to Occupy or Use:

(i) with respect to the applicable New Facilities Construction Milestone or the applicable Construction Segment, as the case may be, and within the time periods set forth in Sections 10.5(d) through 10.5(g) below, at such time as the Port Authority has determined in accordance with this Section 10.5 (*Partial Completion*) that the Lessee has satisfied all of the following conditions to Partial Completion:

(A) all equipment and systems shall have been installed, commissioned and activated as required for the applicable portion of the Construction Project in accordance with Section 25 of the Design and Construction Requirements and the TCAP and such applicable portion is otherwise complete for purposes of tenant fit-out in compliance with a Phasing Plan (as defined in the TCAP) approved by the Port Authority; it being understood that, solely with respect to the individual tenant spaces in the New Facilities intended to be subleased to Concession

Sublessees or Airline Sublessees (to the extent of any Subleases for portions of the New Facilities related to airline passenger services), the Lessee shall only be required to install the basic infrastructure and equipment for the supply of necessary Utilities to such tenant spaces and shall be required to provide fire alarm, fire protection and space separation between occupied and construction sites (it being further understood and agreed that nothing in this Agreement shall prevent the Lessee or its Contractor from performing the D&C Work in said individual tenant spaces concurrently with the performance of tenant fit-out; provided, that, except as otherwise set out in this Agreement, the Port Authority shall have no liability to the Lessee or its Contractors performing the D&C Work concurrently with the performance of tenant-fit out in connection with such D&C Work), but shall not be required to install the fit-out of such tenant spaces to the individual specifications and needs of each Sublessee in order to satisfy the requirements of this clause (A);

(B) the Lessee shall have completed the relevant D&C Work in accordance with the Construction Documents, the Released for Construction Documents and the requirements of the Project Documents, excluding only Punch List Items;

(C) all required Governmental Approvals needed for the normal use, operation and maintenance and/or to commence tenant fit-out (if such fit-out has not commenced as at the date of the request) of the applicable portion of the Construction Project shall have been received by the Lessee and copies thereof shall have been provided to the Port Authority, the Lessee shall have certified that the Lessee has received, and paid all associated fees due and owing for, all applicable Governmental Approvals required for performing Operations and Maintenance Work associated with such portion of the Construction Project, and shall have provided accurate and complete copies thereof to the Port Authority, such Governmental Approvals shall be final and non-appealable, and there shall exist no uncured violation of the terms and conditions of any such Governmental Approval;

(D) with respect to the applicable portion of the Construction Project, all applicable conditions set forth in Sections 4.3.2.1, 4.3.2.2 and 6.2.2 of the TCAP (including (1) acceptance by the Port Authority of the Engineer of Record or the Architect of Record's certification of completion and a Conformed Set of TAA Design Documents of the D&C Work, which is the subject of the request for the Temporary Certificate of Authorization to Occupy or Use) for the respective portion of the Construction Project and (2) satisfactory Port Authority inspections) shall have been satisfied and the Lessee shall be required to cooperate and coordinate its efforts in all respects to facilitate the Port Authority's inspection of such portion of the Construction Project (including any portion that is otherwise complete for purposes of tenant fit-out) and the Port Authority's audit review of all compliance related documents in accordance with the TCAP;

(E) all certifications for (1) the relevant parts of the Final Design Documents and (2) all mechanical, electrical, electronics and other systems, in each case, for the applicable portion of the Construction Project shall have been received in accordance with the requirements of the Project Documents;

(F) the Lessee shall have certified that it has completed necessary training of personnel that will be performing the Operations and Maintenance Work associated with the applicable portion of the Construction Project and other necessary personnel and has provided the Port Authority with copies of training records and course completion certificates issued to each of the relevant personnel;

(G) the Lessee shall have complied with all other aspects of the Project Documents with respect to completion of the relevant D&C Work;

(H) all Submittals with respect to the relevant portion of the D&C Work (including the reports of Special Inspection) that the Lessee is required to submit by the Project Documents shall have been submitted to the Port Authority and, if required under the Project Documents, approved by the Port Authority;

(I) with respect to the New Facilities, all plans, procedures, manuals and reports, including applicable portions of the O&M Manual, and other Submittals required for performing Operations and Maintenance Work associated with the applicable portion of the Premises during the O&M Period and/or performing tenant fit-out (if such fit-out has not commenced as at the date of the request) shall have been submitted and, if applicable, approved by the Port Authority as required under the Project Documents;

(J) insurance policies identified in Article 20 (*Insurance*) as being required for the Operations and Maintenance Work and/or tenant fit-out (if such fit-out has not commenced as at the date of the request) shall have been obtained and shall be in full force and effect in accordance with Article 20 (*Insurance*) with respect to the relevant part of the Premises that will be made available for use by Patrons and other third-parties and the Lessee shall have delivered to the Port Authority verification of insurance coverage as required by Article 20 (*Insurance*);

(K) the Lessee shall have prepared, in consultation with the Port Authority, and submitted the Punch List in respect of the applicable portion of the Construction Project in accordance with the procedures and schedules set forth in the Project Management and Execution Plan and such Punch List shall have received Port Authority Approval; and

(L) subject to the Plan for New Improvements Construction Segments, any New Improvements or any portion of the New Improvements that constitutes a Construction Segment that is necessary for the normal use, operation and

maintenance of the applicable portion of the Construction Project, has been completed and the Lessee has satisfied all applicable conditions to Partial Completion set forth in this Section 10.5(c) with respect to such New Improvements or Construction Segment, as the case may be; and

(ii) with respect to a Phased Occupancy Area, upon the satisfaction by the Lessee of all applicable conditions and requirements set forth in Sections 4.3.2 (Close-Out and Occupancy Activities) and 6.2 (Phased Construction and Occupancy Procedure) of the TCAP. In accordance with the requirements of the TCAP, the Lessee's AOR or EOR shall request a partial inspection of any Phased Occupancy Area and the Lessee shall be required to cooperate and coordinate its efforts in all respects to facilitate the Port Authority's inspection of any Phased Occupancy Area and the Port Authority's audit review of all compliance related documents in accordance with the TCAP.

(d) The Lessee shall provide the Port Authority with not less than sixty (60) days' prior written notification of the date the Lessee expects to achieve Partial Completion with respect to any New Facilities Construction Milestone or Construction Segment, as applicable, so as to allow the Port Authority to commence its review of the satisfaction of the conditions to Partial Completion. Notification shall include a list of all specific requirements that were or will be achieved to allow the Port Authority's issuance of a Temporary Certificate of Authorization to Occupy or Use.

(e) No later than forty (40) days prior to the date on which the Lessee expects to achieve all of the conditions to Partial Completion, the Lessee shall meet and confer with the Port Authority with respect to the list of requirements provided pursuant to Section 10.5(d). Subsequent to this initial meeting, the Lessee and the Port Authority shall meet, confer and exchange information on a regular basis with the goal being to facilitate the Port Authority's timely inspection and determination of whether the Lessee has satisfied all of the conditions required to achieve Partial Completion.

(f) The Lessee shall thereafter provide written notification to the Port Authority of the date it has satisfied all conditions for Partial Completion of the applicable New Facilities Construction Milestone or Construction Segment, together with the relevant supporting documentation. Within thirty (30) days of receipt of the Lessee's written notification and all required documentation and Submittals per the Project Documents, the Port Authority shall conduct an inspection of the applicable portion of the Construction Project, a review of the applicable Final Design Documents and Construction Documents or the applicable portions thereof and such other investigation as may be necessary to evaluate whether Partial Completion of the applicable New Facilities Construction Milestone or Construction Segment has been achieved.

(g) Within the thirty (30)-day period referenced in Section 10.5(f), the Port Authority shall either (i) issue a Temporary Certificate of Authorization to Occupy or Use regarding the applicable New Facilities Construction Milestone or Construction Segment, effective as of the date that the Port Authority accepts that all conditions to Partial Completion were satisfied or (ii) notify the Lessee in writing of the reasons why the conditions to Partial

Completion have not been satisfied; provided, that in the event that any condition has not been satisfied, the Lessee shall be entitled to resubmit the notification provided pursuant to Section 10.5(f) (together with the relevant supporting documentation and inspection verification) once it believes that the relevant condition has been satisfied, whereupon, if the Port Authority agrees that such condition has been satisfied, the Port Authority will issue a Temporary Certificate of Authorization to Occupy or Use in accordance with this Section 10.5(g). If the Parties cannot agree as to the occurrence of Partial Completion, either Party may refer the matter to the Dispute Resolution Procedures set forth in Article 33 (*Dispute Resolution Procedures*); provided, that there may be no extension of the fifteen (15)-day negotiation period pursuant to Section 33.1(b) and after the conclusion of such fifteen (15)-day period, any Dispute of a technical nature shall be determined by the Chief Engineer, in his or her sole discretion, as set forth in Section 33.3 (*Chief Engineer's Jurisdiction*).

(h) Once the Port Authority issues a Temporary Certificate of Authorization to Occupy or Use with respect to Partial Completion of any of the New Improvements (or any portion of the New Improvements that constitutes a Construction Segment), upon such issuance, (i) the Lessee shall promptly transfer control of the applicable New Improvement or Construction Segment, as the case may be, to the Port Authority for the permanent operation and maintenance by the Port Authority and (ii) the Lessee shall have no further obligations with respect to such New Improvement or Construction Segment and the associated Temporary Rights of Access except (A) as required to satisfy the conditions to Final Acceptance set forth in Section 10.7 (*Final Acceptance*) (provided, that solely for the purpose of processing such Final Acceptance, all reference to the Construction Project shall be changed to reference the applicable New Improvement or Construction Segment, as the case may be) and (B) as required by Sections 10.8 (*Design and Construction Warranties*), 21.1 (*Indemnification by the Lessee*) and 31.3 (*Lessee's Intellectual Property Indemnity*).

(i) Following Lease Commencement, the Lessee shall prepare and submit for Port Authority Approval, a plan that (a) sets forth the Construction Segments, together with a written narrative describing in reasonably sufficient detail the Lessee's plans with respect to Partial Completion with respect to such Construction Segments and (b) provides a reasonably detailed description of any portion of the New Improvements that constitutes a Construction Segment, that is necessary for the normal use, operation and maintenance of any portion of the Construction Project, including any New Facilities Construction Milestone, and is required to be completed in connection with Partial Completion of such portion of the Construction Project or will be required to be completed as set out in Exhibit 21 [redacted] in order that any subsequent Work can be carried out in order to allow the normal use, operation or maintenance of the New Facilities, or the progression of the Construction Work in accordance with the Project Baseline Schedule, by the relevant milestone dates (the "**Plan for New Improvements Construction Segments**").

Section 10.6 Substantial Completion

(a) The Port Authority will issue, following the Lessee's request and within the time periods set forth in Sections 10.6(b) through 10.6(g) below, a written certificate that the Lessee has achieved Substantial Completion (the "**Certificate of Substantial Completion**")

after the Port Authority has determined that the Lessee has satisfied all of the following conditions with respect to the entire Construction Project (other than with respect to (1) the Central Hall, (2) except for the condition set forth in Section 10.6(a)(x), which the Lessee shall be required to satisfy, (x) such New Improvements, or portions thereof corresponding to any Construction Segments, that achieved Partial Completion prior to the date of the Substantial Completion Notice, and have been transferred to the Port Authority in accordance with Section 10.5(h) and (y) such New Facilities, or portions thereof corresponding to New Facilities Construction Milestones, that achieved Partial Completion prior to the date of the Substantial Completion Notice; provided, that notwithstanding this clause (y), the Port Authority may review and inspect the status of any Punch List items (that have not been completed) with respect to any New Facilities, or any portions thereof corresponding to New Facilities Construction Milestones, that achieved Partial Completion prior to the date of the Substantial Completion Notice and may also review and inspect any equipment or systems that (A) achieved Partial Completion prior to the date of the Substantial Completion Notice for the purpose of determining that said equipment or systems operate and function properly in light of subsequent New Facilities Construction Milestones for which the Lessee is seeking Partial Completion or for Substantial Completion, or (B) that did not achieve Partial Completion prior to the date of the Substantial Completion Notice, and the Port Authority determines that it is necessary to inspect the integrity and functionality of such equipment or systems as a whole. It is understood, however, that notwithstanding anything herein, including the right of the Port Authority to review and inspect previously accepted equipment or systems that achieved Partial Completion, nothing in this Section 10.6 (*Substantial Completion*) or this Agreement shall in any way increase or expand the Warranty provided pursuant to Section 10.8 (*Design and Construction Warranties*).

(i) other than Punch List Items, the Lessee shall have completed all D&C Work in accordance with the requirements of the Construction Documents, the Released for Construction Documents and the other Project Documents (including installation, commissioning and activation of all equipment and systems required to be installed, commissioned and activated by the Lessee in accordance with Section 25 of the Design and Construction Requirements); it being understood that, solely with respect to the individual concession spaces in the New Facilities intended to be subleased to Concession Sublessees or Airline Sublessees (to the extent of any Subleases for portions of the New Facilities related to airline passenger services), the Lessee shall only be required to install the basic infrastructure and equipment for the supply of necessary Utilities to such concession spaces, and shall not be required to install the fit-out of such concession spaces to the individual specifications and needs of each Sublessee in order to satisfy the requirements of this clause (i);

(ii) (A) all certifications for the Final Design Documents and all mechanical, electrical, electronics and other systems shall have been received in accordance with the requirements of the Project Documents (provided, that for the avoidance of doubt, LEED Silver Certification or LEED Gold Certification shall not be a condition to Substantial Completion); and (B) inspection reports for the New Facilities shall have been made in accordance with the requirements of the Project Documents;

(iii) the Lessee shall have certified that all D&C Work (other than Punch List Items) has been completed in accordance with the requirements of the Project Documents;

(iv) the Lessee shall have certified that the Lessee has received, and paid all associated fees due and owing for, all applicable Governmental Approvals required for performing Operations and Maintenance Work at the New Facilities, and shall have provided accurate and complete copies thereof to the Port Authority, such Governmental Approvals shall be final and non-appealable, and there shall exist no uncured violation of the terms and conditions of any such Governmental Approval;

(v) all plans, procedures, manuals and reports, including the O&M Manual, for Operations and Maintenance Work to be performed during the O&M Period, shall have been submitted and, if required under the Project Documents, shall have received Port Authority Approval;

(vi) all other Submittals required to have been provided by the Lessee prior to or on the Substantial Completion Date as set forth in the D&C Schedule of Submittals, the O&M Schedule of Submittals, the applicable Requirements and Provisions for Work or the other Project Documents (including the reports of Special Inspection, O&M Manual updates, Capital Asset Management Plan updates, the O&M Quality Control Plan, O&M Quality Reports and the Asset Inventory Report updates) shall have been submitted and, if required under the Project Documents, approved by the Port Authority;

(vii) the Lessee shall have prepared, in consultation with the Port Authority (including as contemplated in Section 10.6(g)), and submitted the Punch List in respect of the New Facilities in accordance with the procedures and schedules set forth in the Project Management and Execution Plan and such Punch List shall have received Port Authority Approval, which Punch List shall include any remaining items (if any) from the respective Punch Lists related to the New Facilities Construction Milestones that achieved Partial Completion prior to the date of the Substantial Completion Notice;

(viii) all insurance policies identified in Article 20 (*Insurance*) as being required for the Operations and Maintenance Work, shall have been obtained and shall be in full force and effect in accordance with Article 20 (*Insurance*), and the Lessee shall have delivered to the Port Authority verification of insurance coverage as required by Article 20 (*Insurance*);

(ix) the Lessee shall have certified that it has completed necessary training of personnel that will be performing the Operations and Maintenance Work at the New Facilities and other necessary personnel and has provided the Port Authority with copies of training records and course completion certificates issued to each of the relevant personnel; and

(x) any Defects in any portion of the Construction Project, including any Construction Segment or New Facilities Construction Milestone, existing during the

applicable Warranty Period, the repair and rehabilitation of which is the responsibility of the Lessee or its Contractors pursuant to the obligations set forth in Section 10.8 (*Design and Construction Warranties*) shall have been rectified in full, or are in the process of being rectified, in each case, to the Port Authority's satisfaction.

(b) The Port Authority will issue, following the Lessee's request and within the time periods set forth in Sections 10.6(c) through 10.6(g) below, a written certificate that the Lessee has achieved Central Hall Substantial Completion (the "**Certificate of Central Hall Substantial Completion**") after the Port Authority has determined that the Lessee has satisfied all of the following conditions with respect to the Central Hall:

(i) other than Punch List Items, the Lessee shall have completed all D&C Work with respect to the Central Hall in accordance with the requirements of the Construction Documents, the Released for Construction Documents and the other Project Documents (including installation, commissioning and activation of all equipment and systems required to be installed, commissioned and activated by the Lessee in accordance with Section 25 of the Design and Construction Requirements); it being understood that, solely with respect to the individual concession spaces in the Central Hall intended to be subleased to Concession Sublessees or Airline Sublessees (to the extent of any Subleases for properties related to airline passenger services), the Lessee shall only be required to install the basic infrastructure and equipment for the supply of necessary Utilities to such concession spaces, and shall not be required to install the fit-out of such concession spaces to the individual specifications and needs of each Sublessee in order to satisfy the requirements of this clause (i);

(ii) all inspection reports with respect to the Central Hall shall have been made in accordance with the requirements of the Project Documents;

(iii) the Lessee shall have certified that all D&C Work with respect to the Central Hall (other than Punch List Items) has been completed in accordance with the requirements of the Project Documents;

(iv) the Lessee shall have certified that the Lessee has received, and paid all associated fees due and owing for, all applicable Governmental Approvals required for performing Operations and Maintenance Work at the Central Hall, and shall have provided accurate and complete copies thereof to the Port Authority, such Governmental Approvals shall be final and non-appealable, and there shall exist no uncured violation of the terms and conditions of any such Governmental Approval;

(v) all Submittals required to have been provided by the Lessee prior to the date of the Central Hall Substantial Completion as set forth in this Agreement, the Central Hall Requirements and Provisions for Work or the other Project Documents shall have been submitted and, if required under the Project Documents, approved by the Port Authority;

(vi) the Lessee shall have prepared, in consultation with the Port Authority (including as contemplated in Section 10.6(g)), and submitted the Punch List with respect to the Central Hall in accordance with the procedures and schedules set forth in the Project Management and Execution Plan and such Punch List shall have received Port Authority Approval; and

(vii) the Lessee shall have certified that it has completed necessary training of personnel that will be performing the Operations and Maintenance Work at the Central Hall and has provided the Port Authority with copies of training records and course completion certificates issued to each of the relevant personnel.

(c) Approximately ninety (90) days prior to the date on which the Lessee expects to achieve all of the conditions to (i) Substantial Completion, the Lessee shall provide written notice to the Port Authority (the "**Substantial Completion Notice**") or (ii) Central Hall Substantial Completion, the Lessee shall provide written notice to the Port Authority (the "**Central Hall Substantial Completion Notice**"), in each case so as to allow the Port Authority to commence its review of the satisfaction of those conditions to Substantial Completion or Central Hall Substantial Completion, as applicable, amenable to being reviewed at the time of such notice. The Substantial Completion Notice or the Central Hall Substantial Completion Notice, as applicable, shall include a list of all requirements that were or will be achieved by the Lessee to allow the Port Authority's issuance of a Certificate of Substantial Completion or Certificate of Central Hall Substantial Completion, as applicable.

(d) No later than sixty (60) days prior to the date on which the Lessee expects to satisfy all conditions to Substantial Completion or Central Hall Substantial Completion, as applicable, the Lessee shall meet and confer with the Port Authority with respect to the list of requirements provided for in Section 10.6(c). Subsequent to this initial meeting, the Lessee and the Port Authority will meet, confer and exchange information on a regular basis with the goal being the Port Authority's timely inspection of the Construction Project, review of the Final Design Documents and final Construction Documents and determination of whether the Lessee has satisfied all of the conditions required for the Port Authority's issuance of a Certificate of Substantial Completion or Certificate of Central Hall Substantial Completion, as applicable.

(e) The Lessee shall thereafter provide written notification to the Port Authority of the day it has satisfied all requirements for the Port Authority's issuance of a Certificate of Substantial Completion or Certificate of Central Hall Substantial Completion, as applicable, together with all relevant supporting documentation. Within thirty (30) days of receipt of the Lessee's written notification, all required supporting documentation and all Submittals required to be provided in accordance with the Project Documents, the Port Authority shall conduct an inspection of the Construction Project and its components, a review of the Final Design Documents, final Construction Documents, other Submittals and reports, and such other investigation as may be necessary to evaluate whether Substantial Completion or Central Hall Substantial Completion, as applicable, has been achieved.

(f) Within the thirty (30)-day period referenced in Section 10.6(e), the Port Authority shall either (i) issue the Certificate of Substantial Completion or Certificate of Central Hall Substantial Completion, as applicable, effective as of the date the Port Authority accepts that all the conditions to Substantial Completion or Central Hall Substantial Completion, as applicable, were satisfied or (ii) notify the Lessee in writing of the reasons why the conditions to Substantial Completion or Central Hall Substantial Completion, as applicable, have not been satisfied; provided, that, in the event that any condition has not been satisfied, the Lessee shall be entitled to resubmit the notification provided pursuant to Section 10.6(e) (together with the relevant supporting documentation and inspection verification) once it believes that the relevant condition has been satisfied, whereupon, if the Port Authority agrees that such condition has been satisfied, the Port Authority will issue a Certificate of Substantial Completion or Certificate of Central Hall Substantial Completion, as applicable, in accordance with this Section 10.6(f). If the Parties cannot agree as to the occurrence of Substantial Completion or Central Hall Substantial Completion, as applicable, either Party may refer the matter to the Dispute Resolution Procedures set forth in Article 33 (*Dispute Resolution Procedures*).

(g) In connection with the Port Authority's issuance of the Certificate of Substantial Completion or Certificate of Central Hall Substantial Completion, as applicable, the Port Authority shall have the right in its reasonable discretion to add or remove items to or from the Punch List.

Section 10.7 Final Acceptance

(a) The Port Authority will issue, following the Lessee's request and within the time periods set forth in Sections 10.7(b) through 10.7(e) below, a written certificate that the Lessee has achieved Final Acceptance (the "**Certificate of Final Acceptance**") after the Port Authority has determined that the Lessee has satisfied all of the following conditions with respect to the entire Construction Project:

(i) all conditions to Substantial Completion and Central Hall Substantial Completion shall have remained satisfied;

(ii) all Punch List Items shall have been completed in accordance with the requirements of the Project Documents;

(iii) the Lessee shall have certified that it has acquired and properly stored, or arranged for adequate levels of readily available spare parts, resources and equipment necessary for maintenance of the Premises as identified in the Capital Asset Management Plan for the O&M Period;

(iv) all Submittals for the D&C Work (including (A) those required pursuant to Section 8 of the Design and Construction Requirements relating to sustainable design and (B) the reports of Special Inspection) that the Lessee is required by the Project Documents to submit after Substantial Completion or Central Hall Substantial Completion, as applicable, but before Final Acceptance shall have been submitted to the

Port Authority and, if required under the Project Documents, approved by the Port Authority;

(v) the Port Authority shall have received a complete set of the Record Documents for the entire Construction Project, including two (2) sets of As-Built Drawings of the Construction Work in an electronic CADD data file in a format to be designated by the Port Authority, all of which shall have conformed to the specifications of the Port Authority in the Project Documents (the receipt of a copy of said specifications prior to the execution of this Agreement being hereby acknowledged by the Lessee), together with two (2) complete hard copies of such drawings, all engineering reports, engineering analysis, boring logs, survey information, engineering design calculations and the O&M Manual in a comprehensive, coordinated package;

(vi) if any Governmental Entity with jurisdiction requires any form of certification of design, engineering or construction with respect to the Construction Project or any portion thereof, including any certifications from the Engineer of Record or the Architect of Record, as applicable, for the Construction Project and certificates of occupancy, the Lessee shall have concurrently issued identical certificates to the Port Authority;

(vii) subject to clause (viii) below, the Lessee shall have restored to their original condition any lands provided by the Port Authority for temporary access and other activities not part of the permanent work;

(viii) all aesthetic and landscaping work, with the exception of vegetative ground covering, shall have been completed and is operational, including aesthetic lighting;

(ix) all demobilization from relevant parts of the Construction Project shall have been completed, including the removal of temporary work and equipment used in performance of the Construction Work but not required for the Operations and Maintenance Work;

(x) the Lessee shall have certified to the Port Authority in writing that no overdue amounts owing to any Contractor or Supplier remain unpaid (except disputed amounts for which the Lessee or the D&C Contractor, as applicable, has established adequate reserves);

(xi) subject to Section 9.2(f), the Lessee shall have (A) certified to the Port Authority in writing that the Premises are free and clear of all Liens or Claims arising out of or in connection with the performance of the D&C Work by the Lessee or any of the Contractors, and (B) delivered to the Port Authority final Lien waivers, in form and substance satisfactory to the Port Authority, from each Contractor, other than Excepted Contractors, as necessary to support the Lessee's certification required by clause (A), or, if the Lessee is unable to obtain all such waivers, a letter of credit or bond that has received Port Authority Approval to protect the Port Authority, the Construction Project

and the Premises from any and all Claims and Liens arising out of or in connection with the performance of the D&C Work by the Lessee or any of the Contractors;

(xii) all obligations of the Lessee associated with Governmental Approvals applicable to the Construction Work shall have been completed, including the payment to any permitting agency of any amounts due pursuant to the terms of or as a result of any breaches of Governmental Approvals by the Lessee;

(xiii) with respect to any New Facilities Construction Milestone or any Construction Segment that achieved Partial Completion, all conditions set forth in Sections 4.3.2.3 and 6.2.3 of the TCAP shall have been satisfied and the Port Authority shall have issued the Final Certificate of Authorization to Occupy or Use in accordance with such sections of the TCAP); and

(xiv) with respect to the individual concession spaces in the New Facilities intended to be subleased to Concession Sublessees or Airline Sublessees (to the extent of any Subleases for portions of the New Facilities related to airline passenger services), the fit-out of any such concession spaces in accordance with the initial configuration set forth in the revised Comprehensive Concessions Plan delivered to the Port Authority pursuant to Section 5.3(d) that was not completed prior to Substantial Completion or Central Hall Substantial Completion, as applicable, shall have been completed.

(b) Within sixty (60) days prior to the date on which the Lessee expects to achieve all of the conditions to Final Acceptance, the Lessee shall provide written notice to the Port Authority so as to allow the Port Authority to commence its review of the satisfaction of those conditions amenable to being reviewed at the time of such notice. Notification shall include a list of all requirements that were or will be achieved to allow the Port Authority to issue the Certificate of Final Acceptance.

(c) No later than forty-five (45) days prior to the anticipated date of satisfying all conditions of Final Acceptance, the Lessee shall meet and confer with the Port Authority with respect to the list of requirements provided for in Section 10.7(b). Subsequent to this initial meeting, the Lessee and the Port Authority shall meet, confer and exchange information on a regular basis as necessary with the goal being to facilitate the Port Authority's timely inspection and determination of whether the Lessee has satisfied all of the conditions required for the Port Authority's issuance of a Certificate of Final Acceptance.

(d) The Lessee shall thereafter provide written notification to the Port Authority of the date it has satisfied all requirements for the Port Authority's issuance of the Certificate of Final Acceptance, together with the relevant supporting documentation. Within thirty (30) days of receipt of the Lessee's written notification, all required documentation and all Submittals required to be provided in accordance with the Project Documents, the Port Authority shall conduct an inspection of the Punch List Items, a review of the As-Built Drawings and such other investigation as may be necessary to evaluate whether the Lessee has satisfied all of the conditions to achieve Final Acceptance.

(e) Within the thirty (30)-day period referred to in Section 10.7(d), the Port Authority shall either (i) issue a Certificate of Final Acceptance, effective as of the date the Port Authority accepts that all the conditions to Final Acceptance were satisfied or (ii) notify the Lessee in writing of the reasons why the conditions to Final Acceptance have not been achieved; provided, that, in the event that any condition has not been satisfied, the Lessee shall be entitled to resubmit the notification provided pursuant to Section 10.7(d) once it believes that the relevant condition has been satisfied, whereupon, if the Port Authority agrees that such condition has been satisfied, the Port Authority will issue a Certificate of Final Acceptance in accordance with this Section 10.7(e). If the Parties cannot agree as to the occurrence of Final Acceptance, either Party may refer the matter to the Dispute Resolution Procedures set forth in Article 33 (*Dispute Resolution Procedures*).

Section 10.8 Design and Construction Warranties

(a) The Lessee warrants and guarantees (the "**Warranty**") to the Port Authority as follows:

(i) the design of the Construction Project shall satisfy the requirements of this Agreement, the Requirements and Provisions for Work and the other Project Documents;

(ii) all D&C Work (except as described in clause (i) above), including materials and equipment furnished as part of the construction, shall be (A) complete and conform to Best Management Practice, (B) new (unless otherwise specified herein or in the Requirements and Provisions for Work), of good quality, in conformance with the Applicable Laws, Applicable Standards, this Agreement, the Requirements and Provisions for Work and the other Project Documents, and (C) once completed, free of all Defects in design, materials and workmanship and fit for its intended purpose; and

(iii) the Final Design Documents, final Construction Documents and the Record Documents shall (A) be accurate and complete, (B) comply with the requirements of the Project Documents, and (C) accurately reflect the condition of the Construction Project as of Final Acceptance.

(b) The Warranty with respect to the entire Construction Project (other than the Central Hall) shall be for a term of one (1) year from the issuance by the Port Authority of the Certificate of Substantial Completion, and with respect to the Central Hall, one (1) year from the issuance by the Port Authority of the Certificate of Central Hall Substantial Completion, but, with respect to any portion of the D&C Work that is repaired or replaced during such one (1)-year periods, such term shall be for one (1) year from the date of repair or replacement of such portion of the D&C Work; provided, that the Warranty with respect to any New Facilities Construction Milestone or any Construction Segment that has achieved Partial Completion prior to the Substantial Completion Date shall commence from the issuance by the Port Authority of a Temporary Certificate of Authorization to Occupy or Use with respect to such New Facilities Construction Milestone or Construction Segment, as applicable; and provided, further, that the Lessee shall not have any Warranty obligations with respect to a New

Improvement (or a portion thereof) once such New Improvement (or a portion thereof) has been turned over to the Port Authority in accordance with Section 10.5(h) and the related construction warranties have been assigned to the Port Authority pursuant to Section 10.8(d) (the "**Warranty Period**").

(c) If a Defect in the D&C Work encompassed by the Warranty has occurred during the applicable Warranty Period, then no later than thirty (30) days after the expiration of the Warranty Period, the Port Authority shall be entitled to require that the Lessee (or a Contractor on its behalf), at its sole expense, rectify such Defect. If the Lessee and the Contractor have failed to promptly rectify such Defect within the time permitted in Section 28.1 (*Right to Perform the Lessee's Obligations*), the Port Authority shall be entitled to rectify such Defect itself in accordance with Section 28.1 (*Right to Perform the Lessee's Obligations*) (or to engage a third party to rectify such Defect) and receive from the Lessee payment or reimbursement of an amount equal to one hundred fifteen percent (115%) of its out-of-pocket costs, expenses, damages, penalties and other charges directly paid or incurred by it to rectify such Defect (together with, but without duplication of, late charges calculated pursuant to Section 35.16(a) (*Late Charges*)) in accordance with Section 28.2 (*Reimbursement by the Lessee*). If the Lessee fails to make such payment to the Port Authority as required by Section 28.2 (*Reimbursement by the Lessee*), subject to the other terms and conditions of this Agreement (including Section 23.1(h)) and in addition to all rights and remedies available to the Port Authority under the Project Documents or Applicable Law, the Port Authority shall be entitled to require the Lessee to draw on the Construction Security furnished by the D&C Contractor pursuant to this Agreement (and the Lessee hereby agrees to make such draw upon the demand of the Port Authority) in the amount payable to the Port Authority and pay the proceeds of such draw over to the Port Authority without deduction.

(d) The Lessee shall obtain from all Contractors and Suppliers appropriate representations, warranties, guarantees and obligations in accordance with Best Management Practice, for work of similar scope and scale, all as set forth in Sections 19.1(c)(iv) and 19.1(f). The Lessee will cause any warranties to be expressly extended to the Port Authority; provided, that the foregoing requirement will not apply to standard, pre-specified manufacturer warranties of mass marketed materials, products (including software products), equipment or supplies where the warranty cannot be extended to the Port Authority despite Reasonable Efforts exercised in accordance with Best Management Practice; and provided, further, that upon Partial Completion of any of the New Improvements, the Lessee shall assign in favor of the Port Authority the Lessee's rights under the D&C Contract with respect to the construction warranty coverage for such New Improvement under terms that provide for the warranties to run solely for the benefit of the Port Authority. To the extent that any Contractor or Supplier warranty would be voided by reason of the Lessee's negligence or failure to comply with the requirements of the Project Documents in incorporating material or equipment into the Construction Project or by reason of the Lessee's failure to comply with the operations and maintenance instructions provided by such Contractor or Supplier, the Lessee shall be responsible for correcting any Defects in the D&C Work or Operations and Maintenance Work, as applicable, at the Lessee's sole expense.

(e) The Warranty and any Contractor and Supplier warranties are in addition to all rights and remedies available to the Port Authority under the Project Documents or Applicable Law, and shall not limit the Lessee's liability or responsibility imposed by the Project Documents or Applicable Law with respect to the Work.

Section 10.9 Suspension of D&C Work

(a) The Port Authority shall at any time have the right and authority to suspend, in whole or in part, the D&C Work by written order to the Lessee. Any such written order will be supported by the Port Authority's reasons for the required suspension of the D&C Work.

(b) Except where any suspension of the D&C Work by the Port Authority pursuant to this Section 10.9 (*Suspension of D&C Work*) is made in response to:

(i) any failure by any Lessee-Related Entity to comply with any Applicable Law, Applicable Standard or Governmental Approval or obtain any Lessee Governmental Approval;

(ii) the existence of conditions unsafe for workers, other personnel or the general public, including failures by a Lessee-Related Entity to comply with Safety Standards or perform Safety Compliance as set forth in Section 13.5 (*Safety Compliance Orders*);

(iii) a declared Emergency issued pursuant to Applicable Law by the Port Authority Police or any other Governmental Entity (to the extent not a Force Majeure Event with respect to the Lessee), if caused by a Lessee-Related Entity;

(iv) a significant incident involving one or more casualties requiring hospitalization or treatment by a medical professional or one or more fatalities caused by the failure of any Lessee-Related Entity to comply with any Applicable Law or Applicable Standard or any requirements of the Project Documents;

(v) the presence of a "VIP," dignitary or other person requiring special security arrangements or expedited handling at LGA Airport; or

(vi) the exercise of other suspension rights expressly set forth in the Project Documents resulting from any Lessee-Related Entity's failure to comply with any requirement of the Project Documents,

any such suspension order shall entitle the Lessee to claim a [redacted] and a Delay Event in accordance with Article 14 [redacted] *Delay Events*) and any suspension order made in response to matters referred to in clauses (i) and (v) above shall cease to apply as soon as the relevant matter has been rectified or remedied to the reasonable satisfaction of the Port Authority.

Section 10.10 Port Authority Inspections of Construction Work Generally; No Duty to Inspect or Police

(a) The Port Authority shall have the right, through its duly authorized representatives, to inspect the Construction Work and the plans and specifications thereof, at any and all times during the progress thereof and from time to time, in its sole discretion, to take samples and perform testing in any part of the Construction Work, in each case without interfering with the Construction Work or operation of the Premises to the extent reasonably practicable.

(b) It is hereby further understood and agreed that the Port Authority has no duty or obligation of any kind whatsoever to inspect or police the performance of the Construction Work by the Lessee, and the rights granted to the Port Authority hereunder shall not create or be deemed to create such a duty or obligation. Accordingly, the fact that the General Manager has not exercised the Port Authority's right to require the Lessee to cease all or any part of the Construction Work shall not be or be deemed to be an agreement or acknowledgment on the part of the Port Authority that the Lessee has in fact performed such portion of the Construction Work in accordance with the terms of this Agreement or the Construction Plan, nor shall such fact be or be deemed to be a waiver by the Port Authority from the requirement of compliance by the Lessee with the provisions of this Agreement with respect to the Construction Work and the Construction Plan.

Section 10.11 Coordination of the Work

(a) The Lessee and the Port Authority agree to cooperate with each other, and to exercise Reasonable Efforts to cause their respective contractors to cooperate with each other, fairly, reasonably and in good faith in all respects in connection with the Construction Project, the Supporting Projects, the Perimeter Intrusion Detection System (PIDS) and any other construction or redevelopment activities at LGA Airport authorized by the Port Authority, in accordance with the terms of this Agreement and any other Project Document, and to identify and coordinate their efforts and interfere as little as possible with each other's design and construction activities being undertaken with respect to the Construction Project, the Supporting Projects, the Perimeter Intrusion Detection System (PIDS) and any other construction or redevelopment activities at LGA Airport authorized by the Port Authority, during the Construction Period.

(b) With respect to the Perimeter Intrusion Detection System (PIDS), the Lessee and the Port Authority's cooperation obligations under this Section 10.11 (*Coordination of the Work*) shall include the obligation to cooperate with each other, and to exercise Reasonable Efforts to cause their respective contractors to cooperate with each other, in negotiations with the Port Authority's PIDS provider and in reaching an agreement mutually agreed by the Parties with the Port Authority's PIDS provider. If an agreement is reached with the Port Authority's PIDS provider pursuant to which the Perimeter Intrusion Detection System (PIDS) will be replaced by the Lessee as part of the D&C Work, as described in Section 24.0 of the Design and Construction Requirements, the Parties shall enter into an appropriate change order to memorialize such agreement pursuant to Section 13.1 (*Port Authority Changes*).

(c) The Lessee and the Port Authority acknowledge and agree that design and construction activities being undertaken with respect to the Construction Project, the Perimeter Intrusion Detection System (PIDS) and the Supporting Projects may be required to be undertaken concurrently, in sequence or otherwise, and may be closely integrated to each other physically, structurally, operationally, programmatically, or otherwise. The Lessee shall sequence and perform, or cause to be sequenced and performed, the Work (including disposal of materials and use of construction staging areas and transport roadways) so as to minimize interference with the work and operations of contractors engaged on the Supporting Projects and the Perimeter Intrusion Detection System (PIDS), and the Port Authority shall use Reasonable Efforts to sequence and perform its work on the Supporting Projects (including disposal of materials and use of construction staging areas and transport roadways) and the Perimeter Intrusion Detection System (PIDS) so as to minimize interference with the Work and the operations of Contractors engaged on the Construction Project.

Section 10.12 Parking Deficiency

(a) As of the Lease Commencement Date, the Lessee and the Port Authority shall have developed and mutually agreed to a plan (as revised or updated from time to time as permitted under this Section 10.12 (*Parking Deficiency*), the "**Parking Plan**") that, among other things, sets forth the projected numbers of unavailable parking spaces during each phase of the D&C Work (as may be revised or updated from time to time in a revised or updated Parking Plan, the "**Projected Parking Deficiencies**"). The Parking Plan may be revised or updated from time to time upon the mutual agreement of the Lessee and the Port Authority.

(b) In fulfillment of its obligation to mitigate impacts resulting from the projected unavailability of parking spaces at LGA Airport due to the D&C Work, the Lessee shall (i) complete construction of the West Garage and receive a Temporary Certificate of Authorization to Occupy or Use with respect thereto by no later than January 30, 2018, and (ii) make payment to the Port Authority of an amount equal to (A) $720,000 on the Lease Commencement Date and (B) $200,000 on each anniversary of the Lease Commencement Date occurring in the five (5) years thereafter (the "**Busing Support Payments**"), in support of the Port Authority's busing program at LGA Airport.

(c) Failure of the Lessee to comply with its obligations set forth in Section 10.12(b) above shall give rise to the right of the Port Authority to require the Lessee to prepare a plan of action, as described below, to resolve any unavailability of parking spaces at LGA Airport that is projected to result from such failure in excess of the Projected Parking Deficiencies (the "**Excess Parking Deficiency**"); provided, that an Excess Parking Deficiency shall not include any parking unavailability to the extent that it is the result of any act or omission of the Port Authority, actual demand for parking spaces by patrons of LGA Airport being in excess of projected demand, a Delay Event, a change order or Other Redevelopments. The Lessee shall prepare a plan of action to resolve any Excess Parking Deficiency by a date certain (including by implementing alternative modes of parking or ground transportation), mitigate any damages and address any dissatisfaction of airline passengers and customers of the Existing Terminal B Facilities or the New Terminal B Facilities, as applicable, caused by and during such condition ("**Parking Deficiency Plan of Action**"), and any Parking Deficiency Plan of Action shall be

subject to Port Authority Approval. Any increased costs or mitigation payments with respect to such Parking Deficiency Plan of Action approved by the Port Authority shall be the responsibility of the Lessee (including any costs incurred by the Port Authority in connection with the exercise by the Port Authority of its right to step-in and perform the Lessee's obligations pursuant to Article 28 (*Right to Perform the Lessee's Obligations*) in connection with the Lessee's efforts to comply, or any failure of the Lessee to comply, with a Parking Deficiency Plan of Action), and such increased costs and mitigation payments shall not constitute Permitted O&M Expenses.

[redacted]

[redacted]

[redacted]

[redacted]

ARTICLE 11

OPERATIONS AND MAINTENANCE

Section 11.1 Operations and Maintenance Work

(a) Operations and Maintenance Work During Initial O&M Period. On the Lease Commencement Date the Lessee shall be responsible for and shall commence and continue performance of all Operations and Maintenance Work during the Initial O&M Period as set forth in the Project Documents, including the Requirements and Provisions for Work. The Lessee will implement and comply with the applicable portion of the Operational Readiness and Transition Plan to ensure the timely and orderly transition of operations and maintenance of the Existing Facilities from the Port Authority to the Lessee. The Parties will cooperate and coordinate with each other with respect to activities undertaken pursuant to the Operational Readiness and Transition Plan.

(b) Operations and Maintenance Work During Phased Construction O&M Period. After the Initial O&M Period, the Lessee shall be responsible for and shall continue performance of all Operations and Maintenance Work during the Phased Construction O&M Period as set forth in the Project Documents, including the Requirements and Provisions for Work. The Lessee shall implement and comply with the applicable portion of the Operational Readiness and Transition Plan to ensure the timely and orderly transition of operations from the Existing Facilities to the New Facilities.

(c) Operations and Maintenance Work During O&M Period. After the Phased Construction O&M Period, the Lessee shall be responsible for and shall continue performance of all Operations and Maintenance Work during the O&M Period as set forth in the Project Documents, including the Requirements and Provisions for Work.

Section 11.2 Operations and Maintenance Work Standards and Requirements

(a) General Obligations. The Lessee shall carry out the Operations and Maintenance Work within the Premises in accordance with (A) Best Management Practice, (B) the requirements, terms and conditions set forth in this Agreement, the Operational Requirements, the Maintenance Requirements and the other Project Documents, (C) all Applicable Laws and Applicable Standards, and (D) the requirements, terms and conditions set forth in all Governmental Approvals. To the extent the Lessee or the Collateral Agent obtain any Performance Security under the O&M Contract, such Performance Security will name the Port Authority as a permitted assignee or transferee beneficiary (as applicable), with rights to draw upon or exercise other remedies thereunder if the Port Authority succeeds to the position of the Lessee under the O&M Contract.

(b) Airport Performance.

(i) The Lessee shall at all times perform the Operations and Maintenance Work to ensure ongoing compliance with the Airport Performance Measurement Program

established in the Customer Care Standards and shall meet or exceed the Customer Care Standards.

(ii) The Lessee shall at all times perform the Operations and Maintenance Work to ensure ongoing compliance with the Performance Standards and Measurement Provisions. The Lessee's failure to comply with such requirements shall entitle the Port Authority to the rights and remedies under this Agreement and the other Project Documents, including the assessment of financial penalties in accordance with Exhibit 34 [redacted], and termination for uncured Event of Default (subject to the rights of the Recognized Mortgagees pursuant to Article 18 (*Lenders' Rights and Remedies; Refinancing*).

Section 11.3 Annual Budget and Forecasts

(a) In addition to any annual budget the Lessee is required to deliver to the Lenders under the Financing Documents, for each Calendar Year during the Term, the Lessee shall provide to the Port Authority for informational purposes only (and not subject to Port Authority Comment or Port Authority Approval) an annual budget for such Calendar Year at least thirty (30) days prior to the start thereof (an "**Annual Budget**"). Each Annual Budget shall include the following in sufficient detail in respect of such Calendar Year:

(i) projected Gross Revenues;

(ii) projected Permitted O&M Expenses, itemized by categories satisfactory to the Port Authority, including all amounts payable to the Port Authority;

(iii) projected net revenues (which shall not include Gross CH Revenues);

(iv) projected debt service and other amounts payable with respect to Lessee Debt, including deposits to reserve funds held for benefit of the Lenders;

(v) projected costs of the Asset Preservation Work to be performed pursuant to the Asset Preservation Schedule;

(vi) projected Distributions;

(vii) projected enplaned passengers;

(viii) reasonably detailed information regarding the qualifications, function and utility of any proposed Seconded Terminal Operator Personnel; and

(ix) such other information as the Port Authority may reasonably require in connection with its review of the Annual Budget.

For the avoidance of doubt, the Annual Budget delivered pursuant to this Section 11.3(a) shall not include CH O&M Expenses, projected costs of CH Renewal Work or any other

expenses or projections required to be included in the CH Annual Budget provided to the Port Authority pursuant to Exhibit 33 (*Central Hall Provisions*).

(b) Simultaneously with the delivery of an Annual Budget in accordance with Section 11.3(a), the Lessee will provide to the Port Authority a statement setting forth projections of each of the items described in Section 11.3(a)(i) through (a)(viii) for each of the following fifteen (15) Calendar Years (or, if fewer than fifteen (15) Calendar Years remain in the Term, such number of Calendar Years remaining until the Expiry Date), beginning in the Calendar Year for which such Annual Budget is being provided.

Section 11.4 Financial Statements and Other Information

(a) As soon as available, but no later than sixty (60) days following the end of the first full quarterly period of the Lessee following the Lease Commencement Date and the first, second and third quarterly periods of each fiscal year of the Lessee thereafter, the Lessee shall provide to the Port Authority a copy of the unaudited income statement and balance sheet of the Lessee as of the end of such period and the related unaudited statements of operations and changes in member capital and of cash flows of the Lessee for such period and for the portion of the fiscal year through the end of such period, setting forth in each case in comparative form the figures for the previous period, certified by the chief executive officer or chief financial officer of the Lessee as fairly stating in all material respects the financial condition of the Lessee as at the end of such period and the results of its operations and its cash flows for such period (subject to normal year-end audit adjustments).

(b) As soon as available, but no later than one hundred twenty (120) days following the end of each fiscal year of the Lessee, the Lessee shall provide to the Port Authority a copy of the audited income statement and balance sheet of the Lessee as of the end of such fiscal year, and the related audited statements of operations, changes in member capital and cash flows of the Lessee for such fiscal year, setting forth in each case in comparative form, to the extent available, the figures for the previous fiscal year, certified without a "going concern" or like qualification or exception or qualification as to the scope of the audit, by an independent public accounting firm of national standing, and including in each case the notes thereto, together with such accounting firm's report and comments on the financial statements.

(c) All financial statements required to be provided to the Port Authority in accordance with this Section 11.4 (*Financial Statements and Other Information*) shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein (except for changes approved or required by the independent public accountants certifying such statements and disclosed therein).

(d) The Lessee shall provide to the Port Authority, together with each delivery of annual audited or interim unaudited financial statements of the Lessee pursuant to this Section 11.4 (*Financial Statements and Other Information*), a certificate signed by the chief financial officer or chief executive officer of the Lessee stating (i) that such financial statements fairly present the financial condition and the results of operations as at the

respective dates of and for the periods referred to in such financial statements and (ii) whether or not, to the Lessee's knowledge, during the annual or quarterly period (as the case may be) covered by such financial statements, there occurred any Event of Default or event which, with notice or lapse of time or both, would become an Event of Default, and, if any such Event of Default or other event shall have occurred during such period, the nature of such Event of Default or other event and the actions that the Lessee has taken or intends to take in respect thereof.

(e) In addition to the information that the Lessee is required to provide pursuant to Section 11.3 (*Annual Budget and Forecasts*) and clauses (a), (b), (c) and (d) of this Section 11.4 (*Financial Statements and Other Information*), the Lessee shall provide, promptly upon request, (i) such information as the Port Authority may request from time to time to facilitate responses required by the Port Authority to the City pursuant to the Basic Lease or as may be required for compliance by the Port Authority with Applicable Law, (ii) concurrently with the provision of such information by the Lessee to any Lender or the Collateral Agent, copies of all deliverables and information of the Lessee, including budgets for D&C Work and Operations and Maintenance Work, and such other information that the Lessee provides to any Lender or the Collateral Agent under the Financing Documents, and (iii) such other information as the Port Authority may reasonably request to monitor compliance with this Agreement and the other Project Documents.

Section 11.5 Organization Chart

The legal, beneficial and equitable ownership of the Lessee and the indirect ownership of the Lessee, and the percentage ownership of each such direct and indirect ownership of the Lessee, shall be set forth in an organization chart attached to this Agreement as Exhibit 22 (*Lessee Organization Chart*). At least thirty (30) days prior to the start of each Calendar Year during the Term, the Lessee shall provide to the Port Authority (a) an updated organization chart specifying any changes to the ownership structure since the submission of the organization chart for the immediately prior Calendar Year (which updated organization chart shall, in each case, include ownership of indirect owners to the same extent as Exhibit 22 (*Lessee Organization Chart*)) or (b) if no change occurred to the organization chart that was submitted to the Port Authority in the immediately prior Calendar Year, a written certification by the Lessee that no such change has occurred. The Lessee shall provide the Port Authority with such additional information in connection therewith as the Port Authority may reasonably require from time to time. For the avoidance of doubt, any organization charts provided pursuant to this Section 11.5 (*Organization Chart*) are for informational purposes only (and are not subject to Port Authority Comment or Port Authority Approval).

Section 11.6 Signs

(a) Except with Port Authority Approval, the Lessee shall not erect, maintain or display any signs, lettering, advertising, posters, displays or similar devices at or on the exterior parts of the Premises, or in the Premises, so as to be visible from outside the Premises or at or on any other portion of LGA Airport. Interior signs affecting public safety, security, way-finding and convenience shall be in accordance with Applicable Law and Applicable

Standards, including the Signing and Wayfinding Airports Standards Manual, and any signs, lettering, advertising, posters, displays or similar devices erected, maintained or displayed anywhere on the exterior of the Premises pursuant to the provisions of this Section 11.6(a) shall conform to the Rules and Regulations with respect to design, material, lettering and size. The Lessee shall keep all exterior signs, lettering, advertising, posters, displays or similar devices at all times in a clean, first-class condition and appearance and shall perform all required maintenance, repairs and replacements thereto and thereof.

(b) On the first to occur of the Expiry Date or the Early Termination Date, the Lessee shall, if so directed by the Port Authority, remove, obliterate or paint out any and all signs and advertising installed or caused to be installed by the Lessee on the Premises or elsewhere at LGA Airport and in connection therewith shall restore the portion of the Premises and LGA Airport affected by such signs or advertising to the same condition as existing prior to the installation of such signs and advertising. In the event of a failure on the part of the Lessee to remove, obliterate or paint out each and every such sign or advertising and to restore the Premises and LGA Airport, the Port Authority may perform the necessary work in accordance with Section 28.1 (*Right to Perform the Lessee's Obligations*) and the Lessee shall reimburse the Port Authority for an amount equal to one hundred fifteen percent (115%) of all costs, expenses, damages, penalties and other charges paid or incurred by the Port Authority in connection therewith (together with late charges calculated pursuant to Section 35.16(a) (*Late Charges*) in accordance with Section 28.2 (*Reimbursement by the Lessee*)).

Section 11.7 Obstruction Lights

The Lessee shall give all notices and obtain all determinations required to be given or obtained from the FAA with respect to construction, construction equipment and improvements on the Premises, and shall update and maintain such notifications and determinations as needed. The Lessee shall install, maintain and operate at its own expense such obstruction lights on the Premises as required by the FAA or as the General Manager of LGA Airport may direct, and shall energize such lights daily as required or advisable by the FAA and for such other period as may be directed or requested by the air-traffic control tower of LGA Airport.

Section 11.8 Major Maintenance

The Lessee shall diligently perform Major Maintenance as and when necessary to maintain compliance with the performance measures and standards described in Section 11.2 (*Operations and Maintenance Work Standards and Requirements*) and, when applicable, the Handback Requirements. The Lessee shall comply with the then-current Capital Asset Management Plan and the Asset Preservation Schedule, as updated from time to time in accordance with the Maintenance Requirements, including with respect to scheduling and performing Major Maintenance. For avoidance of doubt, Major Maintenance obligations and terms with respect to the Central Hall are set forth in Exhibit 33 (*Central Hall Provisions*).

Section 11.9 Asset Preservation Schedule

The Lessee shall submit an Asset Preservation Schedule and updates thereto for Port Authority Comment as required under the Maintenance Requirements. The Lessee's preparation of the updated Asset Preservation Schedule shall include revisions as reasonably indicated by experience and then-existing conditions respecting the Premises, changes in estimated costs of Asset Preservation Work, funding of the Major Maintenance Reserve Fund and drawing plan and schedule, changes in technology, changes in the Lessee's planned means and methods of performing Asset Preservation Work and other relevant factors. The updated Asset Preservation Schedule also shall set forth, by Element, the Lessee's planned draws from the Major Maintenance Reserve Fund during the forthcoming five (5) Calendar Years.

Section 11.10 Major Maintenance Reserve Requirements

(a) Establishment.

(i) No later than the Substantial Completion Date, the Lessee shall establish and fund a reserve account (the "**Major Maintenance Reserve Fund**") that may be used to pay the costs of the performance of Major Maintenance as set forth in Section 11.8 (*Major Maintenance*). The Major Maintenance Reserve Fund shall be funded in accordance with Section 11.10(b) (*Funding; Use*) and shall be established under arrangements that, subject to the prior rights of the Lenders in and to the Major Maintenance Reserve Fund established in the Financing Documents, will ensure its availability to the Port Authority if the Port Authority exercises its option to perform Major Maintenance in accordance with Section 11.10(b)(iii).

(ii) The Lessee shall provide to the Port Authority the details regarding the Major Maintenance Reserve Fund account, including the name, address and contact information for the depository institution and the account number. The Lessee shall inform the depository institution of the Port Authority's rights and interests with respect to the Major Maintenance Reserve Fund, which shall be subordinate to the rights of the Lenders in and to the account as provided in the Financing Documents, including the Port Authority's right to instruct the Collateral Agent to draw on the Major Maintenance Reserve Fund.

(b) Funding; Use.

(i) The Lessee shall make deposits to the Major Maintenance Reserve Fund at the frequencies or intervals and in the amounts as determined by the Lenders under the Financing Documents, as such requirements may be waived or amended by the Lenders; provided, that if the Lenders at any time during the Term no longer require any major maintenance reserve, the Lessee shall establish the Major Maintenance Reserve Fund for the sole benefit of the Port Authority at a financial institution approved by the Port Authority.

(ii) It is the Parties' intent that any major maintenance reserve required by the Lenders serve also as the Major Maintenance Reserve Fund required pursuant to this

Agreement. Except as otherwise provided in this Agreement, no provision of any Financing Document shall have any effect on the applicability and enforcement of any other provision of the Project Documents pertaining to Major Maintenance, the Asset Preservation Schedule or the Major Maintenance Reserve Fund.

(iii) If at any time the Port Authority reasonably determines that the Lessee has failed to complete any part of the Major Maintenance which was contemplated to be completed by, and within the time set forth in, the Asset Preservation Schedule, the Port Authority will give written notice thereof to the Lessee and the Recognized Mortgagee. If the Lessee fails to complete such part of the Major Maintenance within thirty (30) days after the date of the Port Authority's notice (unless the Lessee has provided a work plan acceptable to the Port Authority within such thirty (30)-day period that sets forth a schedule and describes specific actions the Lessee will undertake to cure such failure and demonstrates to the satisfaction of the Port Authority that such failure can be cured within a reasonable period of time, and for so long as the Lessee is diligently implementing such plan), then the Port Authority shall have the option of either (A) declaring an Event of Default and exercising its rights and remedies with respect to such Event of Default (subject to the Lenders' rights to cure such Event of Default and the Lenders' rights in and to the Major Maintenance Reserve Fund established in the Financing Documents) or (B) performing and completing such Major Maintenance (or engaging third parties to perform and complete such Major Maintenance) at the sole expense and for the account of the Lessee. If the Port Authority has chosen to perform, or engage a third party to perform such Major Maintenance, it shall provide to the Lessee an invoice for the reasonable estimated or actual costs of such action, and the Lessee shall, or shall cause the Recognized Mortgagee, to promptly pay such invoice in full upon drawing on the Major Maintenance Reserve Fund (including the Major Maintenance Performance Security, if applicable). If the amounts in the Major Maintenance Reserve Fund, together with any amounts drawn under a Major Maintenance Performance Security, are insufficient to cure such failure to complete Major Maintenance, or the Lessee is unable to make draws from the Major Maintenance Reserve Fund or any Major Maintenance Performance Security for the purpose of paying the Port Authority's invoice, the Port Authority shall have the right to pay for the costs of any such action. The Lessee shall reimburse the Port Authority an amount equal to one hundred fifteen percent (115%) of all out-of-pocket costs, expenses, damages, penalties and other charges directly paid or incurred by the Port Authority in connection with the exercise of the Port Authority's right to perform and complete any Major Maintenance Work as provided in this Section 11.10(b)(iii) (together with, but without duplication of, late charges calculated pursuant to Section 35.16(a) (*Late Charges*) in accordance with Section 28.2 (*Reimbursement by the Lessee*)). The foregoing remedy is in addition to any other remedies available to the Port Authority under the Project Documents on account of such failure to complete Major Maintenance, including any financial damages assessed in accordance with Section 11.2(b) (*Airport Performance Measurement Program*), and its right to intervene immediately and without notice to address Safety Compliance.

(iv) The Lessee may, by written notice to the Port Authority, object to any notice delivered by the Port Authority pursuant to Section 11.10(b)(iii) on the grounds

that the Lessee has completed the Major Maintenance specified in the Port Authority's notice or that such Major Maintenance is not then required, which notice shall give details of the grounds for objection. Promptly after the delivery of any such notice, the Parties will endeavor to reach agreement as to any matters referred to in the notice. If no agreement is reached as to any such matter within thirty (30) days after the Lessee delivers such notice, either Party may refer the matter for resolution in accordance with the Dispute Resolution Procedures set forth in Article 33 (*Dispute Resolution Procedures*).

(c) Disposition upon Establishment and Funding of Handback Reserve Fund or Early Termination Date.

(i) The Major Maintenance Reserve Fund may be used to establish and fund the Handback Reserve Fund as and within the time required under Section 11.12(d) (*Handback Reserve Fund*).

(ii) If this Agreement is terminated for any reason, including termination due to an Event of Default, the Port Authority's interest in the Major Maintenance Reserve Fund shall terminate, and the Lessee shall cause all monies then on deposit in the Major Maintenance Reserve Fund to be included in Gross Revenues, except to the extent such inclusion would result in the double-counting of such monies in the Lessee's cash waterfall, in which case such amounts shall be returned to the Lessee.

Section 11.11 Major Maintenance Performance Security

At its sole cost, the Lessee will be permitted to deposit Acceptable Credit Support in the form of one or more standby letters of credit (each, a "**Major Maintenance Performance Security**") to the credit of the Major Maintenance Reserve Fund, on the terms and conditions set forth in this Section 11.11 (*Major Maintenance Performance Security*) and in the Financing Documents. If the Major Maintenance Reserve Fund has been previously established, the Lessee may at any time thereafter substitute one or more Major Maintenance Performance Security for all or any portion of the amounts required to be on deposit in the Major Maintenance Reserve Fund, on the terms and conditions set forth in this Section 11.11 (*Major Maintenance Performance Security*) and in the Financing Documents. The Major Maintenance Performance Security will be considered a part of the Major Maintenance Reserve Fund and the amount available thereunder will be included in any calculations of the amount required to be on deposit in the Major Maintenance Reserve Fund.

Section 11.12 Handback Requirements

(a) Handback Requirements. On the earlier of the Expiry Date or the Early Termination Date, the Lessee will hand back the Premises to the Port Authority, at no charge to the Port Authority, in the condition and meeting all of the requirements set forth in Section 3.0 of the Maintenance Requirements, including the minimum Remaining Service Life of the improvements on the Premises as described in Section 3.1 of the Maintenance Requirements

(collectively, the "**Handback Requirements**"). The Lessee shall execute and deliver such instruments as may be required by the Port Authority to effectuate such transfer and conveyance.

(b) Pre-Handback Inspections. Prior to the projected Expiry Date, the Port Authority and the Lessee shall jointly perform three (3) inspections of the Premises (the "**Pre-Handback Inspections**"), in the time periods specified in Section 3.2 of the Maintenance Requirements, for the purposes of jointly (i) determining and verifying the condition of the Premises and the residual lives of the various Assets thereof, as further detailed in Section 3.0 of the Maintenance Requirements and (ii) revising and updating the Capital Asset Management Plan to reflect the Handback Requirements. The cost and expense of conducting the Pre-Handback Inspections shall be a Permitted O&M Expense. By no later than the Expiry Date, the Lessee shall perform the necessary maintenance to remedy any Defects identified by the Pre-Handback Inspections based on the Capital Asset Management Plan reviewed and commented on by the Port Authority and the Handback Maintenance Services Plan approved by the Port Authority that take into account the results of the Pre-Handback Inspections.

(c) Handback Amount. No later than sixty (60) days prior to the date that is five (5) years prior to the projected Expiry Date, and no later than sixty (60) days prior to each anniversary of such date, the Port Authority and the Lessee will engage a mutually acceptable independent, nationally-recognized consultant to provide an estimate of amounts it reasonably believes will be sufficient to cover all costs necessary to cause the Premises and the Assets thereof to meet the Handback Requirements at the Expiry Date. The amount determined in accordance with the preceding sentence is the "**Handback Amount**." The cost and expense of such consultant shall be a Permitted O&M Expense.

(d) Handback Reserve Fund. Five (5) years prior to the projected Expiry Date, the Lessee will establish the Handback Reserve Fund for the sole and exclusive benefit of the Port Authority:

(i) Concurrently with the establishment of the Handback Reserve Fund, the Lessee shall deposit therein cash (either transferred from the Major Maintenance Reserve Fund pursuant to Section 11.10(c) or cash from operating revenues), credit a Handback Performance Security to such Handback Reserve Fund or apply any combination of the two in an aggregate amount equal to at least one hundred fifteen percent (115%) of the Handback Amount. Within fifteen (15) days of the date of each annual determination of the Handback Amount, the Lessee will cause the amount on deposit in the Handback Reserve Fund to be equal to at least one hundred fifteen percent (115%) of the Handback Amount so determined. If the sum of the amount available under the Handback Performance Security and the amount of cash on deposit in the Handback Reserve Fund exceeds one hundred fifteen percent (115%) of the new Handback Amount, the Lessee shall be permitted (A) to cause the stated amount of the Handback Performance Security to be reduced by an amount equal to such excess, or (B) to include the excess cash then on deposit in the Handback Reserve Fund in Gross Revenues to the extent such inclusion would not result in the double-counting of such monies in the Lessee's cash waterfall. The Lessee shall not be permitted to grant any

Liens to any Person other than the Port Authority in relation to the Handback Reserve Fund or any amounts in it.

(ii) At its sole cost, the Lessee will be permitted to deposit Acceptable Credit Support in the form of a standby letter of credit (the "**Handback Performance Security**") to the credit of the Handback Reserve Fund, which will have a scheduled expiration date no earlier than the second (2nd) anniversary of the projected Expiry Date. The Handback Performance Security will be considered a part of the Handback Reserve Fund and the amount available thereunder will be included in any calculations of the amount required to be on deposit in the Handback Reserve Fund. The proceeds of any drawing on the Handback Performance Security will be paid in cash into the Handback Reserve Fund for application in accordance with this Section 11.12 (*Handback Requirements*).

(iii) Without limiting clause (iv) below, the Port Authority may withdraw moneys on deposit in the Handback Reserve Fund beginning on the Early Termination Date or the Expiry Date, as applicable, and until two (2) years after such date if any portion of the Premises or any Asset thereof does not satisfy the Handback Requirements. The Port Authority's right to withdraw funds from the Handback Reserve Fund includes the right to draw upon the Handback Performance Security. Any moneys withdrawn from the Handback Reserve Fund pursuant to this Section 11.12(d)(iii) will be used by the Port Authority to pay up to one hundred fifteen percent (115%) of all out-of-pocket costs, expenses, damages, penalties and other charges directly paid or incurred by the Port Authority in order to cause the Premises and the Assets thereof to satisfy the Handback Requirements (together with, but without duplication of, late charges calculated pursuant to Section 35.16(a) (*Late Charges*)) in accordance with Section 28.2 (*Reimbursement by the Lessee*).

(iv) Upon the occurrence of an Event of Default, subject to the rights of the Recognized Mortgagees pursuant to Article 18 (*Lenders' Rights and Remedies; Refinancing*), the Port Authority will have the right (in addition to all other rights and remedies provided in this Agreement, but with the understanding that any other monetary damages that the Lessee may recover will be reduced by the amount so drawn, and without the Port Authority's exercise of such right being deemed a waiver or a cure of the Lessee's failure to perform and whether or not this Agreement is thereby terminated), with three (3) Business Days' prior notice to the Lessee, to withdraw moneys from the Handback Reserve Fund and to draw upon the Handback Performance Security in accordance with its terms up to the amount due to the Port Authority with respect to such Event of Default.

(v) If this Agreement is terminated by the Port Authority prior to the Expiry Date as a result of an Event of Default in accordance with the terms hereof, the Port Authority will have the right (subject to the rights of the Recognized Mortgagees pursuant to Article 18 (*Lenders' Rights and Remedies; Refinancing*), and in addition to all other rights and remedies provided in this Agreement and without the Port Authority's exercise of such right being deemed a waiver or a cure of the Lessee's

failure to perform), with three (3) Business Days' prior notice to the Lessee, to withdraw moneys from the Handback Reserve Fund and to draw upon any Handback Performance Security in accordance with its terms up to the amount due to the Port Authority pursuant to the terms of this Agreement. The Port Authority shall also have the right to draw on the Handback Performance Security in the case the issuer of such Handback Performance Security fails to constitute an Eligible LC Issuer.

(vi) Upon the expiration of this Agreement at the Expiry Date, the Handback Reserve Fund will remain in effect until the earliest of: (A) a determination by the Port Authority that the Lessee's obligations under this Section 11.12 (*Handback Requirements*) have been satisfied, (B) the Lessee's obligations are determined to have been satisfied hereunder pursuant to Article 33 (*Dispute Resolution Procedures*) and (C) the second (2nd) anniversary of the Expiry Date.

(vii) Upon the expiration of the Handback Reserve Fund pursuant to clause (vi) above, (A) the Port Authority shall make a draw on the Handback Performance Security (if any) for the full amount thereof and (B) a portion (equal to the [redacted] that was applicable to the payment of Second Additional Rent immediately preceding the date of such draw) of the aggregate proceeds of such draw and any monies then on deposit in the Handback Reserve Fund will be retained by the Port Authority, and the balance distributed to the Lessee.

(viii)All rights and obligations of the Parties necessary to implement clauses (vi) and (vii) of this Section 11.12(d) (*Handback Reserve Fund*) shall survive the Expiry Date until all such obligations have been fully fulfilled or waived in writing by the relevant Party.

(e) Handback of the Premises. On the first to occur of the Expiry Date or the Early Termination Date, or as soon thereafter as is possible as provided in the final transition plan, the Lessee shall relinquish and surrender full control and possession of the Premises to the Port Authority or the Port Authority's Authorized Representative, and shall cause all Persons claiming under or through the Lessee to do likewise, in at least the condition required by the Handback Requirements. On the later of (i) the Expiry Date or the Early Termination Date, as applicable, and (ii) the date the Lessee relinquishes control and possession as provided in the final transition plan, the Lessee shall no longer be responsible for the Premises, without derogation of the Port Authority's rights under this Agreement with respect to any failure of the Lessee to perform its obligations under this Agreement.

(f) Handback of the Central Hall. In the case of Partial Termination, Section 4.4 of Part III of Exhibit 33 (*Central Hall Provisions*) shall apply.

(g) Expiration of the Basic Lease. The rights and obligations of the Parties with respect to the Handback Reserve Fund as provided in this Section 11.12 (*Handback Requirements*) shall not be affected in any way by the expiration of the Basic Lease, and shall survive any such expiration to the extent they are deemed to survive the expiration or earlier termination of this Agreement pursuant to Section 35.7 (*Survival*).

ARTICLE 12

CONTRACTORS, SUPPLIERS AND LEAD PERSONNEL

Section 12.1 Relationship with Contractors and Suppliers

(a) Nothing in this Agreement will create any contractual relationship between the Port Authority and any Contractor or any Supplier. No Contract entered into by or under the Lessee shall impose any obligation or liability upon the Port Authority to any Contractor, any Supplier or any of its respective employees.

(b) The retention of Contractors and Suppliers by the Lessee will not relieve the Lessee of its obligations under the Project Documents and the Lessee will at all times be held fully responsible under the Project Documents for the acts and omissions of all Contractors and Suppliers, in relation to the D&C Work or the Operations and Maintenance Work, as if they were the acts and omissions of the Lessee.

Section 12.2 Lead Personnel

(a) For the purposes of this Agreement, "**Lead Personnel**" means, (i) with respect to the Lessee, the "Project Executive" and "Project Director"; (ii) with respect to the Lead Contractor, the "Project Officer" and "General Superintendent"; (iii) with respect to the Lead Designer, the "Design Manager"; (iv) with respect to the Terminal Operator, the "Terminal Operator" and (v) with respect to the Concessions Manager, the "Concessions Manager."

(b) The Lessee shall (and shall cause the Lead Firms to) retain, employ and utilize the individuals specifically listed as Lead Personnel in the Lessee's Proposal Commitments or the Project Management and Execution Plan to fill the corresponding positions until such time as all relevant activities have been completed. The Lessee shall not, prior to Substantial Completion, change or substitute any such individuals, except due to retirement, death, disability, incapacity, or voluntary or involuntary termination of employment or with the prior consent of the Port Authority (such consent not to be unreasonably withheld, delayed or conditioned if the proposed substitute individual possesses equal or greater experience, skill, knowledge and professional expertise in the relevant fields than the individual being replaced).

(c) The Lessee shall notify the Port Authority in writing of any proposed replacement for any Lead Personnel position no later than thirty (30) days prior to the effective date of such proposed replacement. The Port Authority shall have the right to review the qualifications and character of each individual to be appointed to a Lead Personnel position (including personnel employed by Contractors to fill any such position) and within fifteen (15) Business Days of receipt of any notice of a proposed replacement, the Port Authority, acting reasonably, shall approve or disapprove the use of such individual in such position.

(d) The Lessee shall cause each individual filling a Lead Personnel position to dedicate the full amount of time necessary for the proper prosecution and performance of the applicable Work.

(e) The Lessee shall provide the Port Authority with phone and cell phone numbers as well as e-mail addresses for all Lead Personnel. The Lessee shall provide to the Port Authority two (2) personnel and a minimum of three (3) Lead Personnel who the Port Authority can contact twenty-four (24) hours per day, seven (7) days per week as required, and who will be able to, in turn, contact the other Lead Personnel promptly thereafter.

Section 12.3 Certain Public Policy Requirements

(a) Port Authority Prevailing Wage. The Lessee shall perform, and shall cause its Contractors to perform, the D&C Work in compliance with Exhibit 12 (*Certain Public Policy Requirements*).

(b) Port Authority Living Wage. The Lessee shall comply with, and shall cause its Contractors, Sublessees, permittees and others on the Premises, and their respective contractors, to comply with the wage and benefits requirements set forth in Exhibit 30 (*Wage and Benefits Requirements*) attached hereto, as such requirements may be modified, supplemented or otherwise modified by the Port Authority from time to time. For the avoidance of doubt, any wage and benefits requirements that the Lessee is required to comply with pursuant to this Section 12.3(b) (*Port Authority Living Wage*) shall not constitute an Applicable Standard and any modifications, supplements or revisions to any such wage and benefits requirements shall not constitute an Applicable Standards Change.

Section 12.4 Labor Harmony

(a) The Lessee shall be responsible and liable for all labor relations matters of Contractor personnel relating to the Work and shall at all times use Reasonable Efforts to maintain harmony among the unions, if any, and other personnel employed by it or its Contractors in connection with the Work and act in a reasonable, professional and courteous manner with the Port Authority's separate contractors. The Lessee shall at all times use Reasonable Efforts and judgment as an experienced developer to adopt and implement policies and practices which do not contain terms relating to the Lessee's or any Contractor's performance of the Work that are likely to instigate strikes, boycotts, picketing, work-stoppages, slowdowns and disputes (collectively, "**Labor Troubles**") but the Lessee shall not, in so doing, be obliged to investigate the employment terms or the employment status of any Person not employed by it or by its Contractors in connection with the Work.

(b) The Lessee shall not employ any Contractor, nor shall the Lessee or any of its Contractors employ any Persons or use any labor, or use or have any equipment or materials, or permit any condition to exist, which causes any Labor Troubles at the Premises that interfere or are likely to interfere with the Work or any part thereof in any material respect, or interfere or are likely to interfere with the operations of the Port Authority or its contractors, or lessees, licensees, permittees or other users of LGA Airport. Upon written notice from the Port Authority specifying the failure of the Lessee to comply with this Section 12.4(b), the Lessee shall, as promptly as possible, remove such Contractor or withdraw or cause its Contractors to withdraw, from LGA Airport, the Persons, equipment or materials specified in the notice; provided, that the Lessee shall be entitled to replace such Contractors, Persons, equipment and

materials with a substitute which, if such existing Contractor, Person, equipment or material previously required Port Authority Approval pursuant to the terms of this Agreement, is reasonably acceptable to the Port Authority. In the event of failure by the Lessee to comply or to cause its Contractors to comply with any removal notice within thirty (30) days of such notice, the Port Authority shall have the right to suspend the Lessee's right to perform that portion of the Work for which the offending Contractor was responsible or which was being performed by such offending Persons, equipment or materials. When the Labor Troubles shall be so settled such that the Lessee is in compliance with this Section 12.4(b), the Port Authority, by notice to the Lessee, shall reinstate said right on all the same terms and conditions as before the suspension.

(c) The Lessee shall give notice to the Port Authority (to be followed by written notice and reports) of any and all impending or existing Labor Troubles referenced in Section 12.4(b) and the progress thereof as soon as practicable (but in no event later than five (5) days after the Lessee becomes aware of such impending or existing Labor Troubles). The Lessee shall use its best efforts to resolve any such Labor Troubles.

(d) If any strike or labor activity is directed against the Lessee at LGA Airport or against any operations pursuant to this Agreement resulting in picketing or boycott for a period of at least forty-eight (48) hours, which, in the opinion of the Port Authority, adversely affects or is likely to adversely affect the operation of LGA Airport or the operations of other permittees, lessees or licensees thereat, whether or not the same is due to the fault of the Lessee, and whether caused by the employees of the Lessee or by others, the Port Authority shall have the right to take all legal remedies available to it to end or arrange for the cessation of any such strike or labor activity.

(e) The Lessee shall cause each Sublease to include the provisions related to labor harmony and labor peace set forth in Part A and Part C of Exhibit 7 [redacted] and shall cause all Sublessees to comply with such provisions.

ARTICLE 13

PORT AUTHORITY AND LESSEE CHANGES; DIRECTIVE LETTERS; SAFETY COMPLIANCE ORDERS

Section 13.1 Port Authority Changes

(a) The Port Authority has the right to propose Port Authority Changes in accordance with this Section 13.1 (*Port Authority Changes*).

(b) If the Port Authority proposes a Port Authority Change, the Port Authority shall provide to the Lessee in writing a description of the Port Authority's requirements for a change in the Work, including any change to the Requirements and Provisions for Work, in sufficient detail to enable the Lessee to provide the Lessee's Impact Statement in accordance with Section 13.1(c).

(c) As soon as practicable, but in no event later than thirty (30) days after having received a proposal for a Port Authority Change, the Lessee shall deliver to the Port Authority a written description of the projected impact to the Lessee of the proposed Port Authority Change (a "**Lessee's Impact Statement**"); provided, that the Lessee may request in writing, within such thirty (30)-day period, additional time to provide the Lessee Impact Statement to the Port Authority, together with the explanation of the reasons therefor, and the Port Authority will consider such request in good faith; provided, further, that the Port Authority may in such case require the Lessee to provide to the Port Authority such required information it prepared within the initial thirty (30)-day period and deliver the remaining information to the Port Authority within the time period agreed to by the Port Authority. A Lessee's Impact Statement shall include the following, as applicable:

(i) any deviation from the Lessee's obligations under this Agreement or from the Requirements and Provisions for Work that would result from the implementation of the proposed Port Authority Change, and any impact to the Project Baseline Schedule, including to the scheduled New Facilities Construction Milestone Completion Dates, the scheduled Substantial Completion Date and the scheduled Final Acceptance Date;

(ii) any impact, either upward or downward, to the forecasted costs and revenues in connection with the performance of the Operations and Maintenance Work resulting from the proposed Port Authority Change;

(iii) any Governmental Approvals, or amendments, revisions, supplements, waivers or modifications thereto or exemptions therefrom, which would be required as a result of the proposed Port Authority Change;

(iv) if applicable, any additional land or real property rights which would be required as a result of the proposed Port Authority Change;

(v) a scope of work for any proposed additional or modified work required as a result of the proposed Port Authority Change and estimated pricing to carry out such work;

(vi) any additional financing which might be required in connection with the proposed Port Authority Change, including the terms of such additional financing; and

(vii) such other supporting documentation as may be reasonably required by the Port Authority.

(d) For the avoidance of doubt, the Lessee's Impact Statement shall not include any projected impacts to cost of operations and maintenance, or revenues derived from the operation, of the Central Hall (including the operation of the AirTrain Station, any hotel or any alternative uses thereof).

(e) As soon as practicable after the Port Authority receives the Lessee's Impact Statement, the Port Authority and the Lessee shall meet and negotiate in good faith to agree to

the terms of the Port Authority Change, which terms will reflect an agreement addressing the Lessee's Impact Statement.

(f) If the Parties agree on the terms of the proposed Port Authority Change in accordance with this Section 13.1 (*Port Authority Changes*), the Parties shall enter into an appropriate change order to give effect to the proposed Port Authority Change, which change order shall include, as applicable, the scope of the additional or modified Work and schedule to perform such Work (including any adjustments to the Guaranteed New Facilities Construction Milestone Completion Dates, the Guaranteed Substantial Completion Date, the Guaranteed Final Acceptance Date and/or Long Stop Deadline, as appropriate), changes and modifications to the other requirements of the Project Documents and compensation and payment terms (including to the New Improvements Payment and Milestone Schedule and/or the Central Hall Payment and Milestone Schedule, as applicable).

(g) If at any time after the Port Authority receives the Lessee's Impact Statement, the Port Authority determines not to proceed with the proposed Port Authority Change the Port Authority shall reimburse the Lessee for the reasonable, documented out-of-pocket costs incurred to prepare the Lessee's Impact Statement, but shall not bear any other of the Lessee's costs and expenses in complying with this Section 13.1 (*Port Authority Changes*) and the proposed Port Authority Change shall be deemed withdrawn.

Section 13.2 Directive Letters

If the Parties are unable to reach an agreement on a proposed Port Authority Change and enter into a change order in accordance with Section 13.1 (*Port Authority Changes*), the Port Authority may, in its sole discretion, deliver to the Lessee a "**Directive Letter**" directing the Lessee to proceed with the implementation of the Port Authority Change. Upon receipt of the Directive Letter, the Lessee shall implement and perform the work in question as directed by the Port Authority and the Lessee will be entitled to claim a Delay Event and/or a [redacted] with respect to such Directive Letter in accordance with Article 14 [redacted] *Delay Events*).

Section 13.3 Lessee Changes

(a) If the Lessee wishes to introduce a change in the Work (a "**Lessee Change**"), it must deliver written notice (the "**Lessee Change Request**") to the Port Authority setting out the following:

(i) the proposed change to the Work in sufficient detail to enable the Port Authority to evaluate it in full;

(ii) the Lessee's reasons for proposing the change to the Work;

(iii) a request to the Port Authority to consult with the Lessee with a view to deciding whether to agree to the change to the Work and, if so, what consequential changes the Port Authority requires due to the Lessee Change;

(iv) any implications of the change to the Work on any component of the Supporting Projects;

(v) any dates by which a decision by the Port Authority is critical;

(vi) any additional financing which might be required in connection with the proposed Lessee Change, including the terms of such additional financing; and

(vii) all of the other information enumerated above in Section 13.1(c).

(b) The Port Authority shall evaluate the Lessee Change Request in good faith.

(c) As soon as practicable after the Port Authority receives the Lessee Change Request, the Parties shall meet and discuss the matters referred to in such Lessee Change Request. During their discussions the Port Authority may propose modifications or, subject to clauses (e) and (f) below of this Section 13.3 (*Lessee Changes*), approve or reject the Lessee Change Request in its sole discretion. Following such discussions, the Port Authority shall issue a response to the Lessee as soon as practicable, but in no event later than thirty (30) days after the meeting of the Port Authority and the Lessee with respect to the matters referred to in the Lessee Change Request; provided, that if the Port Authority requests additional information from the Lessee to enable it to fully evaluate the Lessee Change Request, the Port Authority shall issue a response to the Lessee no later than thirty (30) days after the receipt of all the requested information; and provided, further, that if the Port Authority believes it requires additional time to review the Lessee Change Request (and any subsequently received information), the Port Authority may notify the Lessee thereof within the applicable thirty (30)-day period and the Port Authority shall issue a response to the Lessee within the time period specified in such notice, not to exceed an additional sixty (60) days.

(d) If the Port Authority approves the Lessee Change Request (with or without modification), the Parties shall as soon as practicable, enter into an appropriate change order to implement the Lessee Change Request, which change order shall include, as applicable, the scope of the additional or modified Work and schedule to perform such Work and changes and modifications to the requirements of the Project Documents. All costs of the Lessee Change Request and the Work that is the subject thereof shall be the Lessee's responsibility.

(e) If the Port Authority rejects the Lessee Change Request, it shall not be obliged to give its reasons for such a rejection and, subject only to Section 13.3(f), such rejection shall not be subject to challenge by the Lessee, whether pursuant to Article 33 (*Dispute Resolution Procedures*) or otherwise.

(f) The Port Authority shall not be entitled to reject a Lessee Change Request that is required in order to conform to Applicable Law or Applicable Standards.

(g) Without limiting anything in the foregoing, if a Lessee Change Request is submitted to implement an Airline Requested Change, the Port Authority shall not withhold its approval thereof so long as the Lessee has demonstrated to the Port Authority's reasonable satisfaction that (i) the Port Authority shall not bear any increased costs or any decrease to the

Second Additional Rent payable to the Port Authority in each year of the Term, in each case, resulting from the implementation of such Airline Requested Change, (ii) any changes to the methodologies for Airline Terminal Rates resulting from such Airline Requested Change shall have been approved by the Port Authority in accordance with Section 5.2(e) and (iii) such Lessee Change Request, if implemented, (A) will comply with this Agreement, the other Project Documents (including the Requirements and Provisions for Work), Applicable Law and Applicable Standards (except with respect to modifications to the Project Documents necessary to accommodate any change to the scope of the D&C Work or performance thereof as agreed between the Parties), (B) could not reasonably be expected to result in any adverse impact to any aspect of the work being performed by the Port Authority or its contractors with respect to the Supporting Projects and (C) could not reasonably be expected to adversely impact public health, welfare, safety, noise concerns, sanitation, good order and the economic and efficient operation of LGA Airport; provided, that the Port Authority's approval of any Lessee Change Request submitted to implement an Airline Requested Change requested by a Scheduled Aircraft Operator that is a prospective airline sublessee is conditioned upon the Lessee executing an Airline Sublease with such prospective airline sublessee in accordance with Article 5 (*Subleases*).

Section 13.4 Performance During Negotiation of Proposed Port Authority Change or Lessee Change Request

The Lessee shall not suspend performance of the Work during the negotiation of any proposed Port Authority Change or Lessee Change Request, except (a) as may be otherwise directed by the Port Authority in writing as expressly permitted under the terms of this Agreement (including pursuant to Section 10.9 (*Suspension of D&C Work*) or (b) to the extent that such suspension by the Lessee is otherwise expressly permitted under the terms of this Agreement.

Section 13.5 Safety Compliance Orders

(a) Safety Compliance Orders.

(i) The Port Authority shall use Reasonable Efforts to inform the Lessee at the earliest practicable time of any circumstance or information relating to the D&C Work, the Operations and Maintenance Work or the Premises that, in the Port Authority's reasonable judgment, is likely to result in a Safety Compliance Order. Except in the case of an Emergency, the Port Authority shall consult with the Lessee prior to issuing a Safety Compliance Order.

(ii) Subject to clause (i) of this Section 13.5(a) (*Safety Compliance Orders*), the Port Authority may issue Safety Compliance Orders to the Lessee at any time from and after the Lease Commencement Date.

(b) Duty to Comply.

(i) Subject to Section 13.5(a) (*Safety Compliance Orders*), the Lessee shall implement all Safety Compliance as expeditiously as reasonably possible following issuance of the Safety Compliance Order.

(ii) The Lessee shall diligently perform all work required to implement Safety Compliance and shall bear all costs with respect to any Non-Qualifying Safety Compliance. The Lessee may claim a [redacted] or a Delay Event with respect to any costs or other impacts incurred or suffered in connection with the implementation of Qualifying Safety Compliance.

(iii) The Lessee shall undertake Reasonable Efforts to overcome any inability to comply with any Safety Compliance Order caused by a Delay Event.

ARTICLE 14

[redacted] DELAY EVENTS

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

(ii) The Lessee Damages will be net of all applicable Insurance Proceeds payab[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Section 14.2 Delay Events

(a) Definition. For the purposes of this Agreement, the term "**Delay Event**" means any of the following events or conditions (subject to the limitations and other provisions set forth in this Section 14.2 (*Delay Events*)) that causes a delay in the Lessee's performance of the Work or adversely affect the Lessee's ability to perform the Work in compliance with the Project Documents, but only if and to the extent that such event or condition cannot be overcome by consumption of available Float (provided, that, the Lessee shall not be required to consume available Float with respect to the events described in clauses (ii) through (v), (xi), (xii), (xiii) and (xxi) of this Section 14.2(a) (*Definition*)):

(i) the occurrence of any Force Majeure Event with respect to the Lessee or any other Lessee-Related Entity;

(ii) any failure by the Port Authority to complete, or cause to be completed, any work carried out in connection with any Supporting Project by the applicable Supporting Project Milestone;

(iii) performance of work at or immediately adjacent to the Premises carried out by the Port Authority or its contractors (or by Delta in respect of the Other Redevelopments), that materially damages or disrupts the Construction Work so as to cause a material delay to the scheduled New Facilities Construction Milestone Completion Dates, the scheduled Substantial Completion Date and/or the scheduled Final Acceptance Date set forth in the Project Baseline Schedule;

(iv) any failure by the Port Authority to respond in accordance with this Agreement or the other Project Documents to any Submittal subject to Port Authority Approval within the time period provided therefor under the D&C Schedule of Submittals, the O&M Schedule of Submittals, the Requirements and Provisions for Work, Section 8.4 (*Review Process*) or Section 16.14 (*Environmental Notices, Submittals and Reports*), as applicable; provided, that no such failure shall be deemed to have occurred if due in whole or in part to (A) the submission of incomplete or unresponsive documentation by the Lessee for Port Authority Approval, or (B) review by Governmental Entities required in connection with Submittals for Port Authority Approval where such review is required and cannot be completed or independently obtained by the Lessee;

(v) any delay or failure by the Port Authority to issue a Temporary Certificate of Authorization to Occupy or Use with respect to a New Facilities Construction Milestone or a Construction Segment, as applicable, a Certificate of Substantial Completion, a Certificate of Central Hall Substantial Completion, a Certificate of Final Acceptance or a Notice to Proceed within the time set forth herein if, in each case, all conditions to issuance of such certificate or Notice to Proceed have been fully satisfied;

(vi) any suspension of the D&C Work by the Port Authority that constitutes a Delay Event pursuant to Section 10.9(b);

(vii) any Directive Letter issued by the Port Authority pursuant to Section 13.2 (*Directive Letters*);

(viii) any Change in Law or Applicable Standards Change taking effect prior to the Substantial Completion Date that materially and adversely impacts (notwithstanding the Lessee's reasonable efforts to mitigate) the Lessee's performance of the D&C Work;

(ix) any change by the Port Authority to the General Conditions or the Technical Requirements taking effect prior to the Substantial Completion Date that materially and adversely impacts (notwithstanding the Lessee's reasonable efforts to mitigate) the Lessee's performance of the D&C Work;

(x) any Discriminatory Change in Law or Discriminatory Applicable Standards Change that materially and adversely impacts the Lessee's performance of the Operations and Maintenance Work; but in each case, excluding any Discriminatory Change in Law and Discriminatory Applicable Standards Change that may be promulgated or applied from time to time (A) in the interest of public health, (B) in response to an Emergency or (C) that is intended to bring the Operations and Maintenance Work into compliance with Best Management Practices so long as applied in a non-discriminatory manner;

(xi) any failure or delay by the Port Authority to obtain a Port Authority Governmental Approval it is required to obtain pursuant to the Project Documents, or, with respect to Governmental Approvals the Lessee is required to obtain pursuant to the Project Documents but for which the Lessee has requested information or requires a signature from the Port Authority, any failure or delay by the Port Authority to provide such information or signature, subject to Section 8.4 (*Review Process*) or Section 16.14 (*Environmental Notices, Submittals and Reports*), within the specified time period, or, if no time period is specified, then within a reasonable time period after the request from the Lessee to provide such information or signature;

(xii) any breach by the Port Authority of any material obligation under this Agreement (to the extent not covered otherwise by any of the other events specified in this Section 14.2(a));

(xiii) the issuance of any injunction, restraining order or other similar legal order by a court of competent jurisdiction under Applicable Law based on a claim that challenges the Port Authority's authority to enter into this Agreement or the transactions contemplated hereby under New York Unconsolidated Laws Sections 6631-6647, which injunction or order prohibits or enjoins prosecution of the Work;

(xiv) the occurrence of conditions relating to the Environmental Requirements described in Section 16.17(b) (*Cost Allocation for Lessee Responsibilities*) for which the Lessee is entitled to schedule relief pursuant to this Section 14.2 (*Delay Events*);

(xv) the discovery of any Unknown Endangered Species by the Lessee during the carrying out of the Construction Work;

(xvi) the discovery of any Unknown Archaeological Remains by the Lessee during the carrying out of the Construction Work;

(xvii) the discovery of any Unknown Facilities by the Lessee during the carrying out of the Construction Work that adversely impacts the Lessee's performance of the Construction Work;

(xviii) the discovery of any Unknown Geotechnical Conditions during the carrying out of the Construction Work that adversely impacts the Lessee's performance of the Construction Work;

(xix) the issuance by the Port Authority of any Qualifying Safety Compliance Order;

(xx) the issuance of a decision or determination by the Chief Engineer pursuant to Section 33.3 (*Chief Engineer's Jurisdiction*) in connection with a Dispute involving a purely technical or engineering matter;

(xxi) any final and non-appealable determination by a court of competent jurisdiction finding a violation by the Port Authority of Applicable Law that has, or could

reasonably be expected to have, a direct, material and adverse impact on the Lessee's performance of the Work; or

(xxii) any Lessee Change Request approved by the Port Authority that implements an Airline Requested Change pursuant to Section 13.3(g);

except, in each case, to the extent arising by reason of or attributable to (A) the negligence or willful misconduct of a Lessee-Related Entity or (B) any act or omission by a Lessee-Related Entity in breach of the provisions of this Agreement or any other Project Document.

(b) Delay Event Notice.

(i) Subject to Section 8.5 (*Open Dialogue and Cooperation*), the Lessee shall give written notice to the Port Authority within thirty (30) days following the date on which the Lessee first became aware (or should have become aware, using all reasonable due diligence) that an event has occurred that the Lessee claims is or is likely to become a Delay Event (provided, that in the case of the same Delay Event being a continuing cause of delay, only one (1) notice will be necessary) (a "**Delay Event Notice**"). The Delay Event Notice will include (A) a detailed description of the Delay Event claimed by the Lessee, (B) details of the circumstances from which the claimed Delay Event arises, (C) an estimate of the duration of the delay in the performance of obligations pursuant to this Agreement attributable to such Delay Event and information in support thereof, if known at that time and (D) evidence reasonably satisfactory to the Port Authority that such event could not reasonably be avoided by the Lessee without material cost or delay, including by re-sequencing, reallocating or redeploying its forces to other portions of the Work. The Lessee will also provide such further information relating to the claimed Delay Event as the Port Authority may reasonably require. The Lessee may update the information provided in the Delay Event Notice once within the thirty (30)-day period commencing at the submission of the Delay Event Notice (or at other times, if reasonably requested by the Port Authority).

(ii) The Lessee will bear the burden of proving the occurrence of a Delay Event and the resulting impacts.

(iii) If for any reason the Lessee fails to deliver such written Delay Event Notice within the time period required by Section 14.2(b)(i), the Lessee will be deemed to have irrevocably and forever waived and released any Claim or right to time extensions or any other relief with respect to such event that the Lessee may otherwise have been able to claim as a Delay Event pursuant to this Agreement or any Project Document.

(iv) Upon the occurrence of an event that is or may be a Delay Event, the Lessee will, and will cause each of its Contractors and Suppliers to, take all steps reasonably necessary to mitigate the effects of such event, including all steps that would generally be taken in accordance with Best Management Practice. The Lessee will

promptly deliver to the Port Authority an explanation of the measures being undertaken to mitigate the delay and other consequences of such event. The Lessee will notify the Port Authority within fifteen (15) days following the date on which it first became aware (or should have become aware, using all reasonable due diligence) that such event has ceased. In the event that the Lessee fails to take (or to cause its Contractors to take) mitigation measures as required pursuant to this clause (iv), the delay and excuse of performance permitted under this Section 14.2 (*Delay Events*) shall be reduced to the extent that such mitigation measures, if taken, would have reduced the impact of such event on the Lessee.

(v) Notwithstanding the occurrence of an event that is or may be a Delay Event, the Lessee will continue its performance and observance pursuant to this Agreement of all of its obligations and covenants to be performed to the extent that it is reasonably able to do so and will use Reasonable Efforts to, and will cause each of its Contractors and Suppliers to use Reasonable Efforts to, minimize the effect and duration of such event. Without limiting the foregoing, the occurrence of a Delay Event will not excuse the Lessee from timely payment of monetary obligations pursuant to this Agreement or compliance with Applicable Law, Applicable Standards, the Requirements and Provisions for Work and other Project Documents, except temporary inability to comply as a direct result of the Delay Event.

(vi) Subject to Sections 14.2(b)(v) and 14.2(e) (*Failure to Agree*) and the Lessee giving the Delay Event Notice required in Section 14.2(b)(i), a Delay Event will excuse the Lessee from whatever performance is prevented or delayed by the Delay Event referred to in such notice to the extent set forth in Section 14.2(c) (*Delay Events Affecting Performance of the D&C Work*) and Section 14.2(d) (*Delay Events Affecting Performance of the Operations and Maintenance Work*).

(c) Delay Events Affecting Performance of the D&C Work. Subject to Sections 14.2(b)(iv), 14.2(b)(v) and 14.2(e) (*Failure to Agree*), a Delay Event that is agreed between the Parties occurring during the Construction Period affecting the performance of the D&C Work will excuse the Lessee from performance of its obligations to perform the D&C Work pursuant to this Agreement but only to the extent that such D&C Work is directly affected by such Delay Event. In addition, during the Construction Period, extensions of any Guaranteed New Facilities Construction Milestone Completion Date, the Guaranteed Substantial Completion Date, the Guaranteed Final Acceptance Date and/or the Long Stop Deadline, as applicable, for Delay Events directly affecting the D&C Work will be made based on a Time Impact Analysis, using the then-effective Project Baseline Schedule and taking into account impacts of the Delay Events on Critical Path items, in accordance with the Requirements and Provisions for Work, and will extend the Guaranteed New Facilities Construction Milestone Completion Date(s), the Guaranteed Substantial Completion Date, the Guaranteed Final Acceptance Date and the Long Stop Deadline, as may be applicable, but only to the extent that the Delay Event actually delays the performance of the D&C Work beyond such date or deadline; provided, that, with respect to any Delay Event occurring during the Construction Period which solely affects the Central Hall and does not affect the rest of the Premises or D&C Work on the Premises generally, extension of the Guaranteed Final Acceptance Date shall be permitted, to

the extent that such Delay Event actually delays performance of the D&C Work beyond such date or deadline, but no extensions will be permitted with respect to any Guaranteed New Facilities Construction Milestone Completion Date, the Guaranteed Substantial Completion Date and/or the Long Stop Deadline in connection with such Delay Event.

(d) Delay Events Affecting Performance of the Operations and Maintenance Work. Subject to Section 14.2(b)(iv), a Delay Event that is agreed between the Parties affecting performance of the Operations and Maintenance Work will only excuse the Lessee from performance of its obligations to perform Operations and Maintenance Work pursuant to this Agreement but only to the extent that such Operations and Maintenance Work is directly affected by such Delay Event.

(e) Failure to Agree. If the Parties (i) cannot agree on the extent of any delay incurred or relief from the Lessee's obligations under this Agreement, or (ii) the Port Authority disagrees that a claimed Delay Event has occurred (or as to its consequences) or that the Lessee is entitled to relief under this Section 14.2 (*Delay Events*), the Parties shall resolve the matter in accordance with Article 33 (*Dispute Resolution Procedures*).

(f) Sole Remedy and Release of Claims.

(i) Without limiting the Lessee's rights with respect to monetary relief for [redacted]he delay incurred or relief from the Lessee's obligations under this Agreement as determined according to this Section 14.2 (*Delay Events*) will represent the sole and exclusive right to relief for the adverse effects of a Delay Event against the Port Authority and its officers, directors, commissioners, agents, authorized representatives, consultants and employees.

(ii) As a condition precedent to the Port Authority's obligation to extend any schedule relief, following a determination of the extent of any delay incurred or relief from the Lessee's obligations under this Agreement, the Lessee shall execute and deliver to the Port Authority a full, unconditional, irrevocable release in favor of the Port Authority and the Port Authority Indemnified Parties, in form reasonably acceptable to the Port Authority, of any Claims and other rights to relief and remedies under this Agreement, in law, equity or otherwise, associated with such Delay Event, except for (A) the Claim and right to the subject relief, (B) the Lessee's right to claim monetary relief for a [redacted]and (C) the right to terminate this Agreement in accordance with Article 24 (*Grounds for Termination by the Lessee; Other Termination*) and to receive any applicable termination compensation.

Section 14.3 Final Crane Directive

(a) Subject to the limitations set forth in clause (d) below, prior to the date of public issuance of the Final Crane Directive, the following procedures shall apply (to the exclusion of the other provisions of Article 14 [redacted]*Delay Events*), except as otherwise specified herein) with respect to the determination of any Lessee Damages, if any, caused by the Temporary Crane Directives (it being understood that delay incurred or relief from the

Lessee's obligations under this Agreement , if any, on account of the Temporary Crane Directives shall not be determined under this Section 14.3(a), but shall be determined in accordance with Section 14.3(b)):

(i) Within five (5) days following the end of the first month of the Term, and within five (5) days following the end of each month thereafter during which the Temporary Crane Directives are in effect, the Lessee shall provide or cause to be provided written notice to the Port Authority if, despite all commercially reasonable efforts to mitigate the impact of the Temporary Crane Directives (including the use of workarounds, re-sequencing, re-allocating and re-deploying labor forces), the Lessee claims that the Temporary Crane Directives constitute a [redacted]

(ii) Within thirty-five (35) days following the end of the first month of the Term, and within thirty-five (35) days following the end of each month thereafter during which the Temporary Crane Directives are in effect, the Lessee shall provide the Port Authority with a supplemented written notice setting forth the analysis and calculation of the amount of Lessee Damages attributable to the Temporary Crane Directives.

(iii) Within sixty-five (65) days following the end of the first month of the Term, and within sixty-five (65) days following the end of each month thereafter during which the Temporary Crane Directives are in effect, the Port Authority, the Lessee and the Lead Contractor shall meet and confer with respect to resolution of the amount of Lessee Damages attributable to the Temporary Crane Directives. Any determination of Lessee Damages pursuant to this Section 14.3(a) shall be limited to only actual, documented, adverse [redacted] and [redacted] incurred by the Lessee during the previous month that are directly attributable to the Temporary Crane Directives; provided, that the determination of impact for the first month of the Term shall also include any [redacted] incurred in the period prior to the Lease Commencement Date.

(iv) Failure by the Lessee to deliver the written notice described in Section 14.3(a)(i) within the time period required thereby will result in the Lessee being deemed to have irrevocably and forever waived and released any Claim or right to damages attributable to the Temporary Crane Directives with respect to the applicable month. The Lessee and Lead Contractor shall conduct all discussions and negotiations with the Port Authority and will share with the Port Authority all data, documents and information pertaining to the relevant negotiations on an Open Book Basis. Compensation as determined in accordance with this Section 14.3(a) will represent the sole right to compensation and damages for the adverse impacts of the Temporary Crane Directives.

(b) The Port Authority and the Lessee acknowledge and agree that the Final Crane Directive shall be deemed to be a Change in Law solely for purposes of this Article 14 [redacted] *Delay Events*). Any claim by the Lessee for a [redacted] or Delay Event based on the Final Crane Directive or for a Delay Event based on the Temporary Crane Directives shall be subject to the terms and provisions of this Article 14 [redacted] *Delay Events*) in all respects; provided, however, that solely in connection with any

claim based on the Final Crane Directive or Delay Event claim based on the Temporary Crane Directive, the parties shall comply with the modified procedures set forth in the following clauses (i) through (v), which procedures shall modify this Article 14 ([redacted] *Delay Events*) only as specifically identified herein and shall otherwise in all cases be read in conjunction with Article 14 ([redacted] *Delay Events*) in a manner that gives full effect to the provisions of Article 14 ([redacted] *Delay Events*) without diminishing or deviating from the intent thereof:

(i) Within five (5) days following the later of (x) the Lease Commencement Date and (y) the date of public issuance of the Final Crane Directive (or determination that the current Temporary Crane Directive shall constitute the Final Crane Directive) (such later date, the "**Crane Directive Trigger Date**"), the Lessee shall provide or cause to be provided written notice to the Port Authority if, despite all commercially reasonable efforts to mitigate the impact of the Final Crane Directive (including the use of workarounds, re-sequencing, re-allocating and re-deploying labor forces), the Lessee claims that the Final Crane Directive constitutes a [redacted] and/or a Delay Event. The notice shall also indicate if the Temporary Crane Directives constitute a Delay Event.

(ii) Within thirty-five (35) days following the Crane Directive Trigger Date, the Lessee shall provide the Port Authority with a supplemented [redacted] Notice and/or Delay Event Notice, as applicable, setting forth all of the information required to be provided by clauses (A) through (F) of Section 14.1(b)(i) and/or by clauses (A) through (D) of Section 14.2(b)(i), as applicable. The Lessee's analysis and calculation of Lessee Damages and the schedule impact due to the Delay Event, which for purposes of the [redacted] on the D&C Work directly attributable to the Final Crane Directive (and, with respect to schedule impact only, attributable to the Temporary Crane Directives) will be based on historical wind and weather records, the Lessee's experience and the Lead Contractor's experience with similar construction projects and the same methodology used by the Lessee for the development of the estimate of performing the D&C Work and the Project Baseline Schedule. Such notices, as supplemented, shall constitute a "[redacted] Notice" and a "Delay Event Notice" described in Sections 14.1(b)(i) and 14.2(b)(i), respectively. The additional thirty (30)-day period which the Lessee is otherwise afforded by Sections 14.1(b)(i) and 14.2(b)(i) to provide a one-time update to a [redacted] Notice and Delay Event Notice shall not apply to notices delivered in connection with the Final Crane Directive or to a Delay Event Notice delivered in connection with the Temporary Crane Directives.

(iii) Within sixty-five (65) days following the Crane Directive Trigger Date, the Port Authority, the Lessee and the Lead Contractor shall meet and confer to determine: (i) with respect to the Temporary Crane Directives, the delay incurred or relief from the Lessee's obligations under this Agreement as determined in accordance with Section 14.2 (*Delay Events*), and (ii) with respect to the Final Crane Directive, any Lessee Damages as determined in accordance with Section 14.1 ([redacted] and the delay incurred or relief from the Lessee's obligations under this Agreement as determined in accordance with Section 14.2 (*Delay Events*).

(iv) The Port Authority shall be entitled to procure any report or study to verify or analyze the impacts claimed by the Lessee arising from the Final Crane Directive, in accordance with Section 14.1(b)(iv), except that such report or study will be provided to the Lessee within sixty-five (65) days (and not ninety (90) days as provided in such Section) following the Crane Directive Trigger Date, or such other time period reasonably necessary for the Port Authority to obtain such report or study.

(v) If the Port Authority disagrees (A) that a [redacted] or a Delay Event claimed by the Lessee on the basis of the Final Crane Directive, or a Delay Event claimed by the Lessee on the basis of the Temporary Crane Directives, has occurred or (B) with the Lessee's entitlement to or amount of Lessee Damages or other relief claimed by the Lessee under Section 14.3(b)(iii) above, the Lessee and the Port Authority will commence good faith negotiations to resolve the Dispute within ninety-five (95) days following the Crane Directive Trigger Date; provided, that if the Dispute cannot be resolved within such ninety-five (95) day period, then either Party, by written notice to the other Party, may terminate the negotiations and submit the Dispute for resolution in accordance with Article 33 (*Dispute Resolution Procedures*).

(c) Further amendments or modifications to the Final Crane Directive shall constitute a Change in Law solely for purposes of this Article 14 ([redacted] *Delay Events*).

(d) Notwithstanding anything herein, but for the avoidance of doubt, without limiting the Lessee's obligation to mitigate potential damages and schedule impacts, to negotiate with the Port Authority on an Open Book Basis and to bear the burden of proving such claimed impacts, all as set forth in Sections 14.1 [redacted] and 14.2 (*Delay Events*), the Parties may agree to seek resolution of the Final Crane Directive and the Temporary Crane Directives by negotiating a Port Authority Change. In that event, nothing in this Section 14.3 (*Crane Directive*), nor any exercise by either Party of its rights or obligations under this Section 14.3 (*Crane Directive*), shall preclude the Parties from resolving any or all impacts of the Final Crane Directive or the Temporary Crane Directives through an agreement on the terms of a Port Authority Change in accordance with Section 13.1 (*Port Authority Changes*).

Section 14.4 Waiver

The Lessee unconditionally and irrevocably waives the right to any claim against the Port Authority, its officers, directors, commissioners, agents, representatives, consultants and employees for any monetary compensation, schedule relief or other relief except to the extent specifically provided in this Article 14 ([redacted] *Delay Events*) or otherwise as specifically provided in this Agreement. The foregoing waiver is limited solely to the occurrence of [redacted] and Delay Events and encompasses all theories of liability, whether in contract, tort (including negligence), strict liability, equity, *quantum meruit* or otherwise, and encompasses all theories to extinguish contractual obligations, including impracticability, mutual or unilateral mistake and frustration of purpose. Notwithstanding anything to the contrary herein, no liability of the Lessee that arose before the occurrence of the

[redacted] or Delay Event giving rise to a claim under this Article 14 ([redacted] *Delay Events*) shall be excused as a result of the occurrence thereof. Nothing in the Requirements and Provisions for Work shall have the intent or effect or shall be construed to create any right of the Lessee to any claim for additional monetary compensation, schedule relief or other relief, notwithstanding any provision in the Requirements and Provisions for Work to the contrary, in each case with respect to [redacted] and Delay Events. The provisions of this Section 14.4 (*Waiver*) shall not affect the Lessee's remedies under the Project Documents in the event of a termination event pursuant to Section 24.1 (*Grounds for Termination*) or upon termination of this Agreement prior to the stated expiration of the Term.

ARTICLE 15

COMPLIANCE WITH LAW

Section 15.1 Compliance with Law Generally; Governmental Approvals

(a) The Lessee shall comply with all Applicable Laws and Applicable Standards, including all Environmental Laws and those Applicable Laws and Applicable Standards specifically enumerated in this Article 15 (*Compliance With Law*). The Lessee shall make any and all structural or non-structural improvements, alterations or repairs of the Premises that may be required at any time hereafter by any such Applicable Law or Applicable Standard. Except as otherwise expressly provided in this Agreement, including in Section 15.1(d) (*Governmental Approvals*) below, the Lessee shall procure and obtain from all Governmental Entities having jurisdiction over the operations of the Lessee hereunder all required Governmental Approvals, other than Port Authority Governmental Approvals, and shall maintain in full force and effect all such Governmental Approvals, other than Port Authority Governmental Approvals.

(b) The obligation of the Lessee to comply with Applicable Laws, Applicable Standards and Governmental Approvals is not to be construed as a submission by the Port Authority to the application to itself of such Applicable Laws, Applicable Standards and Governmental Approvals.

(c) The Lessee shall promptly provide notice to the Port Authority after the Lessee becomes aware of any Claim, action, judgment, warning, summons, obligation, notice, notice of violation, investigation, proceeding, order or Lien arising under or relating to any violation or alleged violation of any Applicable Law, Applicable Standard or Governmental Approval with respect to the Premises or LGA Airport.

(d) Governmental Approvals.

(i) Except in respect of the Port Authority Governmental Approvals, the Lessee shall be solely responsible for securing, obtaining and maintaining all Governmental Approvals (including any revision, modification, amendment, supplement, renewal or extension thereof) required in connection with the performance of its obligations under the Project Documents. Notwithstanding the foregoing, if the Port

Authority's participation in such application or request for any Governmental Approval (including any revision, modification, amendment, supplement, renewal or extension thereof) is necessary or desirable, the Parties shall cooperate with each other and the Lessee shall provide all information to the Port Authority to facilitate such process. Governmental Approvals that are the responsibility of the Lessee shall be obtained prior to the time set forth in the Project Baseline Schedule for the commencement of the portion of the Work to which such Governmental Approvals are applicable.

(ii) Notwithstanding Sections 15.1(a) and 15.1(d)(i), the Lessee shall be responsible for obtaining any amendments, modifications, revisions or supplements to any Port Authority Governmental Approval where such amendments, modifications, revisions or supplements are necessary to reflect the requirements for the Construction Work and Operations and Maintenance Work based on the Lessee's Final Design and/or means and methods should the Final Design and/or means and methods deviate from the basis upon which the Port Authority Governmental Approval was initially granted by the applicable Governmental Entity; it being understood that if the application or request for such amendment, modification, revision or supplement can only be made in the name of the Port Authority or the Port Authority's participation in such application or request process is necessary or desirable, the Parties shall cooperate with each other and the Lessee shall provide all information to the Port Authority to facilitate such process. In the event that the applicable Governmental Entity refuses to grant any such amendment, modification, revision or supplement or any such amendment, modification, revisions or supplement cannot be obtained in a form that is consistent with the Final Design and acceptable to the Port Authority in accordance with the requirements of this Agreement, the Lessee shall be responsible, at its own risk of delay and cost, for revising its Final Design and/or means and methods as necessary to satisfy the requirements and conditions of the original Port Authority Governmental Approval or the amendment, modification, revision or supplement to such Governmental Approval as has been issued by such Governmental Entity, as applicable, and the Lessee shall perform the Construction Work or the Operations and Maintenance Work in accordance therewith during the Term. For avoidance of doubt, any amendments, modifications, revisions or supplements to any Port Authority Governmental Approval required to be obtained by the Lessee pursuant to this Section 15.1(d)(ii) shall not provide the basis for any [redacted] or Delay Event under Section 14.1(a)(xii) or Section 14.2(a)(xi), respectively, for any failure or delay of the Port Authority to obtain a Port Authority Governmental Approval that it is required to obtain pursuant to the Project Documents.

(iii) The Lessee shall at all times perform its obligations under this Agreement in compliance with all Governmental Approvals and shall be responsible for the satisfaction of all conditions of such Governmental Approvals in connection with such performance.

(iv) The Lessee shall deliver to the Port Authority for Port Authority Approval, as required by Section 16.14(a)(ii), accurate and complete copies of all applications for new Governmental Approvals or amendments to the existing Governmental Approvals that are required to be obtained by the Lessee, at least sixty (60)

days in advance of planned submittal of such application and taking into account time allotted for review of such application by the Port Authority in accordance with Section 16.14(a); provided, that if, a new Governmental Approval or an amendment to an existing Governmental Approval is required in order to comply with Applicable Law, Applicable Standards or the Lessee's obligations under this Agreement and a sixty (60)-day review period is impracticable, the Lessee may request that the Port Authority review such application or amendment on an expedited basis and the Port Authority shall not unreasonably withhold or delay its consent to such request. The Lessee shall provide to the Port Authority a true and complete copy of any new or amended Governmental Approval within two (2) Business Days after receipt thereof, together with all correspondence to and from the applicable Governmental Entity in respect of such Governmental Approval.

(v) The Port Authority will cooperate with the Lessee in connection with any application by the Lessee for a Lessee Governmental Approval and will, at the reasonable request of the Lessee and at the Lessee's expense, and where necessary to obtain, renew, replace, extend the validity of, or arrange necessary amendments to any Governmental Approval:

(A) execute documents that are acceptable to the Port Authority and can only be executed by the Port Authority;

(B) make such applications, either in its own name or jointly with the Lessee, as can only be made by the Port Authority or in the joint names of the Lessee and the Port Authority, as the case may be; and

(C) attend meetings with appropriately qualified staff and cooperate with approval bodies as reasonably requested by the Lessee,

in each case, with reasonable advance notice on the Premises or at a location convenient for the Port Authority and within a reasonable period of time of being requested to do so by the Lessee.

(vi) The Lessee shall take all steps and perform all acts to facilitate the application by the Port Authority for any Port Authority Governmental Approvals, at the times and in the manner reasonably requested by the Port Authority, including providing supporting drawings, data, plans and technical information in form and substance reasonably satisfactory to the Port Authority, and the preparation or filing by the Lessee of appropriate applications for such Port Authority Governmental Approvals with the applicable Governmental Entity.

Section 15.2 Port Authority Rules and Regulations

(a) The Lessee covenants and agrees to comply, and to cause the Lessee-Related Entities, Sublessees, and their respective guests and invitees to comply, with the Rules and Regulations in effect on the Lease Commencement Date and such future Rules and Regulations and amendments and supplements to Rules and Regulations with respect to the conduct and

operations of the Lessee and others at LGA Airport, including with respect to the use of the Public Aircraft Facilities, as such Rules and Regulations may from time to time be promulgated by the Port Authority pursuant to Section 15.2(b). The Port Authority agrees that, except in cases of Emergency, the Port Authority will notify the Lessee of any new Rules and Regulations or amendments to Rules and Regulations that require compliance under this Section 15.2(a) at least thirty (30) days before the Lessee shall be required to comply therewith (or such longer time period as may be specified by the Port Authority in such notice).

(b) The use by the Lessee, the Lessee-Related Entities and their respective officers, employees, guests and invitees, Sublessees, and those doing business with the Lessee, of the Public Aircraft Facilities and any and all other portions of LGA Airport which it may be entitled to use under this Agreement shall be subject to the Rules and Regulations in effect as of the Lease Commencement Date, and such future Rules and Regulations (including amendments and supplements to existing Rules and Regulations) as the Port Authority may from time to time promulgate in the public interest and in the interest of health, safety, noise, sanitation, good order and the economic and efficient operation of LGA Airport, including the number and type of Aircraft which at any particular time may use the Public Aircraft Facilities and the time or times when such Aircraft may use the Public Aircraft Facilities. Without limiting the foregoing, the Port Authority may take into account in adopting such Rules and Regulations the adequacy, capacity and suitability of (i) Aircraft using LGA Airport, (ii) passenger handling facilities at LGA Airport, (iii) the Public Aircraft Facilities at LGA Airport, (iv) the roadways and (v) the parking facilities. In the event the Port Authority promulgates new Rules and Regulations pursuant to this Section 15.2(b), the Port Authority may devise and implement reasonable procedures including but not limited to, allocations among Aircraft Operators at LGA Airport.

Section 15.3 Compliance with General Manager's Bulletins, Directives and Instructions

(a) In addition to all other provisions of this Agreement that expressly require compliance with the General Manager's decisions and instructions in the exercise of the General Manager's discretion, the Lessee covenants and agrees to comply, and to cause its Contractors, Suppliers and Sublessees to comply, with any bulletin, directive or other official instruction issued by the General Manager from time to time (a "**General Manager Directive**"), it being understood that a General Manager Directive would apply comparably to the Lessee as to other operators at LGA Airport; provided, however, that an Event of Default or any other event subjecting the Lessee to termination under this Agreement shall be deemed not to occur if, in complying with a General Manager Directive, the Lessee is compelled to commit a breach of, or otherwise would be non-compliant with, the terms of this Agreement, any Applicable Law or any Applicable Standard.

(b) The Lessee shall not be entitled to claim a [redacted] or a Delay Event with respect to any costs or other impacts incurred or suffered in connection with its compliance with any General Manager Directive pursuant to this Section 15.3 (*Compliance with General Manager's Bulletins, Directives and Instructions*); provided, however, that the Lessee shall be entitled to claim a [redacted] or a Delay Event, as applicable, if and

to the extent the Lessee demonstrates that such General Manager Directive has been issued to comply with or directly implement a Discriminatory Change in Law or Discriminatory Applicable Standards Change with respect to which the Lessee would otherwise be entitled to claim a [redacted] or a Delay Event under Section 14.1 [redacted] or Section 14.2 (*Delay Events*), as applicable.

Section 15.4 [Reserved]

Section 15.5 FAA Grants

(a) The Port Authority has applied for and received a grant or grants of money from the Administrator of the FAA and has applied for and received permission to collect and use Passenger Facility Charges pursuant to An Act To Revise, Codify, And Enact Without Substantive Change Certain General And Permanent Laws, Related To Transportation, Pub. Law 103-272, 108 Stat 745 (July 5, 1994), and under prior Federal statutes which said act superseded. The Port Authority may apply for and receive such grants and permissions in the future. The Port Authority has undertaken, and may in the future undertake, certain obligations respecting its operation of LGA Airport and the activities of its contractors, lessees and permittees thereon in applications for such grants and permissions. The performance by the Lessee of the covenants and obligations contained in this Agreement is therefore a special consideration and inducement for the Port Authority to enter into and execute this Agreement.

(b) The Lessee covenants and agrees that (i) the Lessee shall comply with any direction issued by the Port Authority (including any bulletin, directive or other official instruction issued by the General Manager) to comply with Applicable Law or Applicable Standards, or with any applicable regulation, order, statement of policy, advisory circular, recommendation or suggestion, of the Administrator of the FAA or any other governmental officer or body having jurisdiction over the enforcement of the obligations of the Port Authority under Federal law, or arising from the applications described in Section 15.5(a); provided, that with respect to directions issued to comply with a recommendation or suggestion of any such governmental officer or body, such direction shall be applied in a non-discriminatory manner to the Lessee, (ii) for the purpose of this Section 15.5 (*FAA Grants*), "governmental officer or body" shall not be construed to refer to or include the Port Authority, (iii) the direction of the Port Authority made under this Section 15.5(b) shall include a direction to the Lessee to take an action, to not take an action, or to cease an action, including the granting of a Contract or permission or directing another person to take an action, refrain from taking an action, or cease an action, (iv) the Port Authority's interpretation of any such law, order, statement of policy, advisory circular, recommendation or suggestion, including those of a general nature which do not refer specifically to LGA Airport or any specific person, shall be final and determinative unless such interpretation is discriminatory to the Lessee; and (v) the Port Authority may require any permittee, Sublessee, subtenant, licensee, Contractor or Supplier of the Lessee who acts for or on behalf of the Lessee in or regarding the Premises to perform the obligations imposed by, and be subject to, the terms of, this Section 15.5 (*FAA Grants*), as if such permittee, Sublessee, subtenant, licensee, Contractor or Supplier were the Lessee with respect to the obligations of the Lessee set forth in this Section 15.5 (*FAA Grants*).

Section 15.6 Terminal Security Program Obligations

(a) Terminal Security Program.

(i) The Lessee has been advised that the Port Authority is obligated to have in effect and does now have in effect an airport security program (the "**Airport Security Program**" or "**ASP**") approved by the TSA, which complies with 49 C.F.R. Part 1542 and includes, as a portion thereof, the Port Authority's obligations under 49 C.F.R. Part 1542 to provide security within LGA Airport, including the Premises.

(ii) The Lessee has submitted as part of the consolidated "Security Management Program," and the Port Authority has approved, on or before the Lease Commencement Date, a security program for the Premises (the "**Terminal Security Program**" or "**TSP**"), which describes security and law enforcement requirements to be performed by the Lessee throughout the Term in accordance with Section 2.4 of the Operational Requirements. The TSP shall comply with the requirements of 49 C.F.R. Parts 1520 and 1542 as though the Lessee were a regulated party under an exclusive area agreement, setting forth, *inter alia*, (A) procedures to protect Sensitive Security Information; (B) procedures to monitor and restrict access to Secured Areas, inclusive of Sterile Areas, Security Identification Display Areas, and the Air Operations Area, on the Premises; (C) procedures for ensuring security complies with the TSP throughout the Term, including during the Initial O&M Period, the Phased Construction O&M Period and the O&M Period; (D) procedures for participation in the annual security contingency plan tabletop exercise; (E) procedures related to implementation of increased security measures during times of heightened security in compliance with the ASP; (F) procedures for ensuring and demonstrating continuous compliance with the requirements of TSA-issued Security Directives and Information Circulars, including the implementation of any changes to such requirements; (G) procedures for ensuring and demonstrating continuous compliance with the requirement to provide TSA-issued public advisories within the Premises; and (H) such other security-related information or data as the Port Authority may reasonably request from time to time. The Lessee understands and agrees that the maintenance and operation of the Premises pursuant to the requirements of the Terminal Security Program is essential to the operation of the Premises and the operation of LGA Airport. For the purposes of this Section 15.6 (*Terminal Security Program Obligations*), "Secured Areas," "Air Operations Area," "Sterile Area," "Security Identification Display Area," "Security Directives," "Information Circulars," and "Sensitive Security Information" shall each have the meaning set forth in 49 C.F.R. Parts 1520 and 1542.

(iii) The Port Authority and the Lessee have agreed that, after the Port Authority has approved the Terminal Security Program and execution of this Agreement, the Port Authority shall amend the Airport Security Program and submit such amended Airport Security Program to the TSA for approval pursuant to 49 C.F.R. Part 1542. The Parties acknowledge that the Port Authority shall continue to have responsibility as the airport operator under the Airport Security Program and that the Port Authority shall designate the Lessee as its security agent for implementing security in the Premises in

accordance with the Terminal Security Program and the Airport Security Program, as amended pursuant to this Section 15.6(a)(iii).

(iv) The Lessee acknowledges that it has been provided with a copy of the Airport Security Program and agrees to treat and properly secure and safeguard the Terminal Security Program and the Airport Security Program, as well as Security Directives and Information Circulars, if any, related thereto, as Sensitive Security Information, in compliance with Applicable Law, including the regulations set forth in 49 C.F.R. Parts 1520 and 1542. The Lessee further acknowledges that it understands the need to restrict access to Sensitive Security Information strictly to authorized persons in accordance with such regulations.

(b) Coordination with the Port Authority.

(i) The Lessee hereby agrees to, and shall, assume and fulfill all of the Port Authority's obligations and responsibilities with respect to the Premises under the Terminal Security Program and shall take all measures required, necessary or appropriate to implement and carry out the requirements of the Terminal Security Program (as may be amended from time to time), including complying with any TSA-issued Security Directives, Information Circulars and public advisories and coordinating with the Port Authority or the TSA, as required. The Lessee shall report immediately to the Port Authority, as required by Applicable Law or the Terminal Security Program, (A) any unauthorized or otherwise improper attempt to gain access to the Terminal Security Program; (B) any unauthorized or improper disclosure of the Terminal Security Program, whether deliberate or inadvertent; (C) any malfunctions of equipment or other inability to meet the requirements of the Terminal Security Program; (D) any and all security violations or breaches of security; and (E) any other matter which may compromise the security of the Premises or the ability of the Lessee to fulfill the requirements of the Terminal Security Program. The Lessee shall investigate each and every security violation or breach with respect to the Premises, determine the cause thereof and take appropriate and timely action in response thereto. The Lessee shall make available to the Port Authority and the TSA, as required, any and all materials or information necessary to conduct security reviews, both scheduled and non-scheduled security inspections and security audits. The Lessee shall also respond to Port Authority requests and provide to the Port Authority records and access to personnel as required to respond to all complaints, letters of investigation and requests from the TSA.

(ii) The Port Authority agrees to provide the Lessee, in a timely manner, with copies of all correspondence, letters of investigation or other documents related to possible or alleged violations of 49 C.F.R. Parts 1520, 1542 and 1544 with respect to the Premises so as to permit the Lessee fully and meaningfully to participate in any response to such correspondence or other documents. To the extent permitted by Applicable Law and the TSA, the Port Authority may, at its sole discretion, allow the Lessee to participate in meetings and negotiations with the TSA regarding alleged violations of 49 C.F.R. Parts 1520, 1542 and 1544 with respect to the Premises.

(iii) The Lessee covenants and agrees that the Lessee shall promptly comply with any direction issued by the Port Authority (including any bulletin, directive or other official instruction issued by the General Manager) to remedy any security deficiencies or to comply with Applicable Law, the Terminal Security Program (as may be amended) and any TSA-issued Security Directives, Information Circulars and public advisories.

(c) Amendments or Revisions to Terminal Security Program.

(i) Without limiting any term or provision hereof, during the performance of the Work or any modification of the Premises or any other change in conditions at the Premises which shall require or make desirable any revisions to the Terminal Security Program, the Lessee shall submit for Port Authority Approval the proposed amended Terminal Security Program along with a reasonably detailed narrative describing the differences between such proposed amended Terminal Security Program and the Terminal Security Program then in effect. After the Port Authority has approved the revised Terminal Security Program, the Port Authority shall, in a timely manner, amend the Airport Security Program, if necessary, and submit such amended Airport Security Program to the TSA for approval pursuant to 49 C.F.R. Part 1542 if the Port Authority determines in its sole discretion that such amendment to the Airport Security Program is necessary. Upon Port Authority Approval of the revised Terminal Security Program, the Lessee shall implement the same and in any event shall maintain, at all times, the required level of security under the Terminal Security Program and comply with all requirements of the Terminal Security Program. The Lessee may not implement any amendment to the Terminal Security Program unless and until such amended Terminal Security Program has been approved by the Port Authority and any implementation prior to such approval shall be at the Lessee's sole cost and expense and shall subject the Lessee to a breach of its obligations under this Agreement.

(ii) From time to time, as may be required pursuant to Applicable Law (including, but not limited to, the regulations set forth in 49 C.F.R. Parts 1520, 1542 and 1544), Security Directive or applicable changes in circumstances, the Port Authority shall notify the Lessee of the actions so required and the Lessee shall prepare and shall submit for Port Authority Approval pursuant to Section 15.6(c)(i), in a timely manner, any revisions or updates to the Terminal Security Program that may be required.

(d) Other Safety and Security Responsibilities of the Lessee.

(i) In accordance with Section 1.1 of the General Conditions, the Lessee shall apply to the Port Authority for the issuance of identification for its employees for access to Security Identification Display Areas, as may be required generally for employees at LGA Airport or under the Terminal Security Program, and shall establish its own security badging office for the issuance of "CTB Replacement Project Photo IDs." In connection therewith, the Lessee shall conduct or cause to be conducted all investigations and background checks which may be required and shall prepare and submit to the Port Authority all forms and applications and other material as the Port Authority may require.

(ii) In accordance with Sections 2.4 and 2.6 of the Operational Requirements, the Lessee shall be responsible for all personnel training with respect to all persons employed by the Lessee, including security guards, as required by the Operational Requirements, Applicable Law or the Terminal Security Program.

(iii) In accordance with Sections 2.1 through 2.3 of the Operational Requirements, the Lessee shall integrate its safety and security systems with the Port Authority's LGA Airport safety and security systems and programs, including "Fire Protection and Life Safety Systems" (as defined in the Operational Requirements), physical security systems, including access control systems, and the integrated security approach for LGA Airport, as may be required under the Terminal Security Program or otherwise by the Port Authority.

(iv) In accordance with Section 2.8 of the Operational Requirements, the Lessee shall be responsible for developing contingency plans and deplaning procedures that comply with Port Authority guidelines with respect to lengthy ground delays, as required in the LaGuardia Airport Tarmac Delay Contingency Plan and Customer Care Airport Standards Manual.

(v) In accordance with Section 2.12 of the Operational Requirements, the Lessee and Lessee-Related Entities shall maintain a safe working environment for the general public, passengers, patrons and employees and shall be required to implement a comprehensive safety management system plan satisfying the requirements of Section 2.12.1 of the Operational Requirements.

(e) Without limiting the generality of any other term or provision of this Agreement, the Port Authority at any time, and from time to time, shall have the right to enter upon the Premises and to take over the operation, implementation, maintenance or any other aspects of the Terminal Security Program, in whole or in part, and with or without cause. Upon notice from the Port Authority of its intention to do so, the Lessee will immediately turn over to the Port Authority access to and control of all material, equipment, supplies, personnel and records necessary for the implementation of the Terminal Security Program and shall accord the Port Authority complete access to the Premises and cooperation for the purpose of taking over and carrying out the Terminal Security Program; provided, however, that the Port Authority shall use Reasonable Efforts to minimize the effect and duration of any disruption to or impairment of the Work or the use and occupancy of the Premises. The Port Authority's cost of operation, implementation and maintenance of the Terminal Security Program and compliance with any Security Directives or similar orders or directives shall be deemed a Permitted O&M Expense and shall be paid by the Lessee to the Port Authority.

(f) The Port Authority is entitled to seek specific performance, injunction or any other remedies at law or in equity with respect to any breach of the Lessee's obligations under this Section 15.6 (*Terminal Security Program Obligations*).

(g) Pursuant to Section 21.1(o), the Lessee shall indemnify and hold harmless the Port Authority from and against all claims and demands for death, personal injuries, property

damages, fines (including any fines from the TSA), penalties, liquidated damages or other monies arising out of any act or omissions of the Lessee with respect to the operation, maintenance and implementation of the Terminal Security Program. The Lessee shall have no obligation to the Port Authority and the Port Authority shall assume responsibility for any claims or demands in connection with the Terminal Security Program (as may be amended from time to time): (i) arising because the Port Authority has failed to provide to the Lessee a notice regarding material information concerning the Terminal Security Program and about which the Lessee is otherwise unaware or (ii) arising after the Port Authority has taken over and is implementing the Terminal Security Program (except to the extent the Port Authority's actions arise from the Lessee's willful misconduct, negligence or any other conduct of the Lessee inconsistent with the Terminal Security Program (as may be amended from time to time)).

Section 15.7 OFAC

The Lessee hereby represents and warrants to the Port Authority that the Lessee is not, and agrees that at all times the Lessee shall not become, a person or entity with whom the Port Authority is restricted from doing business under the regulations of the Office of Foreign Asset Control ("**OFAC**") of the United States Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including the September 24, 2001 Executive Order on Terrorist Financing Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit or Support Terrorism), or other governmental action and is not engaging, and shall not engage, in any dealings or transactions or be otherwise associated with such persons or entities in violation of the regulations of OFAC or any statute, executive order or other governmental action. The Lessee acknowledges that the Port Authority is entering into this Agreement in reliance on the foregoing representations and warranties and that such representations and warranties are a material element of the consideration inducing the Port Authority to enter into and execute this Agreement.

Section 15.8 Non-Discrimination

(a) 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: (i) no person on the ground of race, creed, color, sex, age, disability, marital status or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises, (ii) in the construction of any improvements on, over, or under the Premises and furnishing of services thereon, no person on the ground of race, creed, color, sex, age, disability, marital status or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination and (iii) the Lessee shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 C.F.R. Part 21 and as said regulations may be amended, and any other Applicable Laws or Applicable Standards, which from time to time may be applicable to the Lessee's operations at LGA Airport, whether by reason of agreement between the Port Authority and any Governmental Entity or otherwise.

(b) The Lessee shall include the provisions of Section 15.8(a) in every Sublease, agreement or concession it may make pursuant to which any Person or Persons, other than the Lessee, operates any facility at LGA Airport providing services to the public and shall also include therein a provision granting the Port Authority a right to take such action as the United States may direct to enforce such covenant.

(c) The Lessee's noncompliance with the provisions of this Section 15.8 (*Non-Discrimination*) shall constitute a material breach of this Agreement. In the event of the breach by the Lessee of any of the above non-discrimination provisions the Port Authority may take appropriate action to enforce compliance; or the Port Authority shall have the right to terminate this Agreement pursuant to Article 23 (*Lessee Events of Default*), or may pursue such other remedies as may be provided by law; and as to any or all the foregoing, the Port Authority may take such action as the United States may direct.

(d) Pursuant to Section 21.1(l), the Lessee shall indemnify and hold harmless the Port Authority from any Third-Party Claims resulting from the Lessee's noncompliance with this Section 15.8 (*Non-Discrimination*), and the Lessee shall reimburse the Port Authority for any loss or expense incurred by reason of such noncompliance.

(e) The Lessee specifically agrees, as part of its obligation to comply with all Applicable Laws and Applicable Standards during the Term, that it shall comply with 49 C.F.R. Part 26 and 49 C.F.R. Part 23, as the same may be amended from time to time. In addition, the Port Authority may from time to time, by written notice to the Lessee, provide to the Lessee specific provisions that it determines may be required by 49 C.F.R. Part 26 and/or 49 C.F.R. Part 23, to be attached to and form a part of this Agreement. Such specific provisions, from the effective date of such notice, shall be deemed to constitute an integral part of this Agreement.

Section 15.9 Employment – Affirmative Action – Equal Opportunity

(a) The Lessee shall not discriminate against employees or applicants for employment, including recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selections for training or retraining, including apprenticeship and on-the-job training, because of race, creed, color, national origin, sex, age, disability or marital status.

(b) In addition to and without limiting the foregoing, and without limiting the provisions of Section 15.8 hereof (*Non-Discrimination*) and Part I of Exhibit 13 (*Affirmative Action, Equal Opportunity, Minority Business Enterprise, Women-owned Business Enterprise Requirements*), it is hereby agreed that the Lessee in connection with the Work, or any portion thereof, shall throughout the Term commit itself to and use good faith efforts to implement an extensive program of affirmative action, including specific affirmative action steps to be taken by the Lessee, to ensure maximum opportunities for employment and contracting by minorities and women. Such programs shall include recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selections for training or retraining, including apprenticeship and on-the-job

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

(c) The Lessee's noncompliance with the provisions of this Section 15.9 (*Employment – Affirmative Action – Equal Opportunity*) shall constitute a material breach of this Agreement. In the event of the breach by the Lessee of any of the above provisions the Port Authority may take appropriate action to enforce compliance; or the Port Authority shall have the right to terminate this Agreement pursuant to Article 23 (*Lessee Events of Default*), or may pursue such other remedies as may be provided by law.

(d) In the implementation of this Section 15.9 (*Employment – Affirmative Action – Equal Opportunity*), the Port Authority may consider compliance by the Lessee with the provisions of any Federal, state or local law concerning affirmative action equal employment opportunity which are at least equal to the requirements of this Section 15.9 (*Employment – Affirmative Action – Equal Opportunity*), as effectuating the provisions of this Section 15.9 (*Employment – Affirmative Action – Equal Opportunity*). If the Port Authority determines that by virtue of such compliance with the provisions of any such Federal, state or local law that the provisions hereof duplicate or conflict with such law the Port Authority may waive the applicability of the provisions of this Section 15.9 (*Employment – Affirmative Action – Equal Opportunity*) to the extent that such duplication or conflict exists.

Section 15.10 Minority Business Enterprises, Women-Owned Business Enterprises and Local Business Enterprises Commitment

(a) Minority Business Enterprises and Women-owned Business Enterprises Commitment. In addition to and without limiting any other term or provision of this Agreement, it is hereby agreed that the Lessee in connection with the Work, or any portion thereof, shall throughout the Term commit itself to and use good faith efforts to implement an extensive program to ensure maximum opportunities for Minority Business Enterprises ("**MBE**") and Women-owned Business Enterprises ("**WBE**") in accordance with Part II of Exhibit 13 (*Affirmative Action, Equal Opportunity, Minority Business Enterprises, Women-Owned Business Enterprise Requirements*).

(b) Local Business Enterprises Commitment. Throughout the Term, the Lessee in connection with any Work on the Premises, or any portion thereof, shall commit itself to and use good faith efforts to implement a program to maximize the use of Local Business

Enterprises in accordance with Exhibit 14 (*Local Business Enterprise and Employment Opportunity*).

(c) Throughout the Term the Lessee shall document its efforts in implementing programs to ensure maximum opportunities for MBE and WBE and to maximize the use of Local Business Enterprises in accordance with this Section 15.10 (*Minority Business Enterprises, Women-owned Business Enterprises and Local Business Enterprises Commitment*), shall keep the Port Authority fully advised of the Lessee's progress in implementing such programs and shall supply to the Port Authority such information, data and documentation with respect thereto as the Port Authority may from time to time and at any time request, including but not limited to annual reports.

(d) The Lessee's noncompliance with the provisions of this Section 15.10 (*Minority Business Enterprises, Women-owned Business Enterprises and Local Business Enterprises Commitment*) shall constitute a material breach of this Agreement. In the event of the breach by the Lessee of any of the above provisions the Port Authority may take appropriate action to enforce compliance; or the Port Authority shall have the right to terminate this Agreement pursuant to Article 23 (*Lessee Events of Default*), or may pursue such other remedies as may be provided by law.

Section 15.11 Airport Concession Disadvantaged Business Enterprises Commitment

(a) The Lessee hereby covenants and agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or disability in connection with the award or performance of any Concession Sublease or any management contract, or subcontract, purchase or lease agreement or other agreement covered by 49 C.F.R. Part 23.

(b) In addition to and without limiting any other term or provision of this Agreement, the Lessee hereby agrees that in connection with the leasing and operation of the concession program at the Premises, or any portion thereof, the Lessee shall commit itself to and use good faith efforts to implement an extensive program to maximize the use of ACDBEs in accordance with Exhibit 15 (*Airport Concession Disadvantaged Business Enterprise (ACDBE) Participation*).

(c) The Lessee's noncompliance with the provisions of this Section 15.11 (*Airport Concession Disadvantaged Business Enterprises Commitment*) shall constitute a material breach of this Agreement. In the event of the breach by the Lessee of any of the above provisions the Port Authority may take appropriate action to enforce compliance; or the Port Authority shall have the right to terminate this Agreement pursuant to Article 23 (*Lessee Events of Default*), or may pursue such other remedies as may be provided by law.

[redacted]

[redacted]

ARTICLE 16

ENVIRONMENTAL, HEALTH AND SAFETY REQUIREMENTS

Section 16.1 General Obligations

(a) Environmental Laws and Environmental Requirements. The Lessee shall design and construct the Construction Project so that it complies with and can be operated in compliance with all Environmental Requirements, and shall perform all the Operations and Maintenance Work during the Term in compliance with all Environmental Requirements. Unless otherwise expressly stated herein, all Environmental Requirements related to the Lessee's rights to use the Premises and the areas subject to the Temporary Rights of Access and activities with respect to the Premises and the Temporary Rights of Access are the responsibility of the Lessee, and the Lessee shall be responsible for all costs, losses, liabilities, damages and operational requirements arising under or with respect to such Environmental Requirements throughout the Term, including obtaining any surety bond or giving any other financial assurance that may be required in connection with the Work, and complying with the provisions of all Environmental Requirements becoming effective upon, or relating to, the termination of this Agreement or the surrender of the Premises, the Temporary Rights of Access or any portion thereof under this Agreement, or on the closure of or transfer of control of the Lessee's operations at the Premises or the Temporary Rights of Access. The Lessee shall not dispose of, release or discharge any Hazardous Materials on, in, under or from the Premises or the Temporary Rights of Access, except in compliance with the Environmental Requirements and this Agreement.

(b) Environmental Management Plan. The Lessee shall prepare and submit for Port Authority Approval, in accordance with the submittal time periods set forth in Section 16.14 (*Environmental Notices, Submittals and Reports*), an Environmental Management Plan that sets forth in detail the design and construction requirements, operational procedures, documentation, reporting and record keeping requirements addressed in this Article 16 (*Environmental, Health and Safety Requirements*) and other information required by Section 7.8 and 7.9 of the Design and Construction Requirements and by the provisions of the TCAP relating to environmental management plan preparation. The Environmental Management Plan shall include inspection, sampling and maintenance requirements to ensure

compliance with the Environmental Requirements, including to the extent required by the Environmental Requirements or this Agreement, the timely identification, reporting, remediation and repair of conditions that constitute violations of the Environmental Requirements or Hazardous Materials Releases by the Lessee or any Occupant, and shall include provisions relating to coordination with the Port Authority with respect to communications with or obligations of the Port Authority. The Environmental Management Plan shall include the substantive requirements and any additional details necessary for the Lessee and Occupants to comply with the Lessee's obligations under, and permit the Port Authority to monitor and, where provided by this Agreement, supervise and approve the Lessee's compliance with, this Article 16 (*Environmental, Health and Safety Requirements*), including the classification, handling, management and disposal of Demolition Debris, Excavated Materials, Groundwater and Hazardous Materials.

(c) Environmental Approvals. The Lessee shall identify and obtain, or cause its Sublessees or Lessee-Related Entities to obtain, any Governmental Approvals required under Environmental Laws for the performance of the Work throughout the Term in accordance with Section 15.1(d) hereof, other than the Port Authority Governmental Approvals.

(d) Costs and Expenses. Unless specified otherwise in this Article 16 (*Environmental, Health and Safety Requirements*), the Lessee shall bear all costs, fees and expenses of performing its responsibilities under and otherwise complying with this Article 16 (*Environmental, Health and Safety Requirements*) during the Term until all obligations arising under this Article 16 (*Environmental, Health and Safety Requirements*) are satisfied, including all costs, losses, liabilities, expenses and claims relating to Hazardous Environmental Conditions caused by the Lessee or any Occupant during the Term, or for which Lessee is responsible under this Agreement, or that are associated with obtaining and maintaining Governmental Approvals required to perform the Work. To the extent the Lessee recovers costs from any available reimbursement program or third parties with respect to any Hazardous Materials Release that have been paid or reimbursed by the Port Authority, the Lessee will pay such amounts to the Port Authority, less the reasonable documented costs incurred by the Lessee in seeking recovery from such available reimbursement program or third parties. The Lessee will furnish to the Port Authority documentation supporting the amount recovered from any reimbursement program or third parties and the reasonable documented costs incurred by the Lessee in pursuing such recovery.

(e) Storage of Waste Materials. The Lessee shall collect, manage and store on the Premises and the Temporary Rights of Access all garbage, debris and other waste materials (whether solid or liquid), or soil intended for use as backfill, arising out of its performance of the Work, occupancy of the Premises, the areas subject to the Temporary Rights of Access or out of its operations, including all Excavated Materials and Demolition Debris. Any such material that may be temporarily stored in the open shall be kept in suitable garbage and waste receptacles, the same to be made of metal or other suitable material and equipped with tight-fitting covers, and to be designed to safely and properly contain whatever material may be placed therein; provided, that Excavated Materials and Demolition Debris may be stockpiled as provided in Section 16.4(b) (*Construction and Excavation Wastes*). No such garbage, soil, debris or other waste materials, including all Excavated Materials and Demolition Debris, shall

be thrown, discharged or deposited into or upon any waters or any wetland areas or be stored in a manner that could be result in such waste materials being blown or dislodged that could result in such discharges or deposits. The Lessee shall not allow the collection, management or storage of such waste materials to create or maintain a nuisance on the Premises, or to cause or permit to emanate from the Premises or the Temporary Rights of Access any smoke, gases, vapor or odors that cause or maintain a nuisance, create a safety hazard for airfield operations, violate any Environmental Requirements or constitute a Hazardous Materials Release.

(f) Responsibility for Third Parties. Without limiting the generality of Section 1.4 (*Responsibility for Related Parties*), the Lessee shall be responsible for the performance of and breaches of the Lessee's obligations and responsibilities under this Article 16 (*Environmental, Health and Safety Requirements*) by all Lessee-Related Entities, Sublessees and other Persons using space within the Premises or the areas subject to the Temporary Rights of Access, or handling, storing, managing, transporting or disposing of waste materials subject to Section 16.4 (*Responsibility for Waste Management*) pursuant to any contract or sublease with the Lessee, as well as all guests, invitees, and visitors within the Premises or the areas subject to the Temporary Rights of Access (other than the Port Authority and its contractors) (collectively, "**Occupants**"). All such Occupants shall be required by the Lessee to comply with all Environmental Requirements applicable to the Lessee (including all Sublessees, Lessee-Related Entities or other Occupants) or the Premises during the Term, including such requirements relating to Hazardous Materials and compliance with Environmental Laws as are imposed pursuant to the Project Documents. With respect to Occupants subject to a sublease or other contract with the Lessee, the Lessee shall ensure that any applicable requirements of this Article 16 (*Environmental, Health and Safety Requirements*) are imposed upon such Occupant pursuant to such contract or sublease. With respect to Occupants not parties to a contract with the Lessee, such as invitees, guests and visitors, the Lessee shall use reasonable commercial efforts and exercise due care to cause such Occupants to comply with the Lessee's obligations under this Article 16 (*Environmental, Health and Safety Requirements*). The Lessee shall be responsible for any acts or omissions of Occupants during the Term that breach or cause the Lessee to breach the requirements of this Article 16 (*Environmental, Health and Safety Requirements*) as though such acts or omissions were performed or caused by the Lessee or are otherwise the Lessee's obligation or responsibility under this Article 16 (*Environmental, Health and Safety Requirements*). If, during the Term, the actions or omissions of an Occupant, including a Lessee-Related Entity, Sublessee, guest, invitee or visitor, create a Hazardous Environmental Condition, Hazardous Materials Release or result in an Environmental Liability for which the Lessee is responsible under this Article 16 (*Environmental, Health and Safety Requirements*), or otherwise violate the Lessee's obligations under this Article 16 (*Environmental, Health and Safety Requirements*), then the Lessee shall take all actions as may be required or necessary to correct such conditions, including Remedial Action, and shall be entitled, in its own name and, with the prior written consent of the Port Authority, in the name of the Port Authority, to pursue any legal action or remedy available with respect to such conditions, including filing and pursuing claims against responsible persons or against insurers under available insurance, to recover the costs of its actions to correct the conditions subject to this Section 16.1(f) (*Responsibility for Third Parties*). For the avoidance of doubt, the references to, or failure to reference, this Section 16.1(f) (*Responsibility for Third Parties*), shall not affect the interpretation of whether this

Section 16.1(f) (*Responsibility for Third Parties*) applies throughout this Article 16 (*Environmental, Health and Safety Requirements*). With respect to the obligations imposed upon the Lessee pursuant to this Article 16 (*Environmental, Health and Safety Requirements*), references to the Lessee shall be deemed to include references to all Occupants, including Sublessees and Lessee-Related Entities, regardless of whether there is an express reference to any Occupant in the provision referencing the Lessee.

(g) SPDES Permit. The Lessee shall comply with the SPDES Permit, and shall manage stormwater within the Premises and the areas subject to the Temporary Rights of Access in a manner that does not cause violations of the SPDES Permit. Should the SPDES Permit be modified or renewed in such a way as to require local collection of materials (e.g., deicing fluid), local prevention of runoff of Hazardous Materials, centralized collection, reclamation or treatment of stormwater or other disposal of stormwater, the Lessee shall perform such collection and pollution prevention measures, or, as applicable, pay directly or reimburse the Port Authority for the costs of collection, reclamation, treatment or disposal, as applicable, based on an equitable allocation by the Port Authority among tenants and operating entities within the Airport Premises, including the Lessee, for areas within its or its Sublessees' control (as may be further allocated among the Sublessees). Nothing in this Agreement shall prohibit the Lessee from submitting comments to the relevant Governmental Entities in connection with modifications to the SPDES Permit (or any other Port Authority Governmental Approval) in connection with the publication of a draft permit or proposed amendments, or as otherwise permitted under Applicable Law.

(h) Reliance on Available Documents. The Lessee may rely upon the accuracy of information disclosed in the Available Documents for purposes of identifying Known Hazardous Materials, identifying Disclosed Facilities and estimating quantities of ACM, PCB and LCP in Demolition Debris (or, if applicable, Excavated Materials) in connection with the implementation of this Article 16 (*Environmental, Health and Safety Requirements*), and for no other purpose. For the avoidance of doubt, neither the Lessee nor any third party shall be entitled to rely upon the Available Documents (i) to confirm that there are no Hazardous Materials existing in any Current Facilities, Disclosed Facilities, soil or Groundwater, (ii) for purposes of classifying any materials, including Excavated Materials, as required under this Agreement or the Environmental Requirements, or (iii) for any other report, designation, notice or other purpose relating to compliance with the Environmental Requirements. Nothing in this Section 16.1(h) (*Reliance on Available Documents*) shall prohibit the Lessee from distributing Available Documents to third parties, including Governmental Entities, at the Lessee's sole risk, cost and expense. The Lessee shall indemnify the Port Authority and hold the Port Authority harmless from and shall defend the Port Authority against any Third-Party Claims arising from such third-party distribution and use.

(i) Temporary Rights of Access. The obligations under this Article 16 (*Environmental, Health and Safety Requirements*) with respect to the Temporary Rights of Access apply with respect to the areas subject to the Temporary Rights of Access, and such obligations terminate when the Temporary Rights of Access terminate; provided, that any obligations arising under this Article 16 (*Environmental, Health and Safety Requirements*) that have not been performed or completed on or prior to such date of termination shall survive and

remain obligations of the Lessee until performed or completed. With respect to the areas subject to the Temporary Rights of Access with respect to which the Lessee's rights of access are not exclusive, the provisions of Section 16.1(f) (*Responsibility for Third Parties*) apply only with respect to Persons whom the Lessee has the legal right or obligation to exclude from or admit to such areas.

Section 16.2 Sustainability

(a) LEED Certification. The Lessee shall design and operate the Premises to achieve LEED Silver Certification, and obtain as many additional credits for LEED Gold Certification as are reasonably obtainable consistent with the Requirements and Provisions for Work, including Section 8 of the Design and Construction Requirements. The Lessee shall satisfy the requirements of the Port Authority's Sustainable Design Guidelines and the "LEED for New Construction & Major Renovation" framework to achieve all required credits under the Sustainable Design Guidelines. The Lessee shall appoint a person who is a USGBC LEED Accredited Professional – Building Design + Construction (AP BD+C) to act as the sustainability lead (the "**Sustainability Lead**") for the Construction Work and the duration of the Term to coordinate and monitor the Lessee's compliance with the sustainability requirements of this Section 16.2 (*Sustainability*).

(b) LEED Administration During Construction Work. Throughout the Construction Period, the Lessee shall monitor and update the verification documentation with respect to the reviewed "Project Credit Checklist" and other LEED documentation. Evidence and documentation as required by the Sustainable Design Guidelines and the LEED for New Construction & Major Renovations shall be provided to verify that all items identified during the Design Work are completed during the Construction Work. The Sustainability Lead shall compile all documentation for each credit identified in the "Project Credit Checklist Form" using the relevant "Project Credit Documentation Form." The "Final Project Credit Checklist" and "Project Credit Documentation" shall be provided to the Port Authority after Substantial Completion but prior to Final Acceptance. Port Authority Approval of the Final Project Credit Checklist and Project Credit Documentation is a condition precedent to Final Acceptance.

(c) LEED Requirements during Operations and Maintenance Work. During the O&M Period, the Lessee shall ensure that the maintenance and operation of the New Terminal B Facilities are undertaken to ensure compliance with or maintenance of at least a silver rating under the "LEED for Existing Buildings: Operations & Maintenance" rating system.

Section 16.3 Specific Environmental Planning Requirements

(a) Spill Prevention, Control and Countermeasures. The Lessee shall prepare a spill prevention, control and countermeasures plan (the "**SPCC Plan**") for Port Authority Approval in accordance with the submittal time periods set forth in Section 16.14 (*Environmental Notices, Submittals and Reports*) for any petroleum products or chemicals for which SPCC Plans are required under the Environmental Requirements. The SPCC Plan shall include best management practices, spill containment methods, spill response, spill cleanup and equipment decontamination for all Construction Work and Operations and Maintenance Work. To the

extent not covered in the SPCC Plan, spill prevention, control and countermeasure plans for bulk chemical storage facilities and mobile equipment shall be incorporated into the Environmental Management Plan.

(b) Stormwater Pollution Prevention Plan. The Lessee is responsible for the preparation of a stormwater pollution prevention plan (the "**SWPPP**") in accordance with the Environmental Requirements. The SWPPP shall include, but not be limited to: drawings and specifications detailing requirements relating to the protection of the existing storm sewer transportation and collection system and new or existing catch basins and drains; prevention of storm water runoff to adjacent areas; and schedules for site inspections, reporting and recordkeeping requirements. The Lessee shall submit the SWPPP and any Notice of Intent ("**NOI**") required to obtain a general permit for stormwater discharges on or from the Premises and the Temporary Rights of Access during construction and, if required by the Environmental Requirements, operation to the Port Authority for Port Authority Approval, in accordance with the submittal time periods set forth in Section 16.14 (*Environmental Notices, Submittals and Reports*), at least sixty (60) days prior to the date of issuance of the Full Construction NTP or the initial Construction Segment NTP, as applicable. The Port Authority will then submit the approved SWPPP and NOI to NYSDEC on behalf of the Lessee. The Lessee shall certify and ensure all Contractor(s) have read and will fully comply with the SWPPP. The Lessee shall provide to the Contractor(s) a copy of the SWPPP and certification forms. Construction Work shall not commence until signed certification forms are submitted to and received by the Port Authority. If and when required by applicable Environmental Requirements, the Lessee shall also prepare required notices and plans to obtain any stormwater permit required for operation of the Premises or the Temporary Rights of Access.

(c) Erosion Control Plan. The Lessee shall submit for Port Authority Approval in accordance with the submittal time periods set forth in Section 16.14 (*Environmental Notices, Submittals and Reports*), a soil erosion and sediment control plan for the Premises and the Temporary Rights of Access (the "**Soil Erosion and Sediment Control Plan**") in conformance with the New York State Standards and Specifications for Erosion and Sediment Control (August 2005), the New York State Storm Water Management Design Manual (August 2010) and the SWPPP, including inspection and maintenance procedures. After receiving Port Authority Approval, the Lessee shall submit the Soil Erosion and Sediment Control Plan and related inspection and maintenance procedures to NYSDEC for approval, and may not commence any Construction Work prior to receipt of all such approvals.

(d) Health and Safety Plan. The Lessee shall prepare a Health and Safety Plan ("**HASP**") for the full scope of the Work, conforming with current OSHA requirements and signed by a certified industrial hygienist, all of which shall be submitted for Port Authority Approval in accordance with the submittal time periods set forth in Section 16.14 (*Environmental Notices, Submittals and Reports*). The HASP shall include provisions for worker protection, as well as any terms and conditions required to protect contractors, visitors and the public from exposure to Hazardous Materials. The HASP shall provide (or alternative documentation shall provide) for emergency planning, notifications to Governmental Entities required for Hazardous Materials locations, types and quantities, for fire protection and other emergency communications, all to the satisfaction of the Port Authority.

(e) Updates. All plans required by this Section 16.3 (*Specific Environmental Planning Requirements*) shall be reviewed and maintained in current status throughout the Term, as needed in connection with the Work, and shall be updated or amended as changing circumstances may require (including, as applicable, any change in law). Updated documentation shall be submitted to the Port Authority within thirty (30) days after it is finalized, and may be subject to Port Authority Comment.

(f) Incorporation into Environmental Management Plan. Any plan required by this Section 16.3 (*Specific Environmental Planning Requirements*) may be incorporated into the Environmental Management Plan and need not be prepared or submitted to the Port Authority in a separate document if fully included in the Environmental Management Plan.

Section 16.4 Waste Management

(a) Responsibility for Waste Management. The Lessee shall be responsible for handling, sampling, evaluation, characterization, disclosure, storage, transport and disposal in compliance with all Environmental Requirements of all waste materials used, handled, disturbed or generated within the Premises and the Temporary Rights of Access during the Term. During the Term, the Lessee shall be responsible for the administration of waste handling services for all wastes generated by Occupants, as a component of Routine Maintenance. The Lessee shall conduct any sampling, analysis or other investigation of such waste materials required to characterize waste materials and otherwise comply with the Environmental Requirements relating to waste management and disposal, and may not rely upon the accuracy or completeness of sample results or other information provided by the Port Authority for purposes of such compliance. The Lessee is responsible for ensuring that all waste materials originating from the Work or otherwise on or from the Premises and the Temporary Rights of Access during the Term, including Excavated Materials, Demolition Debris and any waste materials containing Hazardous Materials intended to be disposed of off-Premises, are (i) sampled to confirm waste classification and disposal requirements in accordance with Port Authority requirements as approved in the Environmental Management Plan, but no less frequently than one (1) representative sample for the smallest of (A) a single, discrete area of excavation (e.g., an individual excavation that is not part of or adjacent to a larger excavation); (B) a single stockpile of soil; or (C) five hundred (500) cubic yards, (ii) excavated, collected, handled, stored, transported and disposed of in compliance with Applicable Law, including all Environmental Requirements, by contractors approved by the Port Authority, (iii) disposed of only at Approved Disposal Locations, and (iv) described accurately and completely in documentation prepared by the Lessee and provided to the Port Authority no less frequently than in Environmental Status Reports to establish compliance with the requirements of this Section 16.4(a) (*Responsibility for Waste Management*) pertaining to characterization, shipping and acceptance at Approved Disposal Locations.

(b) Construction and Excavation Wastes. During the performance of the Work, and any subsequent demolition, excavation or construction as part of Major Maintenance or Routine Maintenance during the Term, the Lessee is responsible for the storage, classification, handling and disposal of Excavated Materials and Demolition Debris in compliance with Section 16.4(a) (*Responsibility for Waste Management*). The Lessee shall sample Excavated

Materials and Demolition Debris as required by the Environmental Requirements or as otherwise necessary to determine the waste classification of such materials if such Excavated Materials or Demolition Debris are intended to be disposed of off-Premises. No such Excavated Materials or Demolition Debris shall be combined, mixed, stored together or otherwise commingled with other Excavated Materials, Demolition Debris or other waste materials unless such waste classification has been completed and such materials fall into the same regulatory classification. Any stockpiles of Excavated Materials stored on the Premises or the Temporary Rights of Access shall be located on impervious sheeting to avoid contaminating the Premises or the Temporary Rights of Access as a result of placement of the Excavated Materials in stockpiles and shall be covered to avoid contamination of stormwater and release of dust.

(i) Universal Waste; Lead-Containing Materials. The Lessee is responsible for the identification, removal, handling and disposal of Hazardous Materials, including lead-containing paint ("**LCP**"), equipment and oils containing polychlorinated biphenyls in excess of fifty (50) parts per million ("**PCB**") and universal waste ("**UW**"), including those present within the Premises as of the Lease Commencement Date to the extent necessary to perform the Work. LCP found on structural steel and throughout other building surfaces is subject to OSHA's "Lead in Construction Standard" requirements, which require localized abatement when heating or cutting structural steel members. Additionally, the HASP shall include a Premises-specific written compliance program meeting the requirements of the General Industry Standard for Lead set forth in 29 C.F.R. 1926.62. No LCP is expected to remain in place after the Construction Work is completed, but if LCP does remain in place, it must be identified, encapsulated, contained or stabilized, and subjected to an operations and maintenance program consistent with Best Management Practices. All other UW that is used or remains in place during the Initial O&M Period, the Phased Construction O&M Period and the O&M Period shall be managed in accordance with the Environmental Requirements throughout the Term as provided in Section 16.12(b) (*Responsibility for Hazardous Materials during Operations and Maintenance Work*).

(ii) Asbestos-Containing Materials. The Lessee is responsible for the identification, removal, handling and disposal of all asbestos-containing materials ("**ACM**") present in the Current Facilities in compliance with the Environmental Requirements to the extent necessary to perform the Construction Work. The Lessee shall engage properly licensed personnel or Contractors to identify and classify the ACM through inspection and sampling, and to perform any required abatement, packaging, transport and disposal; provided, that sampling shall not be required for any materials presumed or assumed to be ACM based on the Available Documents or this Agreement, including Conduit ACM, that are handled and disposed of as ACM. All the asbestos abatement of friable ACM, including thermal system insulation and surfacing, shall be performed by the Lessee prior to any demolition work as per the State of New York Department of Labor's Industrial Code Rule 56. Any residual ACM, following completion of the Construction Work, shall be maintained in place in accordance with applicable Federal guidance (including property characterization, encapsulation and inspection) and Best Management Practices.

(iii) Hazardous Waste. Any waste materials that are RCRA hazardous wastes shall be handled, stored, maintained, transported and disposed of by the Lessee in compliance with the Environmental Requirements, including RCRA. For any such RCRA hazardous wastes that are Pre-Existing Hazardous Materials encountered during the Construction Work, the Lessee shall perform all actions, prepare all documents and otherwise fully comply with all requirements under RCRA, as the Port Authority's designated contractor for RCRA hazardous waste management. In connection with the RCRA hazardous wastes that are Pre-Existing Hazardous Materials transported from the Premises or the Temporary Rights of Access in connection with the Construction Work, the Lessee shall obtain and use a project-specific hazardous waste identification number (distinct from any hazardous waste identification number currently applicable to any part of the Premises) under RCRA, identifying the Port Authority as the owner and/or operator of the Premises. For all other RCRA hazardous wastes, including those generated in the course of the Construction Work or generated during the O&M Period, the Lessee shall procure a separate RCRA identification number and shall conduct such operations as the "generator" (unless a Lessee-Related Entity or Sublessee is identified as the "generator"). Copies of all applications, notices, Regulatory Manifests, and other compliance documentation in connection with off-Premises shipments of RCRA hazardous wastes shall be provided in Environmental Status Reports.

(c) Shipping Documentation. The Lessee and any Sublessee or Lessee-Related Entity performing the Construction Work shall handle all Excavated Materials and Demolition Debris as required in this Section 16.4 (*Responsibility for Waste Management*) and Section 16.12 (*Hazardous Materials*), as applicable, except that with respect to any Excavated Materials or Demolition Debris containing Pre-Existing Hazardous Materials shipped off the Premises or the Temporary Rights of Access for disposal or recycling in connection with the Construction Work as required or permitted by this Agreement, the Port Authority shall be identified as the originator, owner, shipper or generator of such Excavated Materials or Demolition Debris on any manifests, bills of lading and all other transportation documents, including if applicable, Regulatory Manifests relating to Excavated Materials or Demolition Debris during the Construction Work. Regulatory Manifests used for shipment of Pre-Existing Hazardous Materials in connection with the Construction Work that are regulated RCRA hazardous wastes may identify the Port Authority as the "generator," as provided in Section 16.4(b)(iii) (*Hazardous Waste*). The Lessee may not execute Regulatory Manifests relating to RCRA hazardous wastes that are Pre-Existing Hazardous Materials encountered in the course of the Construction Work on behalf of the Port Authority except pursuant to delegations and authorizations provided in writing by the Port Authority or as set forth in the Environmental Management Plan approved by the Port Authority. In cases where the Port Authority directs or approves Remedial Action, during the Construction Work and as provided in Section 16.12(e) (*Area-Wide Remediation*), Section 16.12(h) (*Remediation at Port Authority Direction*), Section 16.12(d) (*Contamination Encountered During the Construction Work*) or Section 16.16(d) (*Port Authority-Directed Testing and Remediation*), the Port Authority shall be identified as the originator, owner, shipper or generator on any manifests, bills of lading and all other transportation documents, including if applicable, Regulatory Manifests, relating to Remedial Action Debris generated by such Remedial Action that contains Pre-Existing Hazardous Materials. All waste materials exported from the Premises during the O&M Period shall be

shipped using documentation that lists the Lessee (unless a Lessee-Related Entity or Sublessee is identified) as the shipper, owner or generator, except in the event that the Port Authority approves excavation of Known Hazardous Materials and authorizes the Lessee to ship such materials identifying the Port Authority as the owner, shipper or generator.

(d) Disposal Locations. All waste materials, including Excavated Materials and Demolition Debris intended to be disposed of, shall be disposed of off-Premises by Lessee, unless the Excavated Materials meet the requirements for backfill set forth in Section 16.6 (*Backfill; Reuse of Excavated Materials*). The Environmental Management Plan shall include a procedure for approval by the Port Authority of disposal locations for disposal of waste materials, including Demolition Debris, Excavated Materials and Hazardous Materials, generated in connection with the Work, from among Qualified Disposal Locations identified by the Lessee (an "**Approved Disposal Location**"). Wastes containing any levels of Hazardous Materials that are produced from Work or Remedial Action on the Premises or the Temporary Rights of Access shall be disposed of only at Approved Disposal Locations for the specific type of wastes being disposed of. Excavated Materials and Remedial Action Debris that are removed from the Premises or the Temporary Rights of Access for disposal shall not be reused as fill at any location other than as restricted fill at Approved Disposal Locations. The Lessee may sort Excavated Materials to separate soil from debris, so long as dust from such operations is controlled as provided herein, required Governmental Approvals are obtained, and the separated materials are separately classified for regulatory purposes (including sampling if necessary) and are managed as required in this Article 16 (*Environmental, Health and Safety Requirements*). The Port Authority may, for reasonable cause, disapprove a disposal location that was formerly identified as an Approved Disposal Location.

(e) Soil Stockpiling and Sampling. Unless otherwise provided in an approved Environmental Management Plan, the Lessee shall submit a stockpile or in-situ sampling plan to the Port Authority for approval at least one (1) week prior to the date of the proposed sampling activity with respect to any soil that is or is expected to be Excavated Material to be disposed of at off-Premises locations. Soil sampling shall be conducted in a manner approved by any applicable disposal facility to ensure that the sampling is representative and accurately classifies the regulatory category applicable to the soil (i.e., confirming non-hazardous or hazardous status).

(f) Off-Premises Disposal Arrangements. The Environmental Management Plan shall include criteria to be used for classification of Excavated Materials for off-site disposal, and procedures for ensuring that the Lessee submits appropriate applications and information to, and obtains approval from, Qualified Disposal Locations. The Lessee shall maintain, for each shipment of waste materials for off-site disposal, the sampling and characterization data, the documentation exchanged with the disposal location and the disposal facility acceptance letter. The Environmental Management Plan shall also include criteria for selection and qualification of transporters of Excavated Materials and Demolition Debris, including current applicable state issued waste transporters permits, and procedures for documenting the transporters control of shipments and use of procedures required by the Environmental Requirements to ensure that waste shipments are accepted and disposed of at acceptable

facilities. Lessee shall prepare and maintain, in a format acceptable to the Port Authority, summaries of the information pertaining to such off-site waste shipments. The summary format shall be in a spreadsheet table format and shall include at a minimum the following columns: parameters, concentration results, facility acceptance criteria, method detection limit, qualifier, and date analyzed, and such soil cleanup or remediation standards as the Port Authority may request to be included. The Lessee shall submit the summary to the Port Authority in Environmental Status Reports, and upon the Port Authority's request, copies of documentation of reuse or disposal of any waste materials removed from the Premises or the Temporary Rights of Access for disposal, plus laboratory data, bills of lading and/or manifests executed by the receiving facility.

(g) Soil Disposal Cost Savings. The Lessee shall account for and track Soil Disposal Costs, and provide documentation and backup information in the Environmental Status Reports comparing the Soil Disposal Costs (including the RCRA Soil Disposal Costs) incurred by the Lessee to the Soil Disposal Cost Budget (which includes the RCRA Allowance). The Lessee shall be entitled to recover, and the Port Authority shall compensate the Lessee for the amount by which the aggregate Soil Disposal Costs exceed the Soil Disposal Cost Budget; provided, that the Lessee has disposed of such Excavated Materials at a Budgeted Disposal Location in the appropriate Material Category for such Excavated Materials. Following Final Acceptance, if the amount of the Soil Disposal Costs incurred in connection with the New Facilities as provided in this Section 16.4(g) (*Soil Disposal Cost Savings*) is less than $30,066,956, then the excess of the $30,066,956 over the Soil Disposal Costs incurred in connection with the New Facilities under this Section 16.4(g) (*Soil Disposal Cost Savings*) shall first be credited against the Port Authority's obligations to pay to the Lessee Incremental Environmental Damages and then any remainder shall be credited to other Project Costs for which the Port Authority is obligated to pay a [redacted] pursuant to a [redacted]

Section 16.5 Dewatering

(a) Dewatering Plan. The Lessee shall submit a discharge authorization request for Port Authority Approval at least sixty (60) days prior to the date the Lessee desires to submit such request to the NYSDEC. In addition, the Lessee shall submit a plan (the "**Dewatering Plan**") for Port Authority Approval at least sixty (60) days prior to initiation of any dewatering operations. The Dewatering Plan shall at a minimum include a plan for minimizing Groundwater infiltration into excavations, a Groundwater discharge plan, a contingency plan for the handling of petroleum and hazardous materials spills and a pre-treatment or treatment plan, if any, that is required in order to operate dewatering equipment and discharge pumped water. During excavation, if the capacity of dewatering equipment exceeds forty-five (45) gallons per minute, the Lessee shall obtain a Long Island Water well permit prior to implementation. Dewatering activities shall be conducted in accordance with all applicable Environmental Requirements, including any requirement to obtain Long Island Water well permits, any amendments required to the SPDES Permit and any stormwater permit that may be applicable to the Work or the Premises or the Temporary Rights of Access.

(b) Dewatering Requirements. The Lessee shall use reasonable commercial efforts to minimize the flow of Groundwater into excavations (such as sheet piling), in order to reduce the rate of pumping of Groundwater and minimize potential movement of Known Hazardous Materials in Groundwater. The Lessee shall implement pumping, storage and treatment protocols for the management of water pumped from excavations (including Groundwater and any rainwater or surface water that may be handled with such Groundwater) as may be necessary to ensure compliance of combined wastewater streams with the discharge requirements of the SPDES Permit and with any applicable pre-treatment requirements directly imposed upon the Lessee by applicable Environmental Requirements or by Governmental Entities issuing Governmental Approvals to the Lessee. Treated effluent must meet the SPDES Permit requirements and any other parameters specified by NYSDEC at the point of discharge from the Lessee's treatment equipment. A Groundwater treatment system design, including an effluent monitoring schedule, shall be submitted to the Port Authority for approval prior to commencement of construction that is designed to treat the highest concentrations of Known Hazardous Materials in Groundwater (and any other Known Hazardous Materials in soil if Groundwater sampling results are not provided in the Available Documents) in the manner required under the Environmental Management Plan (unless the Lessee proposes and the Port Authority approves specific exceptions in advance). After treatment and before being combined with other wastewater discharges, Groundwater effluent shall be sampled and analyzed. Procedures shall be set forth in the Environmental Management Plan for sampling and record keeping in relation to dewatering activities sufficient to demonstrate compliance by the Lessee with the requirements of this Agreement and the Requirements and Provisions for Work. No discharges of Groundwater effluent to the Port Authority's wastewater collection system, or to any other location, including any catch basin, wetland, ditch, or injection wells are permitted, unless approved in advance in writing by the Port Authority following submittal of sampling results and approval of a discharge and monitoring plan. The Lessee shall take all appropriate steps to assure that dewatering does not result in settling that may cause damage to adjacent structures, and to evaluate and avoid to the extent feasible any material modifications to Groundwater flows and directions that are likely to result in additional treatment requirements for Hazardous Materials present in soil or Groundwater.

Section 16.6 Backfill; Reuse of Excavated Materials

(a) All material originating off-Premises that is used to backfill excavations within the Premises shall be clean soil, sand or gravel procured from sources identified by the Lessee and from entities authorized to provide such material under Applicable Law. Any soil or other material originating from areas other than the Premises and used pursuant to this Section 16.6 (*Backfill; Reuse of Excavated Materials*) shall be sampled and analyzed by the Lessee to fully characterize its condition and confirm that any Hazardous Materials in such material occur at levels below New York State NYCRR Part 375 Unrestricted Use Soil Cleanup Objectives. Soil and other materials originating from off-Premises that are used for backfill shall be certified as clean material by a professional engineer licensed in the State of New York. Procedures and criteria necessary for implementation of this Section 16.6 (*Backfill; Reuse of Excavated Materials*) shall be included in the Environmental Management Plan.

(b) The Lessee shall maintain sampling results and summary information comparing the concentration of chemical constituents contained in fill material originating from off-Premises to the criteria in the Environmental Management Plan and/or the limits set forth in New York State NYCRR Part 375 Unrestricted Use Soil Cleanup Objectives. The Lessee shall obtain and maintain records of analytical results at a rate of at least one five-point grab composite sample for every 1,000 cubic yards originating from a single source location or any smaller portion thereof. Nothing in this paragraph shall be interpreted to preclude the Port Authority from collecting and analyzing soil samples to confirm compliance with the requirements for clean fill. Soil and any other material used for backfill that is brought onto the Premises and is not in compliance with the requirements of this Section 16.6 (*Backfill; Reuse of Excavated Materials*) shall be removed from the Premises and replaced with acceptable material, without additional compensation.

(c) Notwithstanding any of the foregoing provisions of this Section 16.6 (*Backfill; Reuse of Excavated Materials*):

(i) Soil and other Excavated Materials that are not removed from the Premises are not subject to the requirements and limitations applicable to backfill materials originating from off-Premises locations under this Section 16.6 (*Backfill; Reuse of Excavated Materials*);

(ii) Excavated Materials that may lawfully be stored on the Temporary Rights of Access shall be subject to all of the requirements of this Section 16.6 (*Backfill; Reuse of Excavated Materials*) that are applicable to Excavated Materials originating from the Premises, and no such Excavated Materials shall be stored permanently or otherwise be disposed of or backfilled within the Temporary Rights of Access unless such Excavated Materials comply with all requirements for on-Premises fill set forth in this Section 16.6 (*Backfill; Reuse of Excavated Materials*);

(iii) Excavated Materials that have been sampled pursuant to any requirements of this Agreement and that do not meet the New York State NYCRR Part 375 Unrestricted Use Soil Cleanup Objectives may not be reused as fill on the Premises or the Temporary Rights of Access, unless (A) NYSDEC approves a "beneficial reuse determination" or the equivalent in accordance with NYSDEC's regulations, (B) the Port Authority approves the alternative standard for backfill material, including any conditions or restrictions on land use associated with such alternative standards, (C) no deed notice or land use restriction is required to be recorded in the land records for any part of the Premises or the Temporary Rights of Access as a result of the use of such backfill material, and (D) no engineering or institutional controls are necessary to prevent exposure to such backfill materials or prevent Hazardous Materials Releases from such materials; and

(iv) If Excavated Materials exhibit olfactory or visual evidence of the presence of Hazardous Materials, such Excavated Material may not be used for backfill unless sampled and determined to comply with the requirements for off-Premises fill materials set forth in this Section 16.6 (*Backfill; Reuse of Excavated Materials*). Prior to

such sampling, the Lessee shall either arrange for off-Premises disposal in a manner that complies with the provisions of this Article 16 (*Environmental, Health and Safety Requirements*), or shall segregate and temporarily store such Excavated Materials in a manner that complies with all Environmental Requirements until sample results are available for classification of such Excavated Materials. If such Excavated Materials are sampled and analyzed, and comply with the criteria set forth in this Section 16.6 (*Backfill; Reuse of Excavated Materials*) for use as backfill applicable to off-Premises soil and backfill materials, such Excavated Materials may be used as backfill.

Section 16.7 Pesticides and Herbicides

The Lessee shall notify the Port Authority of any impending applications of herbicides and/or insecticides at least twenty-four (24) hours prior to any application. Written notification of the application of herbicides and insecticides shall be posted at all access points to the Premises at least twenty-four (24) hours prior to application to forewarn visitors of the application(s). The HASP shall include the procedures to follow in the event staff is exposed to the herbicides/insecticides without proper personal protective equipment. Only products registered with the NYSDEC or exempt from state registration in the State of New York shall be used. The use of "restricted use" products is prohibited unless used under the direction of a properly licensed and certified technician. The use of any products in the sulfonylurea family of chemicals is not permitted. Herbicide application by broadcast spraying is not permitted. The Lessee shall ensure that all employees applying insecticides and herbicides possess a current Commercial Pesticide Operator License, compliant with Article 33, Section 33-0905 of the New York State Environmental Conservation Law and approved by the Port Authority, and provide a copy of current certificates to the Port Authority upon request.

Section 16.8 Indoor Environmental Quality

The Lessee shall develop and comply with an indoor air quality management plan (the "**Indoor Air Quality Management Plan**"), which employs architectural and HVAC design strategies to establish minimum outdoor air replacement quantities, chemical and biological and particulate source control and on-going air quality monitoring to meet requirements of ASHRAE Standard 62-2010 and all published addenda. Ventilation rates for acceptable indoor air quality, using the "Ventilation Rate Procedure," shall comply with the Sustainable Design Guidelines for "Indoor Environmental Qualities." Any new buildings to be constructed over areas where Known Hazardous Materials are present shall be evaluated for the installation of vapor barriers or other mitigation systems, and such systems shall be installed where necessary, to ensure that Known Hazardous Materials do not migrate into such buildings in concentrations that would pose a hazard to building occupants.

Section 16.9 Acoustics

(a) The Lessee shall take all appropriate measures to eliminate vibrations originating from the Work that may damage any equipment, structure, building or portion of a building located off the Premises and to maintain the sound level of its operations at levels that do not unreasonably disturb others located off the Premises.

(b) The Lessee shall design, construct and operate the New Facilities to control ambient noise levels as required by the Sustainable Design Guidelines. The Lessee shall investigate and employ where feasible the following Sustainable Design Guidelines requirements:

(i) locate the mechanical plant and equipment and other sources of noise away from interior and exterior spaces designed for use by building tenants and the public;

(ii) design and maintain separations between interior spaces to minimize the transfer of noise;

(iii) provide Sound Transmission Class levels of fifty (50) or better;

(iv) comply with the recommendations of ASHRAE Applications Handbook, HVAC (2011) Chapter 48, "Noise and Vibration Control Guidelines" to reduce potential noise and vibration from mechanical equipment and Architectural Graphics Standards 11th Edition (2007); and

(v) comply with the latest edition of City building code provisions applicable to noise and vibration mitigation and reduction.

Section 16.10 Maintenance and Inspection Requirements

The Lessee shall be responsible for the inspection and maintenance of mechanical systems that could result in a Hazardous Materials Release, including performance of the inspections of the following systems within the Premises: (a) storm sewer systems, including culverts, piping, catch basins and other associated storm sewer system components; (b) sanitary sewer systems, including piping, pumps, lift stations, sewer ejector pits and other associated sanitary sewer system components; (c) all indoor environmental quality and monitoring system within the Premises, including HVAC systems; and (d) all HVAC systems in the New Terminal B Facilities connected to the New CHRP. The Lessee shall inspect and maintain, in the manner and frequency prescribed in ASTM standards, all high and low pressure water supply systems in the New Facilities, including (i) water mains, pumps, valves, piping and other associated water supply system components; and (ii) all airside snow melting pit infrastructure within the Premises, including fuel lines, pumps, valves and other associated system components. The Lessee shall be required to use video inspections, in the manner and frequency prescribed in ASSE standards, of sanitary sewer system within the Premises.

Section 16.11 Storage Tank Systems

(a) Lessee Responsibility for Tanks and Tank Systems. The Lessee shall be responsible for all underground storage tanks and all above-ground storage tanks (including oil/water separators) currently in use and owned or operated by the Port Authority or that are closed or abandoned that are Disclosed Facilities existing in or on the Premises as of the Lease Commencement Date (each, a "**Tank**"), in each case, including their appurtenances, pipes, lines, fixtures and other related equipment (collectively with the Tanks, the "**Tank Systems**").

The Lessee shall remove and demolish any such Tank Systems that are expressly required to be removed or demolished as part of the Work, or that are present within the Premises but not intended to be used by the Lessee following completion of the Construction Work. The Lessee hereby agrees that title and ownership of Tanks and Tank Systems owned or operated by the Port Authority as of the Lease Commencement Date shall be conveyed to the Lessee by this Agreement upon the Lease Commencement Date, unless the Lessee has designated such Tanks or Tank Systems for closure and causes such Tanks or Tank Systems to be taken out of service within sixty (60) days following the Lease Commencement Date. With respect to all Tanks and Tanks Systems that are transferred to and owned by the Lessee, or are installed by the Lessee, and that are required by the Environmental Requirements to be registered or authorized by Governmental Approvals, the Lessee shall within thirty (30) days after the Lease Commencement Date file such applications and amendments as are necessary under Environmental Requirements to transfer to the Lessee as operator and owner all responsibility for such Tanks and Tank Systems. For the avoidance of doubt, this Section 16.11(a) (*Lessee Responsibility for Tanks and Tank Systems*) does not affect the allocation of responsibilities and costs for Known Hazardous Materials or Unknown Hazardous Materials set forth elsewhere in this Agreement, except that the Lessee shall be entitled to Incremental Environmental Damages for any Remedial Action to the extent required to be performed by the Lessee in connection with the removal of a Tank System because of Hazardous Materials Releases from the Tank System occurring or existing prior to the Lease Commencement Date, in order to comply with Environmental Requirements, and was not otherwise part of the Construction Work or required for the physical removal of the Tank System. Any Tank System discovered by the Lessee within the Premises during the Construction Work that is an Unknown Facility and presents a risk of a Hazardous Materials Release or interferes with the Construction Work, shall be removed by the Lessee in compliance with the Environmental Requirements, and the Lessee shall be entitled to Incremental Environmental Damages in connection with such removal (including Remedial Action to the extent provided in this Section 16.11(a) (*Lessee Responsibility for Tanks and Tank Systems*)) to the extent available for Unknown Facilities.

(b) Maintenance of Tanks. Without limiting the generality of any other term or provision of this Agreement, the Lessee shall comply with all Environmental Requirements applicable to the Tanks and Tank Systems, including (i) any modifications or closures required, (ii) testing the Tanks and registering the Tanks in the name of the Lessee as owner and operator, (iii) submitting all required bonds and other financial assurances, (iv) performing all required monitoring and release detection, and (v) filing all reports, making all submissions to, maintaining all records, and providing all information required by and complying with all requirements of all Governmental Entities pursuant to the Environmental Requirements. In addition, the Lessee shall make all modifications to Tanks and Tank Systems that are owned by the Lessee and remain in service, and take all other actions so such Tanks and Tank Systems shall at all times comply with all applicable Environmental Requirements.

(c) Handback and Maintenance Requirements. Tanks and Tank Systems shall be subject to the Handback Requirements, and must have a Remaining Service Life of five (5) years at the Expiry Date, unless a different date is specified in Section 3.1 of the Maintenance Requirements. Tanks and Tank Systems remaining on the Premises and owned or operated by

the Lessee that do not meet the Handback Requirements shall be removed in accordance with all Environmental Requirements.

(d) Leaking Tank Systems. The Lessee shall conduct testing of Tank Systems or otherwise inspect Tank Systems in order to determine within sixty (60) days after the Lease Commencement Date whether such Tank Systems are leaking, and shall, within ten (10) days after receiving the results of such testing or inspection, remove the contents of and discontinue the use of any leaking Tank Systems that are Disclosed Facilities. The Lessee shall remove any Tank or Tank System on or under the Premises if such Tank or Tank System is the source of a Hazardous Materials Release during the Term and cannot be repaired at a commercially reasonable cost to prevent future Hazardous Materials Releases. In connection with any such removal, the Lessee shall (i) restore the surface of the Premises to the same condition existing prior to the removal of the Tank or Tank System, (ii) perform such testing of the Tank, Tank System and soil, sub-soil and Groundwater in the vicinity of the Tanks as shall be necessary to identify the extent and location of any Hazardous Materials Release associated with such Tank or Tank System, and (iii) complete Remedial Action with respect to any Hazardous Environmental Condition disclosed by said testing. During the Initial O&M Period, the Lessee shall be entitled to Incremental Environmental Damages with respect to Losses attributable to Remedial Action required to be performed in connection with Unknown Hazardous Materials originating from Tank Systems. The Lessee shall be responsible for Losses attributable to leaks occurring after the Lease Commencement Date from Tanks and Tank Systems that (A) were not in use within the Premises as of the Lease Commencement Date, and were put into use by the Lessee, or (B) were installed by the Lessee, or (C) are used by any Lessee-Related Entity or Sublessee more than sixty (60) days after the Lease Commencement Date.

(e) TCAP. Neither the Lessee nor any Occupant shall perform any major repair, removal, installation or replacement of Tanks or Tank Systems after the completion of Construction Work on buildings or improvements at which such Tanks or Tank Systems are located or operated without the prior written approval of the Port Authority pursuant to the TCAP.

Section 16.12 Hazardous Materials

(a) Responsibility for Hazardous Materials During Construction Work. As part of the Construction Work and subject to Article 10 (*Design and Construction*), the Lessee shall be responsible for the management, treatment, handling, storage, monitoring, remediation, removal, transport, and disposal of any and all Hazardous Materials present or contained in the Current Facilities, Demolition Debris, Groundwater and Excavated Materials that are required to be operated, demolished, managed, removed, excavated or disposed of in connection with the Construction Work. Costs for managing, treating, handling, storing, monitoring, remediating, removing, transporting and disposing of Hazardous Materials associated with the Construction Work, including Excavated Materials, Demolition Debris and Groundwater, are the responsibility of the Lessee, in accordance with Sections 16.1(d) (*Costs and Expenses*) and 16.4 (*Responsibility for Waste Management*), except that to the extent that the Lessee incurs costs and expenses for Unknown Hazardous Materials handling, management or disposal required by this Section 16.12(a), the Lessee shall be entitled to receive Incremental

Environmental Damages, as provided in Section 16.17(b)(i). The Lessee shall perform such investigation, sampling, analysis and other Work as shall be necessary to ensure that all waste materials generated in the performance of the Construction Work that contain Hazardous Materials, including Demolition Debris, Excavated Materials and Groundwater, are properly characterized, handled, stored and disposed of in accordance with the Environmental Requirements. Neither the Lessee nor any Occupant may rely upon the accuracy or sufficiency of sampling results or information set forth in the Available Documents in connection with the classification and assessment of waste materials generated by the Construction Work unless the Lessee or Occupant independently verifies that such information satisfies the Environmental Requirements. The requirements for Work under this Section 16.12(a) (*Responsibility for Hazardous Materials During Construction Work*) are not Remedial Action, as that term is defined and used herein.

(b) Responsibility for Hazardous Materials During Operations and Maintenance Work. As part of the Operations and Maintenance Work under Article 11 (*Operations and Maintenance*), the Lessee shall be responsible for the collection, management, treatment, handling, storage, monitoring, removal, transport, and disposal of any and all waste materials generated or accumulated within the Premises, including such wastes as may contain Hazardous Materials. Costs for handling, managing and disposing of such wastes, including Hazardous Materials, are the responsibility of the Lessee, in accordance with Sections 16.1(d) (*Costs and Expenses*) and 16.4 (*Responsibility for Waste Management*). The Lessee shall perform such investigation, sampling, analysis and other Work as shall be required to ensure that all waste materials generated in the performance of the Operations and Maintenance Work, including those that contain Hazardous Materials, if any, are properly characterized, handled, stored and disposed of in accordance with the Environmental Requirements. Operations and Maintenance Work under this Section 16.12(b) (*Responsibility for Hazardous Materials During Operations and Maintenance Work*) that involves excavation, demolition, removal of equipment, or installation of new equipment or facilities, is subject to Port Authority Approval pursuant to the TCAP.

(c) Release Prevention. The Lessee shall not cause or permit a Hazardous Materials Release to occur on, in, under or from the Premises or the Temporary Rights of Access, except as authorized pursuant to a Governmental Approval or in a manner that does not violate or require Remedial Action under any Environmental Requirement. The Lessee is responsible for the investigation, monitoring, management and Remedial Action with respect to all Hazardous Materials Releases occurring on, in, under or from the Premises or the Temporary Rights of Access from and after commencement of the Construction Work. The Lessee shall regularly inspect, monitor and maintain all equipment and improvements, including Utilities, Tanks and Tanks Systems, to detect and prevent Hazardous Materials Releases, and shall ensure that such equipment and improvements are operational at all times. With respect to costs in connection with these activities, the Lessee shall seek reimbursement, insurance recoveries or contribution from responsible Persons to the extent commercially reasonable.

(d) Contamination Encountered During the Construction Work. The Lessee shall notify the Port Authority immediately if it identifies odors, observes conditions or obtains other

information (including sampling data if the Lessee is conducting sampling within the relevant area) indicating that the Lessee has encountered a Hazardous Environmental Condition during the Construction Work that may require Remedial Action, and shall immediately implement reasonably available measures to avoid disturbance of such conditions and prevent or mitigate any Hazardous Materials Release associated with such observed conditions. The Port Authority will determine whether sampling or analysis is required, and the extent to which Remedial Action should be performed or the Work stopped in order to conduct Remedial Action, and may direct the Lessee to conduct such Remedial Action under Section 16.16(d) (*Port Authority-Directed Testing and Remediation*). Remedial Action performed under this Section 16.12(d) (*Contamination Encountered During the Construction Work*) by the Lessee pursuant to the Environmental Requirements or a written agreement with a Governmental Entity that was submitted for Port Authority Approval and was approved by the Port Authority, and that addresses Unknown Hazardous Materials, or that addresses Known Hazardous Materials located outside the areas intended or required to be excavated as part of the Construction Work, entitles the Lessee to Incremental Environmental Damages and a Delay Event; provided, that, no Delay Event shall be applicable or Incremental Environmental Damages authorized to the extent the Lessee or a Lessee-Related Entity is responsible, directly or pursuant to Section 16.12(f) (*Hazardous Materials Releases During the Term*), for the foregoing Hazardous Environmental Condition. Nothing herein prevents the Lessee from conducting Remedial Action or stopping work in response to a Hazardous Environmental Condition if required by Environmental Requirements, provided, that no Delay Event is applicable or Incremental Environmental Damages authorized under this Section 16.12(d) (*Contamination Encountered During the Construction Work*) unless and until the Port Authority is notified and the Port Authority issues such written direction to stop work or commence Remedial Action, or a Governmental Entity issues a written order to the Lessee to perform Remedial Action, whichever is earlier. Subject to the terms of the Project Documents, the Lessee will be responsible for obtaining and maintaining all Governmental Approvals relating to any Remedial Action and will be solely responsible for compliance with all Environmental Requirements concerning or relating to such Hazardous Environmental Condition. The Remedial Actions covered by this Section 16.12(d) (*Contamination Encountered During the Construction Work*) are separate and distinct from Work performed under Section 16.12(a) (*Responsibility for Hazardous Materials During the Construction Work*), and are not intended to cover handling of Demolition Debris, Excavated Materials or Groundwater dewatering pursuant to Section 16.5 (*Dewatering*). The Lessee is responsible for managing the evaluation, planning and coordination of any such Remedial Action to minimize the duration of any Delay Event and Lessee Damages that may result. Excavation and other construction activities conducted by the Lessee or a Lessee-Related Entity during the O&M Period are not subject to this Section 16.12(d) (*Contamination Encountered During the Construction Work*).

(e) Area-Wide Remediation. Remediation of Hazardous Environmental Conditions that were present on, in or under the Premises or the Temporary Rights of Access on or prior to the Lease Commencement Date and that are found outside an Excavation Zone ("**Area-Wide Contamination**") shall be the Port Authority's responsibility. To the extent that the Excavation Zone includes or is affected by the same Hazardous Materials that comprise part of a larger contiguous Hazardous Environmental Condition that includes the area surrounding the

Excavation Zone and the Port Authority is required by law, or elects, to remediate all of such Hazardous Environmental Condition with remediation technology that would remediate all of such Hazardous Environmental Condition within and outside of the Excavation Zone, such Port Authority remediation within the Excavation Zone shall be the Port Authority's responsibility. To the extent that the Port Authority directs the Lessee to stop Work in order to conduct Remedial Action with respect to the Excavation Zone, the Lessee shall stop such Work as the Port Authority shall direct.

(f) Hazardous Materials Releases During the Term. If, at any time from and after the earlier of the date of the first Construction Segment NTP or, if issued, the Full Construction NTP, a Hazardous Materials Release occurs at, on or under the Premises or the Temporary Rights of Access during the Term, as a result of the negligence, actions or omissions of the Lessee or Occupant, a breach of the provisions of the Project Documents by the Lessee or any Occupant or otherwise, but excluding any Hazardous Materials Release to the extent proximately caused after the Lease Commencement Date by the negligence of or breach of this Agreement by the Port Authority or its contractors, the Lessee shall (i) promptly commence and diligently prosecute to completion all investigation, sampling, monitoring, containment, cleanup, removal, restoration, remedial work, or other response action of any kind to the extent required by and in compliance with the Environmental Requirements and this Agreement, including at any locations outside of the Premises or the Temporary Rights of Access affected by such Hazardous Materials Release, and (ii) provide notices or reports to the Port Authority in such form and substance as the Port Authority may reasonably require, specifying the likely origin, nature and condition of such Hazardous Materials, and such Remedial Action the Lessee or any other Person the Lessee has knowledge of, has taken, is taking or proposes to take with respect thereto. The obligations to take a Remedial Action shall include the investigation of the area affected by such Hazardous Materials Release, the preparation of feasibility studies, reports and Remedial Action plans, and the performance of all Remedial Actions and related Work in a good, safe and workmanlike manner. Promptly upon completion of such investigation and Remedial Action, the Lessee shall seal or cap all monitoring wells and test holes, remove all associated equipment and restore the remediated property. With respect to any sudden Hazardous Materials Release, the Lessee shall stabilize and contain the relevant Hazardous Materials Release without prior notice or inspection, but will immediately notify the Port Authority of the sudden Hazardous Materials Release and its location, and shall comply with Applicable Law, Governmental Approvals and the requirements of any Governmental Entity in reporting such Hazardous Materials Release and implementing Remedial Action. With respect to any Hazardous Materials Release occurring during the Term for which the Lessee is responsible under this Agreement, the Lessee shall complete the Remedial Action to achieve the more stringent of the following standards: (i) the default cleanup standard established under NYSDEC regulations that are part of the Environmental Requirements; (ii) an Approved Alternative Cleanup Standard; or (iii) removal and cleanup of such Hazardous Materials Release so that Hazardous Materials in soil and Groundwater are restored to levels equivalent to or better than levels existing before such Hazardous Materials Release occurred. If the Lessee is required to conduct a Remedial Action with respect to a Hazardous Materials Release for which the Lessee is responsible under this Agreement, any Remedial Action with respect to Pre-Existing Hazardous Materials shall be conducted at Lessee's cost and expense, without regard to Section 16.17(b)(i), to the extent that

such Remedial Action for Pre-Existing Hazardous Materials is confined to the same environmental media (soil or Groundwater) and approximately the same geographic area as the Remedial Action for which the Lessee is responsible.

(g) Remedial Action Plans. For any Remedial Action required or authorized to be implemented by the Lessee under this Agreement, the Lessee shall prepare for Port Authority Approval, in accordance with the submittal time periods in Section 16.14 (*Environmental Notices, Submittals and Reports*), a Remedial Action Plan prior to implementing any Remedial Action, except for sudden Hazardous Materials Releases requiring an immediate response as provided in Section 16.12(f) (*Hazardous Materials Releases During the Term*). This Remedial Action Plan shall include and provide for such sampling and investigation as is necessary to characterize soil and Groundwater, and plan for excavation, extraction, storage, handling, transport, removal, treatment and disposal of such Hazardous Materials for any Remedial Action required for a Hazardous Materials Release during the Term for which the Lessee is responsible under this Agreement to achieve the cleanup standards set forth in Section 16.12(l) (*Cleanup Standards*). The Lessee shall be responsible for the diligent and prompt implementation of such Remedial Action Plan after receiving Port Authority Approval therefor. Such Remedial Actions shall be conducted by the Lessee until the Lessee receives a "no further action" letter or the equivalent from any Governmental Entity having jurisdiction over the Remedial Action.

(h) Remediation at Port Authority Direction. The Port Authority may assume responsibility for, or modify, suspend or terminate, any Remedial Action required to be performed, or being performed, by the Lessee under this Agreement upon delivery of written notice from the Port Authority to the Lessee. Such notice shall take the form either of a release, deferral or postponement of the Lessee's obligations hereunder by the Port Authority (which may be conditioned or limited in scope, duration or otherwise), or by a Port Authority Change pursuant to which the Port Authority requests or directs the Lessee to conduct specific or different forms of Remedial Action. Nothing in this Section 16.12(h) (*Remediation at Port Authority Direction*) shall relieve the Lessee from obligations it may have to comply with the Environmental Requirements, including those under Section 16.12(f) (*Hazardous Materials Releases during the Term*). Notwithstanding the foregoing, the Lessee shall not be required to conduct, modify, suspend or terminate any Remedial Action at the Port Authority's direction if such action, modification, suspension or termination would violate a written order issued to the Lessee by a Governmental Entity under Environmental Law, or an agreement between the Lessee and a Governmental Entity that was submitted for Port Authority Approval and was approved by the Port Authority in writing, unless the Port Authority shall have assumed responsibility for the performance or reimbursement of the costs relating to such written order or agreement.

(i) Remediation Completion Reports. After any Lessee-Related Entity or Sublessee performs any Remedial Action on the Premises or the Temporary Rights of Access, such Person shall sample and test the soil and/or Groundwater in or under the Premises, the Temporary Rights of Access or portions thereof affected by such Remedial Action to confirm that the Hazardous Materials Release has been removed from the Premises or the Temporary Rights of Access and soil and Groundwater have been restored to the condition existing before

the Hazardous Materials Release or better, and set forth the results of such samplings and tests in a report (any such report and test results, a "**Remediation Completion Report**") and submit for the Port Authority's review. Upon Port Authority Approval of such Remediation Completion Report, such Remediation Completion Report shall (i) supersede and replace the existing Disclosed Environmental Reports with respect to the relevant area or environmental media, and (ii) supplement the Disclosed Environmental Reports to the extent the test results and report do not supersede (pursuant to the foregoing clause (i)) any existing test results and reports in the Disclosed Environmental Reports; provided, however, that said sampling and testing shall produce a fair and representative sampling of the Premises or the Temporary Rights of Access, and shall have been performed in accordance with a methodology approved by the Port Authority. Nothing in this Section 16.12(i) shall relieve the Lessee of its obligation to obtain a "no further action" letter as provided in Section 16.12(g).

(j) Preservation of Rights. Before any Remedial Action is taken with respect to a Hazardous Environmental Condition, the Lessee shall assess whether there is a potential right to recovery of contribution or reimbursement from other Persons that may be exercised by the Port Authority but not by the Lessee. In such cases, the Lessee shall afford the Port Authority a reasonable opportunity to inspect areas and locations that require Remedial Action within a reasonable time period. For any costs, losses or liabilities relating to Hazardous Environmental Conditions that may be retained by or otherwise imposed upon a third party by the Port Authority, the Lessee shall preserve data, information, documents and records, and to conduct any required Remedial Action is such as manner as to preserve the Port Authority's rights of indemnification, contribution or cost recovery as may be available under Applicable Law. The Lessee shall be entitled to, and at the direction of the Port Authority, shall take such steps and actions as may reasonably be required in order to preserve potential claims of contribution and indemnity, statutory or otherwise, against potentially responsible parties. Any recoveries by the Lessee, after reductions for costs and expenses required to obtain such recoveries, shall be applied to the past and future costs of the Remedial Action incurred or to be incurred by the Lessee that are recoverable by the Lessee under Section 16.17(b) (*Cost Allocation for Lessee Responsibilities*). Any excess recovery above the costs of recovering such amounts and payment of the Lessee's costs for such Remedial Action as provided above, shall be paid to the Port Authority to the extent that the Port Authority has paid such costs or incurred damages. The Lessee shall not settle or consent to any judgment concerning such recoveries without Port Authority Approval.

(k) Environmental Assessment after the Completion of Construction Work. Within thirty (30) days following Final Acceptance, the Lessee shall provide to the Port Authority a report, similar in scope and substance to the Exit Baseline Report and including investigation and sampling results within any areas where Hazardous Materials are known to have been released, during the Term, documenting the locations and concentrations of Hazardous Materials in sufficient detail to update the Available Documents and provide a basis against which to compare the Handback Environmental Report and Exit Baseline Report required to be prepared under Section 16.13 (*Handback Environmental Report and Exit Baseline Report*). Releases of Hazardous Materials identified in the post-completion environmental report for which the Lessee is responsible under Section 16.12(f) (*Hazardous Materials Releases during*

the Term) shall be subject to Remedial Action by the Lessee as provided in Section 16.12(f) (*Hazardous Materials Releases during the Term*).

(l) Cleanup Standards. Any Remedial Action conducted as part of the Work under this Agreement shall be conducted to achieve the regulatory standards imposed by NYSDEC regulations as the "default" standards (those that are specified in the regulations). Less stringent alternative standards may be used where (i) permitted under NYSDEC regulations, (ii) NYSDEC approves the use of such alternative remediation standard, if such approval is required, (iii) the Port Authority approves the alternative remediation standard, including any conditions on land use associated with such standards, (iv) no deed notice or land use restriction is required to be recorded in the land records for any part of the Premises or the Temporary Rights of Access, and (v) no engineering or institutional controls are necessary to prevent exposure to such backfill materials or prevent further Hazardous Materials Releases in order to apply such alternative remediation standard. Such alternative cleanup standards may be approved by the Port Authority for a limited time period. The Port Authority Approval for such alternative standards may be conditioned upon compensation or adequate security for later Remedial Action (by the Port Authority or third parties), and such arrangements shall be taken into account in the implementation of Section 16.13 (*Handback Environmental Report and Exit Baseline Report*). An alternative cleanup standard applicable to soil or Groundwater located or originating within the Premises or the Temporary Rights of Access and approved under this Section 16.12(l) is an "**Approved Alternative Cleanup Standard**." Notwithstanding the foregoing, in the case of a Hazardous Materials Release during the Term, for which the Lessee is responsible and required to implement Remedial Action, including under Section 16.11(d) (*Leaking Tank Systems*) and Section 16.12(f) (*Hazardous Materials Releases during the Term*), the applicable cleanup standard shall be the more stringent of the Approved Alternative Cleanup Standard or restoration to pre-existing conditions, as provided in Section 16.12(f) (H*azardous Materials Releases during the Term*).

(m) Additional ACM Cost Savings. The Lessee shall account for and track Additional ACM Costs, and provide documentation and backup information in the Environmental Status Reports comparing the Additional ACM Costs incurred by the Lessee to the Additional ACM Allowance. All submittals establishing that Additional ACM Costs have been incurred shall be based upon a unit cost approved by the Port Authority and applied to the Additional ACM that has been removed, abated or disposed of. Lessee shall be entitled to recover, and the Port Authority shall compensate the Lessee for the amount by which the Additional ACM Costs incurred exceed the Additional ACM Allowance.

Section 16.13 Handback Environmental Report and Exit Baseline Report

(a) No later than three hundred sixty-five (365) days after establishing the Handback Amount under Section 11.12(c), the Lessee shall submit to the Port Authority for Port Authority Approval a proposed scope of work for an investigation of Hazardous Materials within the Premises that shall, at a minimum, include representative sampling of soil and Groundwater at locations and depths that serve to identify and characterize the locations of any known Hazardous Environmental Conditions and any Hazardous Materials Releases occurring or discovered during the Term, together with assessment of such other areas as the Port

Authority shall reasonably request. The approved scope of work shall be implemented by an independent nationally recognized environmental consulting firm with demonstrated prior experience on projects of similar scope, selected by the Lessee, and subject to Port Authority Approval, which shall not be unreasonably withheld or delayed. Within one hundred eighty (180) days after Port Authority Approval of such scope of work, a draft report of the results of the investigation comparing the results of such investigation to the Disclosed Environmental Reports and the report prepared pursuant to Section 16.12(k) (*Environmental Assessment after the Completion of Construction Work*) shall be prepared and provided to the Port Authority for Port Authority Approval, and shall include the consultant's assessment of the causes and sources of the Hazardous Environmental Conditions (if any) identified in such draft report. Based on the Port Authority's review of the draft report, the Lessee shall conduct such additional investigation as may be reasonably requested by the Port Authority to identify or characterize Hazardous Environmental Conditions that are likely to be required to be reported to Governmental Entities under the Environmental Requirements or for which Remedial Action is likely to be required under the Environmental Requirements. If the consultant preparing the report or the Port Authority determines that a reportable Hazardous Materials Release has occurred, which has not been previously reported, the Lessee shall immediately report the Hazardous Materials Release to the appropriate Governmental Entities. The Lessee shall then submit to the Port Authority for Port Authority Approval a final report that includes a Remedial Action Plan for any Hazardous Materials Releases for which the Lessee is the responsible party under this Agreement or the Environmental Requirements that occurred during the Term and have not been previously remediated, and any areas of Hazardous Environmental Conditions that have been exacerbated by the Lessee in connection with the failure of the Lessee to comply with any obligation in this Agreement (the approved form of such final report shall be the "**Handback Environmental Report**"). Within thirty (30) days following Port Authority Approval of the Handback Environmental Report, the Lessee shall provide to the Port Authority estimated costs for any Remedial Action Plan set forth in the Handback Environmental Report. Such estimates will be based on the reasonably projected costs for achieving applicable Environmental Remediation Standards, and shall be subject to Port Authority Approval. The total of the approved costs for Remedial Actions required by the Handback Environmental Report shall be designated the handback environmental amount (the "**Handback Environmental Amount**"), and shall be added to the Handback Amount for all purposes hereunder (including calculation and posting of the Handback Performance Security). Within thirty (30) days after receipt of the Port Authority Approval for the Handback Environmental Amount, the Lessee shall commence such Remedial Action, and shall complete such Remedial Action prior to the expiration of the Term, subject to such extensions as the Port Authority may approve.

(b) At least three hundred sixty-five (365) days before the end of the Term, the Lessee shall submit to the Port Authority for Port Authority Approval a proposed scope of work for an investigation of Hazardous Materials within the Premises, that shall update and confirm the findings of the Handback Environmental Report and address any new Hazardous Materials Releases occurring or discovered after the investigation reported in the Handback Environmental Report, together with assessment of such other areas as the Port Authority shall reasonably request. The approved scope of work shall be implemented by a nationally recognized environmental consulting firm with demonstrated prior experience on projects of

similar scope, selected by the Lessee, and subject to Port Authority Approval, which shall not be unreasonably withheld or delayed. At least one hundred eighty (180) days before the end of the Term, a draft report of the results of the investigation comparing the results of such investigation to the Handback Environmental Report and, as necessary, the Disclosed Environmental Reports shall be prepared and provided to the Port Authority for Port Authority Approval, and shall include the consultant's assessment of the status, causes and sources of, and responsibility for, the Hazardous Environmental Conditions (if any) identified in such draft report. Based on the Port Authority's review of the draft report, the Lessee shall conduct such additional investigation as may be reasonably requested by the Port Authority to identify or characterize Hazardous Environmental Conditions that are likely to be required to be reported to Governmental Entities under the Environmental Requirements or for which Remedial Action is likely to be required under the Environmental Requirements. If the consultant preparing the report or the Port Authority determines that a reportable Hazardous Materials Release has occurred, which has not been previously reported, and the Lessee is the responsible party under this Agreement or the Environmental Requirements, the Lessee shall immediately report the Hazardous Materials Release to the appropriate Governmental Entities, unless the Lessee has previously reported the Hazardous Materials Release. The Lessee shall then submit to the Port Authority for Port Authority Approval a final report that includes a Remedial Action Plan for any Hazardous Materials Releases occurring during the Term that have not been previously remediated, and any areas of Hazardous Environmental Conditions that have been exacerbated by the Lessee in connection with the failure of the Lessee to comply with any obligation in this Agreement (the approved form of such final report shall be the "**Exit Baseline Report**"). Within thirty (30) days following approval of the Exit Baseline Report, the Lessee shall commence implementation of any Remedial Action Plan set forth in such Exit Baseline Report, and shall complete such Remedial Action prior to the expiration of the Term, subject to such extensions as the Port Authority may approve.

(c) The Handback Environmental Amount shall be reduced as a result of completion of Remedial Actions for which cost estimates are included in the Handback Environmental Amount (along with the Handback Performance Security amount), provided that reductions shall occur not more frequently than semi-annually, and that any reduction in such amounts is supported by new estimates for all Remedial Actions identified as being necessary in the Handback Environmental Report or the Exit Baseline Report. All adjustments in such amounts are subject to Port Authority Approval of the estimates on the basis of which such reductions are proposed.

(d) If Hazardous Environmental Conditions are identified in the Handback Environmental Report or the Exit Baseline Report, and the Lessee is required to implement Remedial Actions pursuant to the Handback Environmental Report or the Exit Baseline Report and this Section 16.13 (*Handback Environmental Report and Exit Baseline Report*), and such Remedial Actions cannot be completed by the Lessee prior to the expiration of the Term, then, subject to Port Authority approval, the Lessee may post such additional Handback Performance Security as may be necessary to cover the reasonably foreseeable costs of such Remedial Actions. Notwithstanding Section 16.16(i) (*Survival of Obligations*) or Section 35.7 (*Survival*), the Lessee's obligation to perform such Remedial Actions with respect to any Hazardous Materials Release or Hazardous Environmental Condition that is identified in the

Handback Environmental Report or Exit Baseline Report sufficient to estimate an expected cleanup cost, and with respect to which Handback Performance Security has been posted for a Handback Environmental Amount that has received Port Authority Approval (including for Hazardous Materials Releases and Hazardous Environmental Conditions that are projected to have zero or *de minimis* cost) will terminate at the end of the Term. Nothing in this Section 16.13(d) shall be interpreted to relieve the Lessee of obligations for Hazardous Environmental Conditions or Hazardous Materials Releases that are the Lessee's responsibility hereunder, and are not identified and included, to the extent required, in the Handback Environmental Amount.

Section 16.14 Environmental Notices, Submittals and Reports

(a) Environmental Submittals.

(i) Submittals relating to environmental matters and other documentation described in this Section 16.14(a) (*Environmental Submittals*) are subject to the provisions and requirements of Article 8 (*Submittals; Open Dialogue and Cooperation*) during the Construction Period, provided however that the provisions of this Section 16.14(a) (*Environmental Submittals*) shall govern in the event of any inconsistency with Article 8 (*Submittals; Open Dialogue and Cooperation*) or additional requirement imposed under this Section 16.14(a) (*Environmental Submittals*). Unless otherwise expressly provided in this Article 16 (*Environmental, Health and Safety Requirements*) or the D&C Schedule of Submittals, the O&M Schedule of Submittals or applicable provisions of the Requirements and Provisions for Work, the Lessee shall provide the following Submittals for Port Authority Approval at least sixty (60) days prior to proceeding with the relevant portion of the Work on the Premises and the Temporary Rights of Access, if applicable: (A) Remedial Action Plans and Remediation Completion Reports; (B) SPCC Plan; (C) SWPPP, Soil Erosion and Sediment Control Plan, and NOI; (D) HASP; the (E) Environmental Management Plan; (F) the request for authorization to discharge contemplated under Section 16.5 (*Dewatering*); and (G) such other reports, notices, data and other documentation required to be submitted by the Lessee to the Port Authority under this Article 16 (*Environmental, Health and Safety Requirements*). Reports may be combined in a single document (such as the Environmental Management Plan), so long as the components of each plan are clearly labeled and readily identifiable, and the requests for Port Authority Approval identify the separate approval requests for separate plans or Submittals that are combined. Notwithstanding the foregoing, the provisions of Section 8.2(b), that permit the Lessee to proceed "at risk" without considering Port Authority comments, shall not apply to Submittals required or permitted by this Article 16 (*Environmental, Health and Safety Requirements*).

(ii) The Lessee shall submit for Port Authority Approval all draft applications for Lessee Governmental Approvals (or if requested by the Port Authority pursuant to Section 15.1(d)(vi), applications for Port Authority Governmental

Approvals) or amendments to Port Authority Governmental Approvals if necessary pursuant to Section 15.1(d)(ii), at least sixty (60) days prior to the date on which such application is required to be submitted in order to obtain the related Governmental Approval by the time required to commence the related Work in order to achieve the Project Baseline Schedule. With respect to such applications as require action by the Port Authority, including signatures or the supply of information regarding Port Authority personnel, operations or history that is not otherwise available to the Lessee, the Lessee shall identify such requested action or information in a cover letter accompanying the application.

(iii) The Port Authority shall review and approve or disapprove, and shall provide requested information within its possession and complete lawful actions requested by the Lessee pursuant to this Section 16.14 (*Environmental Notices, Submittals and Reports*), within thirty (30) days after the date on which such Submittal has been deemed complete by operation of Section 8.3(b).

(iv) To the extent that the actions or information requested by the Lessee under this Section 16.14 (*Environmental Notices, Submittals and Reports*) require the Port Authority to obtain an approval (including any signature) from Governmental Entities that the Lessee is not required to obtain and cannot obtain in its own name without Port Authority participation, the Port Authority shall inform the Lessee within thirty (30) days after receipt of such Submittal, and the date by which the Port Authority's response to such Submittal is due under this Section 16.14 (*Environmental Notices, Submittals and Reports*) shall be extended by such time as is necessary to obtain such approval. Nothing in this Section 16.14 (*Environmental Notices, Submittals and Reports*) relieves the Lessee from its obligation to obtain any Governmental Approval (other than a Port Authority Governmental Approval) required from Governmental Entities (not including the Port Authority).

(v) The Lessee shall ensure that the draft and final reports required under this Article 16 (*Environmental, Health & Safety Requirements*), including the Handback Environmental Report, Exit Baseline Report, all Remedial Action Plans, and all Remediation Completion Reports, are signed by a professional engineer licensed in the State of New York.

(b) Hazardous Materials Documentation. For any Work requiring demolition of building components and materials that include Hazardous Materials, the Lessee shall provide documentation to the Port Authority at least thirty (30) days in advance of commencement of such Work confirming that all required licenses and certifications are held by the Contractor(s) performing such Work. For disposal of wastes containing Hazardous Materials (including Excavated Materials, Groundwater, stormwater or Demolition Debris), the Lessee shall provide completed bills of lading, manifests, invoices, licenses, certifications, sampling results and evidence of receiving facility approval at least ten (10) Business Days in advance of such disposal. Within thirty (30) days after achieving completion of a Remedial Action, a closure report shall be provided by the Lessee to the Port Authority to confirm compliance with all

requirements of this Agreement pertaining to Remedial Action, which report shall include all documentation required to confirm that Remedial Action standards imposed under this Agreement and the Environmental Requirements have been achieved. Each such closure report shall be subject to the Port Authority's review and approval in accordance with the provisions of Article 8 (*Submittals; Open Dialogue and Cooperation*) hereof.

(c) Release Reporting. The Lessee shall promptly provide written notice to the Port Authority when the Lessee becomes aware of any Claim, judgment, notice, notice of violation, investigation, order or Lien relating to (i) a violation or alleged violation of, or matter arising under, any Environmental Laws with respect to the Premises or the Temporary Rights of Access or (ii) Hazardous Materials at, on, under or migrating to or from the Premises or the Temporary Rights of Access. Any new Hazardous Materials Release shall be reported to the Port Authority within the time necessary and reasonable to notify the Port Authority of actions that the Lessee or the Port Authority must take to contain, remove or implement Remedial Action with respect to such Hazardous Materials Release. New Hazardous Materials Releases that do not require immediate response under the Environmental Requirements or under this Agreement may be reported to the Port Authority in writing up to five (5) Business Days after discovery or in the Environmental Status Report, whichever occurs sooner. Any notice or report required to be made under Applicable Law in response to a Hazardous Materials Release, incident, accident or other lawfully reportable event within or from the Premises or the Temporary Rights of Access on or after the Lease Commencement Date shall be made by the Lessee in its name and shall also be provided to the Port Authority as and when provided to the required Governmental Entity. The Lessee agrees that in reporting any Hazardous Material discovered on the Premises or the Temporary Rights of Access, the Lessee shall direct such report to the attention of such individual at the subject Governmental Entity as the Port Authority shall require. The Lessee agrees that any of the foregoing may be filed by the Port Authority with the appropriate Governmental Entity on behalf of the Lessee at the Lessee's cost and expense.

(d) Test Results, Etc. Unless directed otherwise by the Port Authority, Lessee shall provide the Port Authority with copies of all information, documentation, records, correspondence, notices, certifications, reports, test results and all other submissions provided by the Lessee to a Governmental Entity and by a Governmental Entity to the Lessee within five (5) Business Days that the same are made available to or received by the Lessee with respect to any Environmental Requirements, unless a shorter period of time is required to obtain a response from the Port Authority that is required by this Agreement or desired by the Lessee. The Lessee shall provide the Port Authority with copies of any other information, documentation, records, correspondence, notices, reports, test results, and certifications and any other information as the Port Authority shall request in connection with any Environmental Requirements. All such documentation relating to the Work or the Premises during the Term shall be signed and certified by the Lessee, in its own name, unless otherwise directed by the Port Authority.

(e) Information in Environmental Status Report. Any documentation or notification required by this Section 16.14 *(Environmental Notices, Submittals and Reports*) shall be included in the next Environmental Status Report, and need not be separately provided

to the Port Authority if the Environmental Status Report is provided prior to the deadline for notifications set forth in this Section 16.14 (*Environmental Notices, Submittals and Reports*).

(f) Port Authority Responsibility. The Port Authority's rights to review and approve Submittals, receipt of reports or other information, inspections and other oversight activities under this Article 16 (*Environmental, Health and Safety Requirements*) or otherwise with respect to the Environmental Requirements shall not be deemed or interpreted to impose upon the Port Authority obligations relating to the Lessee's performance of the Work, and no aspect of such review, approval, oversight or inspection shall be deemed to constitute negligence relieving the Lessee of any obligation under this Article 16 (*Environmental, Health and Safety Requirements*).

Section 16.15 Environmental Status Reports

(a) Environmental Status Report. Until the Final Acceptance Date, the Lessee shall prepare and submit to the Port Authority Environmental Status Reports within ten (10) days after the end of each calendar month to summarize the previous month's environmental activities, including permit status, soil disposal activities and other environmental activities. After the Final Acceptance Date, throughout the Term, such reports shall be prepared and delivered within ten (10) days after the end of each calendar quarter, for the environmental activities conducted or occurring during the preceding calendar quarter. Each Environmental Status Report shall include copies of any material correspondence or other written communications received or given by the Lessee concerning the Lessee's performance under this Article 16 (*Environmental, Health and Safety Requirements*), including any notices, reports and applications filed with Governmental Entities during the reporting period, and any Governmental Approvals, notices or other correspondence from third parties or Governmental Entities, received during the reporting period, including such documentation and written communications as to which the Lessee was required to give notice to the Port Authority under this Agreement during the reporting period.

(b) Environmental Status Reports; Topics. The content of the Environmental Status Reports shall document the Lessee's performance during construction and include, but not be limited to, the following:

(i) status of implementation and compliance with the Environmental Management Plan and any proposed modifications or amendments to it;

(ii) status of all applications for Governmental Approvals and copies of newly-issued Governmental Approvals, or amendments and modifications thereto;

(iii) status of handling, storage and management of Hazardous Materials, construction and demolition debris, soil and dewatering effluent, including sampling results and all documentation required by this Agreement with respect to past and future off-site disposal; and

(iv) status of ACM, LCP and UW abatement activities, documentation and compliance, including sampling results and all documentation required by this Agreement with respect to past and future off-site disposal.

(c) Field Work Conditions. Each Environmental Status Report shall include a summary of field work performed (e.g., asbestos abatement) during the previous reporting period (month or quarter) and shall identify:

(i) the name of environmental monitoring inspector(s);

(ii) date(s) of activities;

(iii) weather conditions;

(iv) locations where field activities occurred; and

(v) resource(s) addressed, such as air, water, or hazardous waste.

(d) Compliance Status and Corrective Action. Each Environmental Status Report shall include the status of compliance with this Agreement, Governmental Approvals, plans submitted under this Article 16 (*Environmental, Health & Safety Requirements*), and other Environmental Requirements, along with any corrective actions required, including the following:

(i) locations and nature of violations;

(ii) response to each violation; and

(iii) implemented Remedial Actions and precautions to prevent reoccurrence of violations.

(e) Submittals Status. Each Environmental Status Report shall include a list of any notices, reports or other Submittals made, given or received during the reporting period pursuant to this Agreement and the Environmental Requirements and copies of any such notices, reports or other Submittals that have not previously been provided to the Port Authority. The Environmental Status Report shall clearly identify, by a list or other summary, the Submittals that require further action or review, the type of review or action required and the responsible Party (e.g., complete, requiring Lessee action, requiring Port Authority Approval, etc.). Where reasonably feasible, a schedule of Submittals expected to be submitted for Port Authority Approval in the ensuing ninety (90) days should be submitted. The list of expected future Submittals shall indicate the information, action (e.g., signatures) or other responses expected to be requested from the Port Authority.

Section 16.16 Enforcement and Administration

(a) General. In addition to any other rights and remedies that may be available to the Port Authority under this Agreement or under Applicable Law, the Port Authority may notify the

Lessee of a default under or breach of this Article 16 (*Environmental, Health and Safety Requirements*). The Lessee shall commence diligent efforts to remedy the default or breach immediately upon receipt of such notice and provide a written response indicating the Lessee's plan for remedying such default or breach within (i) five (5) Business Days after receipt of such notice, in the case of any condition that poses a material threat of a Hazardous Materials Release, or (ii) ten (10) Business Days for other matters. If no default or breach has occurred, the Lessee shall provide the Port Authority within ten (10) Business Days after receipt of the notice documentation of compliance. The Lessee shall implement any plan for achieving compliance approved by the Port Authority under this subsection.

(b) Immunity and Waiver. Nothing in the foregoing shall be construed as a submission by the Port Authority to the application to itself of the Environmental Requirements; provided, however, that no immunity or exemption of the Port Authority from the Environmental Requirements shall excuse the compliance therewith by the Lessee or shall be grounds for non-compliance therewith by the Lessee.

(c) Third Parties. The terms and conditions of this Article 16 (*Environmental, Health and Safety Requirements*) are intended to allocate the obligations and responsibilities between the Lessee and the Port Authority, and nothing in this Article 16 (*Environmental, Health and Safety Requirements*) or elsewhere in this Agreement shall be deemed to limit, modify waive or otherwise alter the rights, claims and remedies which the Port Authority or the Lessee may have against third parties at law, in equity or otherwise. The Lessee may assign to third parties, and third parties may assume the Lessee's obligations under this Article 16 (*Environmental, Health and Safety Requirements*), but no such assignment or assumption shall relieve the Lessee of liability to the Port Authority for the performance of the Lessee's obligations under this Article 16 (*Environmental, Health and Safety Requirements*).

(d) Port Authority-Directed Testing and Remediation. Subject to Section 16.17 (*Exclusions, Risk Allocation and Remedies*), the Port Authority shall have the right, but not the obligation, upon notice to the Lessee to direct the Lessee, (i) to perform such reasonable additional testing, above and beyond testing otherwise required by the Environmental Requirements for the performance of the Work, of soil, construction debris, Demolition Debris, dewatering effluent, stormwater and other materials or environmental media as the Port Authority shall direct and the Lessee shall perform such testing of such materials, and (ii) to clean-up and remediate any Hazardous Environmental Condition that is not otherwise required to be cleaned up or remediated pursuant to this Agreement, which clean-up and remediation shall be performed pursuant to applicable Environmental Requirements and a Remedial Action Plan prepared by the Lessee and submitted to the Port Authority for Port Authority Approval. For the avoidance of doubt, the foregoing provisions of this Section 16.16(d) (*Port Authority-Directed Testing and Remediation*) relate only to directions by the Port Authority to conduct Remedial Action and/or testing that is not otherwise required to demonstrate compliance with this Agreement or required under Applicable Law, and does not exclude the Lessee's responsibility for performing and paying for such Remedial Action and/or testing as is otherwise required under this Agreement.

(e) Port Authority Testing and Remediation. In addition to the foregoing, the Port Authority and its designees shall have the right, but not the obligation, to conduct Remedial Action and/or testing of soil and Groundwater, using existing or new borings or wells, including conducting pumping operations from any new or existing wells, within the Premises or the Temporary Rights of Access, upon reasonable notice and at reasonable times; provided, that the Port Authority's conduct of such Remedial Action or testing does not unreasonably interfere with Lessee's Work, including operations within the Premises or the Temporary Rights of Access; and provided, further, that the Port Authority repairs the condition of any facilities, improvements and equipment to substantially the condition in which they existed immediately prior to the Port Authority's Remedial Action or testing or, if applicable, to the Port Authority's own specifications for such facilities, improvements or equipment.

(f) Use of Certified Laboratories. All sampling, testing and chemical analyses performed in accordance with this Article 16 (*Environmental, Health and Safety Requirements*) shall be performed by a laboratory duly approved or certified by NYSDEC or other appropriate Governmental Entity acceptable to the Port Authority.

(g) Burden of Proof. In performing its obligations under this Agreement, the Lessee shall be responsible for collecting, recording and maintaining records of the facts related to the scope of the Lessee's obligations under this Article 16 (*Environmental, Health and Safety Requirements*), including: (i) the existence or concentrations of any Hazardous Material; (ii) whether any Hazardous Material was released or disposed of or migrated to or from the Premises or the Temporary Rights of Access prior or subsequent to a specific date; (iii) the causes or origin of such Hazardous Material Release and whether the Lessee or any Occupant caused a Hazardous Materials Release or exacerbated any Hazardous Environmental Condition so as to cause a Hazardous Material to first become regulated during the Term; (iv) the waste classification of any Excavated Materials, Demolition Debris or any other materials constituting or containing Hazardous Material; and (v) entitlement to remedies based on any claim of [redacted] or Delay Event arising from the Lessee's obligations under this Article 16 (*Environmental, Health and Safety Requirements*). In the event that the Lessee has failed to collect, record and maintain sufficient factual information upon which the determinations set forth in clauses (i)-(iv) of this Section 16.16(g) (*Burden of Proof*) are based, then any ambiguity or uncertainty concerning such facts shall be presumed to be resolved in the Port Authority's favor in any discussion, dispute or analysis (subject to rebuttal by the Lessee through the development of additional factual information or analysis that demonstrates that the presumption is inaccurate). While the burden of proof shall remain with the Lessee for demonstrating the presence or absence of Unknown Hazardous Materials, no presumption under this Section 16.16(g) shall apply with respect to the presence or absence of Unknown Hazardous Materials in areas where no data or information exist regarding the use, storage, handling or release of Hazardous Materials.

(h) Port Authority Remedies. Without limiting the Port Authority's other remedies under this Agreement or, generally, at law or in equity, the Port Authority shall have the right, during and after the Term, to such equitable relief, including injunctions and declaratory judgments, to enforce compliance by the Lessee of its environmental obligations under this Agreement, including all the Lessee's obligations under this Article 16 (*Environmental, Health*

and Safety Requirements). In the event that the Lessee fails to comply with or perform any of such obligations, the Port Authority at any time during or subsequent to the Term may elect (but shall not be required) to perform such obligations, and upon demand the Lessee shall pay to the Port Authority its costs thereof, including all overhead costs as determined by the Port Authority in accordance with Section 28.2 (*Reimbursement by the Lessee*).

(i) Survival of Obligations. Obligations with respect to Environmental Liabilities arising or existing under this Agreement at or prior to the expiration or Early Termination of this Agreement that have not been performed shall survive the expiration or Early Termination of this Agreement. Obligations to perform Remedial Actions, for known or disclosed Hazardous Environmental Conditions for which Handback Performance Security has been accepted by the Port Authority shall not survive the expiration or Early Termination of this Agreement, but shall be performed by the Port Authority from funds provided through the Handback Performance Security.

Section 16.17 Exclusions, Risk Allocation and Remedies

(a) Exclusions from the Lessee's Environmental Liability. Notwithstanding any of the foregoing provisions of this Article 16 (*Environmental, Health and Safety Requirements*), the Lessee shall not be responsible for Remedial Action or Environmental Liabilities to the extent arising from:

(i) a Hazardous Materials Release occurring or existing outside of the Premises and the Temporary Rights of Access on or prior to the Lease Commencement Date;

(ii) Area-Wide Contamination as to which the Port Authority has assumed responsibility for Remedial Action pursuant to Section 16.12(e) (*Area-Wide Remediation*) or other Remedial Action undertaken by the Port Authority pursuant to Section 16.16(e) (*Port Authority Testing and Remediation*);

(iii) Third-Party Claims relating to Environmental Liability to the extent arising from events, acts or circumstances occurring or existing prior to the Lease Commencement Date, but not including liability for Remedial Action or management of Hazardous Materials as part of the Work, responsibility for which is allocated in other provisions of this Agreement;

(iv) fines and penalties imposed by any Governmental Entity with respect to violations of Environmental Law based on facts, circumstances or events existing or occurring prior to the Lease Commencement Date, unless such fines or penalties are imposed as a result of the Lessee's or any Occupant's failure to comply with obligations under this Agreement;

(v) Hazardous Material that migrates onto the Premises or the Temporary Rights of Access from outside the Premises or the Temporary Rights of Access for reasons other than an act or omission of the Lessee or any Lessee-Related Entity;

(vi) Environmental Liabilities arising from the presence at Approved Disposal Locations of Pre-Existing Hazardous Materials disposed of by the Lessee during the Construction Work in compliance with the requirements of this Agreement, including Section 16.4(a) (*Responsibility for Waste Management*);

(vii) Remedial Action requirements to the extent arising out of or relating to any Hazardous Materials Release existing on additional land at the time such additional land was added to the Premises or to the Temporary Rights of Access by any Port Authority Change or Directive Letter; and

(viii) Claims for removal or other Remedial Action to the extent attributable to Pre-Existing Hazardous Materials in Excavated Materials arising after such Excavated Materials have been permanently backfilled on the Premises in compliance with this Agreement.

(b) Cost Allocation for Lessee Responsibilities. Except as expressly provided in Section 16.12(f) (*Hazardous Materials Releases During the Term*), the Lessee shall be entitled to claim a [redacted] and a Delay Event, as applicable, for complying with its obligations under this Article 16 (*Environmental, Health and Safety Requirements*) to the extent that, without the negligence or culpable act or omission of the Lessee or any Occupant, the Lessee incurs Incremental Environmental Damages arising from and attributable to:

(i) Unknown Hazardous Materials that are required to be managed, treated or disposed of by the Lessee as part of the Construction Work under this Agreement or Environmental Requirements; or

(ii) Subject to Section 16.4(g) (*Soil Disposal Cost Savings*), Excavated Materials, Demolition Debris and other waste materials that the Lessee is handling during the Construction Work under the provisions of Section 16.4 (*Responsibility for Waste Management*), Section 16.5 (*Dewatering*), or Section 16.12(a) (*Responsibility for Hazardous Materials during Construction Work*) that (A) are classified as regulated hazardous wastes under RCRA where such classification was not expressly disclosed or readily apparent from the Available Documents, or (B) require specialized protective equipment under the HASP for personnel handling such waste materials beyond the protective equipment that would have been required under the HASP based on Known Hazardous Materials in such waste materials; or

(iii) Remedial Action that the Lessee is required to perform under Environmental Law at the request or direction of a Governmental Entity with respect to Pre-Existing Hazardous Materials outside of the Excavation Zone during the Construction Work or that arise from an Excluded Liability (including those obligations excluded from the Lessee's environmental obligations pursuant to Section 16.17(a) (*Exclusions from the Lessee's Environmental Liability*)); or

(iv) the stoppage of Work or modification of Work as directed by the Port Authority under Section 16.12(e) (*Area-Wide Remediation*) or Section 16.12(h) (*Remediation at Port Authority Direction*); or

(v) Remedial Action required or otherwise approved by the Port Authority to be performed by the Lessee under Section 16.12(d) (*Contamination Encountered During the Construction Work*) or Section 16.16(d) (*Port Authority-Directed Testing and Remediation*); or

(vi) the discovery, management and removal by the Lessee of Tanks or Tank Systems that are Unknown Facilities and are required to be removed in order to perform the Construction Work or are directed to be removed by the Port Authority.

(c) Exceptions to Exclusions, Risk Allocation and Remedies. The provisions of this Section 16.17 (*Exclusions, Risk Allocation and Remedies*) shall not operate to relieve the Lessee of:

(i) obligations under this Agreement to the extent arising as a result of the actions or omissions of the Lessee or, during the Term, any Occupant, including any breaches of this Agreement, to the extent that they cause or contribute to conditions that would otherwise be Excluded Liabilities under Section 16.17(a) (*Exclusions from the Lessee's Environmental Liability*) or qualify as Incremental Environmental Damages under Section 16.17(b) (*Cost Allocation for Lessee Responsibilities*); or

(ii) Lessee obligations arising under other Project Documents or provisions of this Agreement other than Article 16 (*Environmental, Health and Safety Requirements*), except pursuant to a Directive Letter or as a result of an agreed change order implementing a Lessee Change or a Port Authority Change that expressly references this Section 16.17 (*Exclusions, Risk Allocation and Remedies*) and modifies its terms; or

(iii) obligations for which costs and expenses were expressly provided for, or estimated in, the Lessee's Proposal Commitments for obligations arising under other provisions of this Agreement or other Project Documents, unless reductions in cost relating to such obligations are part of a cost savings plan proposed in the Lessee's Proposal Commitments for which a cost reduction or shared savings plan was accepted by the Port Authority; or

(iv) costs and expenses attributable to deviations from the quantities of Known ACM (including any claimed Incremental Environmental Damages under Section 16.17(b)(i)), Known LCP or Known PCB, as such quantities are estimated or presumed to exist in the Available Documents, either individually by category or type, unless, prior to the demolition or removal of such Known Hazardous Materials, the Lessee prepares and submits, for Port Authority Approval, documentation confirming that the quantities of such Known Hazardous Materials differ in kind, quality or location from the information provided in the Available Documents.

ARTICLE 17

ASSIGNMENTS

Section 17.1 Restrictions on Assignments

(a) Except as otherwise expressly provided in this Agreement, no Assignment may be made without the prior written consent of the Port Authority in its sole discretion.

(b) Notwithstanding any other provision of this Agreement, and notwithstanding that the consent of the Port Authority may have been given or may not have been required, in no event shall an Assignment be permitted if (i) the transferee, or any of its direct or indirect beneficial owners, for the proposed Assignment is a Prohibited Party or (ii) the proposed Assignment would entail a violation of Section 721 of the Defense Production Act of 1950, as amended, the Port Authority Code of Ethics or the relevant conflict of interest rules or a violation of Applicable Law.

(c) Any purported voluntary or involuntary (i) Assignment by the Lessee and (ii) Lessee Change in Control, in each case, in violation of this Section 17.1 (*Restrictions on Assignments*) shall be null and void *ab initio* and of no force and effect.

(d) Notwithstanding the provisions of Section 17.1(a), where a Recognized Mortgagee (or its designee or nominee) (i) has acquired the Lessee's interest in this Agreement through foreclosure of its Leasehold Mortgage, or assignment of this Agreement in lieu of foreclosure, or enforcement of its security interest over any direct or indirect equity interest in the Lessee or any property of the Lessee, or (ii) has entered into a New Agreement, the Port Authority's consent shall not be required to an Assignment by such Recognized Mortgagee of its interest in this Agreement or such New Agreement or any direct or indirect equity interest in the Lessee, as the case may be, to an entity that satisfies the requirements of a Qualified Terminal Operator; provided, that at least thirty (30) days prior to the effective date of such Assignment or New Agreement, the Recognized Mortgagee shall provide a notice to the Port Authority setting forth the nature of the Assignment or New Agreement and the ownership structure of the new lessee, and shall provide the Port Authority with such additional information as is reasonably necessary for the Port Authority to verify that such Assignment or New Agreement complies with the foregoing requirements.

(e) For purposes of this Article 17 (*Assignments*), the following capitalized terms shall have the meanings set forth below:

(i) "**Assignment**" means any sale, conveyance, transfer, exchange, assignment, pledge, hypothecation or other disposition, of all or any portion of the Lessee's interest in this Agreement (including any sale, transfer, assignment or other disposition of any interest in the Lessee or in any direct or indirect constituent entity of the Lessee, including any redemption of any interest therein or the issuance of any additional interest therein) or the leasehold estate created hereby, whether by operation of law or otherwise, and shall include any Lessee Change in Control. None of (a) the

Security Documents, and (b) the exercise by the Collateral Agent of its rights under Security Documents shall constitute an Assignment. Notwithstanding anything to the contrary set forth in this definition, the following shall not constitute an Assignment:

(A) Transfers of securities evidencing ownership or any other ownership interests pursuant to bona fide open market transactions on a recognized stock exchange (including initial or "follow on" public offerings);

(B) Transfers of equity interests between or among Persons that are under common Control;

(C) Transfers of equity interests in the Lessee by an Equity Member or any Affiliate thereof to a pension fund or employee equity compensation plan sponsored, maintained and Controlled by such Equity Member or such Affiliate;

(D) Transfers of any indirect equity interests in the Equity Members by any Governmental Entity;

(E) Transfers of indirect equity interests in the Lessee by any direct or indirect beneficial owner of such interests (other than any Related Equity Member) to any of such entity's partners, members or shareholders who are distributees of investments held by such entity; provided, that (1) such distribution does not result in a Lessee Change in Control and (2) each such distributee receives distributions in an amount corresponding to substantially the same percentage of beneficial interest in the Lessee as such distributee owned prior to such distribution; and

(F) any upstream reorganization or Transfer of direct or indirect equity interests in an Equity Member; provided, that there occurs no change in the entity with ultimate power to direct or control or cause the direction or control of the management of such Equity Member, whether directly or indirectly and whether through share ownership, a trust, a contract, or otherwise.

(ii) "**Lessee Change in Control**" means, whether accomplished through a single transaction or a series of related or unrelated transactions, and whether or not reflected in the organization chart provided and updated pursuant to Section 11.5 (*Organization Chart*): (a) any Assignment of fifty percent (50%) or more of the voting or economic interests in the Lessee by the Equity Members owning equity interests in the Lessee as of the Lease Commencement Date or (b) any transfer of an interest, direct or indirect, in any Equity Member, or other assignment, sale, financing, grant of security interest, hypothecation, conveyance, transfer of interest or transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation, bankruptcy or otherwise, that results, directly or indirectly, in a change of possession of the power to direct or control or cause the direction or control of the management of the Lessee or a material aspect of its business or (c) the merger, consolidation, amalgamation, business combination or sale of

substantially all of the assets of the Lessee. A change in the power to direct or control or cause the direction or control of the management of an Equity Member may constitute a Lessee Change in Control if such Equity Member possesses, immediately prior to such Lessee Change in Control, the power to direct or control or cause the direction or control of the management of the Lessee. Notwithstanding anything to the contrary set forth in this definition, the following shall not constitute a Lessee Change in Control:

(A) Transfers of securities evidencing ownership or any other ownership interests pursuant to bona fide open market transactions on a recognized stock exchange (including initial or "follow on" public offerings); provided, that no Person or group of Persons acting in concert (that is not the Lessee, an Equity Member or its direct or indirect beneficial owner(s) prior to such Assignment) acquires securities such that such Person or group of Persons beneficially owns fifty percent (50%) or more of the publicly traded securities of the Lessee;

(B) Transfers of equity interests between or among Persons that are under common Control;

(C) Transfers of any indirect equity interests in the Equity Members by any Governmental Entity;

(D) Transfers of direct or indirect equity interests in the Lessee (1) between or among investment funds, including infrastructure funds, and investors therein; provided, that following such Transfer such direct or indirect equity interests remain under common ownership or control or (2) from investment funds, including infrastructure funds, or investors therein, to any Person; provided, that such direct or indirect equity interests, following consummation of such Transfer, remain under common ownership or control, it being understood that equity interests shall be deemed to be controlled by a Person if controlled in any manner whatsoever that results in control in fact, whether directly or indirectly, and whether through share ownership or otherwise;

(E) any upstream reorganization or Transfer of direct or indirect equity interests in an Equity Member; provided, that there occurs no change in the entity with ultimate power to direct or control or cause the direction or control of the management of such Equity Member, whether directly or indirectly and whether through share ownership, a trust, a contract, or otherwise; and

(F) the exercise by the Collateral Agent of its rights under the Leasehold Mortgage or under any pledge of equity interests in the Lessee to the Collateral Agent to secure Lessee Debt.

(iii) "**Related Equity Member**" means (A) Vantage Airport Group (New York) LLC, (B) Skanska ID LGP, LLC and (C) and MI LaGuardia CTB, LLC and, in

each case, any permitted successors, assigns and transferees of such Related Equity Member.

(iv) "**Terminal Operator Change in Control**" means, whether accomplished through a single transaction or a series of related or unrelated transactions: (a) any Transfer of fifty percent (50%) or more of the voting or economic interests in the Terminal Operator or the Terminal Operator Member, by its equity members or shareholders, as applicable, owning equity interests in the Terminal Operator or the Terminal Operator Member as of the Lease Commencement Date or (b) any assignment, sale, financing, grant of security interest, hypothecation, conveyance, transfer of interest or transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation, bankruptcy or otherwise, that results, directly or indirectly, in a change of possession of the power to direct or control or cause the direction or control of the management of the Terminal Operator or the Terminal Operator Member or a material aspect of the business of the Terminal Operator or the Terminal Operator Member, or (c) the merger, consolidation, amalgamation, business combination or sale of substantially all of the assets of the Terminal Operator or the Terminal Operator Member, or (d) any Transfer resulting in the Vantage Member Entity (as defined herein) ceasing to be Under Common Control With Vantage (as defined herein) while the Vantage Member Entity is the Terminal Operator Member. A change in the power to direct or control or cause the direction or control of the management of an equity member or shareholder, as applicable, of the Terminal Operator or the Terminal Operator Member may constitute a Terminal Operator Change in Control if such equity member or shareholder, as applicable, of the Terminal Operator or the Terminal Operator Member possesses, immediately prior to such Terminal Operator Change in Control, the power to direct or control or cause the direction or control of the management of the Terminal Operator or the Terminal Operator Member. Notwithstanding anything to the contrary set forth in this definition, the following shall not constitute a Terminal Operator Change in Control:

(A) Transfers of securities evidencing ownership or any other ownership interests pursuant to bona fide open market transactions on a recognized stock exchange (including initial or "follow on" public offerings); provided, that no Person or group of Persons acting in concert (that is not the Terminal Operator or the Terminal Operator Member an equity member or shareholder in the Terminal Operator or the Terminal Operator Member or its direct or indirect beneficial owner(s) prior to such Assignment) acquires securities such that such Person or group of Persons beneficially owns more than fifty percent (50%) of the publicly traded securities of the Terminal Operator or the Terminal Operator Member;

(B) Transfers of equity interests between or among Persons that are under common Control;

(C) Transfers of any indirect equity interests in the Equity Members by any Governmental Entity;

(D) Transfers of any indirect equity interests in the Terminal Operator by any Governmental Entity; and

(E) any upstream reorganization or Transfer of direct or indirect interests in an equity member or shareholder, as applicable, of the Terminal Operator or the Terminal Operator Member; provided, that there occurs no change in the entity with ultimate power to direct or control or cause the direction or control of the management of such equity member or shareholder, as applicable, whether directly or indirectly and whether through share ownership, a trust, a contract, or otherwise.

(v) "**Transfer**" means to sell, convey, assign, sublease, encumber or otherwise dispose of.

Section 17.2 Restrictions on Terminal Operator Change in Control

(a) In connection with the Operations and Maintenance Work, the Lessee shall rely on the expertise and personnel of a Qualified Terminal Operator, pursuant to any of the following arrangements or a combination thereof, subject to applicable provisions of clauses (b) and (d) below:

(i) one of its Equity Members shall be a Qualified Terminal Operator (the "**Terminal Operator Member**"), in which case the Lessee may, but shall not be required to, enter into a contract with such Terminal Operator Member, under which the Terminal Operator Member, as Terminal Operator, provides the Lessee with specified services and support relating to the Operations and Maintenance Work (an "**O&M Contract**");

(ii) an Affiliate Under Common Control with the Terminal Operator Member shall also be a Qualified Terminal Operator (an "**Affiliate QTO**"), in which case the Lessee shall enter into an O&M Contract with such Affiliate QTO as Terminal Operator on terms approved by the Port Authority;

(iii) the Lessee shall enter into and maintain an O&M Contract, on terms approved by the Port Authority, with a third-party Terminal Operator (i.e., a party other than the Terminal Operator Member or an Affiliate QTO) who is a Qualified Terminal Operator and who undertakes to perform substantially all of the Operations and Maintenance Work; or

(iv) the Lessee qualifies as a QTO and shall self-perform the Operations and Maintenance Work without reliance on a Terminal Operator Member or an affiliated or third-party Terminal Operator.

(b) (i) In the event of any proposed Terminal Operator Change in Control, the Lessee shall inform the Port Authority promptly upon obtaining actual knowledge of such proposed Terminal Operator Change in Control. If the Port Authority determines, in its sole discretion, that such Terminal Operator Change in Control will or may have a material adverse effect on the Lessee's ability to carry out its obligations under this Agreement and the Port

Authority so notifies in writing, the Lessee shall either (in each case prior to occurrence of such Terminal Operator Change in Control):

(A) if the proposed Terminal Operator Change in Control will apply to a Terminal Operator Member, (1) nominate another Equity Member who is a Qualified Terminal Operator to succeed to the responsibilities, rights and obligations of the Terminal Operator Member under Section 17.2(a)(i) and in Section 17.2(c) and terminate any O&M Contract with the Terminal Operator Member (if applicable) and, at the request of the Port Authority or, notwithstanding anything to the contrary in Section 19.1(a), at its discretion,any O&M Contract with the Affiliate of such Terminal Operator Member (if applicable); provided, that Section 17.2(c) governing the Terminal Operator Minimum Share shall apply, (2) enter into an O&M Contract on terms approved by the Port Authority with a third-party Terminal Operator who is a Qualified Terminal Operator in accordance with Section 17.2(a)(iii), or (3) proceed to self-perform the Operations and Maintenance Work in accordance with Section 17.2(a)(iv), implementing such changes to the personnel and management of the Lessee as needed for the Port Authority to determine that the Lessee is a Qualified Terminal Operator; or

(B) if the proposed Terminal Operator Change in Control will apply to a third-party Terminal Operator or a Terminal Operator who is an Affiliate QTO of the Terminal Operator Member, terminate the O&M Contract with such Terminal Operator within thirty (30) days following such notice from the Port Authority and either (1) if the O&M Contract was performed by an Affiliate QTO of the Terminal Operator Member in accordance with Section 17.2(a)(ii), replace the Terminal Operator with another Terminal Operator who is a QTO Affiliate of the Terminal Operator Member, on substantially the same terms as the O&M Contract, or on such other terms that are acceptable to the Port Authority in its sole discretion, (2) enter into an O&M Contract on terms approved by the Port Authority with a third-party Terminal Operator who is a Qualified Terminal Operator in accordance with Section 17.2(a)(iii), or (3) proceed to self-perform the Operations and Maintenance Work in accordance with Section 17.2(a)(iv), implementing such changes to the personnel and management of the Lessee as needed for the Port Authority to determine that the Lessee is a Qualified Terminal Operator.

(ii) The Lessee shall not terminate or replace an O&M Contract other than as provided in Section 19.1(a), in clause (b)(i)(A) above or in clause (d) below. The Lessee shall provide written notice to the Port Authority promptly upon the earlier to occur of an event of default under an O&M Contract, and the termination of such O&M Contract. Upon termination of an O&M Contract, the Lessee shall promptly effectuate one of the arrangements set forth in Section 17.2(a), or a combination thereof.

(c) (i) Subject to this Section 17.2(c), the Port Authority's consent shall be required for any proposed Transfer that results in the Terminal Operator Member's holding less

than fifteen percent (15%) of the direct equity interests in the Lessee (the "**Terminal Operator Minimum Share**"); provided, however, that at all times (irrespective of the percentage interest in the Lessee held by the Terminal Operator Member), the Terminal Operator Member shall be represented by one or more members, partners or like representatives in the governing body of the Lessee with a veto power over major operational matters.

(ii) With respect to any such Transfer described in Section 17.2(c)(i) occurring prior to the fifth (5th) anniversary of the Substantial Completion Date, the Port Authority shall have the right to withhold its consent at its sole discretion.

(iii) With respect to any such Transfer occurring on or after the fifth (5th) anniversary of the Substantial Completion Date, the Port Authority shall not unreasonably withhold, delay or condition its consent if the Lessee has demonstrated that: (A) as a result of such Transfer, (x) the Terminal Operator Member will be replaced with an entity who is a Qualified Terminal Operator holding an equity stake in the Lessee of no less than the Terminal Operator Minimum Share or other share reasonably acceptable to the Port Authority and (y) any existing O&M Contract will remain in effect, (B) the Lessee has entered into an O&M Contract on terms approved by the Port Authority with a third-party Terminal Operator who is a Qualified Terminal Operator in accordance with Section 17.2(a)(iii), or (C) the Lessee is a Qualified Terminal Operator capable of self-performing the Operations and Maintenance Work in accordance with Section 17.2(a)(iv).

(d) The Parties acknowledge that, as of the Lease Commencement Date, and in satisfaction of clause (a)(i) above with respect to the Operations and Maintenance Work, the Lessee intends to rely on the expertise and personnel of (i) Vantage Airport Group (New York) LLC (the "**Vantage Member Entity**"), as Terminal Operator Member; and (ii) Vantage Airport Group (New York) Management Ltd. (the "**Vantage Management Entity**"), a wholly-owned subsidiary of Vantage Airport Group Ltd. ("**Vantage**") and an Affiliate Under Common Control With the Vantage Member Entity, as Terminal Operator, under an O&M Contract between the Lessee and the Vantage Management Entity under which the Vantage Management Entity will provide the Lessee with certain specified services and support relating to the Operations and Maintenance Work. As of the Lease Commencement Date, the Port Authority has determined that each of the Vantage Member Entity and the Vantage Management Entity is a Qualified Terminal Operator. Such determination with respect to the Vantage Member Entity was based in substantial part on the provisions of an expertise agreement dated as of June 1, 2016 (the "**Expertise Agreement**") between Vantage and the Vantage Member Entity, under which Vantage is committed to provide the Vantage Member Entity, for the duration of the Term, with full access to the experience, personnel, intellectual property and other resources of Vantage as required by the Vantage Member Entity in connection with its role as the Terminal Operator Member. Each of the Port Authority and the Lessee shall be an express third party beneficiary of the Expertise Agreement with the right receive notice of any breach or asserted breach of the Expertise Agreement by either party to it and to approve in advance of any proposed amendment, termination or replacement of the Expertise Agreement. As an express third party beneficiary of the Expertise Agreement, the Lessee will (w) inform the Port Authority promptly after obtaining any knowledge that either

Vantage or the Vantage Member Entity is in breach of or otherwise failing to meet its obligations under the Expertise Agreement in any material respect, (x) not agree to the amendment of the Expertise Agreement without the prior written consent of the Port Authority, (y) not agree to the replacement of all or any part of the Expertise Agreement without the prior written consent of the Port Authority, and (z) not agree to the termination of the Expertise Agreement without the prior written consent of the Port Authority; provided, that the Lessee shall not unreasonably withhold its approval of any amendment, termination or replacement of the Expertise Agreement that has been approved by the Port Authority. The Parties acknowledge that any termination, replacement or amendment of, or any material departure from, the terms of the Expertise Agreement may result in the revocation of the Port Authority's determination that the Vantage Member Entity is a Qualified Terminal Operator. In the event that the status of the Vantage Member Entity as a Qualified Terminal Operator is revoked by the Port Authority, the Lessee shall, at the request of the Port Authority or, notwithstanding anything to the contrary in Section 19.1(a), at its discretion, terminate its O&M Contract with the Vantage Management Entity and shall promptly effectuate one of the arrangements set forth in Section 17.2(a), or a combination thereof.

Section 17.3 Standards and Procedures for Port Authority Approval of Assignments

(a) Without limitation and except for Assignments of direct equity interests in the Lessee by the Terminal Operator Member, which shall be subject to Section 17.2(c), the Port Authority may, at its sole discretion, withhold its consent to any proposed Assignment by or among Related Equity Members or any subsidiary thereof of its respective direct or indirect ownership interest in the Lessee prior to the first (1st) anniversary of the Substantial Completion Date.

(b) Without limitation and except for Assignments of direct equity interests in the Lessee by the Terminal Operator Member, which shall be subject to Section 17.2(c), from and after the first (1st) anniversary of the Substantial Completion Date, the Port Authority may withhold its consent to any proposed Assignment by or among Related Equity Members or any subsidiary thereof of its respective direct or indirect ownership interest in the Lessee or any Assignment that results in a Lessee Change in Control only if the Port Authority reasonably determines that:

(i) the Lessee has failed to demonstrate to the Port Authority's reasonable satisfaction any of the following factors: (A) the financial strength and integrity of the proposed assignee, grantee or transferee (collectively, the "**transferee**"), or its direct or indirect beneficial owners, any proposed managers or operating partners or direct contractors and each of their respective Affiliates; (B) the capitalization of the proposed transferee; (C) after the consummation of the proposed Assignment, the qualifications and experience of the Lessee and each of its Contractors to timely perform the Lessee's obligations under this Agreement and the Principal Lessee Documents and (D) compliance by the proposed transferee or any of its direct contractors with the Port Authority's rules, regulations and policies regarding organizational conflicts of interest; or

(ii) subject to the Recognized Mortgagee's rights set forth in this Agreement, at the time of the proposed transaction, (A) there exists any uncured Event of Default or any event or circumstance that with the lapse of time, the giving of notice or both would constitute an Event of Default, unless the Port Authority receives from the proposed transferee assurances of cure and performance acceptable to the Port Authority in its sole discretion, or (B) there is then in effect any Port Authority Termination Notice served by the Port Authority pursuant to Section 23.3 (*Remedies of the Port Authority Upon Event of Default*).

(c) The Port Authority will approve or disapprove a proposed Assignment that is subject to the consent of the Port Authority in accordance with Section 17.3(a) or (b), as applicable, within thirty (30) Business Days after it receives from the Lessee:

(i) a request for approval;

(ii) a reasonably detailed description of the proposed transaction;

(iii) such information, evidence and supporting documentation as the Port Authority may request concerning the identity, financial resources, qualifications, experience and potential conflicts of interest of the proposed transferee and its proposed contractors; and

(iv) such evidence of organization and authority, such incumbency certificates, certificates regarding debarment or suspension and other certificates, representations and warranties as the Port Authority may reasonably request.

(d) If for any reason the Port Authority does not act within such thirty (30)-Business Day period, or any extension thereof by mutual agreement of the Parties, then the proposed Assignment shall not be permitted, subject to the Lessee's right, in the case of a proposed Assignment governed by Section 17.2(c)(iii) or Section 17.3(b), to submit a Dispute for resolution in accordance with Article 33 (*Dispute Resolution Procedures*).

[redacted]

[redacted]

[redacted]

Section 17.5 Submittals

For the avoidance of doubt, the provisions of Sections 8.1 (*Submittals Generally*) through 8.4 (Review *Process*) shall not apply to any submittal required pursuant to this Article 17 (*Assignments*).

ARTICLE 18

LENDERS' RIGHTS AND REMEDIES; REFINANCING

Section 18.1 Leasehold Mortgages

Except as expressly authorized in this Article 18 (*Lender's Rights and Remedies; Refinancing*), the Lessee shall not mortgage the Lessee's interest in this Agreement or the letting hereunder in whole or in part, or any portion of the Premises in whole or in part. The Lessee shall have the right, at its sole cost and expense, in connection with incurring (i) the initial Lessee Debt under the Financing Documents or (ii) subject to Section 18.10 (*Refinancing Requirements*), any subsequent Lessee Debt, to grant a Leasehold Mortgage to secure the obligations of the Lessee with respect to such Lessee Debt, provided, that at the time any such Leasehold Mortgage is executed and delivered to the Recognized Mortgagee, no Event of Default has occurred and is continuing and subject to the following terms and conditions:

(a) the Lessee shall have provided the form of the Leasehold Mortgage to the Port Authority and the Port Authority shall have determined that the Leasehold Mortgage is in compliance with this Section 18.1 (*Leasehold Mortgages*);

(b) the Leasehold Mortgage (i) may not cover any property of, or secure any debt issued or guaranteed by, any Person other than the Lessee (or a financial institution providing a financial guaranty or similar credit enhancement in respect of any debt of the Lessee) and (ii)

shall only secure the obligations of the Lessee under the Financing Documents or a Refinancing approved by the Port Authority in accordance with Section 18.10 (*Refinancing Requirements*);

(c) subject to Section 2.2 (*Partial Termination*) and clause (m) below, no Leasehold Mortgage shall encumber less than the entire interest of the Lessee under this Agreement and the other Project Documents; provided, that the Financing Documents shall provide for the non-discretionary partial release of the Central Hall and the Lessee's rights therein from the lien of the Leasehold Mortgage and the Security Documents in the case of a Partial Termination;

(d) no Leasehold Mortgage or other instrument purporting to mortgage, pledge, encumber or create a lien, charge or security interest on or against any or all of the Lessee's interest in this Agreement shall extend to or affect the fee simple interest in the Premises, the Port Authority's interest under this Agreement or its reversionary interest and estate in and to the Premises or any part thereof;

(e) the Port Authority shall have no liability whatsoever for payment of the principal sum secured by any Leasehold Mortgage, or any interest accrued thereon or any other sum secured thereby or accruing thereunder, and, except for violation by the Port Authority of the express obligations to a Recognized Mortgagee set forth in this Article 18 (*Lender's Rights and Remedies; Refinancing*) and for any remedies of the Recognized Mortgagee provided by Applicable Law, no Recognized Mortgagee shall be entitled to seek any damages or other amounts against the Port Authority for any or all of the same;

(f) the Port Authority shall have no obligation to the Recognized Mortgagee in the enforcement of the Port Authority's rights and remedies herein or as otherwise provided by Applicable Law, except as expressly set forth in this Agreement and unless the Recognized Mortgagee has provided the Port Authority with notice of its Leasehold Mortgage;

(g) the Leasehold Mortgage shall provide that if an "Event of Default" under the Funding Agreements has occurred and is continuing, and the Recognized Mortgagee gives notice of such "Event of Default" to the Lessee, then the Recognized Mortgagee shall simultaneously give notice of such "Event of Default" to the Port Authority;

(h) subject to the terms of this Agreement and except as specified herein, all rights acquired by a Recognized Mortgagee under a Leasehold Mortgage shall be subject and subordinate to all of the provisions of this Agreement and to all of the rights of the Port Authority under this Article 18 (*Lender's Rights and Remedies; Refinancing*);

(i) neither this Article 18 (*Lender's Rights and Remedies; Refinancing*) nor a Leasehold Mortgage shall prevent the Lessee from amending this Agreement without the approval of a Recognized Mortgagee; provided, that a Leasehold Mortgage may contain provisions requiring the approval of a Recognized Mortgagee or Recognized Mortgagees (such approval not to be unreasonably withheld, delayed or conditioned) for any amendment, variation, modification of, or a waiver of the Lessee's rights and obligations under, Articles 4

(*Rental*) (other than Section 4.4 [redacted]), 18 (*Lenders' Rights And Remedies; Refinancing*), 24 (*Grounds For Termination By The Lessee; Other Termination*), 25 (*Early Termination of the Basic Lease*), 26 (*Condemnation*), 27 (*Actions Upon Termination*) or 34 (*Consequential Losses; Double Recovery; Non-Exclusive Remedies; Payments by the Port Authority*) or Sections 14.1 [redacted]14.2 (*Delay Events*), 23.3 (*Remedies of the Port Authority Upon Event of Default*), 23.4 (*Survival of Rental Obligations of the Lessee*), 23.5 (*Re-letting by the Port Authority*), 23.6 (*Remedies to be Non-Exclusive*), 23.7 (*Surrende*r), 23.8 (*Waiver of Redemption*) or 27.6 (*Acceptance of Surrender of Lease*) (including, in each case, amendments to or variations or modifications of the defined terms used in such provisions) or any other amendment, variation or modification of this Agreement that could reasonably be expected to have a material adverse effect on the rights or interests of the Lenders or a Recognized Mortgagee; and provided, further, that the Leasehold Mortgage will expressly state that the Recognized Mortgagee will respond to any request from the Lessee or the Port Authority for approval of a modification or amendment of this Agreement within a reasonable period of time;

(j) notwithstanding any enforcement of the security of the Leasehold Mortgage, the Lessee shall remain liable to the Port Authority for the payment of all sums owing to the Port Authority under this Agreement and the performance and observance of all of the Lessee's covenants and obligations under this Agreement, unless otherwise satisfied;

(k) no Recognized Mortgagee shall, by virtue of a Leasehold Mortgage, acquire any greater rights or interest in the Premises than the Lessee has at any applicable time under this Agreement, other than such rights or interest as may be granted to or acquired by the Recognized Mortgagee in accordance with this Article 18 (*Lender's Rights and Remedies; Refinancing*);

(l) as between the Port Authority and any Recognized Mortgagee, in the event of any inconsistency between the terms, covenants, conditions and provisions of this Agreement and the terms, covenants, conditions and provisions of the Leasehold Mortgage or any of the Financing Documents, the terms, covenants, conditions and provisions of this Agreement shall control; and

(m) the Leasehold Mortgage shall provide that following Substantial Completion, the legal description set forth in Exhibit A of the Leasehold Mortgage and any related diagrams therein shall be amended, as necessary, to reflect the lease lines delineating the final New Facilities Sites, the final Central Hall Site, the final Permanent Rights of Access and the final Premises in connection therewith, which amendment may, in the event the legal description attached as Exhibit A of the Leasehold Mortgage and any related diagrams therein, include property that lies outside such final lease lines, include a non-discretionary partial release of certain parts of the Premises and the Lessee's rights therein from the lien of the Leasehold Mortgage and the Security Documents.

Section 18.2 Recognized Mortgagee

(a) A Person that (i) holds a Leasehold Mortgage that complies with the terms and conditions set forth in Section 18.1 (*Leasehold Mortgages*) above and (ii) is an Institutional Lender shall be entitled to the benefits and protections provided to a Recognized Mortgagee pursuant to this Article 18 (*Lenders' Rights and Remedies; Refinancing*) (such Person, a "**Recognized Mortgagee**"); provided, that lessors and lenders to the Lessee, including any financial insurers, shall be entitled to the benefits and protections provided hereunder so long as any Leasehold Mortgage securing the relevant debt or financial insurance provided by such Persons is held by an Institutional Lender acting as Collateral Agent with the customary powers given to collateral agents or trustees in similar commercial financing transactions, in which event such Institutional Lender shall have the rights of a Recognized Mortgagee under this Article 18 (*Lender's Rights and Remedies; Refinancing*).

(b) In all events, at any one time there shall not be more than two (2) Recognized Mortgagees entitled to the benefits and protections of this Article 18 (*Lender's Rights and Remedies; Refinancing*).

(c) If requested by any proposed Recognized Mortgagee, the Port Authority shall, within fifteen (15) Business Days, acknowledge in writing that such Person is a Recognized Mortgagee, entitled to the benefits of this Article 18 (*Lenders' Rights and Remedies; Refinancing*). If the Port Authority determines that such Person is not entitled to such benefits, the Port Authority shall set forth the reasons therefor.

Section 18.3 Notices

The Port Authority shall deliver to the Recognized Mortgagee a copy of each Event of Default Notice given under Section 23.3 (*Remedies of the Port Authority Upon Event of Default*) of this Agreement, or otherwise at the same time as and whenever any such Event of Default Notice shall have been sent to the Lessee, and (so long as the Leasehold Mortgage is in effect) no Event of Default Notice shall be deemed to have been given unless and until a copy thereof shall have been so given to the Recognized Mortgagee. If the Port Authority shall elect to terminate the letting of the Premises under this Agreement pursuant to Section 23.3 (*Remedies of the Port Authority Upon Event of Default*), the Port Authority shall at the same time send to the Recognized Mortgagee a copy of the Port Authority Termination Notice, and (so long as the Leasehold Mortgage is in effect) no Port Authority Termination Notice given by the Port Authority shall be deemed to have been given by the Port Authority unless and until a copy thereof shall have been so given to the Recognized Mortgagee. The effective time and date of such termination (the "**Termination Effective Date**"), so long as the Leasehold Mortgage is in effect (and notwithstanding Section 23.3 (*Remedies of the Port Authority Upon Event of Default*)), shall not be before 11:59 p.m. New York City time on the ninetieth (90th) day after the Notice of Termination Service Date, and shall be subject to the extension and/or stay provided in Section 18.4 (*Recognized Mortgagee's Right to Cure*). The Recognized Mortgagee shall deliver to the Port Authority a copy of each notice of event of default given under the Financing Documents, and any notice given under the Financing Documents that the Lessee Debt outstanding thereunder has become immediately due and payable.

Section 18.4 Recognized Mortgagee's Right to Cure

The Recognized Mortgagee shall have a period of (a) thirty (30) days with respect to any Event of Default arising out of non-payment of Base Rent, First Additional Rent or Second Additional Rent, and (b) one hundred twenty (120) days with respect to any other Event of Default (other than an Event of Default under Section 23.1(k) as to which no cure period shall apply) beyond any cure period expressly provided to the Lessee herein, in which to cure or cause to be cured any such Event of Default; provided, however, that in the case of clause (b), such one hundred twenty (120)-day period shall be extended for an additional period of time reasonably acceptable to the Port Authority, if the Event of Default may be cured, but such cure cannot reasonably be accomplished during such one hundred twenty (120) day-period and the Recognized Mortgagee begins to and is diligently working to cure such Event of Default within such one hundred twenty (120)-day period (or if possession is necessary in order to effect such cure, the Recognized Mortgagee, within such one hundred twenty (120)-day period, files the appropriate legal action, subject to the conditions of Section 18.5 (*Assignment of Leasehold Mortgage*), to commence foreclosure on the liens of the Leasehold Mortgage) and thereafter proceeds with all due diligence to cure such Event of Default (including by proceeding with all due diligence to effect such foreclosure and during such foreclosure action (to the extent practicable) and thereafter to effect such a cure) within a period of time reasonably acceptable to the Port Authority; provided, further, that if any Recognized Mortgagee is prohibited from curing any Event of Default by any process, stay or injunction issued by any Governmental Entity or pursuant to any bankruptcy or insolvency proceeding involving the Lessee, then the time periods specified in this Section 18.4 (*Recognized Mortgagee's Right to Cure*) for curing such Event of Default shall be extended for the period of such prohibition. If the Recognized Mortgagee is acting to cure an Event of Default in accordance with this Section 18.4 (*Recognized Mortgagee's Right to Cure*) then the Port Authority shall not exercise its right to terminate this Agreement by reason of such Event of Default; provided, however, that the Port Authority may exercise any of its other rights and remedies provided for hereunder at law or in equity so long as the exercise of such rights does not interfere with the Recognized Mortgagee's rights hereunder. In furtherance of the foregoing, the Port Authority shall permit the Recognized Mortgagee and its designees the same access to the Premises as is permitted to the Lessee hereunder and permit the Recognized Mortgagee or its designees to take all actions and exercise all rights of the Lessee under this Agreement (all at the Lessee's sole cost and expense); provided, that any actions to be taken or taken by a Recognized Mortgagee or its designees pursuant to this Section 18.4 (*Recognized Mortgagee's Right to Cure*) shall be undertaken only in accordance with the provisions of this Agreement that would be applicable to the Lessee were it taking such actions, and so as not to cause or result in an Event of Default, and in no event shall any such action be taken by a Prohibited Party. The Port Authority shall accept any such performance by a Recognized Mortgagee or its designee as though the same had been done or performed by the Lessee. Any payment to be made or action to be taken by a Recognized Mortgagee hereunder as a prerequisite to keeping this Agreement in effect shall be deemed properly to have been made or taken by the Recognized Mortgagee if such payment is made or action is taken by a designee, agent or assignee of the rights of such Recognized Mortgagee. Any exercise of the Recognized Mortgagee's rights to cure hereunder shall not result in the assumption by such Recognized Mortgagee of the Lessee's obligations hereunder. Except as provided in this Section 18.4 (*Recognized Mortgagee's Right to Cure*), the Recognized Mortgagee shall not have any right in

or to the occupancy or use of the Premises. The Recognized Mortgagee shall not enter into or be entitled to enter into possession of the Premises under this Agreement except to the extent afforded to it under this Section 18.4 (*Recognized Mortgagee's Right to Cure*).

Section 18.5 Assignment of Leasehold Mortgage

A Recognized Mortgagee shall not assign or transfer the Leasehold Mortgage to any Person other than a Successor Recognized Mortgagee without the prior written consent of the Port Authority in its sole discretion. Any approval or consent given by the Port Authority hereunder to such assignment or transfer of the Leasehold Mortgage to another Person, shall apply only to the specific transaction thereby authorized and shall not relieve the Lessee or the Recognized Mortgagee from the requirement of obtaining the prior approval or consent of the Port Authority to each and every further assignment of the Leasehold Mortgage. Each Successor Recognized Mortgagee shall hold the Leasehold Mortgage subject to all the terms and provisions of this Article 18 (*Lender's Rights and Remedies; Refinancing*) as if it were the original Recognized Mortgagee.

Section 18.6 Foreclosure

(a) The Recognized Mortgagee may exercise its Foreclosure Rights (or any contractual or statutory power of sale under the Security Documents or an assignment in lieu) and enforce any Security Document in any lawful way; provided, however, in connection with the exercise of its Foreclosure Rights (or any contractual or statutory power of sale under such Leasehold Mortgage or an assignment in lieu): (i) the rights of the Lessee under this Agreement may be assigned or transferred only to a Qualified Terminal Operator, (ii) if the Recognized Mortgagee moves or petitions for appointment of a receiver, such motion or petition shall be subject to the prior written consent of the Port Authority, such consent not to be unreasonably withheld or delayed, (iii) any Person to whom the Recognized Mortgagee transfers or assigns the Lessee's interest in this Agreement (including the Recognized Mortgagee) pursuant to clause (i) above shall enter into an assignment and assumption agreement (the "**Lessee Assignment and Assumption Agreement**") in substantially the form attached hereto as Exhibit 23 (*Form of Lessee Assignment and Assumption Agreement*), pursuant to which such Person shall have the rights and powers of, and assume the obligations of, the Lessee under this Agreement, including, without limitation, any and all unperformed obligations of the Lessee under this Agreement; (iv) the Recognized Mortgagee is not permitted in connection with its enforcement of its lien under the Leasehold Mortgage to do anything that would materially and adversely affect the Premises, the Operations and Maintenance Work or is otherwise inconsistent with, or not permitted by, this Agreement, (v) such Qualified Terminal Operator shall acknowledge and agree that each Airline Sublease that is otherwise in full force and effect will remain in full force and effect and will be fully enforceable against such Qualified Terminal Operator in accordance with its respective terms as if such Qualified Terminal Operator were the original party thereto; (vi) such Qualified Terminal Operator (or its designee or nominee) shall pay or cause to be paid to the Port Authority, at the time of the execution and delivery of such Lessee Assignment and Assumption Agreement, all amounts set forth in a Statement of Estimated Liabilities which are past-due or due and payable in accordance with the provisions of this Agreement; and (vii) in

the case of a Lessee Assignment and Assumption Agreement, such Qualified Terminal Operator has cured, within the cure period specified in Section 18.4 (*Recognized Mortgagee's Right to Cure*), all Events of Default under this Agreement of which the Recognized Mortgagee has been notified by the Port Authority in writing, as set forth in a Statement of Estimated Liabilities, or, if such defaults cannot be cured by the payment of money or within the cure period specified in Section 18.4 (*Recognized Mortgagee's Right to Cure*), and to the extent reasonably acceptable to the Port Authority, such Qualified Terminal Operator commits to the Port Authority in a remedial plan acceptable to the Port Authority, in its reasonable discretion, to proceed both promptly and diligently, upon the execution of the Lessee Assignment and Assumption Agreement, to cure all such other Events of Default (to the extent curable) set forth in a Statement of Estimated Liabilities and, if possession is necessary in order to cure such other Events of Default, to proceed both promptly and diligently to obtain the possession required to cure any such other defaults to the extent curable. Any omission from a Statement of Estimated Liabilities of (x) any amounts payable to the Port Authority under this Agreement, (y) any unperformed obligations of the Lessee hereunder or (z) any other costs of the Port Authority shall be without prejudice against the Port Authority, and shall not excuse the payment of such amounts or costs or the performance of such unperformed obligations. For purposes of determining whether a successor lessee to this Agreement pursuant to this Section 18.6 (*Foreclosure*) is a Qualified Terminal Operator, the successor lessee may either (A) self-perform substantially all of the Operations and Maintenance Work and the Port Authority has determined that the successor lessee is itself a Qualified Terminal Operator or the successor lessee will rely on the expertise and personnel of a Qualified Terminal Operator who is an equity member of the successor lessee or (B) enter into an O&M Contract for the performance of substantially all of the Operations and Maintenance Work with a third-party Qualified Terminal Operator on terms that are acceptable to the Port Authority in its sole discretion.

(b) Except as provided in Section 18.4 (*Recognized Mortgagee's Right to Cure*), unless and until the Recognized Mortgagee (i) forecloses or has otherwise taken ownership of the Lessee's interest in this Agreement or (ii) has taken possession or control of the Lessee's interest in this Agreement, whether directly or by an agent as a mortgagee in possession, the Recognized Mortgagee shall not be liable for any of the Lessee's obligations under this Agreement or be entitled to any of the Lessee's rights and benefits contained in this Agreement, except by way of security. During any period in which the Recognized Mortgagee itself or by an agent, is the owner, or is in control or possession, of the Lessee's interest in this Agreement, it shall (A) engage a Qualified Terminal Operator to provide management services with respect to the operations of the Premises and (B) be bound by all liabilities and obligations of the Lessee accruing under this Agreement during such period (including the obligations set forth in Section 3.3 (*Liens*)). Once the Recognized Mortgagee goes out of possession or control of the Lessee's interest in this Agreement or transfers the Lessee's interest in this Agreement to a Qualified Terminal Operator in accordance with the provisions of this Agreement, the Recognized Mortgagee shall cease to be liable for any of the Lessee's obligations under this Agreement accruing thereafter, and to the extent assumed by a Qualified Terminal Operator, for any of the Lessee's obligations under this Agreement accrued during the period in which the Recognized Mortgagee itself, or by an agent or a receiver and manager was the owner, or was in control or possession, of the Lessee's interest in this Agreement, and

shall cease to be entitled to any of the Lessee's rights and benefits contained in this Agreement, except, if the Leasehold Mortgage remains outstanding, by way of security.

Section 18.7 New Agreement

(a) Without prejudice to the rights of a Recognized Mortgagee under Section 18.4 (*Recognized Mortgagee's Right to Cure*), if this Agreement is rejected or disaffirmed pursuant to any bankruptcy law or proceeding or other similar law or proceedings affecting creditors' rights generally with respect to a bankruptcy proceeding relating to the Lessee or otherwise, then the Port Authority agrees, if there are outstanding obligations to a Recognized Mortgagee (subject to the receipt of all necessary Governmental Approvals, which the Port Authority agrees to use commercially reasonable efforts to obtain), to enter into a new lease of the Premises (the "**New Agreement**") with the Recognized Mortgagee (or its designee or nominee) and any ancillary documents or agreements as may be necessary or desirable to give full effect to the New Agreement for the remainder of the Term upon all of the covenants, agreements, terms, provisions and limitations of this Agreement, effective as of the date of such termination subject to the conditions set forth in Section 18.7(b).

(b) The Port Authority's obligation to enter into a New Agreement pursuant to Section 18.7(a) is subject to the satisfaction of all of the following requirements and conditions: (i) such New Agreement shall be between a Qualified Terminal Operator, as lessee, and the Port Authority, as lessor, (ii) such Qualified Terminal Operator, within sixty (60) days after this Agreement is rejected or disaffirmed as a result of such bankruptcy or similar proceeding set forth in clause (a) above, provides a copy of such New Agreement, duly executed by the proposed Qualified Terminal Operator; (iii) the Recognized Mortgagee (or its designee or nominee, including such Qualified Terminal Operator) has paid or has caused to be paid to the Port Authority, on a current basis as and when due under this Agreement and not paid by the Lessee, all amounts set forth in a Statement of Estimated Liabilities which are past-due or due and payable in accordance with the provisions of this Agreement; and (iv) such Qualified Terminal Operator, at the time of such written request, cures all Events of Default under this Agreement (curable by the payment of money) of which the Recognized Mortgagee has been notified by the Port Authority in writing, as set forth in a Statement of Estimated Liabilities, or, if such Events of Default cannot be cured by the payment of money, such Qualified Terminal Operator commits to the Port Authority in the New Agreement to proceed both promptly and diligently, upon the execution of the New Agreement, to cure all such other Events of Default (to the extent curable) set forth in a Statement of Estimated Liabilities and, if possession is necessary in order to cure such other Events of Default, to proceed both promptly and diligently to obtain the possession required to cure any such other Events of Defaults to the extent curable (and such cure shall be a covenant of the Qualified Terminal Operator in the New Agreement).

(c) Nothing contained in this Section 18.7 (*New Agreement*) shall be deemed to limit or affect the Port Authority's interest in and to the Premises upon the expiration of the Term of the New Agreement. The provisions of this Section 18.7 (*New Agreement*) shall survive the termination of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section 18.7 (*New Agreement*) were a separate and independent

contract made by the Port Authority, the Lessee and the Recognized Mortgagee and, if the Recognized Mortgagee satisfies the conditions to a New Agreement from the effective date of such termination of this Agreement to the date of execution and delivery of the New Agreement, the Recognized Mortgagee may use and enjoy the leasehold created by this Agreement (and all other rights and benefits provided to the Lessee hereunder) without hindrance by the Port Authority, but only on and subject to the terms and provisions of this Agreement, including the requirement to engage a Qualified Terminal Operator to provide management services with respect to the operations of the Premises pursuant to Section 18.7(b).

(d) If a New Agreement is requested by more than one Recognized Mortgagee, the Port Authority shall enter into a New Agreement with the Recognized Mortgagee (or its designee) whose mortgage is prior in lien. The Port Authority, without liability to the Lessee or any Recognized Mortgagee with an adverse claim, may rely upon a mortgage title insurance policy or title certificate issued by a responsible title insurance company doing business within the State of New York as the basis for determining the appropriate Recognized Mortgagee that is entitled to such New Agreement.

Section 18.8 Port Authority's Right to Pay Off Lessee Debt

(a) At any time, upon the Port Authority's request, the Recognized Mortgagee shall give the Port Authority written notice which shall state the principal amount of Lessee Debt then outstanding and secured by the Leasehold Mortgage, including the amount of accrued and unpaid interest thereon (including any default interest then outstanding under the Financing Documents), any prepayment premiums or penalties, make-whole amounts or other prepayment amounts or breakage costs that would be due and payable upon payoff of such Lessee Debt, and all other amounts that would be due and owing under the Financing Documents with respect to such Lessee Debt and secured thereby (with good faith estimates provided to the extent of any liabilities, such as termination amounts under hedging arrangements, which cannot be finalized at the time of notice), and the per diem interest which will accrue on the principal amount of such outstanding Lessee Debt from and after the date of such notice.

(b) The Port Authority shall have the right, after the occurrence and during the continuation of a Lessee default under the Leasehold Mortgage and after written notice has been received from the Recognized Mortgagee pursuant to Section 18.3 (*Notices*) that the Lessee Debt outstanding under the Financing Documents has become immediately due and payable, to tender to the Recognized Mortgagee an amount that shall not exceed the total amount specified in the notice described in clause (a) above, including per diem interest through the date of such tender, and upon such tender the Leasehold Mortgage shall terminate and be of no further force and effect. Promptly following the Port Authority's tender of such amount specified in such notice, the Lessee shall cause to be executed, and the Recognized Mortgagee shall execute a satisfaction of the Leasehold Mortgage, cause the same to be filed in the Office of the City Register for Queens County and take all other and additional actions that are required in order to discharge the lien of the Leasehold Mortgage as of record. The Leasehold Mortgage shall contain an agreement of the Recognized

Mortgagee to be bound by the provisions of this Section 18.8 (*Port Authority's Right to Pay Off Lessee Debt*).

(c) The Port Authority shall have the right to receive (and the Leasehold Mortgage shall contain an agreement of the Recognized Mortgagee to deliver) all notices of default under the Leasehold Mortgage contemporaneously with the delivery of such notices to the Lessee, but the Port Authority shall not have the right to cure any default under the Leasehold Mortgage, except to the extent provided in this Section 18.8 (*Port Authority's Right to Pay Off Lessee Debt*).

Section 18.9 Statement of Estimated Liabilities

The Port Authority shall provide a Statement of Estimated Liabilities from time to time, and update any previously delivered Statement of Estimated Liabilities, at the reasonable request of the Recognized Mortgagee in order to allow the Recognized Mortgagee to comply with the requirements of Section 18.4 (*Recognized Mortgagee's Right to Cure*) and Section 18.6(b). Any omission from a Statement of Estimated Liabilities of (a) any amounts payable to the Port Authority under this Agreement, (b) any unperformed obligations of the Lessee hereunder or (c) any other costs of the Port Authority shall be without prejudice against the Port Authority and not excuse the payment of such amounts or costs or the performance of such unperformed obligations.

Section 18.10 Refinancing Requirements

(a) The Lessee shall obtain the Port Authority's prior written consent (not to be unreasonably withheld, conditioned or delayed) to any Refinancing; provided, that no such consent shall be required if the Lessee first demonstrates to the Port Authority that:

(i) (A) the proposed Refinancing does not increase either the weighted average maturity or the yield of the Lessee Debt and (B) the proceeds of the proposed Refinancing refinances Lessee Debt without increasing the principal amount of such existing Lessee Debt then outstanding other than by an amount equal to the reasonable costs of closing the Refinancing (including lender fees, arranger fees and advisor fees, original issue discounts and any required reserves) and results in projected debt service costs in each year to the end of the Term that are no greater than the corresponding debt service costs projected for each year immediately prior to such Refinancing;

(ii) the proceeds of the proposed Refinancing will be used exclusively to pay (A) costs and expenses directly resulting from the Lessee's compliance with a Safety Compliance Order or a Directive Letter, (B) capital expenditures in connection with a Port Authority Change or a Lessee Change that has been approved by the Port Authority pursuant to Section 13.3 (*Lessee Changes*), in each case, to the extent such proposed Refinancing is incurred on terms substantially similar to the terms agreed to or approved by the Port Authority in accordance with Section 13.1 (*Port Authority Changes*) or Section 13.3 (*Lessee Changes*), as applicable, or (C) a capital expenditure or related series of capital expenditures to be incurred in the ordinary course of operations in a

projected amount not to exceed Twenty-Five Million Dollars ($25,000,000) in the aggregate (as such amount may be adjusted on January 1 of each Calendar Year by the greater of (1) a percentage composed of the CPI Percentage Increase (but not to exceed six percent (6%) in any Calendar Year) and (2) two percent (2%) per annum, as multiplied by the applicable amount for the immediately preceding Calendar Year) as contemplated under the most recently approved Capital Asset Management Plan; or

(iii) the proposed Refinancing has been included in the Financial Model and described in the Lessee's Plan of Finance submitted with the Finalized Proposal, which Plan of Finance (as may have been amended) shall be acceptable to the Port Authority, and which shall include a narrative explanation of the purpose of the Refinancing and the range of anticipated terms and timing for such Refinancing (each Refinancing described in this Section 18.10(a), an "**Exempt Refinancing**").

(b) The Lessee shall provide written notice to the Port Authority of the closing of any Exempt Refinancing.

(c) It shall be reasonable for the Port Authority to withhold consent to a proposed Refinancing, without limiting other grounds for withholding consent, if the Port Authority determines that:

(i) the information disclosed to it pursuant to Section 18.10(e) is not a true and complete disclosure of all relevant aspects of the proposed Refinancing;

(ii) any change or series of changes in the obligations of the Lessee due to the proposed Refinancing would, or reasonably could be expected to, result in a material increase in the Port Authority's liabilities, obligations or risks under this Agreement and the other Project Documents;

(iii) the proposed Refinancing would, or reasonably could be expected to, result in a material adverse effect on the ability of the Lessee to perform its obligations under this Agreement and the other Project Documents; or

(iv) the proposed Refinancing would, or reasonably could be expected to, have a material adverse effect on the Lessee's incentives and disincentives to fully comply with the standards and requirements applicable to the Work.

(d) Notwithstanding the foregoing provisions of this Section 18.10 (*Refinancing Requirements*), the Port Authority may, at its sole discretion, withhold its consent to (i) any proposed Refinancing (other than any Exempt Refinancing) occurring prior to the Substantial Completion Date and (ii) any proposed Refinancing that results in any portion of the proceeds of the Refinancing being used to make Distributions or to pay non-capital costs and expenses (other than related to any Exempt Refinancing).

(e) When submitting a request for the Port Authority's consent to a proposed Refinancing, the Lessee shall provide to the Port Authority the following:

(i) details of any changes to the Lessee's obligations to the Lenders;

(ii) a copy of the proposed financial model relating to the Refinancing (including the basis for the assumptions used in any such financial model) projecting the effect of the Refinancing on the Lessee's revenues and costs for the remainder of the Term;

(iii) drafts of all Financing Documents that the Lessee proposes to enter into to effect the Refinancing in substantially final form, including details of changes or replacements to the Financing Documents related to the Refinancing; and

(iv) any other information that is relevant to the Port Authority's decision to consent to the Refinancing, including details that the Port Authority may reasonably require to determine whether the Refinancing could reasonably be expected to have an adverse effect on the ability of the Lessee to perform its obligations pursuant to this Agreement or any other Project Document.

(f) The Port Authority shall notify the Lessee within thirty (30) days of receipt of all of the information required pursuant to Section 18.10(e) whether it consents to or does not consent to the proposed Refinancing.

(g) In connection with any Refinancing, the Lessee shall pay the Port Authority for the Port Authority's reasonable documented costs and expenses incurred in reviewing the Refinancing and otherwise administering its obligations under this Article 18 (*Lenders' Rights and Remedies; Refinancing*) at the time of the closing of the Refinancing. If a Refinancing does not close, the Lessee shall pay the Port Authority for the Port Authority's expenses for such Refinancing at the time of (or, at the Lessee's option, at any time prior to) the closing of any subsequent successful Refinancing (together with late charges calculated pursuant to Section 35.16(a) (*Late Charges*) in accordance with Section 28.2 (*Reimbursement by the Lessee*)).

(h) The Port Authority will provide the Lessee with an estimate of the expenses to be incurred by the Port Authority related to a Refinancing no later than thirty (30) days after the Port Authority has provided its consent to such Refinancing pursuant to Section 18.10(a) and a final estimate not less than five (5) days prior to the proposed closing date of the Refinancing.

(i) The Port Authority shall at any time (including before, during and at any time after any Refinancing) have reasonable rights of audit over the updated Financial Model and related documentation used in connection with any Refinancing.

Section 18.11 Equity Funding

To the extent any Equity Investment, which has been committed to by the Equity Members as of the Lease Commencement Date, remains unfunded as of the Substantial Completion Date, the Port Authority shall have the right to request that the Lessee or the Collateral Agent, as applicable, make a draw on any security for such Equity Investment

commitment and deposit such proceeds in an account of the Lessee in accordance with the Financing Documents.

Section 18.12 Non-Merger

The owner's fee estate in the Premises and the tenant's leasehold estate created under the Basic Lease shall not merge as a result of (a) the Port Authority acquiring the fee estate in the Premises or the Lessee's interest in the aforesaid leasehold estate or (b) any other Person acquiring both the aforesaid fee estate and leasehold estate or both leasehold estates, unless the Lessee, each Recognized Mortgagee, and (i) the Port Authority, in the case of preceding clause (a) or (ii) such other Person, in the case of preceding clause (b), shall consent in a written instrument to the merger of such estates and such instrument is recorded.

ARTICLE 19

PRINCIPAL LESSEE DOCUMENTS

Section 19.1 Contracts

(a) The Lessee shall perform its obligations under, and observe all of the provisions of, the Key Contracts and shall not, without the prior written consent of the Port Authority:

(i) terminate or agree to the termination of all or any part of any Key Contract, except upon (A) the expiration of such Key Contract at the conclusion of the stated term thereof or in the exercise of its rights thereunder in respect of uncured defaults by the counterparty to such Key Contract or (B) a change in Applicable Law that renders part of the Key Contract null and void;

(ii) amend or vary any Key Contract in any material respect, other than to the extent required to comply with any amendment of this Agreement; provided, that no amendment to the provisions of any Key Contract required to be contained therein pursuant to Section 19.1(b) or Section 19.1(c) shall be made without the prior written consent of the Port Authority;

(iii) in any material respect, depart from its obligations (or waive or allow to lapse any rights it may have in a material respect), or cause that others in any material respect depart from their obligations (or waive or allow to lapse any rights they may have in a material respect), under any Key Contract; or

(iv) enter into (or permit the entry into by any other person of) any agreement replacing all or part of (or otherwise materially and adversely affecting the interpretation of) any Key Contract.

(b) The Lessee shall be solely responsible for paying each Contractor and Supplier under any Contract that the Lessee executes for the performance of the Work to whom any amount is due from the Lessee for services, equipment, materials or supplies. The Lessee agrees that, within twenty (20) days following receipt of monies from the Port Authority for

the Work performed by any such Contractor or Supplier, the Lessee shall either: (i) pay each of its Contractors and Suppliers that have executed a Contract with the Lessee for the proportionate share of the total payment received from the Port Authority attributable to the Work performed by such Contractor or Supplier (excluding contractual retainage) or (ii) notify the Port Authority and the Contractor or Supplier, in writing, of the Lessee's intention to withhold all or a part of the Contractor's or the Supplier's payment, specifying the reason for the non-payment. The Lessee also agrees that it shall require all of its Contractors and Suppliers to include in all of their respective Contracts a provision that obligates each Contractor and Supplier to be subject to the corresponding payment requirements as specified in this Section 19.1(b) with respect to each lower-tier Contractor and Supplier.

(c) Each Key Contract for the performance of the Work that the Lessee executes at a minimum shall:

(i) require the Contractor to carry out the Work in accordance with Applicable Law, all Governmental Approvals, Best Management Practice, Applicable Standards and the terms, conditions and standards set forth in the Requirements and Provisions for Work and the other Project Documents;

(ii) include a covenant to maintain all licenses required by Applicable Law;

(iii) set forth a standard of professional responsibility or a standard for commercial practice equal to the requirements of the Project Documents and in accordance with Best Management Practice for work of similar scope and scale and will set forth effective procedures for Claims and change orders;

(iv) set forth representations, warranties, guaranties and liability provisions of the Contractor in accordance with Best Management Practice for work of similar scope and scale;

(v) expressly state that all remaining warranties and guaranties, express or implied, shall inure to the benefit of the Port Authority, its successors and assigns upon expiration of the Term or Early Termination;

(vi) expressly provide that the Contractor shall have no right to suspend its performance under any Key Contract without first delivering to the Port Authority no less than ten (10) days' prior written notice specifying such Contractor's ground(s) therefor; provided, that if after the receipt of such Contractor's notice, the Port Authority notifies the Contractor of the Port Authority's intent to exercise its step-in rights with respect to such Key Contract (subject to the rights of the Lenders pursuant to the applicable Direct Agreement), such Contractor shall have no right to suspend its performance under such Key Contract;

(vii) expressly provide that the Contractor shall have no right to terminate any Key Contract or demobilize without first delivering to the Port Authority no less than forty-five (45) days' prior written notice specifying such Contractor's ground(s) therefor; provided, that if after the receipt of such Contractor's notice, the Port Authority notifies

the Contractor of the Port Authority's intent to exercise its step-in rights with respect to such Key Contract (subject to the rights of the Lenders pursuant to the applicable Direct Agreement), such Contractor shall have no right to terminate such Key Contract;

(viii) require the personal services of and not be assignable by the Contractor without the Lessee's and the Port Authority's prior written consent; provided, that this provision shall not prohibit the subcontracting of portions of the Work;

(ix) expressly include the requirements and provisions set forth in this Agreement applicable to Contractors regarding Intellectual Property rights and licenses;

(x) expressly require the Contractor to participate in meetings between the Lessee and the Port Authority (if such participation is requested or approved by the Port Authority) concerning matters pertaining to such Contractor, the Work or the coordination of the Work with other Contractors and the contractors working on the Supporting Projects; provided, that all direction to such Contractor shall be provided by the Lessee; provided, further, that nothing in this Section 19.1(c)(x) shall limit the authority of the Port Authority to give such direction or take such action as in its opinion is necessary to remove an immediate and present threat to the safety of life or property;

(xi) include an agreement by the Contractor to participate in any Dispute resolution proceeding pursuant to Article 33 (*Dispute Resolution Procedures*), if such participation is requested by either the Port Authority or the Lessee;

(xii) without cost to the Lessee or the Port Authority and subject to the rights of the Lenders pursuant to the applicable Direct Agreement, expressly permit assignment to the Port Authority, or its successor, assignee or designee, of all Lessee's rights under the Key Contract, contingent only upon delivery of a written request from the Port Authority following termination or expiration of this Agreement, allowing the Port Authority or its successor, assign or designee to assume the benefit of the Lessee's rights with liability only for those remaining obligations of the Lessee accruing after the date of assumption, such assignment to include the benefit of all Contractor warranties, indemnities, guarantees and professional responsibility;

(xiii) expressly state that any acceptance of assignment of the Key Contract by the Port Authority, or its successor, assign or designee, shall not operate to make the Port Authority, or its successor, assign or designee, responsible or liable for any breach of the Key Contract by the Lessee or for any amounts due and owing under the Key Contract for work or services rendered prior to assignment;

(xiv) subject to the rights of the Lenders pursuant to the applicable Direct Agreement, expressly include a covenant acknowledging that, upon receipt of written notice from the Port Authority, the Port Authority is entitled to exercise its rights with respect to the Key Contracts in accordance with Section 28.1 (*Right to Perform the Lessee's Obligations*), without any necessity for a consent or approval from the Lessee or the making of a determination whether the Port Authority validly exercised its step-in

rights, and include a waiver and release by the Lessee of any claim or cause of action against the Contractor arising out of or relating to its recognition of the Port Authority's rights in reliance on any such written notice from the Port Authority;

(xv) subject to the rights of the Lenders pursuant to the applicable Direct Agreement, expressly include a covenant, expressly stated to survive termination of the Key Contract, to promptly execute and deliver to the Port Authority or its successor, assignee or designee a new contract between the Contractor and the Port Authority or its successor, assignee or designee on the same terms and conditions as the Key Contract, if (A) the Key Contract is rejected by the Lessee in bankruptcy or is wrongfully terminated by the Lessee and (B) the Port Authority delivers written request for such new contract within sixty (60) days following termination or expiration of this Agreement. If the Contractor is a party to an escrow agreement for an Intellectual Property escrow, the Key Contract shall also include a covenant, expressly stated to survive termination of the Key Contract, to the effect that if the Contractor is a party to such an escrow agreement and the Lessee terminates it, then the Contractor also shall execute and deliver to the Port Authority, concurrently with such new contract, a new escrow agreement on the same terms and conditions as the terminated escrow agreement, and shall concurrently make the same deposits to the new Intellectual Property escrow as made or provided under the terminated escrow agreement. The obligation to include the same terms and conditions is subject to the following exceptions: (1) terms and conditions of a Key Contract (or Intellectual Property escrow agreement, if applicable) rendered moot or inapplicable solely due to change in the identity of the contracting party to the Port Authority or its successor, assign or designee and (2) terms and conditions of a Key Contract that must be adjusted due to schedule delay caused solely by the Lessee's rejection in bankruptcy or wrongful termination. This Section 19.1(c)(xv) shall not apply to Key Contracts with the Port Authority or Governmental Entities;

(xvi) expressly include requirements that the Contractor will comply with the applicable provisions of Article 30 (*Maintenance and Inspection of Records*). In addition, such Key Contract shall require the Contractor to provide progress reports to the Lessee appropriate for the type of work it is performing sufficient to enable the Lessee to provide the reports it is required to furnish the Port Authority under this Agreement;

(xvii) expressly include the Port Authority Indemnified Parties as indemnitees, with direct right of enforcement, in any indemnity given by the Contractor under the Key Contract;

(xviii) expressly include an acknowledgement that the Contractor has no right or claim to any Lien with respect to the Work or Premises for failure of the other contracting party to pay amounts due the Contractor, and a waiver of any such right or claim that may exist at law or in equity;

(xix) expressly include (A) the right of the Lessee to terminate the Key Contract upon any termination of this Agreement or (B) that the Key Contract automatically terminates upon any termination of this Agreement, in each case without

liability of the Lessee or the Port Authority for the Contractor's lost profits or business opportunity;

(xx) not contain any terms that do not comply or are inconsistent with the relevant terms of the Project Documents, including terms that do not comply or are inconsistent with this Article 19 (*Principal Lessee Documents*) or with the applicable requirements of Section 30.1 (*Maintenance and Inspection of Records; Ownership*) regarding maintenance of Books and Records, Design Documents and Construction Documents, that fail to incorporate the requirements of Applicable Law and Applicable Standards set forth in this Agreement, or that are inconsistent with the requirements of the relevant scope of Work; and

(xxi) expressly provide that any purported amendment with respect to any of the foregoing matters without the prior written consent of the Port Authority shall be null and void *ab initio* and of no force and effect.

(d) The Lessee and all Contractors and Suppliers shall cooperate fully with the Port Authority's Office of the Inspector General, which includes the Office of Investigations and the Audit Department (collectively, the "**OIG**"). In addition, the Lessee and all Contractors and Suppliers shall cooperate fully with the OIG's Project Integrity Monitor. Such cooperation will include, but is not limited to, providing complete access to all personnel and records in any way related to the Work, including in accordance with Section 30.2 (*Audit; Inspection*), and reimbursing the Port Authority as may be required in accordance with said Section. A material failure to cooperate with the OIG or the Project Integrity Monitor may result in an Event of Default and/or removal of such Contractor or Supplier.

(e) The Lessee will not enter into any Key Contract at any level with any Person if that Person or any of its affiliates (as "affiliate" is defined in 29 C.F.R. §98.905), or any of their respective officers, directors and employees, (i) is then suspended or debarred, subject to a proceeding to suspend or debar it, or subject to an agreement for voluntary exclusion, from bidding, proposing or contracting with any Federal or state department or agency, (ii) has been convicted, pled guilty or *nolo contendere* to a violation of law involving fraud, conspiracy, collusion, bribery, perjury, material misrepresentation, or any other violation that shows a similar lack of moral or ethical integrity or (iii) is then barred or restricted from owning, operating or providing services for the Work under Applicable Law, including the Foreign Investment and National Security Act of 2007, 50 USC App. 2170 (HR556).

(f) (i) Each Key Contract for the performance of the Work to which the Lessee or an Affiliate of the Lessee is a party shall include provisions naming the Port Authority as a third-party beneficiary of all Contractor representations and warranties contained in such Key Contract and (ii) each Contract for the performance of the Work shall name the Port Authority as a third-party beneficiary of all Contractor and Supplier (as the case may be) representations and warranties contained in such Contract, except where the Port Authority would not be named as a third-party beneficiary pursuant to Best Management Practice; provided, that the Port Authority will have the right to exercise its rights under such representations and warranties only so long as the Lessee or a Lender is not pursuing remedies thereunder and, to

the extent the Port Authority makes claims exercising such rights of the Lessee, the Port Authority shall be responsible for its own acts or omissions in respect of such claims found to be in violation of the relevant Contract.

(g) The appointment of Contractors and Suppliers will not relieve the Lessee of its responsibility hereunder or for the quality of Work, materials and services provided by it. The Lessee will at all times be held fully responsible to the Port Authority for the acts and omissions of its Contractors and Suppliers and persons employed by them and no Key Contract entered into by the Lessee will impose any obligation or liability upon the Port Authority to any such Contractor or Supplier or any of its employees. Further, absent the Port Authority's express written consent, no Key Contract or delegation of Work thereunder will affect the obligation of the Lessee to directly communicate with the Port Authority and to oversee the Work of the Contractor. Nothing in this Agreement will create any contractual relationship between the Port Authority and a Contractor or a Supplier.

(h) The Lessee will not enter into or materially amend a Key Contract with an Affiliate without notice to and consent of the Port Authority, which consent will not be unreasonably withheld or delayed if such Key Contract or amendment is entered into in the ordinary course of business and the Lessee demonstrates to the Port Authority's satisfaction that the new or amended Key Contract is on overall terms no less favorable or unfavorable to the Lessee than terms the Lessee could obtain in an arm's-length transaction for comparable services with a Person that is not an Affiliate of the Lessee.

(i) The Lessee will provide the Port Authority with a copy of any Contract for the D&C Work or the Operations and Maintenance Work to which the Lessee is a party. At the Port Authority's request, the Lessee will promptly provide, or cause its Contractors to promptly provide, the Port Authority with a copy of any Contract for the D&C Work or the Operations and Maintenance Work.

(j) If any Contract for the D&C Work or the Operations and Maintenance Work is with an Affiliate of the Lessee, the Lessee will provide the Port Authority with a list of all Contracts in effect to which such Affiliate is a party and under which all or a substantial portion of the Affiliate's responsibilities or obligations under its Contract are delegated to its Contractor or Supplier.

(k) The Lessee will allow the Port Authority ready access at reasonable times to all Key Contracts and records regarding Key Contracts, including amendments and supplements to Key Contracts and guarantees thereof.

(l) The Lessee shall provide written notice of any Design-Builder Event of Default (as defined in the D&C Contract) and Manager Event of Default (as defined in the O&M Contract) to the D&C Guarantors or any guarantor under any guarantee with respect to the O&M Contract, as applicable, concurrently with any such notice that is delivered to the D&C Contractor or the Terminal Operator, as applicable.

Section 19.2 Construction Security

The Lessee will require the D&C Contractor to furnish both a D&C Guarantee and a D&C Letter of Credit (collectively, the "**Construction Security**"). The Construction Security will name the Port Authority as a permitted assignee or transferee beneficiary (as applicable), with rights to draw upon or exercise other remedies thereunder if the Port Authority succeeds to the position of the Lessee under the D&C Contract.

Section 19.3 Delivery of Changed Principal Lessee Documents

At any time an amendment is made to any Principal Lessee Document (excluding any amendment, modification, supplement or consent to any Financing Document or the exercise by a Lender of rights, waivers, consents and similar actions in the ordinary course of day-to-day loan administration and supervision) or the Lessee enters into a new Principal Lessee Document (or any agreement, which affects the interpretation or application of any Principal Lessee Document), the Lessee shall deliver to the Port Authority a conformed copy of each such amendment or agreement within ten (10) Business Days of the date of its execution or creation (as the case may be) certified as a true copy by an officer of the Lessee.

Section 19.4 No Increased Termination Liabilities

No amendment, waiver or exercise of a right under any Principal Lessee Document shall have the effect of increasing the amount of the Port Authority's liabilities on Early Termination, unless the Lessee has obtained the prior written consent of the Port Authority to such increased liability for the purposes of this Section 19.4 (*No Increased Termination Liabilities*). In the event of any conflict between the provisions of this Section 19.4 (*No Increased Termination Liabilities*) and any other provision of this Agreement, the provisions of this Section 19.4 (*No Increased Termination Liabilities*) shall prevail.

Section 19.5 Replacement of D&C Contractor or Concessions Manager

(a) If the Lessee terminates, replaces or removes any D&C Contractor or Concessions Manager, the Lessee will immediately, but in any event within two (2) Business Days from such termination, replacement or removal, notify the Port Authority thereof in writing.

(b) The Lessee may provide for the provision of the Work from any D&C Contractor or Concessions Manager; provided, however, that the Lessee shall not engage or appoint any D&C Contractor or Concessions Manager unless the Port Authority has approved such D&C Contractor or Concessions Manager (based upon a determination in accordance with the criteria set forth below). The Port Authority will not withhold or delay its approval of a proposed D&C Contractor or Concessions Manager unless the Port Authority reasonably determines that the engagement of such proposed D&C Contractor or Concessions Manager is prohibited by Applicable Law or such proposed D&C Contractor or Concessions Manager is not capable of performing the obligations of the Lessee in accordance with this Agreement. The Port Authority's determination may be based upon, or take into account, one or more of the following factors:

(i) the proposed D&C Contractor's or Concessions Manager's financial strength, individually and, where appropriate, on a consolidated basis with its Affiliates;

(ii) the proposed D&C Contractor's experience in the design and construction of large transportation projects, and the proposed Concessions Manager's experience in the management of concessions at terminals in comparable airports;

(iii) the background, reputation and integrity of the proposed D&C Contractor or Concessions Manager and its Affiliates, including their respective officers, directors and employees, and the quality of any such Person's past or present performance on other large transportation projects or terminals in comparable airports, as applicable;

(iv) whether the proposed D&C Contractor or Concessions Manager or any of its Affiliates, including their respective officers, directors and employees, (A) have been debarred or prohibited from participating in state or Federally-funded projects, (B) have been indicted, convicted, pled guilty or *nolo contendere* to a violation of law involving fraud, conspiracy, collusion, bribery, perjury, material misrepresentation, or any other violation that shows a similar lack of moral or ethical integrity or (C) have been restricted from doing business under the regulations of OFAC or otherwise, as set forth in Section 15.7 (*OFAC*); and

(v) the material terms of the proposed engagement of the proposed D&C Contractor or Concessions Manager that could potentially impact the ability of the Lessee to comply with the terms of this Agreement and the other Project Documents.

(c) The form of contract with any replacement D&C Contractor or Concessions Manager must be approved by the Port Authority, such approval not to be unreasonably withheld if such contract is substantially similar to, and provides no less protection to the Lessee than that in the contract being replaced.

(d) The Port Authority may also condition its approval of a proposed replacement D&C Contractor or Concessions Manager on that Person's fulfillment of any additional reasonable conditions that the Port Authority may choose to impose upon it.

Section 19.6 Concessions Management Contract

(a) The Lessee shall not enter into any Concessions Management Contract without the prior written consent of the Port Authority in its sole discretion.

(b) Neither a Concessions Manager nor any Affiliate thereof shall conduct, directly or indirectly, or have any interest whatsoever in any entity conducting, any concession activity in the Premises. In addition, the Lessee or any Affiliate thereof shall not make any commercial or other use of any space in the Premises that is included in the Comprehensive Concessions Plan or any other space from which concession activity involving the sale or offer of goods or services is conducted.

(c) To the extent any Concessions Management Contract takes the form of a Sublease, the provisions of Article 5 (*Subleases*) (other than Sections 5.1(c) and 5.4 (*Exempt Subleases*)) shall apply in addition to the requirements of this Article 19 (*Principal Lessee Documents*).

Section 19.7 Seconded Terminal Operator Personnel

It is acknowledged that the Terminal Operator in connection with the fulfillment of its obligations under the O&M Contract intends to second or otherwise provide personnel to the Lessee from within its corporate network ("**Seconded Terminal Operator Personnel**"). The Port Authority for reasons of cost, familiarity with the region, and stability hereby expresses its preference, particularly following the Initial O&M Period, for locally-sourced personnel, including at the executive level, and the Lessee shall take such preference into consideration, including in making the determination pursuant to Section 6.2(4) of the O&M Contract.

ARTICLE 20

INSURANCE

Section 20.1 Required Insurance

(a) Generally. The Lessee shall procure and maintain, or cause to be procured and maintained, the insurance policies set forth in this Article 20 (*Insurance*) strictly in accordance with the minimum coverage requirements and terms of coverage as set forth in this Article 20 (*Insurance*). Each insurance policy required to be procured and maintained in accordance with this Article 20 (*Insurance*) shall be effective on the Lease Commencement Date (or such other date to the extent specified in this Agreement) and throughout the Term (except to the extent otherwise explicitly specified in this Agreement).

(b) Property. During the Initial O&M Period, the Phased Construction O&M Period and the O&M Period, the Lessee shall procure and maintain all-risk property damage insurance, including coverage for terrorism, flood, windstorm, storm surge, collapse, lightning, hail, ice, explosion, riot, vandalism, malicious mischief, civil commotion, Aircraft, smoke, fire and earthquake, covering the full replacement cost of the Terminal B Facilities and, prior to any Partial Termination, the Central Hall, as applicable, and any other improvement constructed by the Lessee pursuant to this Agreement and all structures, improvements, fixtures and equipment, furnishings and physical property owned, leased or within the care, custody or control of the Lessee and now or in the future located on or constituting a part of the Premises. A waiver of subrogation, where legally permitted, shall be provided in favor of the Port Authority, the City and the EDC.

(c) Boiler and Machinery. During the Initial O&M Period, the Phased Construction O&M Period and the O&M Period, the Lessee shall procure and maintain boiler and machinery insurance covering all boilers, pressure-vessels and air conditioning and any other related equipment operated by the Lessee in or on the Terminal B Facilities and, prior to any Partial Termination, the Central Hall, as applicable, including expedited expense, the policy to be

effective throughout the term of the letting in such amounts as to sufficiently cover the full inspection and replacement cost of such boilers, pressure-vessels and air conditioning and other related equipment and to be in such form as may now or in the future be prescribed as of the effective date of said insurance by the rating organization having jurisdiction and/or fully compliant with any standards applied by the Superintendent of Insurance of the State of New York in approving boiler and machinery policies for use by admitted insurers in the State of New York.

(d) Business Interruption Insurance. During the Initial O&M Period, the Phased Construction O&M Period and the O&M Period, the Lessee shall procure and maintain business interruption insurance on an actual loss sustained basis written on an "all risks of physical loss" basis in an amount equal to the greater of (i) the gross rents payable by Sublessees of the Premises for a period of three (3) years and (ii) the aggregate amount of Base Rent, First Additional Rent and Second Additional Rent payable by the Lessee hereunder for a three (3)-year period with a waiting period of not greater than three (3) days for an interruption to ongoing operations and Operations and Maintenance Work of the Terminal B Facilities and, prior to any Partial Termination, the Central Hall, or continuing operations of surrounding LGA Airport facilities, or forty-five (45) days for an interruption to the Construction Work.

(e) Builder's Risk Insurance. During the Construction Period, the Lessee shall procure and maintain Builder's Risk (all Risk, including loss or damage by fire, collapse, lightning, windstorm, flood, earthquake, hail, terrorism, explosion, underground property damage, riot, vandalism, malicious mischief, civil commotion, Aircraft, vehicle impact, smoke, off premise service interruption, delay in completion, debris removal, valuable papers, pollutant cleanup and removal, professional fees, extra/expediting expenses and such other risks) Completed Value Insurance on a complete value form, on a non-reporting basis with LEG III covering the Construction Work during the performance thereof including off site material, property in transit and delivered to the Premises but not attached to the realty, or existing property, until the Construction Work is completed. Such insurance shall name the Port Authority, the City and the EDC as loss payees, as their respective interests may appear, subject to the claims of the Collateral Agent.

(f) Liability. Throughout the Term, the Lessee, in its own name as named insured and including the Port Authority, the City and the EDC as additional insureds (except for professional liability insurance and employers liability insurance, if any), shall procure and maintain a policy or policies (the "**Procured Liability Policies**") of (i) Commercial General Liability Insurance, which shall include products/completed operations for a period of not less than six (6) years after Substantial Completion of the Construction Project, premises – operations, terrorism, explosion, collapse and underground property damage, independent contractors coverage, blanket contractual liability and broad form property damage coverage, and covering bodily injury, including death, and property damage liability, broadened to include or equivalent separate policies covering sprinkler leakage legal liability and water damage legal liability (including damage caused by water and any other substance discharged from any part of the fire protective equipment for the Terminal B Facilities and, prior to any Partial Termination, the Central Hall, as applicable, or the collapse or fall of tanks forming part thereof, or the component parts or supports of such tanks), none of the foregoing to contain

care, custody or control exclusions; (ii) Commercial Automobile Liability Insurance covering owned, non-owned and hired vehicles and including automatic coverage for newly acquired vehicles; (iii) Pollution Liability Insurance on an occurrence form (or, alternatively, on a claims-made basis with a ten (10)-year reporting/discovery period, subject to a minimum total policy term of five (5) years, inclusive of D&C Work), including Contractor's Pollution Liability insurance covering the Construction Project during the Construction Period and Pollution Legal Liability insurance covering the Initial O&M Period, the Phased Construction O&M Period and the O&M Period, which shall, as appropriate, include completed operations for a period of not less than six (6) years after Substantial Completion of the Construction Project, shall not contain a sunset provision, or any other provision, which would prohibit the reporting of a claim and the subsequent defense and indemnity that would normally be provided by the policy, shall "pay on behalf of" rather than "indemnify" the insured and shall include transportation coverage by or on the behalf of the Lessee for the loading and unloading and hauling of waste materials, including ACM and LCP, from the site to the final disposition location; (iv) professional liability insurance on an occurrence form (or, alternatively, on a claims-made basis with a five (5) year reporting/discovery period following the completion of each portion of the Construction Project, subject to a minimum total policy term of five (5) years, inclusive of D&C Work), which shall include a retroactive date that precedes the commencement of any Design Work and for which all endorsements and exclusions shall be evidenced on the certificate of insurance; (v) Cargo and Baggage Liability Insurance; and (vi) Liquor Liability Insurance, in each case, in the limits set forth below, during the Construction Period or the Initial O&M Period, Phased Construction O&M Period and the O&M Period, as applicable. Any additional insurance requirements, permits, licenses and other forms of documentation required under the Environmental Laws or the Environmental Requirements shall be the sole responsibility of the Lessee. The Lessee may cause the professional liability insurance to be procured through the D&C Contractor or the Lead Designer in fulfillment of its obligation to procure such insurance under Section 20.1(f)(iv) in which case the Lessee shall be named as an indemnified party. All Procured Liability Policies shall provide that, in the event other insurance also provides coverage for a loss within the coverage of the Procured Liability Policies, then (A) the Procured Liability Policies will pay on a primary basis and (B) no other insurance will contribute concurrently with such Procured Liability Policies, whether on a pro rata basis or otherwise, but shall only attach on an excess basis, after the per occurrence limits of such Procured Liability Policies have been exhausted. All insurance policies shall not contain the "Conditions of Coverage" or similar endorsements.

(i) *Liability Insurance Requirements During the Construction Period.* During the Construction Period, a consolidated insurance program (wrap up) is required to provide insurance coverage for all D&C Work to include, at minimum, policies of commercial general liability, excess, workers compensation insurance and employers liability insurance. The liability policies (except for professional liability insurance, employers liability insurance and workers compensation insurance, if any) shall include the Port Authority, the City, the EDC, the Lessee and the D&C Contractor, as additional insureds, and shall meet or exceed all policy terms and conditions found in this Article 20 (*Insurance*). Such policies shall include a waiver of subrogation, coverage for premises-operations, products/completed operations of not less than six (6) years (unless otherwise indicated).

Type of Coverage	**Minimum Limit**
Commercial General Liability Combined single limit per occurrence and in the aggregate each annual period for death, personal injury, bodily injury and property damage liability:	$300,000,000
Commercial Automobile Liability Combined single limit per accident for death, bodily injury and property damage liability:	$25,000,000
Pollution Liability Insurance Combined single limit per pollution incident and in the aggregate times the number of years in the policy term for bodily injury liability, property damage or environmental damage caused by pollution conditions on land, in air, and on water. Alternatively, if on a claims made basis, with a ten (10) year reporting/discovery period:	$25,000,000
Professional Liability Insurance Combined single limit per claim and in the aggregate each annual period. If on a claims made basis, with a ten (10) year reporting discovery period, subject to a minimum total policy term of five (5) years inclusive of D&C Work:	$10,000,000

(ii) *Liability Insurance Requirements During the Initial O&M Period, the Phased Construction O&M Period and the O&M Period.*

Type of Coverage	**Minimum Limit**
Commercial General Liability Combined single limit per occurrence and in the aggregate each annual period for death, bodily injury and property damage liability:	$300,000,000
Commercial Automobile Liability	$25,000,000

(covering owned, non-owned and hired vehicles) combined single limit per accident for death, bodily injury and property damage liability:	
Pollution Liability Insurance	
Combined single limit per pollution incident and in the aggregate times the number of years in the policy term for bodily injury liability, property damage or environmental damage caused by pollution conditions on land, in air, and on water. If on a claims made basis, with a ten (10) year reporting/discovery period:	$5,000,000
Cargo and Baggage Liability Insurance	
Combined single limit per occurrence and in the aggregate each annual period for property loss of others:	$10,000,000
Liquor Liability	
Combined single limit per occurrence and in the aggregate each annual period for death, bodily injury and property damage liability:	$10,000,000

(g) Workers' Compensation Insurance. Throughout the Term, the Lessee shall procure and maintain and cause their Contractors and any Lead Firm to procure and maintain workers' compensation insurance in accordance with the requirements of law; provided, however, that in the event any class of employees under any contract or subcontract for Construction Work to be performed on the Premises is not protected under the workers' compensation statute, the Lessee shall provide, and cause any additional employers to provide, employers liability insurance for the protection of such of its employees as are not otherwise protected. A waiver of subrogation, where legally permitted, shall be provided in favor of the Port Authority, the City and the EDC. Limits of employers liability insurance shall be as follows:

(i) $1,000,000 each accident

(ii) $1,000,000 each employee – disease

(iii) $1,000,000 policy limit – disease.

(h) Commercial Crime Insurance. The Lessee shall procure and maintain commercial crime insurance covering both innkeeper's/bailee legal liability, including broad form money and securities, money orders, counterfeit paper, depositor's forgery, computer

fraud, cybercrime and transfer fraud, credit card forgery, audit expenses and employee dishonesty, with a combined single limit per occurrence of not less than $5,000,000.

(i) Contractor Insurance Requirements. The Lessee shall cause each Contractor to obtain (prior to commencing any Work) and maintain all insurance that a reasonable and commercially prudent contractor in North America performing work similar to that to be performed by the Contractor would maintain, to the extent that such Contractor is not covered by the Lessee-provided liability insurance; provided, that, in any event, with respect to the Construction Work, the Lessee shall cause the D&C Contractor to obtain and maintain all applicable insurance that may be required from time to time pursuant to TCAP. The Lessee shall cause each such Contractor to include the additional insureds specified in the applicable insurance policies as required under this Article 20 (*Insurance*). If requested by the Port Authority, the Lessee shall promptly provide certificates of insurance evidencing coverage for each Contractor.

(j) Project-Specific Insurance. All insurance coverage required to be provided by the Lessee, the D&C Contractor, the Lead Designer and any other Lead Firm, other than any business automobile liability or workers' compensation insurance, shall be purchased specifically and exclusively for the Work and the Premises, and extend throughout the Term to all aspects of the Work, with coverage limits devoted solely to the Work and the Premises. The Lessee shall ensure that the insurance under this Agreement shall be seamless among and between the Construction Period, the Initial O&M Period, Phased Construction O&M Period and the O&M Period and shall not contain lapse or gaps in coverage. Any insurance necessary to be obtained and maintained in order to avoid any lapses or gaps in coverage shall be paid for and be the sole responsibility of the Lessee. Insurance coverage with dedicated limits specific to the Work and the Premises and identified premiums is acceptable; provided, that it otherwise meets all requirements described in this Article 20 (*Insurance*).

Section 20.2 Other Requirements as to Insurance Policies

(a) Insureds under Property and Liability Policies. Subject to the claims of the Collateral Agent, all property damage insurance policies required under this Agreement shall name the Lessee, the D&C Contractor, the Port Authority, the City and the EDC (with insurance clauses consistent with the provisions of this Agreement) as the loss payees, as their respective interests may appear. All liability policies (except for professional liability insurance, employers liability insurance and workers' compensation insurance, if any) required under this Agreement shall name the Lessee, the D&C Contractor, the Port Authority, the City and the EDC as additional insureds.

(b) Liability Insurance Limits Greater Than Otherwise Required. The Port Authority, the City and the EDC shall be included as additional insureds on all liability insurance (except for professional liability insurance, employers liability insurance and workers' compensation insurance, if any) maintained by the Lessee in limits greater than otherwise required in this Article 20 (*Insurance*) to the full extent of all such insurance in accordance with all the terms and provisions hereof.

(c) Contractual Liability Coverage. Each policy of liability insurance (except for professional liability insurance) shall contain contractual liability coverage covering the insurable obligations assumed by the Lessee under any indemnification provisions set forth in this Agreement. The policies required hereunder shall not be limited by any limitations expressed in the indemnification provisions set forth in this Agreement, other than that of a typical policy insuring work of this nature.

(d) No Impairment. The Lessee shall provide coverages that are not impaired or the aggregate is not impaired by any risk not within the scope of this Agreement, whether past or present, and the limits required shall be fully available to the Port Authority.

(e) Losses Absorbed by the Lessee. Except if and as expressly provided otherwise herein, all losses within the scope of this Article 20 (*Insurance*) which are not recoverable by insurance or deductible shall be absorbed by the Lessee. Other losses and expenses not covered by insurance shall also be the responsibility of and paid by the Lessee. The Lessee's insurance shall be primary insurance with respect to the Port Authority, the City and the EDC. Any insurance or self-insurance maintained by the Port Authority, the City and the EDC shall not contribute to any loss or claim.

(f) Restrictions on Insurance. Except as otherwise approved in writing by the Port Authority and provided herein, self-funded, self-insurance, self-insured retention, policy fronting, or other non-risk transfer insurance mechanisms by the Lessee or its Contractors are not permitted (except for such commercial standard deductibles that are self-funded, including retention under professional liability insurance and pollution liability insurance).

(g) Deductible. Subject to Section 14.1 [redacted] and Section 21.1 (*Indemnification by the Lessee*), as between the Port Authority and the Lessee, the Lessee shall be solely responsible to ensure that all deductibles under each insurance policy required to be procured and maintained in accordance with this Article 20 (*Insurance*) are paid. The Port Authority shall not be responsible for payment of such deductibles under any circumstances. Any deductible (including retention under professional liability insurance and pollution liability insurance) shall not impair or otherwise reduce the limits required for each insurance policy required to be procured and maintained in accordance with this Article 20 (*Insurance*).

(h) Indemnification by the Lessee. The Lessee shall use best efforts to ensure that the insurance it procures and maintains shall provide that the interest of the Port Authority, the City and the EDC will not be prejudiced by the Lessee's error, omission or misdescription of the risk insured under the policies, incorrect declaration of values, failure to advise insurers of any change of risk interest or property insured or failure to comply with a statutory requirement, nor by any other misrepresentation, act or omission by the Lessee that would otherwise result in forfeiture or reduction of coverage. Pursuant to Section 21.1(n), the Lessee shall indemnify, hold harmless and make whole the Port Authority for any forfeiture of insurance coverage resulting from such error, omission, misdescription, incorrect declaration, failure to advise, misrepresentation, act or omission, and for any expense the Port Authority incurs as a result thereof.

(i) Certain Endorsements.

(i) Each policy required under this Agreement shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified (other than to effectuate an increase in coverage) without giving at least thirty (30) days' advance written notice thereof to the Collateral Agent and the Port Authority (provided, that, with respect to any policy for which such endorsement is not commercially available, the Lessee shall cause its insurance agent to provide to the Port Authority and the Collateral Agent at least thirty (30) days' advance written notice of any such cancellation, termination, change or modification), and an endorsement to the effect that the insurance as to the interests of the Collateral Agent and the Port Authority, the City and the EDC shall not be invalidated by any act or omission, including negligence, of the Lessee or any other insured. The provision or endorsement must specify that the policy may not be cancelled for non-payment of premium unless and until the Collateral Agent and the Port Authority have had thirty (30) days' actual notice and an opportunity to cure such nonpayment of premium. Should the Collateral Agent or the Port Authority pay the premium in order to preserve coverage, the Lessee shall be unconditionally liable to reimburse the Collateral Agent or the Port Authority, as appropriate, for the full cost of doing so, including any legal fees or other collateral expenses.

(ii) Each liability policy required under this Agreement shall contain an endorsement providing that in any action or proceeding under or in connection with such policy, the insurance carrier shall not, without obtaining express advance consent from the General Counsel of the Port Authority, raise any defense involving in any way the immunity of the Port Authority, the governmental nature of the Port Authority, the provisions of any statutes respecting suits against the Port Authority or the jurisdiction of the Tribunal over the person of the Port Authority.

(iii) Each policy required under this Agreement shall contain an endorsement providing that the protection afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third party shall obtain and apply with like effect with respect to any claim or action against the Lessee by each Port Authority Indemnified Party, and against each Port Authority Indemnified Party by the Lessee, but such endorsement shall not limit, vary, change or affect the protections afforded the Port Authority, the City and the EDC, as additional insureds.

(iv) *Umbrella and Excess Policies, etc*. Insurance policies required under this Agreement may be written in the form of primary and excess policies and policies of liability insurance may be written in the form of a primary policy and one or more umbrella policies. Such excess and umbrella policies shall "follow form" with drop down provisions. On request of the Port Authority, which may be made at any time and from time to time, the Lessee shall furnish to the party or parties making such request a true copy of each of the insurance policies, including premiums which the Lessee is required to carry under this Agreement.

(v) *Certificates, etc.* With respect to each insurance policy, duplicate original certificates of insurance, specifically referencing the Port Authority number of this Agreement, shall be delivered to The Port Authority of New York and New Jersey, General Manager, Risk Financing, 4 World Trade Center, 150 Greenwich Street, 19th Floor, New York, New York 10007, Attention: Treasury Dept., Risk Finance Division (or to such other address as the Port Authority may direct by notice hereunder), not later than ten (10) days after the date on which such insurance policy is required to be in effect under this Agreement. Duplicate certificates of insurance with respect to a renewal policy shall be delivered to the Port Authority at least ten (10) days prior to the expiration date of each expiring policy, except for any policy expiring after the date of expiration of the letting under this Agreement. If at any time any of the certificates or policies shall become unsatisfactory to the Port Authority, the Lessee shall promptly obtain a new and satisfactory certificate and policy.

(vi) The requirements for insurance procured by the Lessee shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Lessee under this Agreement or by law. The insurance requirements, or the receipt of any certificates or insurance, are not a representation by the Port Authority as to the adequacy of the insurance to protect the Lessee against the obligations imposed on them by law, by this Agreement or by any other agreement.

(vii) Endorsements adding additional insureds to required policies shall contain no limitations, conditions, restrictions or exceptions to coverage beyond those that apply under the policy generally, and shall state that the interests and protections of each additional insured shall not be affected by any misrepresentation, act or omission of a named insured or any breach by a named insured of any provision in the policy which would otherwise result in forfeiture or reduction of coverage.

(j) Commercial Availability. Notwithstanding anything to the contrary herein, if the Lessee maintains that any insurance (including the limits, term, coverage or deductibles thereof) required to be maintained under this Agreement shall not be available at commercially reasonable rates, exclusive of the Lessee's claims and loss experience, the Lessee shall provide its evidence of such commercial unavailability to the Port Authority and shall advise the Port Authority of the maximum insurance the Lessee believes to be available at commercially reasonable rates. The Port Authority may consider the evidence provided by the Lessee and any other information at its disposal. Within ten (10) days after the Port Authority has received the Lessee's evidence:

(i) If the Port Authority agrees that insurance required under this Agreement is unavailable at commercially reasonable rates, it shall so advise the Lessee, whereupon the Lessee shall proceed to obtain the maximum insurance that is available at commercially reasonable rates for the risks at issue. The Port Authority shall be entitled to credit for premium reductions resulting from any resulting elimination or reduction of insurance in a policy year. Thereafter, however, at each renewal date, the Lessee shall be bound to obtain the insurance on the terms that are required under this Agreement, unless the Lessee contends that such insurance continues to be unavailable at commercially

reasonable rates, in which case the Lessee shall provide its evidence of such commercial unavailability to the Port Authority for its consideration, consistent with this Section 20.2(j).

(ii) If the Port Authority does not agree that insurance required under this Agreement is unavailable at commercially reasonable rates, it shall so advise the Lessee, whereupon then the Parties shall, within twenty (20) days, submit their disagreement, and all evidence supporting their respective views, to the pre-selected independent insurance consultant whose name is shown in Exhibit 29 (*Independent Insurance Consultant*) to this Agreement. The independent insurance consultant shall, within twenty (20) days, determine whether the insurance required under this Agreement is available at commercially reasonable rates, and if it is not, the maximum insurance that is available at commercially reasonable rates for the risks at issue. In making this determination, the independent insurance consultant shall consider, as appropriate:

(A) whether or not insurance for the risk at issue is available in the insurance market with the limits and terms required under this Agreement, or substantially similar terms, at any premium;

(B) the importance of LGA Airport and the Premises as a transportation hub, and the imperative to restore affected facilities and services promptly and fully;

(C) the fact that the Basic Lease requires the maintenance of property insurance at full replacement value; and

(D) if insurance for the risk at issue is available in the insurance market with the limits and terms required under this Agreement, whether, in light of all other considerations, the premium required is commercially reasonable; provided, however, that the premium required shall be only one factor, and not the pre-eminent factor, to be considered by the independent insurance consultant.

(iii) The judgment of the independent insurance consultant shall be binding upon the Parties only for one policy period. After the independent insurance consultant has rendered his or her judgment, the Lessee shall secure no less insurance than the independent insurance consultant shall determine to be available at commercially reasonable rates. The Port Authority shall be entitled to credit for premium reductions resulting from any resulting elimination or reduction of insurance in a policy year. Thereafter, however, at each renewal date, the Lessee shall be bound to obtain the insurance on the terms that are required under this Agreement, unless the Lessee contends that such insurance continues to be unavailable at commercially reasonable rates, in which case the Lessee shall provide its evidence of such commercial availability to the Port Authority for its consideration, consistent with this Section 20.2(j).

(iv) Notwithstanding Exhibit 29 (*Independent Insurance Consultant*), the Port Authority shall have the right, at any time during the Term, to propose to the Lessee

an alternative independent insurance consultant; provided, that the Lessee's consent to such alternative independent insurance consultant shall not be unreasonably withheld or delayed.

Section 20.3 Nature of Insurers

All insurance provided for in this Agreement shall be issued by insurance carriers having an A.M. Best Rating of at least A- (A minus) (VII) or an equivalent rating by a comparable insurance rating agency.

Section 20.4 Review by the Port Authority

Binders and certificates of insurance for all insurance policies required under this Agreement are subject to Port Authority Approval and shall be provided to the Port Authority at least thirty (30) days prior to the date that such policies are required pursuant to this Article 20 (*Insurance*) and Article 10 (*Design and Construction*). All insurance policies required under this Agreement are subject to Port Authority Approval and shall be provided to the Port Authority no later than thirty (30) days after the inception date of such insurance policies. Insurance policies required under this Agreement may be reviewed by the Port Authority for adequacy of terms, conditions, coverages and limits of coverage at any time and from time to time during the Term. The Port Authority may, at any such time, require an increase in the minimum limits, or additions, deletions, amendments or modifications to the insurance requirements, or may require such other and additional insurance against such other insurable hazards, as the Port Authority may deem appropriate. Subject to Section 20.2(j) (*Commercial Availability*), the Lessee shall promptly comply with such requirements. Except as provided in Sections 20.2(j) and 20.9 (*Lender Insurance Requirements*), the limits of coverage under any policy shall not be reduced without the Port Authority's prior written consent.

Section 20.5 Settlement of Losses

The Lessee shall use proceeds from any property insurance policy (except any business interruption insurance) for the repair, replacement or rebuilding of the Premises subject to the Financing Documents (to the extent such Financing Documents are not inconsistent with any other provision of this Agreement), and any excess shall be applied in accordance with the Financing Documents. The proceeds of any business interruption insurance shall be payable to the Lessee, which shall apply and utilize such proceeds in accordance with the Financing Documents.

Section 20.6 Separate Insurance

The Lessee shall not carry separate insurance concurrent in form or contributing in the event of loss with that required under this Agreement (other than any retained corporate policies), without the prior written approval of the Port Authority. If such separate insurance is approved by the Port Authority, the Lessee shall deliver to the Port Authority the policies therefor or duplicate originals thereof. All such separate insurance policies must comply with the requirements of this Article 20 (*Insurance*) (except with respect to minimum limits). The Lessee shall be solely responsible for the acquisition and costs of any separate or additional

coverages permitted hereunder and such costs shall not constitute or be payable as a Permitted O&M Expense.

Section 20.7 Defense Costs

Unless otherwise agreed to in writing by the Port Authority in its reasonable discretion, no defense costs shall be included within or erode the limits of coverage of any of the primary insurance policies, except that defense costs may be included within the limits of coverage of professional liability, contractor's pollution and environmental impairment liability and pollution legal liability policies.

Section 20.8 Contesting Denial of Coverage

If any insurer under an insurance policy described in this Article 20 (*Insurance*) denies coverage with respect to any claims reported to such insurer, the Lessee shall bear all the costs of contesting the denial of coverage. The Port Authority may, in its discretion, cooperate in the Lessee's efforts to contest the denial of coverage; provided, that the Lessee shall bear all the costs of such cooperation.

Section 20.9 Lender Insurance Requirements

If under the terms of any Financing Document the Lessee is obligated to, and does, carry insurance coverage with higher limits or lower deductibles, or broader coverage than required under this Agreement, the Lessee's provision of such insurance shall satisfy the applicable requirements of this Agreement; provided, that such policy meets all the other applicable requirements of this Article 20 (*Insurance*).

Section 20.10 Notices

The Lessee shall provide the Port Authority with the following written notices: (a) as soon as practicable, but in no event later than five (5) days after the occurrence of any Claim made by the Lessee or any other Party under any insurance obtained in connection with the Construction Project or otherwise in connection with the Premises, which Claim involves any of the following:

(i) Any incident involving the general public or a Sublessee;

(ii) Any fatality;

(iii) Any incident that involves an amputation or potential loss of use of a limb or body part;

(iv) Incidents that might result in the loss of bodily functions, senses, or abilities;

(v) Head injuries resulting in unconsciousness;

(vi) Falls from any height;

(vii) Major property damage, including collapse, explosion, or fire;

(viii) Any disruption, causing interruption to the operations of the Terminal B Facilities;

(ix) Any impairment to any security/fire protection systems at any Terminal B Facility;

(x) Any incident resulting in injury to two or more persons; and

(xi) Any incident where an ambulance is called; and

(b) the expiration of any insurance policy (whether by its terms or due to non-payment of premium or otherwise) at least fifteen (15) days prior to such expiration, including notification of the date of such expiration.

Section 20.11 Compliance with Insurance Policies

The Lessee shall:

(a) comply with the terms, conditions and requirements of all insurance policies required pursuant to this Article 20 (*Insurance*); and

(b) not do or omit to do anything, or permit (insofar as it is within its power) any other person to do or omit to do anything, on or with respect to the Premises or the Construction Project or with respect to the Work that results in or could reasonably be expected to result in the cancellation of any insurance policies or that would entitle any insurer to refuse to pay any claim under any insurance policy (in whole or in part) or that would otherwise prejudice the interests of the Port Authority, the City or the EDC in an insurance policy or claim under any insurance policy.

Section 20.12 Port Authority's Right to Insure

If the Lessee fails to obtain and maintain or cause to be obtained and maintained the insurance required by this Article 20 (*Insurance*), the Port Authority shall have the right (without any obligation to do so), upon ten (10) Business Days' notice to the Lessee in a non-Emergency or forthwith in an Emergency and any Secured Party and without assuming any obligation in connection therewith, to effect such insurance and all costs and expenses of the Port Authority in connection therewith shall be payable by the Lessee to the Port Authority on demand without any days of grace and without prejudice to any other rights and remedies of the Port Authority hereunder. Such insurance taken out by the Port Authority shall not relieve the Lessee of its obligations to insure hereunder and the Port Authority shall not be liable for any loss or damage suffered by the Lessee in connection therewith.

Section 20.13 Inflation Adjustment

Without limiting, and subject to Section 20.4 (*Review by the Port Authority*), the amounts of coverage required by Section 20.1 (*Required Insurance*) shall be adjusted based upon an escalation factor reasonably acceptable to the Parties each succeeding fifth (5th) anniversary of the Lease Commencement Date.

Section 20.14 Uninsured or Underinsured Loss

Provided that the Lessee has carried insurance to the extent required by this Article 20 (*Insurance*), in the event that a casualty event occurs (other than as a result of the gross negligence or willful misconduct of the Lessee or any of its Contractors) with respect to which the amount of insurance proceeds received by the Lessee is insufficient to reconstruct the affected facilities in accordance with the plans and specifications for such facilities as the same existed prior to the applicable loss, then the Lessee will promptly propose a plan with respect to (i) reasonable modifications to the affected facilities that would allow such facilities to be rebuilt, solely with the insurance proceeds made available for such purpose (including by making use of reasonable value engineering or other design approaches to reduce applicable rebuilding costs), as closely as practicable to a condition of reasonably comparable operating capacity, efficiency and functionality, consistent with the terms of the Financing Documents (to the extent not inconsistent with this Agreement), and (ii) any modifications to the requirements of this Agreement (including the Requirements and Provisions for Work and the Performance Standards and Measurement Provisions) that may be necessary or appropriate in light of the modifications to the affected facilities. Such proposal will be deemed a Submittal subject the Port Authority Approval under Section 8.4(a).

ARTICLE 21

INDEMNITY

Section 21.1 Indemnification by the Lessee

Without limiting any other indemnity obligations of the Lessee or any other Lessee-Related Entity hereunder, the Lessee shall indemnify and hold harmless the Port Authority Indemnified Parties on demand from and against any and all liability for Losses due to Third-Party Claims arising out of:

(a) any use or occupancy of the Premises or the areas subject to the Temporary Rights of Access by the Lessee or any Occupant or any acts or omissions of any Lessee-Related Entity or Sublessee elsewhere at LGA Airport;

(b) any failure by the Lessee to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this Agreement or the other Project Documents, or any breach by the Lessee of its representations or warranties set forth herein;

(c) any willful misconduct, negligence or other culpable act, error or omission of a Lessee-Related Entity or a Sublessee in connection with the Work, the Premises or the areas subject to the Temporary Rights of Access;

(d) any failure by the Lessee to comply with any requirement necessary to preserve the tax exempt status of interest paid on any tax exempt securities;

(e) any Tax attributable to any assignment, pledge, mortgage, encumbrance, conveyance, sale, or other transfer of the Lessee's interest in this Agreement or any part thereof;

(f) any claim by any Person who acted on behalf of the Lessee, its Affiliates or their respective representatives in connection with this Agreement or any other Project Document for brokerage commissions, fees or other compensation;

(g) any use of the proceeds of PFC Funding by the Lessee that does not comply with PFC Regulations;

(h) (i) any claim by any contractor (excluding any claim by Delta or its contractors in respect of the Other Redevelopments for Losses other than as set out in clause (ii) hereof) for Losses caused by interference by the Lessee or any other Lessee-Related Entity with or hindering the progress or completion of work being performed by the other contractor, or resulting from failure of the Lessee or any other Lessee-Related Entity to cooperate reasonably with other contractors in accordance with the terms of this Agreement, or (ii) any claim by Delta or its contractors for Losses in respect of the Other Redevelopments arising out of interference by the Lessee or any other Lessee-Related Entity with or hindering the progress or completion of Other Redevelopments work being performed by Delta or its contractors, arising out of a failure by the Lessee or any other Lessee-Related Entity to carry out Work in accordance with the terms of the Lease, or resulting from failure of the Lessee or any other Lessee-Related Entity to cooperate reasonably with Delta or its contractors performing the Other Redevelopments work (including, for the avoidance of doubt, Losses resulting from any injury to or death of a person); provided, that the indemnity payable under this clause (h)(ii) shall not include any indirect, incidental or consequential damages (other than for Losses resulting from any injury to or death of a person);

(i) any dispute between the Lessee and a Utility owner;

(j) any claim of errors, inconsistencies or Defects in the D&C Work;

(k) any Environmental Liabilities arising with respect to a Hazardous Materials Release at, on or under the Premises or the areas subject to the Temporary Rights of Access, or at any off-Premises location, caused by the negligent or willful acts or omissions of the Lessee, any Lessee-Related Entity or any Occupant, to the extent the Lessee is responsible for the acts or omissions of such Occupant as provided in Section 16.1(f) (*Responsibility for Third Parties*);

(l) any claims and demands of third persons, including the United States of America, resulting from the Lessee's noncompliance with any of the provisions of Section 15.8 (*Non-Discrimination*);

(m) any Losses arising out of any claim or proceeding made or brought against the Port Authority for any patent, trademark, or copyright infringement or other improper appropriation or use by any Lessee-Related Entity of Intellectual Property in accordance with Section 31.3 (*Lessee's Intellectual Property Indemnity*);

(n) any forfeiture of insurance coverage resulting from the Lessee's error, omission, misdescription, incorrect declaration, failure to advise, misrepresentation or act, and for any expense Port Authority incurs as a result thereof in accordance with Section 20.2(h) (*Indemnification by the Lessee*); or

(o) any claims and demands of third persons arising out of any breach or non-compliance by the Lessee with the Terminal Security Program in accordance with Section 15.6 (*Terminal Security Program Obligations*);

provided, that the indemnity provided in this Section 21.1 (*Indemnification by the Lessee*) shall not extend to Losses that are caused by (i) the willful misconduct or gross negligence of a Port Authority Indemnified Party, (ii) a breach by the Port Authority of its obligations under the Project Documents to which it is a party, (iii) a [redacted] or Delay Event or (iv) any Excluded Liabilities.

Section 21.2 Indemnification by the Port Authority

To the fullest extent permitted by Applicable Law, the Port Authority shall indemnify and hold harmless the Lessee Indemnified Parties on demand from and against any and all liabilities for Losses actually suffered or incurred by such Lessee Indemnified Party as a result of any Third-Party Claims arising from (a) any Excluded Liabilities, (b) subject to Section 35.7 (*Survival*), any breach by the Port Authority of its representation and warranty set forth in Section 22.2(k) relating to certain disclosed information and (c) any willful misconduct or negligence of a Port Authority Indemnified Party in connection with the performance of the Supporting Projects; provided, that the indemnity provided in this Section 21.2 (*Indemnification by the Port Authority*) shall not extend to Losses that are caused by (i) the willful misconduct or negligence of a Lessee-Related Entity or (ii) a breach by the Lessee of its obligations under the Project Documents to which it is a party.

Section 21.3 Defense of Third-Party Claims

(a) If an Indemnified Party receives notice of the commencement or assertion of any Third-Party Claim for which the Lessee or the Port Authority may be required to indemnify such Indemnified Party hereunder, it will as promptly as practicable notify the other Party in writing of such Third-Party Claim, and such notice will include a copy of the Third-Party Claim and any related correspondence or documentation from the third-party asserting such Third-Party Claim.

(b) The Lessee or the Port Authority, as applicable, as the Indemnified Party, shall have the right, by provision of written notice, to require the other party who has indemnification obligations to the Indemnified Party with respect to any Third-Party Claim (such party, the "**Indemnifying Party**") to defend, at the Indemnifying Party's sole expense,

with counsel satisfactory to the Indemnified Party, any Third-Party Claim (even if such Third-Party Claim is groundless, false or fraudulent), and the Indemnifying Party shall so defend such Third-Party Claim; provided, that with respect to any Third-Party Claim against the Port Authority for which the Lessee has an indemnification obligation pursuant to the provisions of Section 21.1 (*Indemnification by the Lessee*):

(i) the Lessee shall not, without obtaining express advance written permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the Tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority; and

(ii) if all or a portion of such Third-Party Claim is covered by insurance as required pursuant to the terms of this Agreement and the insurer providing such insurance has reserved rights or disclaimed coverage as to part or all of such Third-Party Claim, then defense counsel appointed by the applicable insurer shall not be deemed to be satisfactory to the Port Authority.

(c) Notwithstanding the Lessee's appointment of counsel to represent a Port Authority Indemnified Party in any action, such Port Authority Indemnified Party shall have the right to employ separate counsel, and the Lessee shall bear the reasonable fees, costs and expenses of such separate counsel, if:

(i) the use of counsel chosen by the Lessee to represent the Port Authority Indemnified Party would present such counsel with a conflict of interest;

(ii) the actual or potential defendants in, or targets of, any such action include both the Port Authority Indemnified Party and the Lessee and the Port Authority Indemnified Party will have reasonably concluded that there may be legal defenses available to it and/or other Port Authority Indemnified Parties which are different from or additional to those available to the Lessee; or

(iii) the Lessee has not employed counsel to represent the Port Authority Indemnified Party within a reasonable time after notice of the institution of such action.

(d) The Lessee shall not enter into any settlement or compromise in connection with a Third-Party Claim without the Port Authority's prior written consent, which consent will not be unreasonably withheld or delayed, except where such settlement or compromise is approved by the court after the Lessee receives reasonable notice and the opportunity to be heard and such court approval has become final and non-appealable.

Section 21.4 Losses Net of Insurance; Reductions and Subrogation

(a) For purposes of this Article 21 (*Indemnity*), the amount of any Losses for which indemnification is provided under Article 21 (*Indemnity*) shall be reduced by any amounts actually recovered by the Indemnified Party under insurance policies with respect to such

Losses, it being understood that the obligations of the Indemnifying Party hereunder shall not be so reduced to the extent that any such recovery results in an increase in the Indemnified Party's insurance premiums, or results in any other additional cost or expense to any such Indemnified Party.

(b) If the amount of any Loss incurred by an Indemnified Party at any time subsequent to the making of a payment required under this Article 21 (*Indemnity*) on account of such Losses (an "**Indemnity Payment**") is reduced by any subsequent recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement or payment by or against any other Person, the amount of such reduction (less any costs, expenses (including Taxes) or premiums incurred or increased in connection therewith), together with interest thereon from the date of such recovery, settlement or reduction pursuant to Section 35.15 (*Late and Service Charges*), shall promptly be repaid by the Indemnified Party to the Indemnifying Party.

(c) Upon making a full Indemnity Payment, the Indemnifying Party, to the extent of such Indemnity Payment, shall be subrogated to all rights of the Indemnified Party against any third-party in respect of the Losses to which the Indemnity Payment relates. Until the Indemnified Party recovers full payment of its Losses, any and all claims of the Indemnifying Party against any such third-party on account of such Indemnity Payment shall be subordinated in right of payment to the Indemnified Party's rights against such third-party.

Section 21.5 Indemnity in Favor of the City

Notwithstanding anything to the contrary stated or implied elsewhere in this Agreement, the Lessee acknowledges and agrees that the indemnification provisions of Section 31 of the Basic Lease shall apply to the Lessee as if the Lessee were the Port Authority party to the Basic Lease for the purposes of Section 31 of the Basic Lease to the extent the Third-Party Claim arises out of or is alleged to arise out of any matter described in Sections 21.1(a), 21.1(b), 21.1(c) and 21.1(k).

ARTICLE 22

REPRESENTATIONS AND WARRANTIES

Section 22.1 Lessee Representations and Warranties

The Lessee hereby represents and warrants to the Port Authority that:

(a) The Lessee is a limited liability company duly organized, validly existing and in good standing under the laws of the state of its organization, and has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute and deliver the Project Documents and the Principal Lessee Documents to which the Lessee is a party and to perform each and all of the obligations of the Lessee provided for therein. The Lessee is duly qualified to do business in the State of New York, and will remain so qualified throughout the Term and for as long thereafter as any obligations remain outstanding under the Project Documents.

(b) (A) The execution, delivery and performance of its obligations under the Project Documents and the Principal Lessee Documents to which the Lessee is (or will be) a party have been (or will be) duly authorized by all necessary limited liability company action of the Lessee, (B) each person executing the Project Documents and such Principal Lessee Documents on behalf of the Lessee has been (or at the time of execution will be) duly authorized to execute and deliver each such document on behalf of the Lessee and (C) the Project Documents and such Principal Lessee Documents have been (or will be) duly executed and delivered by the Lessee.

(c) Neither the execution and delivery by the Lessee of this Agreement and the Principal Lessee Documents to which the Lessee is (or will be) a party, nor the consummation of the transactions contemplated hereby or thereby, is (or at the time of execution will be) in conflict with or has resulted or will result in a default under or a violation of the organizational documents of the Lessee or any other agreements or instruments to which it is a party or which are binding on the Lessee or any of its property or assets.

(d) The execution and delivery by the Lessee of the Project Documents and the Principal Lessee Documents to which the Lessee is (or will be) a party, and the performance by the Lessee of its obligations thereunder, will not result in a default under or violation of any Applicable Law.

(e) Each of the Project Documents and the Principal Lessee Documents to which the Lessee is (or will be) a party constitutes (or at the time of execution and delivery will constitute) the valid and binding obligation of the Lessee, enforceable against the Lessee and each Equity Member (in the case of the Equity Contribution Agreement (as defined in the Collateral Agency Agreement)), in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

(f) There is no action, suit, proceeding, investigation or litigation pending and served on the Lessee or, to the Lessee's actual knowledge, threatened which (i) would reasonably be expected to have a material adverse effect on the ability of the Lessee to perform its obligations under any Project Document or Principal Lessee Document, (ii) challenges the Lessee's authority to execute, deliver or perform, or the validity or enforceability of, the Project Documents and the Principal Lessee Documents to which the Lessee is a party or (iii) challenges the authority of the Lessee's representative executing the Project Documents or such Principal Lessee Documents; and the Lessee has disclosed to the Port Authority any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the Lessee is aware.

(g) The Lessee and its Contractor(s) have obtained and maintained, and throughout the Term shall maintain, all required registrations, authority, license status, professional ability, skills and capacity to perform the then-current stage of the Work.

(h) Without limiting its rights and remedies expressly granted hereunder, the Lessee has evaluated the constraints (including the Project Specific Constraints) affecting the D&C

Work, including the conditions of the Applicable Laws and Governmental Approvals then in effect, and has reasonable grounds for believing, and does believe, that the Construction Project can be designed and built within such constraints.

(i) Prior to the Lease Commencement Date, the Lessee has familiarized itself with the requirements of any and all Applicable Laws, including those Applicable Laws applicable to the use of Federal-aid funds, and the conditions of any required Governmental Approvals then in effect. The Lessee has no reason to believe that any Governmental Approval required to be obtained by the Lessee will not be granted in due course and, thereafter, remain in effect so as to enable the Work to proceed in accordance with the Project Documents.

(j) All Work furnished by the Lessee will be performed by personnel who are skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the Work in accordance with the Project Documents and, where required by Applicable Law and/or Applicable Standard, by or under the supervision of Persons who hold all necessary, valid licenses to practice in the State of New York.

(k) As of the Proposal Due Date the Lessee disclosed to the Port Authority in writing all organizational conflicts of interest of the Lessee and its Contractors of which the Lessee was aware; and between the Proposal Due Date and the Lease Commencement Date the Lessee has not obtained actual knowledge, after due inquiry and investigation, of any additional organizational conflict of interest, and there has been no organizational changes to the Lessee or its Contractors identified in its Proposal, which have not been approved in writing by the Port Authority. For this purpose, "organizational conflict of interest" has the meaning set forth in the RFP.

(l) None of the Lessee, any Related Equity Member, or to the extent that a Lead Firm is not the Lessee, such Lead Firm or any of their respective officers, directors and employees, (i) is suspended or debarred, subject to a proceeding to suspend or debar it, or subject to an agreement for voluntary exclusion, from bidding, proposing or contracting with any Federal or state department or agency, (ii) has been convicted, pled guilty or *nolo contendere* to a violation of law involving fraud, conspiracy, collusion, bribery, perjury, material misrepresentation, or any other violation that shows a similar lack of moral or ethical integrity or (iii) is then barred or restricted from owning, operating or providing services in connection with the Work or the Construction Project under Applicable Law, including the Foreign Investment and National Security Act of 2007, 50 USC App. 2170 (HR556).

(m) To the extent each Lead Firm is not the Lessee, the Lessee represents and warrants, as of the effective date of the relevant Key Contract, as follows: (i) each Lead Firm is duly organized, validly existing and in good standing under the laws of the state of its organization and is duly qualified to do business in the State of New York; (ii) each Lead Firm has the power and the authority to execute, deliver and perform all documents as are required to be done, observed or performed by it in connection with its engagement by the Lessee; (iii) each Lead Firm has (A) obtained and will maintain all necessary or required registrations, permits, licenses and approvals required under Applicable Law and (B) expertise, qualifications, experience, competence, skills and know-how to perform the then-current D&C

Work and the Operations and Maintenance Work, as applicable, in accordance with the Project Documents; (iv) each Lead Firm will comply with all Applicable Laws, Applicable Standards and Best Management Practices in the performance of the D&C Work or the Operations and Maintenance Work, as applicable, for, or on behalf of, the Lessee for the benefit of the Port Authority and (v) each Lead Firm is not in breach of any Applicable Law or Applicable Standard that would have a material adverse effect on the D&C Work or the Operations and Maintenance Work, as applicable.

(n) The audited consolidated financial statements of each of the Equity Members and/or each Lead Firm (or the audited consolidated financial statements of the parent company of any Lead Firm, in the case of any such Lead Firm that is a special purpose vehicle) for the most recent reporting year prior to submission of the Proposal for which such audited statements are available have been prepared on a basis consistently applied and using GAAP or equivalent accounting principles utilized and generally accepted in the country of incorporation of such party, and audited by an independent certified public accountant (applying GAAP or equivalent auditing standards utilized and generally accepted in the country of incorporation of such party) and give a true and fair view of the consolidated financial condition of each such entity or group (as applicable) and are unqualified for the accounting period in question.

(o) There has been no material adverse change in the financial condition of the Lessee, the Equity Members and/or each Lead Firm or the parent company of any Lead Firm since the date of its most recent audited financial statements that would have a material adverse effect on the Lessee's ability to perform its obligations under this Agreement and the other Project Documents.

(p) All written information and certifications furnished by or on behalf of the Lessee to the Port Authority, or any of its representatives or advisors, as part of or in connection with the Proposal and the negotiation of this Agreement or the Project Documents or delivered by or on behalf of the Lessee to the Port Authority or any Person on its behalf pursuant to this Agreement was true and accurate in all material respects when given and taken as a whole and is true on the date on which this representation is made or repeated and taken as a whole and there are no other facts or matters the omission of which made any statement or information contained in the written information provided to the Port Authority or to any of its representatives or advisors misleading in any material respect as of the relevant date of delivery thereof or the date on which this representation is made or repeated and all expressions of opinion contained therein were honestly made on reasonable grounds after due and careful inquiry.

(q) The legal, beneficial and equitable ownership of the Lessee and the indirect ownership of the Lessee, and the percentage ownership of each such direct and indirect ownership of the Lessee, in each case, as of the Lease Commencement Date, are as set out in Exhibit 22 (*Lessee Organization Chart*) and as of such date, no arrangements are in place that will result in, or may reasonably be likely to result in, a Lessee Change in Control.

(r) The Lessee and the Equity Members are not, and to the extent each Lead Firm is not the Lessee, none of the Lead Firms are Prohibited Parties.

(s) The Financial Model delivered to the Port Authority by the Lessee pursuant to the Interim Agreement, as updated on or before the Lease Commencement Date: (i) was prepared by or on behalf of the Lessee in good faith and utilizes the same financial model formulas that the Lessee utilized and is utilizing in making its decision to enter into this Agreement and in making disclosures to potential equity investors and Lenders under the Financing Documents, (ii) represents the projections that the Lessee believes in good faith are the most realistic and reasonable for the Terminal B Facilities, (iii) was audited and verified by an independent, recognized model auditor on or prior to the Lease Commencement Date and (iv) fully discloses all cost, revenue and other financial assumptions and projections that the Lessee has used or is using in making its decision to enter into this Agreement and in making disclosures to Lenders under the Financing Documents; provided, however, that such projections (A) are based upon a number of estimates and assumptions, (B) are subject to significant business, economic and competitive uncertainties and contingencies and (C) accordingly are not a representation or warranty that any of the assumptions are correct, that such projections will be achieved or that the forward-looking statements expressed in such projections will correspond to actual results.

Section 22.2 Port Authority Representations and Warranties

The Port Authority hereby represents and warrants to the Lessee that:

(a) The Port Authority is a municipal corporate instrumentality and political subdivision of the States of New York and New Jersey, created and existing by virtue of the Compact of April 30, 1921, made by and between the States of New York and New Jersey and, consented to by the Congress of the United States.

(b) The Port Authority has all necessary powers adequate for the execution, delivery and performance of its obligations under this Agreement and any other Principal Port Authority Documents. The Port Authority has taken all necessary action required to authorize the issuance and delivery and the execution on its part of this Agreement and any other Principal Port Authority Documents, and the documents and instruments executed in connection therewith.

(c) When executed and delivered by the parties thereto, each of the Principal Port Authority Documents will constitute a valid and binding agreement of the Port Authority and be enforceable in accordance with its terms, except as enforceability may be subject to the exercise of judicial discretion in accordance with general equitable principles and to applicable bankruptcy, insolvency, reorganization, moratorium and other laws for the relief of debtors heretofore or hereafter enacted.

(d) Each person executing a Principal Port Authority Document on behalf of the Port Authority has been (or at the time of execution will be) duly authorized to execute and deliver each such document on behalf of the Port Authority and each Principal Port Authority Document has been (or will be) duly executed and delivered by the Port Authority.

(e) The execution, delivery and performance by the Port Authority of this Agreement, any other Principal Port Authority Documents and the performance by the Port Authority of its obligations under each Principal Port Authority Document do not and will not (i) contravene, result in any breach of, or constitute a default under, the organizational documents of the Port Authority or any other material agreements or instruments to which the Port Authority is a party or which is binding on the Port Authority or any of its property or assets or (ii) conflict with or violate any Applicable Law.

(f) The Port Authority has sufficient rights, title and interest pursuant to the Basic Lease to grant to the Lessee the rights, title and interest granted under this Agreement, subject only to the terms and conditions of this Agreement, and encumbrances and defects to title that are immaterial to the Work described in this Agreement.

(g) There are no actions, suits, proceedings, investigations, litigation, notices of violation, orders, decrees, judgments or demands for which the Port Authority has received notice pending and served on the Port Authority or, to the actual knowledge of the Port Authority, threatened against or affecting the Port Authority in connection with any actual or alleged violation of Environmental Law, that, individually or in the aggregate, could reasonably be expected to have a material adverse effect on the Lessee's ability to perform its obligations under this Agreement.

(h) There are no actions, suits, proceedings, investigations, litigation, notices of violation, orders, decrees, judgments or demands for which the Port Authority has received notice pending and served on the Port Authority or, to the actual knowledge of the Port Authority, threatened against or affecting the Port Authority that, individually or in the aggregate, could reasonably be expected to have a material adverse effect on:

(i) the rights of the Lessee pursuant to this Agreement;

(ii) the ability of the Port Authority to perform its obligations under the Principal Port Authority Documents; or

(iii) the validity or enforceability of all or a material part of a Principal Port Authority Document.

(i) As of the Lease Commencement Date, (i) except as disclosed to the Lessee on or prior to the Lease Commencement Date, each Assigned Terminal B Facilities Agreement is valid and in full force and effect, and any consent required to assign such Assigned Terminal B Facilities Agreement has been obtained, (ii) the Port Authority has not received any notice in writing of any default by the Port Authority under any Assigned Terminal B Facilities Agreement and has no reason to believe that any such default is imminent, and (iii) to the Port Authority's actual knowledge, without independent investigation, no counterparty to any Assigned Terminal B Facilities Agreement is in material default under any Assigned Terminal B Facilities Agreement and no act or event has occurred which, with notice or lapse of time, or both, would constitute a material default under any Assigned Terminal B Facilities Agreement by such counterparty that cannot be cured in the ordinary course.

(j) Except as disclosed to the Lessee on or prior to the Lease Commencement Date, the Port Authority has provided true and complete copies of each of the Assigned Terminal B Facilities Agreements. Other than the Assigned Terminal B Facilities Agreements and contracts disclosed on the Collaboration Portal that will be retained by the Port Authority and will continue to be effective after the Lease Commencement Date, there are no other material undisclosed contracts to which the Port Authority is a party with respect to the Existing Terminal B Facilities on and after the Lease Commencement Date. During the period from the Proposal Due Date to the Lease Commencement Date, the Port Authority has not, without first notifying the Lessee, entered into any amendments or supplements to the Assigned Terminal B Facilities Agreements, or any side agreements or other written understandings with the counterparties to the Assigned Terminal B Facilities Agreements, other than such amendments, supplements or side agreements that would not reasonably be expected to adversely affect the Lessee's operations and maintenance of the Existing Terminal B Facilities or the transition thereof to the Lessee.

(k) As of the Lease Commencement Date: (i) the Port Authority has made available to the Lessee a true, correct and complete copy of each document or data relating to the operations and maintenance of the Existing Facilities identified on Exhibit 25 (*Disclosed Existing Facilities Operations and Maintenance Information*) (the "**Disclosed Existing Facilities Operations and Maintenance Information**"); (ii) to the actual knowledge of the Port Authority, the factual and past historical information regarding the Existing Facilities and the operations and maintenance thereof disclosed on the Proposal Due Date in the Disclosed Existing Facilities Operations and Maintenance Information was complete and accurate in all material respects at the time such information was provided to the Lessee (or, as applicable, the related Proposer); and (iii) the Port Authority does not have actual knowledge of any material misstatement in respect of the information disclosed on the Proposal Due Date in the Disclosed Existing Facilities Operations and Maintenance Information. The Port Authority makes no additional representation or warranty with respect to such information. For avoidance of doubt, the indemnity set forth in Section 21.2(b) and the grounds for termination set forth in Section 24.1(a)(ii) represent the sole remedies (in each case, exercisable only within the limited time periods set forth therein) with respect to this Section 22.2(k).

(l) Except for any Governmental Approvals that have been obtained or that are required to be obtained by the Lessee or the Port Authority pursuant to Section 15.1(d) (*Governmental Approvals*), no consent is required to be obtained by the Port Authority from, and no notice or filing is required to be given by the Port Authority to or made by the Port Authority with, any Person (including any Governmental Entity) in order for the Port Authority to enter into this Agreement and consummate the transactions contemplated hereby.

ARTICLE 23

LESSEE EVENTS OF DEFAULT

Section 23.1 Event of Default

The occurrence of any one or more of the following events or conditions during the Term shall constitute an Event of Default under this Agreement (each, an "**Event of Default**"):

(a) [reserved];

(b) the Lessee fails to begin the Design Work within sixty (60) days of the Port Authority's issuance of the Design NTP;

(c) [reserved];

(d) the Lessee fails to begin the Construction Work (i) with respect to the entire Construction Project, within forty-five (45) days of the Port Authority's issuance of the Full Construction NTP or (ii) with respect to a Construction Segment, within sixty (60) days of the Port Authority's issuance of the applicable Construction Segment NTP;

(e) the Lessee fails to achieve Substantial Completion by the Long Stop Deadline, as such deadline may be adjusted from time to time as expressly provided in this Agreement;

(f) the Lessee voluntarily abandons, deserts or vacates the Premises or the Construction Site or discontinues its performance of the Work (other than a discontinuance in connection with any condemnation, Delay Event or any event described in clause (i) or (ii) of Section 24.1(b) or condemnation of the Premises), or after exhausting or abandoning any right of further appeal, the Lessee, because of an act or omission of the Lessee, is prevented for a period of sixty (60) consecutive days from performing the Work by action of any Governmental Entity having jurisdiction thereof;

(g) during the Construction Period, except in the case of any suspension of D&C Work by the Port Authority pursuant to Section 10.9 (*Suspension of D&C Work*), the Lessee (i) discontinues the performance of the D&C Work for a period of fifteen (15) or more consecutive days (other than a discontinuance resulting from an exercise by the Port Authority of its suspension rights in Section 10.9 (*Suspension of D&C Work*)), and (ii) fails to resume such discontinued D&C Work within thirty (30) days following the date the Port Authority delivers to the Lessee written notice to resume such discontinued D&C Work;

(h) the Lessee fails (i) to pay when due any Base Rent, First Additional Rent or Second Additional Rent, (ii) to pay any other amounts required to be made to or on behalf of the Port Authority under this Agreement or any Principal Lessee Document to which the Lessee and the Port Authority are parties or (iii) to deposit funds to any reserve or account in the amounts and within the time periods required by this Agreement or any Principal Lessee Document to which the Lessee and the Port Authority are parties; provided, that the payment is not subject to a good faith Dispute and such failure shall continue unremedied or unwaived for

a period of twenty (20) days following the date on which the Lessee receives written notice from the Port Authority to make such payment or deposit any such funds;

(i) any representation or warranty made by the Lessee in this Agreement or any other Project Document to which the Port Authority and the Lessee are parties or any certificate delivered by the Lessee to the Port Authority pursuant to this Agreement or any such other Project Documents shall prove to have been false or misleading in any material respect (whether by affirmative statement or omission of statement) as of the time made and the underlying event or circumstances giving rise to such misrepresentation continue without cure for a period of thirty (30) days following the earlier of (i) the date on which the Lessee receives written notice of such circumstances from the Port Authority and (ii) the Lessee's actual knowledge thereof; provided, that such thirty (30)-day grace period may be extended at the Port Authority's reasonable discretion if the Lessee notifies the Port Authority in writing within such thirty (30)-day period that cure cannot be achieved within such period despite the Lessee's diligent efforts and the Lessee shall have commenced performance within such thirty (30)-day grace period and continues such performance diligently and continuously to completion (except during the occurrence of any event beyond the Lessee's control); provided, further, that cure will be regarded as complete only when the adverse effects of the breach are remedied;

(j) this Agreement, the Lessee's leasehold interest, the Premises or any portion of any of the same shall be assigned, subleased, transferred, mortgaged or encumbered in contravention of the terms of this Agreement, and such transaction shall not be made to comply with the terms of this Agreement, or voided *ab initio*, or any Lien or a levy under execution or attachment against all or any material portion of the Premises or the Lessee's leasehold interest as a result of any Lien created, incurred, assumed or suffered to exist by the Lessee or any Person claiming through the Lessee, shall not be discharged or bonded, as applicable, in each case, within twenty (20) days after the earlier of (i) the date on which the Lessee receives written notice of such failure from the Port Authority and (ii) the Lessee's actual knowledge thereof;

(k) (i) the Lessee shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, moratorium, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it as bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding up, liquidation, dissolution, composition or other relief with respect to it or its debts or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or the Lessee shall make a general assignment for the benefit of its creditors; (ii) there shall be commenced against the Lessee any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of sixty (60) days; (iii) there shall be commenced against the Lessee any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded

pending appeal within sixty (60) days from the entry thereof; (iv) the Lessee shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) the Lessee shall generally not or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due;

(l) the Lessee fails to comply with the provisions of Section 3.1(c) (regarding the Basic Lease generally) or Section 11.4(e)(i) (with respect to information required under the Basic Lease), or the Lessee fails to discharge or cause the discharge of a Lien on the Premises as required by Section 32.2 of the Basic Lease, if, in each case, such failure continues without cure for a period of thirty (30) days after the earlier of (i) the date on which the Lessee receives written notice of such failure from the Port Authority and (ii) the Lessee's actual knowledge thereof;

(m) the Lessee fails to comply with the provisions of (i) Section 15.7 (*OFAC*), (ii) Section 15.1 (*Compliance with Law Generally; Governmental Approvals*) if such failure causes, or in the reasonable opinion of the Port Authority, is likely to cause, the loss of the Airport Operating Certificate, and if such failure is likely to cause the loss of the Airport Operating Certificate, such failure continues without cure for a period of thirty (30) days (or such shorter period of time as may be required to comply with FAA direction with respect to such failure) after the date on which the Lessee receives written notice of such failure from the Port Authority, or (iii) Section 15.5 (FAA *Grants*) and, if the Port Authority elects in its sole discretion to grant a cure period for such failure, such failure is not cured within such time period;

(n) the Lessee fails to comply with the provisions of Article 20 (*Insurance*), including failure to comply with the requirements relating to the amount, terms or coverage, and such failure continues without cure for a period of thirty (30) days after the earlier of (i) the date on which the Lessee receives written notice of such failure from the Port Authority and (ii) the Lessee's actual knowledge thereof;

(o) the Lessee fails to comply with any written order issued to the Lessee by the Port Authority to suspend, in whole or in part, the D&C Work within five (5) days following receipt of such written order;

(p) the Lessee fails to commence and continue the implementation of a Safety Compliance Order or a Directive Letter in accordance with the requirements of this Agreement within such period of time as set forth in (or accompanied by) such Safety Compliance Order or Directive Letter, as applicable;

(q) the Lessee or any of its Contractors or Suppliers fails in any material respect to cooperate with the OIG or the Project Integrity Monitor in accordance with Section 19.1(d);

(r) the Lessee fails to comply with, perform or observe (other than as otherwise set forth in this Section 23.1 (*Event of Default*)) (i) any obligation, covenant, agreement, term or condition in this Agreement or any other Project Document to which the Port Authority and the Lessee are parties, including, for the avoidance of doubt, the Requirements and Provisions for

Work, and such failure shall continue unremedied or unwaived for a period of thirty (30) days after the date on which the Lessee receives written notice of such failure from the Port Authority, or (ii) the requirements or directives of a final award in a matter submitted to dispute resolution in accordance with Article 33 (*Dispute Resolution Procedures*) and such failure shall continue unremedied or unwaived for a period of thirty (30) days after the receipt by the Lessee of such final award; provided, that, in each case, such thirty (30)-day grace period shall be extended for as many days as shall be necessary to cure such failure up to a maximum cure period of one hundred-eighty (180) days, where cure by the Lessee requires performance by the Lessee over a period of time, and the Lessee shall have commenced performance within such thirty (30)-day grace period and continues such performance diligently and continuously to completion (except during the occurrence of any event beyond the Lessee's control);

provided, that with respect to any of the events described in clauses (a) through (g), (n), (o), (p) and (r) above, the occurrence of any such event as a direct and proximate result of a Delay Event or a [redacted] with respect to the Lessee shall be deemed not to constitute an Event of Default or an event or circumstance that with the lapse of time, the giving of notice or both would constitute an Event of Default, but only for so long as the Delay Event or the [redacted] is occurring, and any cure periods provided in such clauses shall be extended solely to the extent, and for so long as, the ability of the Lessee to cure thereunder is directly and adversely affected by a Delay Event or a [redacted]

Section 23.2 Remedial Plan

In the case of any Event of Default described in Section 23.1 (*Event of Default*) (other than clauses (h), (j), (k), (o), (p) and (q) of Section 23.1 (*Event of Default*)), the Lessee is entitled to cure such Event of Default by preparing and submitting for Port Authority Approval, within the relevant cure period set forth in Section 23.1 (*Event of Default*), a remedial plan that shall set forth a schedule and specific actions to be taken by the Lessee to cure such Event of Default and, if applicable, reduce the likelihood of such defaults occurring in the future. Such actions may include improvements to the Lessee's quality management practices, plans and procedures, revising and restating management plans, changes in organizational and management structure, increased monitoring and inspections, changes in Lead Personnel and other important personnel, and replacement of Contractors or Suppliers. Subject to the immediately succeeding sentence, within twenty (20) days of receiving any remedial plan pursuant to this Section 23.2 (*Remedial Plan*), the Port Authority shall notify the Lessee whether or not the relevant remedial plan is, in the Port Authority's reasonable discretion, acceptable. If more time is needed by the Port Authority to review a proposed remedial plan, the Port Authority may extend such twenty (20)-day review period with written notice to the Lessee; provided, that the Port Authority shall not exercise any of its rights to remedy with respect to such Event of Default as provided in Section 23.3 (*Remedies of the Port Authority Upon Event of Default*) for the duration of such extended review period. If the Port Authority notifies the Lessee that the remedial plan is not acceptable, the Parties shall meet no later than within the following five (5) days in order to agree any necessary modifications to the plan proposed. If the Parties fail to agree by the end of such five (5)-day period, an Event of Default shall be deemed to exist entitling the Port Authority to immediate exercise of its remedial rights under Section 23.3 (*Remedies of the Port Authority*

Upon Event of Default). If the Port Authority notifies the Lessee that the remedial plan is acceptable, the Lessee shall implement such remedial plan diligently and in accordance with its terms (and the otherwise applicable cure periods and extension limits will be extended in accordance with such approved remedial plan) and the Port Authority shall refrain from exercising its rights and remedies with respect to such Event of Default for so long as the Lessee is diligently implementing such remedial plan. Any failure of the Lessee to comply diligently with such approved remedial plan shall be deemed to be an Event of Default described in Section 23.1(p) and the Port Authority shall have to right to terminate this Agreement pursuant to clause (a) of Section 23.3 (*Remedies of the Port Authority Upon Event of Default*) without any entitlement of the Lessee to a cure period for such Event of Default or to the proposal of another remedial plan.

Section 23.3 Remedies of the Port Authority Upon Event of Default

Upon the occurrence and during the continuation of an Event of Default, the Port Authority may, by notice to the Lessee with a copy to the Recognized Mortgagees, declare that an Event of Default has occurred (such notice, an "**Event of Default Notice**") and thereupon may, subject to the rights of the Recognized Mortgagees pursuant to Article 18 (*Lenders' Rights and Remedies; Refinancing*), do any or all of the following as the Port Authority, in its sole discretion, shall determine:

(a) The Port Authority may terminate this Agreement by serving a Termination Notice (the "**Port Authority Termination Notice**") on the Lessee, other than in the case of an Event of Default described in Section 23.1(r) for any failure by the Lessee to comply with, perform or observe the Operations and Maintenance Work solely with respect to the Central Hall, with respect to which Event of Default, the Port Authority may partially terminate this Agreement pursuant to Section 2.2 (*Partial Termination*). The Port Authority Termination Notice must specify the type of Event of Default which has occurred entitling the Port Authority to terminate. Subject to the rights of the Recognized Mortgagees pursuant to Article 18 (*Lenders' Rights and Remedies; Refinancing*) and any remedial plan prepared by the Lessee pursuant to Section 23.2 (*Remedial Plan*), this Agreement will terminate on the Early Termination Date specified in the Port Authority Termination Notice; provided, that in no event shall such date be (subject to Section 18.1 (*Leasehold Mortgages*)) earlier than twenty (20) days after the date of sending the Port Authority Termination Notice (the "**Notice of Termination Service Date**"). The Lessee's leasehold interest created under this Agreement will automatically terminate and expire as of the Early Termination Date, and, subject to the Lenders' Lien in the Lessee's leasehold interest and any rights of the Recognized Mortgagees pursuant to Article 18 (*Lenders' Rights and Remedies; Refinancing*), all Liens and claims created, permitted or suffered by the Lessee against the Lessee's leasehold interest created under this Agreement will be automatically extinguished;

(b) Notwithstanding anything in the foregoing to the contrary, in the case of an Event of Default described in Section 23.1(k), but subject to the rights of the Recognized Mortgagees pursuant to Article 18 (*Lenders' Rights and Remedies; Refinancing*), the Port Authority shall have the right to terminate this Agreement with immediate effect, and the Lessee will not be entitled to any cure period to remedy such default;

(c) If the Event of Default is by reason of the failure to pay any monies due to any third-party, the Port Authority may (without any obligation to do so) make payment on behalf of the Lessee of such monies, and any amount so paid by the Port Authority shall be payable by the Lessee to the Port Authority within five (5) days after demand therefor, together with late charges calculated pursuant to Section 35.16(a) (*Late Charges*);

(d) Subject to the cure rights of the Recognized Mortgagees set forth in Section 18.1 (*Leasehold Mortgages*), the Port Authority may, if the Lessee has failed to cure an outstanding Event of Default following any cure period granted to the Lessee pursuant to this Article 23 (*Lessee Events of Default*), cure the Event of Default (but this shall not obligate the Port Authority to cure or attempt to cure an Event of Default or, after having commenced to cure or attempted to cure an Event of Default, to continue to do so), and all costs and expenses reasonably incurred and documented by the Port Authority in curing or attempting to cure such Event of Default, together with an administrative fee equal to fifteen percent (15%) of such costs and expenses, shall be payable by the Lessee to the Port Authority within five (5) days of demand therefor; provided, that (i) the Port Authority shall not incur any liability to the Lessee for any act or omission of the Port Authority or any other Person in the course of remedying or attempting to remedy any Event of Default in accordance with this Section 23.3(d) and (ii) the Port Authority's cure of any Event of Default shall not affect the Port Authority's rights against the Lessee by reason of such Event of Default;

(e) The Port Authority is entitled to seek payment of amounts from the Lessee in accordance with Section 23.4 (*Survival of Rental Obligations of the Lessee*), and the Port Authority may assess and collect late charges with respect to such overdue amounts calculated pursuant to Section 35.16(a) (*Late Charges*);

(f) Except with respect to an Event of Default under Section 23.1(r) for any failure by the Lessee to comply with, perform or observe the Operations and Maintenance Work solely with respect to the Central Hall, with respect to which Event of Default, the Port Authority may partially terminate this Agreement pursuant to Section 2.2 (*Partial Termination*), subject to the rights of the Recognized Mortgagees pursuant to Article 18 (*Lenders' Rights and Remedies; Refinancing*), the Port Authority is entitled to terminate the Lessee's right of possession of the Premises and, in such event, the Port Authority or the Port Authority's agents and servants may immediately or at any time thereafter re-enter the Premises or any part thereof without further notice of any kind, either by summary proceedings, or by any other applicable action or proceeding, and may regain and resume possession of the Premises and any property therefrom, and dispossess the Lessee and any other Persons from the Premises and remove any and all of their property and effects from the Premises, with or without terminating this Agreement, and repossess and enjoy the Premises; provided, that no re-entry, regaining or resumption of possession by the Port Authority shall be construed as an election on its part to terminate this Agreement unless a notice of such intention is given to the Lessee; and provided, further, that any re-entry, regaining or resumption of possession made in accordance with this Agreement as against the Lessee shall be valid and effective against the Lessee even though made subject to the rights of the Recognized Mortgagees to cure any default of the Lessee and continue in the place of the Lessee under this Agreement or a New Agreement pursuant to Section 18.7 (*New Agreement*).

Any re-entry, regaining or resumption of possession pursuant to this Section 23.3(f) shall not in any manner affect, alter or diminish any of the obligations of the Lessee under this Agreement, and shall in no event be or be construed to be an acceptance of surrender; and

(g) The Port Authority is entitled to seek specific performance, injunction or any other remedies at law or in equity, it being acknowledged that monetary damages are an inadequate remedy for an Event of Default.

Section 23.4 Survival of Rental Obligations of the Lessee

(a) Damages. If this Agreement shall be terminated pursuant to Section 23.3(a), or by or under any summary proceeding or any other action or proceeding, then, in each such case, all obligations of the Lessee to pay Base Rent and First Additional Rent of whatsoever kind pursuant to Article 4 (*Rental*) shall survive such termination and shall remain in full force and effect for the full Term had the termination not occurred, and the following damages shall become due and payable to the Port Authority:

(i) all Base Rent and First Additional Rent and all other sums that became due and payable to the Port Authority under this Agreement prior to the Early Termination Date (other than Second Additional Rent) and for which payment was not made by the Lessee prior to such date;

(ii) the Port Authority's reasonable expenses in connection with the (A) termination of this Agreement and (B) the Port Authority's re-entry upon the Premises and any re-letting, including, in each case, all repossession costs, brokerage commissions, legal expenses, reasonable attorneys' fees and disbursements, alteration costs, tenant concessions and expenses of preparing the Premises for any such re-letting; and

(iii) an amount equal to the then-present value (determined using a discount rate of seven and one-half percent (7.5%)) of all Base Rent and First Additional Rent and all other sums that would have become due and payable to the Port Authority under this Agreement through the Expiry Date (other than Second Additional Rent).

(b) Collection of Damages; Credit. Without limiting any of the foregoing, the Port Authority may at any time bring an action to recover all the damages set forth in Section 23.4(a) (*Damages*) not previously recovered in separate actions, or it may bring separate actions to recover such damages, and separate actions periodically to recover from time to time only such portion of the damages as would have accrued as rental up to the time of the action if there had been no termination, in each case, at the Port Authority's sole discretion. In any action to recover damages pursuant to this Section 23.4(b) (*Collection of Damages; Credit*), the Lessee shall be allowed a credit against its survived damages obligations equal to (and only to the extent of) (i) rentals or other amounts that the Port Authority actually receives, subsequent to the termination, from a successor lessee to the Premises in connection with the Port Authority's exercise of its right to re-let the Premises or any part thereof pursuant to Section 23.5 (*Re-letting by the Port Authority*) and (ii) rentals that the Port Authority actually

receives, subsequent to the termination, from any subtenant, licensee, permittee or other occupier of the Premises, or any part thereof in connection with the exercise of its right to repossess and operate the Premises pursuant to Section 23.3(f); provided, however, that the credit provided for in this Section 23.4(b) (*Collection of Damages; Credit*) for any period shall not exceed the then-present value of the rentals which would have been payable under this Agreement during such period if a termination pursuant to Section 23.3(a) had not taken place. Nothing in this Section 23.4(b) shall be construed as obligating the Port Authority to re-let the Premises or assume operations at the Premises, or shall impair the Port Authority's right to recover damages for which credit has not been received as contemplated by this Section 23.4(b).

(c) In addition to and without limiting the foregoing or any other right, claim or remedy of the Port Authority, legal or equitable, under this Agreement or otherwise, in the event this Agreement shall be terminated pursuant to Section 23.3 (*Remedies of the Port Authority Upon Event of Default*) or under any provision of Applicable Law, and the Lessee shall not have completed the D&C Work, or any portion thereof, on the Early Termination Date, the Lessee shall and hereby agrees to pay to the Port Authority, as additional damages, any and all amounts, costs or expenses of any type whatsoever paid or incurred by the Port Authority by reason of the failure of the Lessee to complete the D&C Work, or any portion thereof, including all interest costs, completion and other costs, direct damages, penalties and other Losses, and all of the same shall survive the termination of this Agreement and shall be deemed treated as survived damages hereunder in addition to those set forth in Section 23.4(a) (*Damages*).

Section 23.5 Re-letting by the Port Authority

(a) Subject to the rights of the Recognized Mortgagees pursuant to Article 18 (*Lenders' Rights and Remedies; Refinancing*), the Port Authority upon termination pursuant to Section 23.3(a), or upon any re-entry, regaining or resumption of possession pursuant to Section 23.3(f), may occupy the Premises or may re-let the Premises, and shall have the right to permit any Persons to enter upon the Premises and use the same, without any obligation to account to the Lessee for any such rentals. Such re-letting may be all or any part 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 had the termination not occurred, and on terms and conditions the same as or different from those set forth in this Agreement. No such re-letting shall be or be construed to be an acceptance of a surrender. The Port Authority shall also, upon termination pursuant to Section 23.3(a), or upon its re-entry, regaining or resumption of possession pursuant to Section 23.3(f), have the right to repair or to make structural or other changes in the Premises, including changes which alter the character of the Premises and the suitability thereof for the purpose of the Lessee under this Agreement, without affecting, altering or diminishing the obligations of the Lessee hereunder. No such re-letting shall be or be construed to be an acceptance of a surrender.

(b) The Port Authority shall have no obligation to re-let the Premises or any part thereof and shall in no event be liable for refusal or failure to re-let the Premises or any part thereof or, in the event of any such re-letting, for refusal or failure to collect any rent due upon

any such re-letting, and no such refusal or failure shall operate to relieve the Lessee of any liability under this Agreement or otherwise to affect any such liability.

(c) Without limiting the generality of the foregoing, and subject to Exhibit 33 (*Central Hall Provisions*), upon a Partial Termination the Port Authority may occupy the Central Hall or may re-let the Central Hall, and shall have the right to permit any Persons to enter upon the Central Hall and use the same, without any obligation to account to the Lessee for any such rentals. All provisions set forth in Sections 23.5(a) and 23.5(b) shall apply to the Central Hall and the Port Authority's rights therein upon a Partial Termination *mutatis mutandis*.

Section 23.6 Remedies to be Non-Exclusive

Except where an exclusive remedy is expressly provided herein, all of the 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 23.7 Surrender

Upon any termination pursuant to this Article 23 (*Lessee Events of Default*), the Lessee covenants and agrees to promptly yield and deliver peaceably to the Port Authority possession of the Premises on the Early Termination Date, and all of the Premises shall be free and clear of all Liens and of any rights of any Sublessees or other occupants of the Premises; provided, however, that the foregoing provisions shall not apply to the environmental condition of the Premises, and the Lessee's obligations with respect to the environmental condition of the Premises shall be governed by Article 16 (*Environmental, Health and Safety Requirements*).

Section 23.8 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.

ARTICLE 24

GROUNDS FOR TERMINATION BY THE LESSEE; OTHER TERMINATION

Section 24.1 Grounds for Termination

(a) The occurrence of any one or more of the following events shall constitute grounds for termination of this Agreement by the Lessee pursuant to clause (a) of Section 24.2 (*Termination Rights of the Lessee*):

(i) the Port Authority shall fail to make any payment due to the Lessee under this Agreement when due; provided, that the payment is not subject to a good faith Dispute and such failure shall continue unremedied or unwaived for a period of forty-five (45) days after receipt of written notice from the Lessee to make such payment; provided, further, that a failure by the Port Authority to make any such payment that was caused by an administrative or processing error shall not constitute grounds for termination of this Agreement by the Lessee;

(ii) any representation or warranty made by the Port Authority under Section 22.2 (*Port Authority Representations and Warranties*) shall prove to be false or misleading in any material respect (whether by affirmative statement or omission of statement) as of the Lease Commencement Date, and such circumstances continue without cure for a period of thirty (30) days following the date the Lessee delivers to the Port Authority written notice thereof; provided, that such thirty (30)-day grace period may be extended for such longer period of time as may be reasonably necessary to cure such failure up to a maximum cure period of ninety (90) days, where cure by the Port Authority requires performance by the Port Authority over a period of time, and the Port Authority shall have commenced performance within such thirty (30)-day grace period and continues such performance diligently and continuously to completion (except during the occurrence of any event beyond the Port Authority's control); provided, further, that cure will be regarded as complete only when the adverse effects of the breach are remedied; provided, however, that no grounds for termination shall exist whatsoever with respect to a breach of the representation and warranty set forth in Section 22.2(k) after the first (1st) anniversary of the Lease Commencement Date;

(iii) the Port Authority shall fail to comply with, perform or observe any obligation, covenant, agreement, term or condition in this Agreement, which failure materially and adversely (A) affects the Lessee's ability to perform its rights and obligations pursuant to this Agreement, (B) increases costs associated with the Lessee's performance of the Work or (C) decreases revenues derived from the operations of the Premises, and such failure shall continue unremedied or unwaived for a period of thirty (30) days after the date on which the Port Authority receives notice of such failure from the Lessee; provided, that such thirty (30)-day grace period shall be extended for as many days as shall be necessary to cure such failure up to a maximum cure period of one hundred-eighty (180) days, where cure by the Port Authority requires performance by the Port Authority over a period of time, and the Port Authority shall have commenced performance within such thirty (30)-day grace period and continues such performance diligently and continuously to completion (except during the occurrence of any event beyond the Port Authority's control);

(iv) the Port Authority shall take any action or fail to take any action, in each case, which results in the loss of the Airport Operating Certificate, and the Port Authority has not remedied within thirty (30) days after the date of receipt of notice of such loss from the Lessee or the FAA; and

(v) if a levy under execution or attachment has been made against all or any material portion of the Terminal B Facilities or the Lessee's leasehold interest as a result of any Lien created, incurred, assumed or suffered to exist by the Port Authority or any Person claiming through the Port Authority, which execution or attachment materially adversely affects the Lessee's ability to perform its rights and obligations pursuant to this Agreement, and such execution or attachment has not been vacated, removed or stayed by court order, bonding or otherwise within sixty (60) days after the Port Authority obtains knowledge of such execution or attachment, unless such levy or attachment directly resulted from actions or omissions of the Lessee or any Lessee-Related Entity;

provided, that with respect to any of the events described in clauses (iii) or (iv) above, the occurrence of any such event as a direct and proximate result of a Force Majeure Event with respect to the Port Authority shall be deemed not to constitute grounds for termination of this Agreement or an event or circumstance that with the lapse of time, the giving of notice or both would constitute grounds for termination of this Agreement and any cure periods provided in such clauses shall be extended solely to the extent, and for long as, the ability of the Port Authority to cure thereunder is directly and adversely affected by such Force Majeure Event with respect to the Port Authority.

(b) The occurrence of any one or more of the following events shall constitute grounds for termination of this Agreement by the Lessee pursuant to clause (d) of Section 24.2 (*Termination Rights of the Lessee*):

(i) the issuance of any injunction, restraining order or other similar legal order by a court of competent jurisdiction under Applicable Law, which injunction or order prohibits or enjoins prosecution of the Work for more than ninety (90) consecutive days;

(ii) if all the Airline Sublessees shall be prevented from operating their air transportation system to and from LGA Airport by reason of their inability to use a substantial part or all of the runways and taxiways:

(A) for a period of longer than thirty (30) consecutive days, resulting from any condition of LGA Airport not due to the fault of the Port Authority, the Lessee or any Lessee-Related Entity;

(B) for a period of longer than ninety (90) consecutive days, resulting from a permanent injunction issued by any court of competent jurisdiction; or

(C) for a period of longer than ninety (90) consecutive days, resulting from any order, rule or regulation of the FAA, or other Governmental Agency having jurisdiction over the operations of the Airline Sublessees with which the Airline Sublessees are unable to comply at reasonable cost or expense; or

(iii) if the Lessee is prevented from performing all or a substantial portion of the D&C Work by reason of its inability to use or access all or a substantial part of the

Premises directly due to a Force Majeure Event for a period of longer than ninety (90) consecutive days.

Section 24.2 Termination Rights of the Lessee

(a) If any grounds for termination described in Section 24.1 (*Grounds for Termination*) shall have occurred and be continuing, the Lessee may serve a Termination Notice (the "**Lessee Termination Notice**") on the Port Authority. The Lessee Termination Notice must specify the details of the event which has occurred entitling the Lessee to terminate. Subject to the Port Authority's option described in Section 24.2(d), this Agreement will terminate on the Early Termination Date specified in the Lessee Termination Notice; provided, that in no event shall such date be earlier than twenty (20) days after the date of the Lessee Termination Notice.

(b) If this Agreement is terminated pursuant to this Section 24.2 (*Termination Rights of the Lessee*) as a result of any event described in clause (a) of Section 24.1 (*Grounds for Termination*), the Port Authority shall pay to the Lessee the Port Authority Termination Sum. The "**Port Authority Termination Sum**" shall equal the amount calculated at the Early Termination Date (without double-counting), as follows:

(i) the greater of (A) the fair market value of the Lessee's leasehold interest and its rights and obligations pursuant to this Agreement, determined in accordance with the appraisal procedures set forth in Section 24.2(c) (and without regard to (x) the Port Authority Default, condemnation or other event giving rise to the payment of the Port Authority Termination Sum and (y) the termination of any Subleases caused by the Early Termination of this Agreement) and (B) one hundred percent (100%) of Lessee Debt then outstanding (including accrued but unpaid interest on the Lessee Debt to the payment date of such Port Authority Termination Sum); *plus*

(ii) the amount necessary to reimburse the reasonable, out-of-pocket and documented costs and expenses incurred by the Lessee to demobilize and terminate the Contracts between the Lessee and third-parties or Affiliates for performance of the Work as a direct result of the termination, excluding the Lessee's non-contractual liabilities and indemnity liabilities (contractual or non-contractual) to third-parties or Affiliates; *less*

(iii) any insurance or condemnation proceeds (excluding proceeds of personal injury, property damage or other third party liability insurance payable to or for the account of a third party) payable to the Lessee (or that should have been payable to the Lessee but for (A) the insurer's inability to pay, (B) breach by the Lessee of an obligation to take out or maintain insurance pursuant to Article 20 (*Insurance*) or (C) the invalidity or breach of any insurance policy caused by the Lessee under which such policy proceeds would have been paid) with respect to all or any portion of the Premises as a result of the occurrence of the grounds for termination set forth in Section 24.2(a); *less*

(iv) any Account Balances (to the extent such Account Balances are available to the Lessee or the Recognized Mortgagee for payment of any amounts specified in clauses (i) or (ii) above).

(c) The fair market value of the Lessee's leasehold interest and its rights and obligations under this Agreement for purposes of calculating the Port Authority Termination Sum will be determined according to the following procedures:

(i) Within thirty (30) days after a Lessee Termination Notice is received by the Port Authority, which notice results in a claim to payment of the Port Authority Termination Sum, the Port Authority and the Lessee will confer in good faith to mutually appoint an independent third-party appraiser to determine the fair market value of the Lessee's leasehold interest and its rights and obligations under this Agreement by written appraisal. The appraiser must be an independent, third-party appraiser that is nationally recognized and experienced in appraising similar assets and that is reasonably acceptable to the Port Authority and the Lessee.

(ii) If the Port Authority and the Lessee are unable to agree upon an appraiser within such thirty (30)-day period, then within ten (10) days thereafter, the Port Authority and the Lessee will each appoint an independent third-party appraiser and both such appraisers will be instructed jointly to select, within fifteen (15) days after they are appointed, a third independent third-party appraiser who is nationally recognized and experienced in appraising similar assets to make the appraisal referred to above.

(iii) If either Party fails to appoint such independent third-party appraiser or if the appraisers appointed by the Parties are unable to appoint an independent third-party appraiser under Section 24.2(c)(ii) within sixty (60) days after a Party has requested the appointment of an appraiser under Section 24.2(c)(i), then either Party may petition a court of competent jurisdiction located in New York County in the State of New York to appoint an independent third-party appraiser having the requisite reputation and experience.

(iv) Each Party will pay the costs of its own appraiser for purposes of selecting the independent third-party appraiser. The Port Authority will pay the reasonable costs and expenses of the independent third-party appraiser for the performance of the appraisal work to be carried out pursuant to Section 24.2(c)(vi).

(v) Each Party will diligently cooperate with the appraiser, including promptly providing the appraiser with data and information regarding the Work and the Premises, the condition of the Terminal B Facilities, historical cost and revenue data, and other information the appraiser may request that is in the possession of or reasonably available to such Party. Each Party will provide the appraiser with access to such Party's books and records regarding the Premises, the Subleases and the Terminal B Facilities, on an Open Book Basis.

(vi) Once appointed, the independent third-party appraiser will conduct an appraisal of the fair market value of the Lessee's leasehold interest and its rights and obligations under this Agreement and deliver to both Parties a draft appraisal report and draft valuation. The appraisal will determine fair market value as of the Early Termination Date, based on the then-current condition of the Premises and the Terminal B Facilities (but without regard to any damage or loss resulting from the grounds for termination that resulted in the termination or to the loss of revenues resulting from the early termination of any Sublease effected by the termination of this Agreement). The appraiser will appraise the fair market value by taking into account the terms and conditions of this Agreement, projected cash flows and projected costs of the Premises and the Construction Project, as applicable, for the remainder of the projected Term had this Agreement not been terminated, as determined by the appraiser. In conducting the appraisal, and before issuing a draft appraisal report, the independent third-party appraiser will afford reasonable and comparable opportunity to each Party to provide the appraiser with information, data, analysis and reasons supporting such Party's view on the fair market value assessment. The Parties will have fifteen (15) days after receipt of the draft appraisal report to comment thereon. After the opportunity to comment has expired, the independent third-party appraiser will consider and evaluate all comments, prepare a final appraisal report stating the fair market value, and deliver the final appraisal report to both Parties.

(vii) If either Party disagrees with the fair market value, such Party may invoke the Dispute Resolution Procedures set forth in Article 33 (*Dispute Resolution Procedures*), by delivery of notice to the other Party within sixty (60) days following receipt of the appraiser's report.

(viii) Fair market value shall be reviewed and determined *de novo* if any Dispute as to fair market value shall be referred to the Dispute Resolution Procedures.

(ix) Failure to invoke the Dispute Resolution Procedures within such time period will conclusively constitute acceptance of the fair market value in the final appraisal report.

(d) If the Lessee delivers a Lessee Termination Notice to the Port Authority electing to terminate this Agreement as a result of any event described in clause (b) of Section 24.1 (*Grounds for Termination*), the Port Authority shall have the option either to:

(i) accept such notice and pay to the Lessee within sixty (60) days after the receipt by the Port Authority of the Lessee's notice of termination the amount (calculated at the date of termination, without double-counting) equal to:

(A) all Equity Investment (other than Equity Member Debt) actually contributed to the Lessee and either used to pay Project Costs or kept in a bank account held by or on behalf of the Lessee and constituting, wholly or partially, Account Balances, less dividends and other distributions paid to the Equity

Members (provided, that the amount calculated under this clause (a) shall never be a negative number); *plus*

(B) Equity Member Debt then outstanding (provided, that proceeds of such Equity Member Debt were either used to pay Project Costs or deposited in a bank account held by or on behalf of the Lessee and constitute, wholly or partially, Account Balances), less an amount equal to the aggregate of all payments of interest made by the Lessee with respect to such Equity Member Debt; *plus*

(C) one hundred percent (100%) of Lessee Debt then outstanding (including accrued but unpaid interest on the Lessee Debt to the payment date of such Unamortized Costs Termination Sum); *plus*

(D) the amount necessary to reimburse the reasonable, out-of-pocket and documented costs and expenses incurred by the Lessee to demobilize and terminate the Contracts between the Lessee and third-parties or Affiliates for performance of the Work as a direct result of the termination, excluding the Lessee's non-contractual liabilities and indemnity liabilities (contractual or non-contractual) to third-parties or Affiliates; *less*

(E) any Account Balances (to the extent such Account Balances are available to the Lessee or the Recognized Mortgagee for payment of any amounts specified in clauses (A), (B), (C) or (D) above, *less*

(F) the portion of any lump sum compensation previously paid by the Port Authority to the Lessee in connection with any [redacted] occurring prior to the Early Termination Date with respect to any Lessee Damages not yet incurred; *less*

(G) any insurance or condemnation proceeds (excluding proceeds of personal injury, property damage or other third party liability insurance payable to or for the account of a third party) payable to the Lessee (or that should have been payable to the Lessee but for (1) the insurer's inability to pay or (2) breach by the Lessee of an obligation to take out or maintain insurance pursuant to Article 20 (*Insurance*)) (clauses (A)-(G), together, the "**Unamortized Costs Termination Sum**"); or

(ii) within fifteen (15) days of receipt of the Lessee Termination Notice from the Lessee, notify the Lessee in writing that the Port Authority may desire to continue this Agreement in effect, in which event the Lessee and the Port Authority will promptly enter into good faith negotiations to determine an equitable adjustment to the required deadlines and timeframes for performance and the economic obligations of each of the Lessee and the Port Authority under this Agreement (taking into account any amounts to be recovered by the Lessee from third parties and the Equity Investors' previously-projected internal rate of return). If the Port Authority and the Lessee reach agreement as

to an appropriate equitable economic adjustment by the date that is ninety (90) days after the applicable Lessee Termination Notice is received by the Port Authority, then this Agreement shall not be terminated but shall remain in full force and effect, subject to the agreed-upon adjustments to the Parties' economic obligations hereunder and any resulting amendments to this Agreement. The ninety (90) day period referred to herein may be extended upon the mutual agreement of the Port Authority and the Lessee.

(e) As part of any negotiations between the Parties pursuant to Section 24.2(d)(ii), in determining an equitable adjustment to the terms and obligations contemplated under this Agreement, the Parties may, by mutual agreement of the Parties, extend the Term hereunder or execute an agreement that permits the use and occupancy of the Premises by the Lessee on terms and conditions mutually agreed by the Parties. In considering whether to extend the Term, the Parties will take into consideration whether such exercise is permitted pursuant to the Basic Lease (as the same may be amended or modified from time to time) and Applicable Law and whether prior approval is required by the Board of Commissioners. For greater clarity, the Port Authority is under no obligation whatsoever to extend the Term for any reason.

(f) If, at the end of the ninety (90)-day (or other extended) period referred to in Section 24.2(d)(ii) above, the Port Authority and the Lessee have not reached agreement on terms satisfactory to both Parties to continue this Agreement in effect, this Agreement shall terminate on the date that is twenty (20) days following the end of such ninety (90)-day (or other extended) period, and the Port Authority shall pay to the Lessee, subject to Section 24.4 (*Timing of Payment of Port Authority Termination Sum or Unamortized Costs Termination Sum*) the Unamortized Costs Termination Sum, within sixty (60) days following the date of termination.

Section 24.3 Lessee Debt

For purposes of calculating any Port Authority Termination Sum or Unamortized Costs Termination Sum payable under Section 24.2 (*Termination Rights of the Lessee*), Lessee Debt shall exclude (a) any Equity Member Debt, (b) any default interest unless it is accrued directly as a result of the Port Authority making any payment later than the date that it is due under this Agreement or any other default by the Port Authority under this Agreement, and (c) any Lessee Debt not secured by a Leasehold Mortgage.

Section 24.4 Timing of Payment of Port Authority Termination Sum or Unamortized Costs Termination Sum

The Port Authority Termination Sum or Unamortized Costs Termination Sum, as applicable, shall be due and payable by the Port Authority sixty (60) days after such amount is finally agreed or determined; provided, that the Port Authority may defer, with prior written notice to the Lessee, any such payment for up to one hundred twenty (120) additional days if the Port Authority determines that such additional period is necessary to obtain the prior written approval of the Board of Commissioners or to obtain financing to make such payment. Notwithstanding anything in the foregoing, the Lessee agrees that the payment of the Port Authority Termination Sum or Unamortized Costs Termination Sum, as applicable, that is finally

agreed or determined by the Parties or is determined pursuant to the Dispute Resolution Procedures is subject to the prior written approval of the Board of Commissioners in accordance with the Bylaws; and provided, further, that approval of the Board of Commissioners, which would otherwise be required by the Bylaws, will not be required for a final judgment for payment of the Port Authority Termination Sum or Unamortized Costs Termination Sum, as applicable, by a court of competent jurisdiction, for which all rights to appeal have either been exhausted or have expired. If approval of the Board of Commissioners is required in accordance with the Bylaws, the Port Authority will seek to obtain it in an expeditious and diligent manner, consistent in all respects with Applicable Law.

Section 24.5 Exclusivity of Remedy

(a) Subject to Section 24.5(b) and Section 24.2(c), any Port Authority Termination Sum paid by the Port Authority to the Lessee pursuant to Article 24 (*Grounds for Termination by the Lessee; Other Termination*), Article 25 (*Early Termination of the Basic Lease*) or Article 26 (*Condemnation*) shall be in full and final settlement of the Lessee's rights and claims against the Port Authority for breach and/or termination of this Agreement, without prejudice to:

(i) any antecedent liability of either Party to the other that arose prior to the Early Termination Date (but not from the termination itself) to the extent such liability has not already been taken into account in the calculation of the Port Authority Termination Sum; and

(ii) any liabilities arising in respect of any breach by either Party after the Early Termination Date of any obligation under this Agreement that survives the Early Termination Date, to the extent not taken into account in the calculation of the Port Authority Termination Sum.

(b) Nothing in this Section 24.5 (*Exclusivity of Remedy*) shall act as a waiver of, or constitute or be deemed a discharge of, any of the Lessee's obligations with respect to the condition of the Premises as set forth in Article 16 (*Environmental, Health and Safety Requirements*), including the Lessee's indemnity obligations related thereto.

(c) Nothing in this Section 24.5 (*Exclusivity of Remedy*) shall act as a waiver of, or constitute or be deemed a discharge of, any of the Port Authority's obligations under Section 21.2 (*Indemnification by the Port Authority*).

ARTICLE 25

EARLY TERMINATION OF THE BASIC LEASE

If the Basic Lease is terminated prior to the Expiration Date (as defined in the Basic Lease) (a) pursuant to the occurrence of any of the events described in Section 25.1 of the Basic Lease (unless such termination resulted from the failure of the Lessee to comply with its obligations under this Agreement) and, if the termination is disputed, such termination is determined to be final and binding on the parties to the Basic Lease and is no longer subject to

appeal; or (b) pursuant to an amendment, restatement, modification or addition to the Basic Lease entered into by the Port Authority and the City by mutual consent, freely given, then, in each such case, the Port Authority shall pay to the Lessee the Port Authority Termination Sum in accordance with Section 24.4 (*Timing of Payment of Port Authority Termination Sum or Unamortized Costs Termination Sum*); provided, that the Port Authority Termination Sum shall not be due and payable if: (A) the Lessee has entered into a lease with (1) the City or (2) any successor or permitted assignee of the Port Authority to which the Port Authority's interest in this Agreement shall have been transferred, in each case, on substantially similar terms as this Agreement, or (B) a non-disturbance and consent agreement in typical form on terms acceptable to the Lessee, or other agreement which reinstates this Agreement or provides for another lease or occupancy agreement on substantially similar terms as this Agreement, has been executed and delivered by the City, and in each of sub-clauses (A) and (B) above, the Lessee has not been prevented from continuously performing the Work on the Premises in accordance with the terms of this Agreement.

ARTICLE 26

CONDEMNATION

Section 26.1 Condemnation by the Port Authority

If all or a Material Portion of the Premises is acquired by the Port Authority through condemnation or the power of eminent domain, then the Lessee may serve a Termination Notice (the "**Condemnation Termination Notice**") on the Port Authority. The Condemnation Termination Notice must specify the details of such condemnation which has occurred entitling the Lessee to terminate. This Agreement will terminate automatically on the Early Termination Date specified in the Condemnation Termination Notice; provided, that in no event shall such date be earlier than twenty (20) days after the date of the Condemnation Termination Notice. If this Agreement is terminated pursuant to this Section 26.1 (*Condemnation by the Port Authority*), the Port Authority shall pay to the Lessee the Port Authority Termination Sum, which shall be calculated as if such condemnation had not occurred.

Section 26.2 Condemnation by a Governmental Entity

If all or a Material Portion of the Premises is acquired by a Governmental Entity through condemnation or the power of eminent domain, then the Lessee may serve a Condemnation Termination Notice on the Port Authority. The Condemnation Termination Notice must specify the details of such condemnation which has occurred entitling the Lessee to terminate. This Agreement will terminate automatically on the Early Termination Date specified in the Condemnation Termination Notice; provided, that in no event shall such date be earlier than twenty (20) days after the date of the Condemnation Termination Notice. If this Agreement is terminated pursuant to this Section 26.2 (*Condemnation by a Governmental Entity*) and the Port Authority has received payment for damages allocable to the Port Authority's leasehold interest in LGA Airport, the Port Authority shall pay to the Lessee that portion of damages received from the Governmental Entity that represents, in the Port Authority's determination, a fair and

reasonable allocation of available funds to the Lessee's interest in the Premises, and such allocation shall be final and binding on the Lessee.

ARTICLE 27

ACTIONS UPON TERMINATION

Section 27.1 Actions Upon Termination

(a) If a Termination Notice is delivered prior to the Final Acceptance Date, subject to the Lenders' rights under any Direct Agreement the Lenders or the Collateral Agent may have with respect to the D&C Contract, the Port Authority will elect, by written notice to the Lessee and the D&C Contractor delivered within ninety (90) days after the date on which such Termination Notice is delivered, to continue in effect the D&C Contract or to require its termination. If the Port Authority does not deliver written notice of election within such ninety (90)-day period, the Port Authority will be deemed to elect to require termination of the D&C Contract. If the Port Authority elects to continue the D&C Contract in effect in accordance with this Section 27.1(a), then promptly upon notice thereof from the Port Authority, the Lessee will execute and deliver to the Port Authority a written assignment, in form and substance acceptable to the Port Authority, of all the Lessee's right, title and interest in and to the D&C Contract, and the Port Authority will assume in writing the Lessee's obligations thereunder that arise from and after the Early Termination Date. If the Port Authority elects (or is deemed to elect) to require termination of the D&C Contract, then the Lessee will:

(i) take such steps as are necessary to terminate the D&C Contract, including notifying the D&C Contractor that the D&C Contract is being terminated and that the D&C Contractor is to immediately stop work and stop and cancel orders for materials, services or facilities unless otherwise authorized in writing by the Port Authority;

(ii) immediately and safely demobilize and secure construction, staging, lay down and storage areas for the Construction Project and Utility Relocations included in the Construction Work in a manner satisfactory to the Port Authority, and remove all debris and waste materials except as otherwise approved by the Port Authority in writing;

(iii) take such other actions as are necessary or appropriate to mitigate further cost;

(iv) subject to the prior written approval of the Port Authority, settle all outstanding liabilities and all Claims arising out of the D&C Contract;

(v) cause the D&C Contractor to execute and deliver to the Port Authority a written assignment, in form and substance acceptable to the Port Authority, of all the D&C Contractor's right, title and interest in and to (A) all third-party agreements and permits; provided, that the Port Authority assumes in writing all of the D&C Contractor's obligations thereunder that arise after the Early Termination Date and (B) all assignable

warranties and Claims held by the D&C Contractor against other Contractors and other third-parties in connection with the Construction Project or the D&C Work; and

(vi) carry out such other directions as the Port Authority may give for suspension or termination of the D&C Work performed under the D&C Contract.

(b) If, as of the date on which any Termination Notice is delivered, the Lessee has entered into any other Contract for the design, construction, permitting, installation and equipping of the Construction Project, subject to the rights of the Recognized Mortgagees pursuant to Article 18 (*Lenders' Rights and Remedies; Refinancing*), the Port Authority will elect, by written notice to the Lessee, to continue in effect such Contract or to require its termination. If the Port Authority elects to continue the Contract in effect in accordance with this Section 27.1(b), then the Lessee will execute and deliver to the Port Authority a written assignment, in form and substance acceptable to the Port Authority, of all the Lessee's right, title and interest in and to the Contract, and the Port Authority will assume in writing the Lessee's obligations thereunder that arise from and after the Early Termination Date. If the Port Authority elects to require termination of the Contract, then the Lessee will take actions comparable to those set forth in Section 27.1(a) with respect to such Contract.

Section 27.2 Termination Transition Plan

(a) Within three (3) days after receipt by the relevant Party of a Termination Notice, the Parties shall meet and confer with each other for the purpose of developing an interim transition plan (the "**Termination Transition Plan**") for the orderly transition of Work, demobilization and transfer of control of the Premises to the Port Authority. The Parties shall use diligent efforts to complete preparation of the interim Termination Transition Plan within fifteen (15) days after the date the relevant Party receives the Termination Notice.

(b) The Parties shall use diligent efforts to complete a final Termination Transition Plan within thirty (30) days after receipt by the relevant Party of a Termination Notice. The final Termination Transition Plan shall be in form and substance acceptable to the Port Authority and shall include and be consistent with the other provisions and procedures set forth in this Article 27 (*Actions Upon Termination*), all of which procedures the Lessee shall promptly follow, regardless of any delay in preparation or acceptance of the interim or final transition plan. The final Termination Transition Plan shall include an estimate of costs and expenses to be incurred by both Parties in connection with implementation of the Termination Transition Plan.

(c) Notwithstanding the foregoing, nothing in this Section 27.2 (*Termination Transition Plan*) shall limit the Parties' rights and obligations with respect to the performance of an Exit Baseline Report as provided in Section 16.13 (*Handback Environmental Report and Exit Baseline Report*).

Section 27.3 Handback of Premises

(a) On the Expiry Date, or as soon thereafter as is possible as provided in the final transition plan, the Lessee shall relinquish and surrender full control and possession of the

Premises to the Port Authority or the Port Authority's Authorized Representative, and shall cause all Persons claiming under or through the Lessee to do likewise, in at least the condition required by the Handback Requirements.

(b) On the later of the Expiry Date or the date the Lessee relinquishes control and possession as provided in the final transition plan, the Port Authority shall assume responsibility, at its expense (subject to the right to recover damages under this Agreement), for the Premises.

Section 27.4 Transfer of Personal Property

(a) The Lessee shall deliver to the Port Authority on the Expiry Date or the Early Termination Date, as applicable, all tangible personal property, reports, Books and Records necessary or useful for the Work, and, to the extent provided in Article 31 (*Intellectual Property*), Intellectual Property used or owned by the Lessee or any Contractor or Supplier relating to the Construction Project or the Work; excluding, however, all personal property, machinery, equipment and tools owned or leased by any Contractor or Supplier and not incorporated or intended to be incorporated into the Construction Project. The Lessee hereby agrees to deliver an executed bill of sale or such other document of conveyance as the Port Authority deems acceptable to transfer the Lessee's interest in the aforesaid items to the Port Authority free and clear of all Liens.

(b) The Lessee shall use Reasonable Efforts to assure that any of the Lessee's personal property which is leased and any of the Lessee's personal property which is or is subject to an intellectual property license, is assignable to the Port Authority.

(c) Upon the occurrence of the Expiry Date or an Early Termination Date, as the case may be, the Lessee shall grant to the Port Authority, for itself and on behalf of any other Lessee-Related Entity, a license to use Intellectual Property owned or licensable by the Lessee or any other Lessee-Related Entity in accordance with Section 31.1(b), for the limited purposes permitted by such Section 31.1(b).

Section 27.5 Exclusive Termination Rights

Article 23 (*Lessee Events of Default*), Article 24 (*Grounds for Termination by the Lessee; Other Termination*), Article 25 (*Early Termination of the Basic Lease*), Article 26 (*Condemnation*) and this Article 27 (*Actions Upon Termination*) contain the entire and exclusive provisions and rights of the Port Authority and the Lessee regarding termination of this Agreement, and any and all other rights to terminate under Applicable Law are hereby waived to the maximum extent permitted by Applicable Law.

Section 27.6 Acceptance of Surrender of Lease

(a) Neither a surrender or termination of this Agreement nor any agreement to surrender or terminate this Agreement (or to accept a surrender or termination of this Agreement) 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 and each

Recognized Mortgagee; provided, that no surrender or termination of this Agreement (or any agreement to surrender or terminate or to accept a surrender or termination) shall require the consent or approval (in writing or otherwise) of the Recognized Mortgagees:

(i) for a termination of this Agreement by the Port Authority in compliance with Section 23.3 (*Remedies of the Port Authority Upon Event of Default*) and after giving full effect to Article 18 (*Lenders' Rights and Remedies; Refinancing*); or

(ii) for a termination of this Agreement by the Lessee in accordance with Section 24.2 (*Termination Rights of the Lessee*) or Section 26.1 (*Condemnation by the Port Authority*); provided, that any Port Authority Termination Sum or Unamortized Costs Termination Sum, as applicable, required under this Agreement shall have been paid in full by the Port Authority; or

(iii) for a termination of this Agreement by the Lessee in accordance with Section 26.2 (*Condemnation by a Governmental Entity*); provided, that the amounts provided for in Section 26.2 (*Condemnation by a Governmental Entity*) shall have been paid in full by the Port Authority; or

(iv) the Port Authority has agreed in writing to make payment in full of the Port Authority Termination Sum, the Unamortized Costs Termination Sum or other sums provided for in Section 26.2 (*Condemnation by a Governmental Entity*), as may be applicable.

(b) Nothing in this Section 27.6 (*Acceptance of Surrender of Lease*) shall be interpreted to undermine or otherwise compromise the Port Authority's rights under Section 24.4 (*Timing of Payment of Port Authority Termination Sum or Unamortized Costs Termination Sum*) or any other provision of this Agreement.

(c) Except as expressly provided in this Section 27.6 (*Acceptance of Surrender of Lease*), 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 of this Agreement.

ARTICLE 28

RIGHT TO PERFORM THE LESSEE'S OBLIGATIONS

Section 28.1 Right to Perform the Lessee's Obligations

If the Lessee fails to perform any of its obligations under this Agreement within the time period specified in the other Sections of this Agreement or in any other Project Document, or if no such time period is specified, within fifteen (15) Business Days after notice from the Port Authority (or, with respect to obligations which by their nature are not susceptible to complete performance within such fifteen (15)-Business Day period, within such additional time period as may be permitted by the Port Authority so long as the Lessee has commenced performance within such fifteen (15)-Business Day period), then in such event, the Port Authority, in addition

to all other remedies available to it, shall have the right, subject to the rights of the Recognized Mortgagees pursuant to Article 18 (*Lenders' Rights and Remedies; Refinancing*), but under no circumstances any duty or obligation whatsoever, to perform any of such obligations (such performance to comply with Applicable Law); provided, that in no event shall the Port Authority be held in breach of this Agreement as a result of such performance, without further notice; provided, further, that if the Lessee's failure to perform has resulted in an Emergency, the Port Authority shall have the right to perform any of the Lessee's obligations in order to cure such Emergency without providing any cure period or notice to the Lessee. Nothing in this Agreement, including this Section 28.1 (*Right to Perform the Lessee's Obligations*), shall be construed as imposing any duty on the Port Authority to perform any obligation required to be performed by the Lessee hereunder and the performance of any such obligation by the Port Authority shall not constitute a waiver of the Lessee's default in failing to perform the same. So long as the Port Authority undertakes any such action in accordance with this Section 28.1 (*Right to Perform the Lessee's Obligations*) in good faith, even if under a mistaken belief in the occurrence of a breach of the obligations of the Lessee hereunder, such action will not be deemed unlawful or a breach of this Agreement, will not expose the Port Authority to any liability to the Lessee and will not entitle the Lessee to any remedy, it being acknowledged that the Port Authority has a high-priority, paramount public interest in the continuous operations and maintenance of the Terminal B Facilities, the provision and maintenance of continuous public access to the Premises and the protection of public and worker safety. The foregoing will not, however, protect the Port Authority from the Lessee's lawful Claims for recovery for third-party bodily injury or property damage arising out of any such Port Authority action, if and to the extent such injury or property damage was caused by the Port Authority's gross negligence and the third-party liability is not insured and not required to be insured pursuant to this Agreement. At the written request of the Port Authority, the Lessee shall promptly and diligently enforce against the Lead Contractor and shall require the Lead Contractor to enforce against any of its subcontractors any right expressly granted to the Port Authority in the D&C Contract. This provision shall not be construed to qualify or otherwise limit the Port Authority's rights or remedies provided in this Section 28.1 (*Right to Perform the Lessee's Obligations*) or elsewhere in this Agreement.

Section 28.2 Reimbursement by the Lessee

An amount equal to one hundred fifteen percent (115%) of all out-of-pocket costs, expenses, damages, penalties and other charges paid or directly incurred by the Port Authority in connection with its performance of any obligation of the Lessee pursuant to this Article 28 (*Right to Perform the Lessee's Obligations*), together with late charges calculated pursuant to Section 35.16(a) (*Late Charges*) for the period from the respective dates of the making of each such payment or incurring of each such cost, expense, damages, penalty or other charge, until the date of actual repayment to the Port Authority, shall be paid by the Lessee to the Port Authority within thirty (30) days of receipt by the Lessee of the Port Authority's written notice thereof, with a statement of such sums, costs, expenses, damages, penalties and other charges and evidence of payment thereof, and such payment due from the Lessee to the Port Authority shall be recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the Base Rent as set forth in Section 4.2 (*Base Rent*).

ARTICLE 29

LIMITATIONS ON THE LESSEE'S RIGHT TO RELY

Section 29.1 Rights of the Port Authority

The Lessee expressly acknowledges and agrees that the Port Authority's rights under the Project Documents, including its rights:

(a) to review, comment on, approve, disapprove and/or accept designs, plans, specifications, work plans, construction, equipment, installation, plans for maintenance and/or the Work and other Submittals and requests, books, records, reports or statements, or documents pertaining to Lessee Debt and Funding Agreements,

(b) to review, comment on and approve or disapprove qualifications and performance of, and to communicate with, Contractors and Suppliers, and

(c) to perform oversight,

exist solely for the benefit and protection of the Port Authority, do not create or impose upon the Port Authority any standard or duty of care toward any Lessee-Related Entity, all of which are hereby disclaimed, and may not be relied upon, nor may the Port Authority's exercise or failure to exercise any such rights be relied upon, by the Lessee in determining whether the Lessee has satisfied the standards and requirements set forth in this Agreement and may not be asserted, nor may the Port Authority's exercise or failure to exercise any such rights be asserted, against the Port Authority by the Lessee as a defense, legal or equitable, to the Lessee's obligation to fulfill such standards and requirements.

Section 29.2 No Duty or Obligation

To the maximum extent permitted by Applicable Law, and subject to the provisions of this Agreement, the Lessee hereby releases and discharges the Port Authority from any and all duty and obligation to cause permitting, Utility Relocation, construction, equipping, operations, maintenance, renewal, replacement or other management of or for the Construction Project or the Premises by the Port Authority to satisfy the standards and requirements set forth in the Project Documents.

Section 29.3 No Relief or Waiver

No rights of the Port Authority described in Section 29.1 (*Rights of the Port Authority*), no exercise or failure to exercise such rights, no failure of the Port Authority to meet any particular standard of care in the exercise of such rights, no issuance of permits, Temporary Certificate of Authorization to Occupy or Use, Certificate of Substantial Completion or Certificate of Final Acceptance will:

(a) relieve the Lessee from performance of the Work or of its responsibility for the selection and the competent performance of its Contractors and Suppliers;

(b) except to the extent expressly stated herein, relieve the Lessee of any of its obligations or liabilities under the Project Documents;

(c) be deemed or construed to waive any of the Port Authority's rights and remedies under the Project Documents; or

(d) be deemed or construed as any kind of representation or warranty, express or implied, by the Port Authority.

Section 29.4 Limited Right to Rely on Certain Notices and Certificates by the Port Authority

Notwithstanding Sections 29.1 (*Rights of the Port Authority*), 29.2 (*No Duty or Obligation*) and 29.3 (*No Relief or Waiver*): (a) any Notices to Proceed, Temporary Certificate of Authorization to Occupy or Use, Certificate of Substantial Completion and Certificate of Final Acceptance will be binding on the Port Authority and the Lessee will be entitled to rely thereon; provided, however, that the delivery of such notices and certificates will not constitute a waiver by the Port Authority of any breach of this Agreement by the Lessee or relieve the Lessee of any of its obligations hereunder; (b) the Lessee will be entitled to rely on specific approved Lessee Change Requests and (c) the Port Authority is not relieved from any liability arising out of a knowing, intentional material misrepresentation under any written statement the Port Authority delivers.

ARTICLE 30

MAINTENANCE AND INSPECTION OF RECORDS

Section 30.1 Maintenance and Inspection of Records; Ownership

(a) In addition to and without limiting Section 1.1 (*Definitions*) or any term or provision of this Agreement, the Lessee shall keep and maintain, and cause its Contractors and Suppliers, to keep and maintain, in accordance with the applicable Rules and Regulations (including the Port Authority's Information Security Handbook), appropriate books and records in which complete and correct entries will be made of its transactions at, through or in any way connected with the Work and the Premises, in accordance with GAAP or any other generally accepted accounting standards which are acceptable to the Port Authority (provided, that Excepted Contractors and Excepted Suppliers, while required to keep and maintain such books and records, shall not be required to keep and maintain such books and records in accordance with GAAP or such other accounting standards) (collectively, the "**Books and Records**"). The Books and Records shall include and show (i) all matters with respect to the costs of the Construction Work; (ii) all matters which the Lessee is required to certify to the Port Authority pursuant to this Agreement; and (iii) any and all other matters concerning the Lessee's operations at the Premises with respect to which the Port Authority may reasonably need information to fulfill its obligations or exercise its rights under this Agreement, whether or not of the type enumerated above in this Section 30.1(a) and whether or not an express obligation to keep books and records with regard thereto is expressly set forth elsewhere in this

Agreement. Neither the Lessee nor such Contractors and Suppliers shall be obligated to preserve the Books and Records (x) with respect to the Books and Records generated prior to the Substantial Completion Date, for more than seven (7) years after the Substantial Completion Date and (y) with respect to the Books and Records generated after the Substantial Completion Date, for more than seven (7) years after the date such Books and Records are generated (or, in each case, if the Project Documents specify any longer period of time for retention of any particular Books and Records, such longer time period), unless they are material to litigation initiated within that time, in which event they shall be preserved until the final determination of the controversy.

(b) In addition to the Books and Records required to be maintained pursuant to Section 30.1(a), the Lessee shall keep and maintain, and cause its Contractors and Suppliers to keep and maintain, all Design Documents and Construction Documents that are prepared or procured by or on behalf of the Lessee for the D&C Work as required under the Project Documents, as well as all records, documentation and other supporting information evidencing the application of Port Authority Funding to the Construction Project, including copies of all original documents delivered to the Port Authority. The Lessee shall keep and maintain, and cause its Contractors and Suppliers to keep and maintain, the Design Documents and Construction Documents in accordance with applicable provisions of the Project Documents and in accordance with Best Management Practice; provided, that in any event, the obligation to maintain the Design Documents and Construction Documents as provided in this Section 30.1(b) shall remain in effect until such time as the Lessee is required to transfer such documentation to the Port Authority upon the Expiry Date or Early Termination Date, as the case may be, unless the Design Documents or Construction Documents are material to litigation initiated within that time, in which event they shall be preserved until the final determination of the controversy.

(c) All Books and Records, Design Documents, Construction Documents and other documentation required to be kept and maintained in accordance with Sections 30.1(a) and 30.1(b) shall be so kept and maintained in an office or offices in the Port of New York District unless (i) a Contractor or a Supplier does not maintain an office in the Port of New York District, in which case such documentation shall be kept and maintained at an office or offices of such Contractor or Supplier located in the continental United States of America or (ii) a Supplier does not maintain an office in the continental United States of America, in which case such documentation shall be kept and maintained at the Supplier's principal place of business.

(d) All Design Documents and Construction Documents that are prepared or procured by or on behalf of the Port Authority in connection with the Terminal B Facilities, whether before or after the Lease Commencement Date, shall be and remain the exclusive property of the Port Authority.

(e) Prior to the Expiry Date or Early Termination Date, as applicable, all Design Documents and Construction Documents prepared or procured by or on behalf of the Lessee in connection with the Terminal B Facilities or the Work will remain exclusively the property of the Lessee, notwithstanding any delivery of copies thereof to the Port Authority. Upon the Expiry Date or Early Termination Date (including as a result of a termination by the Lessee),

as applicable, (i) the Lessee shall promptly turn over to the Port Authority copies of all Design Documents and Construction Documents the Lessee owns and (ii) subject to Article 31 (*Intellectual Property*), all such Design Documents and Construction Documents shall be deemed the sole and exclusive property of the Port Authority, without compensation due to the Lessee, any other Lessee-Related Entity or any other Person.

Section 30.2 Audit; Inspection

(a) The Port Authority shall have the right to audit and inspect all Books and Records, all Design Documents and all Construction Documents and any other documentation as the Port Authority may reasonably request in connection with the Work or the Premises, for any purpose related to the Work, the Premises or this Agreement, during ordinary business hours, and as often as it may consider necessary, at no cost or charge to the Port Authority, and the Lessee shall permit, and cause its Contractors and Suppliers to permit, such audit and inspection by officers, employees and authorized representatives of the Port Authority; provided, however, that the Port Authority may exercise such right unannounced and at any time during the pendency of an Event of Default or where the Port Authority suspects willful misconduct or fraud. The Lessee shall provide, and cause its Contractors and Suppliers to provide, to the Port Authority copies of all such Books and Records, Design Documents, Construction Documents and such other documentation as and when reasonably requested by the Port Authority. The right of inspection includes the right to make copies and extracts and take notes. If the Books and Records, Design Documents, Construction Documents and other documentation required to be kept and maintained in accordance with Section 30.1 (*Maintenance and Inspection of Records; Ownership*) are kept and maintained outside of the Port of New York District by a Contractor or Supplier, then the Lessee shall reimburse, or cause such Contractor or Supplier, as applicable, to reimburse, the Port Authority for the reasonable costs of travel, meals and lodging of any authorized officer, employee or representative of the Port Authority and the Project Integrity Monitor auditing or examining the same, to the extent permitted under this Agreement, at the location at which they are maintained; provided, however, that if such Books and Records, Design Documents, Construction Documents and other documentation are kept and maintained outside of the continental United States of America in accordance with Section 30.1(c), the Lessee shall also reimburse, or cause such Supplier to reimburse, the Port Authority for salaries, benefits, overhead costs and additional related fees and charges of any authorized officer, employee or representative of the Port Authority or Project Integrity Monitor conducting such audit and examination.

(b) In addition to any other specific audit rights that the Port Authority may have under the Project Documents, the Port Authority shall have such rights to review and audit the Lessee and its Contractors and Suppliers and their respective Books and Records as the Port Authority deems necessary for purposes of verifying compliance with the Project Documents, Applicable Law and Applicable Standards. Without limiting the foregoing, the Port Authority shall have the right to inspect all or any portion of the Work and/or incidental activities, and to observe the business operations of the Lessee and its Contractors and Suppliers in order to confirm the accuracy of their respective Books and Records and verify the accuracy and

adequacy of the plans relating to the Work required by the Requirements and Provisions for Work and other relevant Project Documents.

(c) The Lessee shall install and use, and shall cause its Contractors and Suppliers (other than Excepted Contractors and Excepted Suppliers), to install and use, such computerized recordkeeping systems respecting, among other things, revenues, expenses, work orders and time records as may be appropriate to the Lessee's or such Contractor's or Supplier's business and necessary or prudent in order that accurate Books and Records are kept; provided, that, for the avoidance of doubt, nothing contained in this Section 30.2(c) shall otherwise limit the obligation of Excepted Contractors and Excepted Suppliers to maintain and keep accurate non-computerized Books and Records, Construction Documents, Design Documents and other documentation in accordance with this Article 30 (*Maintenance and Inspection of Records*).

(d) The Lessee represents and warrants the completeness and accuracy in all material respects of all information it or its agents provides in connection with the Port Authority audits, and shall use Reasonable Efforts to cause all Contractors and Suppliers to warrant the completeness and accuracy in all material respects of all information such Contractors and Suppliers provide in connection with the Port Authority audits.

(e) The Lessee shall (and shall cause any Contractor and Supplier to) include appropriate terms in each Contract in order to provide the Port Authority with access and audit rights in accordance with the terms of this Article 30 (*Maintenance and Inspection of Records*).

(f) For the avoidance of doubt, whenever the Lessee has undertaken a selection process, whether through a request for proposals or otherwise, the Port Authority may, at any time during the Term, request true and complete copies of all proposals submitted for the Lessee's consideration and the Lessee shall cause all of such information to be provided to the Port Authority free of any non-disclosure or confidentiality restrictions.

Section 30.3 Semi-Annual Meetings; Information Sharing

There shall be meetings between representatives of the Port Authority and representatives of the Lessee to discuss the use and operation of the Premises, including, without limitation, the status and performance of the concession program at the Terminal B Facilities, the operation of the Premises for passenger air-transportation-related uses, the Sublesses (including prospective Sublesses) and the Work on a semi-annual basis, or more frequently as either the Port Authority or the Lessee may reasonably request. The Lessee shall have a good faith obligation to inform the Port Authority as promptly as reasonably possible after it becomes aware of any event or condition that has occurred or is likely to occur that could reasonably be expected to result in any material impact on the operating and financial performance of the Lessee. The requirements of this Section 30.3 (*Semi-Annual Meetings; Information Sharing*) shall be in addition to and not in replacement of the meetings of the design and construction working group pursuant to Section 8.5(b) and the other cooperation and coordination obligations of the Parties contained herein.

ARTICLE 31

INTELLECTUAL PROPERTY

Section 31.1 Intellectual Property

(a) The Lessee shall deliver copies of all available documentation evidencing Intellectual Property owned or licensed by the Lessee which it uses in performing the Work. Except as expressly provided in Section 1.16 of the General Conditions, all Intellectual Property contained in the Work owned or licensed by the Lessee on the Lease Commencement Date or developed by the Lessee during the Term shall remain exclusively the property of the Lessee that supplies the same, as applicable, notwithstanding any delivery of copies thereof to the Port Authority or any other provision contained in this Agreement.

(b) At the Port Authority's request, the Lessee shall grant a nonexclusive, transferable (subject to Section 31.1(d)), royalty-free, irrevocable, worldwide, fully paid up right and license to use, reproduce, modify, adapt, disclose to and sublicense to other persons engaged by or on behalf of the Port Authority (directly or indirectly) in connection with the Premises, the Intellectual Property owned or licensable by the Lessee; provided, that the Port Authority shall have the right to exercise such license only as follows:

(i) during the Term only in connection with the operation of the Premises by the Port Authority;

(ii) from and after the Expiry Date or an Early Termination Date, as applicable, in which case the Port Authority may exercise such license only in connection with the operation of the Premises;

(iii) during any time that the Port Authority is exercising its rights pursuant to Article 28 (*Right to Perform the Lessee's Obligations*), in which case the Port Authority may exercise such license only in connection with the operation of the Premises; and

(iv) during any time that the Lessee has been replaced, in which case the Port Authority may exercise such license only in connection with the operation of the Premises.

(c) The Port Authority shall have no right to sell any Intellectual Property of the Lessee or to use, reproduce, modify, adapt and disclose, or allow any party to use, reproduce, modify, adapt and disclose, any such Intellectual Property for any other purpose other than as set forth in Section 31.1(b) and shall ensure that any Person to which it discloses any Intellectual Property pursuant to the licenses granted under this Section 31.1 (*Intellectual Property*) agrees to be bound by the provisions of this Section 31.1 (*Intellectual Property*) and the confidentiality obligations set out in Section 35.18 (*Confidentiality*) of this Agreement with respect to such Intellectual Property.

(d) The right to transfer the license is limited to any Governmental Entity that succeeds to the power and authority of the Port Authority generally or with respect to the Premises.

(e) The Lessee shall continue to have a full and complete right to use any and all duplicates or other originals of its Intellectual Property in any manner it chooses.

(f) With respect to any Intellectual Property that is not owned or licensable by the Lessee, the Lessee shall use Reasonable Efforts to obtain from the owner of such Intellectual Property (or any person entitled to license such Intellectual Property), concurrently with execution of any contract, subcontract or purchase order with such Person or with the first use or adaptation of the Intellectual Property in connection with the Work or the Premises, both for the Lessee and the Port Authority, a nonexclusive, transferable (subject to Section 31.1(d)), irrevocable, royalty-free license to use, reproduce, modify, adapt and disclose such Intellectual Property solely in connection with Work or the Premises of at least identical scope, purpose, duration and applicability as the license granted under Section 31.1(b). Any such license shall be subject to the terms of this Article 31 (*Intellectual Property*).

Section 31.2 Maintenance of Data

(a) To the extent that any data, materials and documents referred to in this Article 31 (*Intellectual Property*) are generated by or maintained on a computer or similar system, the Lessee shall use Reasonable Efforts to procure for the benefit of the Port Authority, at no charge or at the lowest reasonable fee, the grant of a license or sub-license for any relevant software to enable the Port Authority or its nominee to access and otherwise use (subject to the payment by the Port Authority of the relevant fee, if any) such data for the purposes set forth in Section 31.1 (*Intellectual Property*). As an alternative, the Lessee may provide such data, materials or documents in a format which may be read by software generally available in the market at the relevant time.

(b) The Lessee shall ensure the backup and storage in safe custody of the data, materials and documents referred to in Section 31.2(a) in accordance with Best Management Practice. Without prejudice to this obligation, the Lessee shall submit to the Port Authority's Authorized Representative for approval its proposals for the backup and storage in safe custody of such data, materials and documents and the Port Authority shall be entitled to object if the same is not in accordance with Best Management Practice. The Lessee shall comply, and shall use Reasonable Efforts to cause all Lessee-Related Entities to comply, with all procedures to which the Port Authority's Authorized Representative has given its approval. The Lessee may vary its procedures for such back-up and storage subject to submitting its proposals for change to the Port Authority's Authorized Representative, who shall be entitled to object on the basis set out above.

Section 31.3 Lessee's Intellectual Property Indemnity

Where a claim or proceeding is made or brought against the Port Authority which alleges any patent, trademark, or copyright infringement or other allegedly improper appropriation or

use by any Lessee-Related Entity of Intellectual Property in performance of the Work, or arising out of any use of Intellectual Property furnished or communicated to the Port Authority or any other Port Authority Indemnified Party pursuant to the Project Documents, then the Lessee shall indemnify and hold harmless the Port Authority at all times from and against all Losses arising out of, based on or related to such claims and proceedings, and the provisions of Section 21.1(m) and Section 21.3 (*Defense of Third-Party Claims*) shall apply; provided, that this indemnity shall not apply to any claim or proceeding for infringement or other improper appropriation or use resulting from the use by the Port Authority of Intellectual Property otherwise than in accordance with the terms thereof (provided, that such terms have been provided to the Port Authority by the Lessee in writing) or the terms of this Agreement.

Section 31.4 Use of Design Documents and Construction Documents by the Port Authority

Following the delivery of a Termination Notice to or by the Lessee prior to the Final Acceptance Date or following Final Acceptance, (a) if the Port Authority uses or modifies the Design Documents or the Construction Documents in connection with the Construction Project, the Port Authority agrees to (i) remove the Lessee's and any relevant Lessee-Related Entity's name(s) from the title block of any such Design Documents or Construction Documents, and (ii) defend, indemnify and hold the Lessee and any relevant Lessee-Related Entity harmless from any claim, demand or liability arising out of the use by the Port Authority of such portions of the Design Documents or the Construction Documents that have been expanded, supplemented or otherwise modified by the Port Authority or any third party without the prior consent of the Lessee and the Lead Contractor, and (b) the Port Authority agrees not to sell or use the Design Documents or Construction Documents or allow any party to sell or use the Design Documents or Construction Documents for any purpose other than in connection with the Construction Project, without the prior consent of the Lessee and the Lead Contractor.

Section 31.5 Naming Rights

(a) The Port Authority shall own all naming rights for the Terminal B Facilities or any portion of the Premises, including the right to name, and change the name of, the Terminal B Facilities or any portion of the Premises, and sell, lease or license such naming rights. The Lessee shall not have the right to name, change the name of, or sell, lease or license to any third-party or otherwise encumber any naming rights associated with, the Terminal B Facilities, or any portion of the Premises, in each case, without the prior written consent of the Port Authority, which consent may be withheld, delayed or otherwise conditioned in the sole discretion of the Port Authority.

(b) The Port Authority, in its sole discretion, shall have the right to cause the Lessee to change, at the Port Authority's expense, any signage on or at the Terminal B Facilities or any portion of the Premises, at any time during the Term upon ninety (90) days' prior notice to the Lessee.

ARTICLE 32

REQUESTING AIRLINES AT LGA AIRPORT

Section 32.1 General

In the event that conditions exist such that the Port Authority may exercise the rights, powers and authority granted to the Port Authority by this Article 32 (*Requesting Airlines at LGA Airport*) herein, the Port Authority may exercise the rights, powers and authority granted by this Article 32 (*Requesting Airlines at LGA Airport*), at the Port Authority's sole option.

Section 32.2 Response to Requesting Airline and Port Authority Determination

(a) If at any time a Scheduled Aircraft Operator that holds an Operating Authorization makes a request to the Lessee to make Accommodations at the Existing Terminal B Facilities or the New Terminal B Facilities, as applicable, available to such Scheduled Aircraft Operator and the Lessee determines that the proposed operations of such Scheduled Aircraft Operator cannot be reasonably accommodated on a timely basis in the Existing Terminal B Facilities or the New Terminal B Facilities, as applicable, upon the written request of the Port Authority identifying such Scheduled Aircraft Operator as a Requesting Airline, the Lessee, in furtherance of the public interest of having the Existing Terminal B Facilities and the New Terminal B Facilities fully and effectively utilized and in accordance with the terms and conditions hereof, shall use Reasonable Efforts to provide Accommodations to the Requesting Airline. If the Lessee fails to reach agreement with such Requesting Airline for such Accommodations, the Lessee shall so advise the Port Authority promptly after the Lessee informs the Requesting Airline that the Requesting Airline will not be provided with Accommodations. Thereafter, the Port Authority shall make a determination as to whether the Lessee should provide Accommodations to such Requesting Airline.

(b) The determination made by the Port Authority pursuant to Section 32.2(a) shall be made on a reasonable basis taking into consideration, together with any other factors regarding Gate usage at LGA Airport reasonably deemed to be relevant by the Port Authority, the following factors:

(i) the requirements and obligations of the Lessee or the Port Authority, as applicable, pursuant to Applicable Law, agreement and otherwise, including as the lessee of the Premises, the operator of LGA Airport and as an applicant for and recipient of governmental grants, Federal airport aid, Passenger Facility Charges and other monies, as the case may be;

(ii) available opportunities for the Requesting Airline to enter into an accommodation agreement at terminals not owned or operated by the Lessee;

(iii) operational considerations of the Port Authority, the Lessee and LGA Airport;

(iv) the compatibility of the flights, schedules, flight times, operations, operating practices, and Aircraft equipment of the Requesting Airline with those of the Airline Sublessees;

(v) effects on the efficiency of the Airline Sublessees' flight operations;

(vi) effects on the ability of the Airline Sublessees to retain their Operating Authorizations;

(vii) the actual and projected growth of the number of enplanements and flight operations of the Airline Sublessees;

(viii) the availability of opportunities for the Requesting Airline to obtain reasonable, timely, accommodation from the Airline Sublessees or other Scheduled Aircraft Operators at LGA Airport;

(ix) the then-existing utilization of Gates at the Existing Terminal B Facilities or the New Terminal B Facilities, as applicable, by the Airline Sublessees compared with the then-existing utilization of gates at the other passenger terminals in LGA Airport;

(x) the need for labor harmony and compliance with collective bargaining agreements; and

(xi) the number, availability and type (e.g., wide-body or narrow body) of Gates and other Aircraft parking positions at the Existing Terminal B Facilities or the New Terminal B Facilities, as applicable.

(c) In making the determination set forth in Sections 32.2(a) and 32.2(b), the Port Authority will attempt to accommodate a Requesting Airline by directing the Requesting Airline to schedule the arrival or departure time of a flight at a time that is not in conflict with the arrival or departure time of a flight of an Airline Sublessee if such direction is consistent with the requirements of the Operating Authorization associated with such flight of the Requesting Airline.

(d) If, after notice from the Port Authority to provide Accommodations to a specific Requesting Airline, the Lessee shall, in good faith, believe that the operations of such specific Requesting Airline in the Existing Terminal B Facilities or the New Terminal B Facilities, as applicable, would cause an Airline Sublessee to be unable to utilize any Operating Authorization from a Gate in the Existing Terminal B Facilities or the New Terminal B Facilities, as applicable, then, upon request by the Lessee to the Port Authority setting forth in specific detail satisfactory to the Port Authority the reason for such inability if the Lessee were to provide Accommodations to such Requesting Airline on the Premises, the Port Authority shall consider the Lessee's request, and if such an inability would be created and would have undesirable effects on LGA Airport, then the Port Authority shall rescind the Notice to Provide Accommodations and notify the Lessee thereof.

(e) If, after notice from the Port Authority to provide Accommodations to a specific Requesting Airline, the Lessee shall, in good faith, believe that the operations of such specific Requesting Airline in the Existing Terminal B Facilities or the New Terminal B Facilities, as applicable, would cause labor disharmony which would seriously affect the operations of the Lessee then, upon request by the Lessee to the Port Authority setting forth in specific detail satisfactory to the Port Authority the nature of the anticipated labor disharmony and requesting that the Lessee not be obligated under this Article 32 (*Requesting Airlines at LGA Airport*) to provide Accommodations for such specific Requesting Airline, the Port Authority shall, in good faith, consider the Lessee's request, and if the labor disharmony described by the Lessee is reasonably likely to result if the Lessee were to provide Accommodations to such Scheduled Aircraft Operator in the Existing Terminal B Facilities or the New Terminal B Facilities, as applicable, then the Port Authority shall rescind the Notice to Provide Accommodations and notify the Lessee thereof.

Section 32.3 Notice to Provide Accommodations to a Requesting Airline

(a) If the Port Authority shall make a determination under Section 32.2 (*Response to Requesting Airline and Port Authority Determination*) that the Lessee is to provide Accommodations to a Requesting Airline, then the Port Authority will provide notice to the Lessee of such determination that the Lessee is to make available and provide Accommodations to such Requesting Airline at the Premises as directed by the Port Authority no later than ninety (90) days before the Lessee shall be required to make available and provide Accommodations (each such notice to be referred to as a "**Notice to Provide Accommodations**" and each such ninety (90)-day period to be referred to as an "**Accommodations Notice Period**"). The Notice to Provide Accommodations shall explain in detail the justification for the Port Authority's determination to issue such Notice to Provide Accommodations.

(b) Upon its receipt of any Notice to Provide Accommodations, the Lessee shall use its Reasonable Efforts to enter into an Airline Sublease with the Requesting Airline in accordance with the Notice to Provide Accommodations that complies with the terms of Article 5 (*Subleases*) and is consistent with the Comprehensive Terminal Plan (including any Airline Terminal Rates principles and methodologies disclosed therein) then in effect; provided, however, that any failure of the Lessee and the Requesting Airline to execute such Airline Sublease shall not relieve or release the Lessee from its obligations hereunder to provide Accommodations to the Requesting Airline in accordance with this Article 32 (*Requesting Airlines at LGA Airport*) and the Notice to Provide Accommodations unless (i) the Lessee shall have tendered to the Requesting Airline a form of Airline Sublease that is consistent with the terms of Section 5.2 (*Air Transportation-Related Subleases*) and the Comprehensive Terminal Plan then in effect, in accordance with the Notice to Provide Accommodations and (ii) the Requesting Airline has not executed such form of Airline Sublease after tender thereof to it for execution.

(c) Subject to Section 32.3(b) above, the Lessee shall, and hereby agrees to, on or before the expiration of the Accommodations Notice Period under each such Notice to Provide Accommodations, provide Accommodations to the Requesting Airline in accordance with such

Notice to Provide Accommodations. The Lessee shall accept information from the Requesting Airline and/or the Port Authority with respect to the Requesting Airline's scheduled arrivals and departures for each Gate specified in the Notice to Provide Accommodations and the Lessee shall provide Accommodations to the Requesting Airline in such manner so as to properly meet the Requesting Airline's schedule and needs for Accommodations as to each applicable Gate for its said scheduled arrivals and departures subject to Section 32.4(c) below.

Section 32.4 Operation and Consents Related to Accommodations

(a) Accommodation may be accomplished by the Lessee by making available and providing non-exclusive use of Gate(s) and Gate Related Premises to a Requesting Airline.

(b) The Lessee shall furnish to the Port Authority from time to time such itemization, details and information pertaining to the Airline Subleases with Requesting Airlines as the Port Authority may from time to time reasonably request. Moreover, and without limiting the foregoing, the Lessee shall at all times keep the Port Authority reasonably informed and advised and, upon request by the Port Authority, will consult with the Port Authority from time to time as to all aspects of its Accommodations of Requesting Airlines hereunder.

(c) The Gate(s) and Gate Related Premises to be used by the Requesting Airline shall be selected by the Lessee; provided, however, that if the Port Authority determines that the Gate(s) and Gate Related Premises selected by the Lessee would not reasonably meet the operational needs of the Requesting Airline, the Port Authority may require the Lessee to offer additional or alternative space to the Requesting Airline until the Port Authority is reasonably satisfied that the Requesting Airline's operational needs will be met by the space offered; provided, however, that the Port Authority cannot require the Lessee to provide additional or alternative space to the Requesting Airline if doing so would displace an Airline Sublessee or otherwise violate the terms of an Airline Sublease.

(d) Any Airline Sublease between the Lessee and the Requesting Airline made in accordance with the foregoing provisions of this Article 32 (*Requesting Airlines at LGA Airport*) shall not be valid without the prior written consent of the Port Authority in accordance with Article 5 (*Subleases*).

Section 32.5 Non-Compliance with a Notice to Provide Accommodations

(a) Subject to Section 32.4 (*Operation and Consents Related to Accommodations*), in the event that, at the expiration of the Accommodations Notice Period, the Lessee shall fail to provide Accommodations to the Requesting Airline named in the Notice to Provide Accommodations, the Port Authority is entitled to seek specific performance, injunction or other equitable remedies.

(b) The Port Authority may exercise any of its other rights and remedies provided for hereunder or at law or equity, except where an exclusive remedy is expressly provided herein.

Section 32.6 No Waiver

The failure of the Port Authority to exercise any of its rights under this Article 32 (*Requesting Airlines at LGA Airport*) during any period in which it may have such a right shall not affect, waive or limit its right to exercise said rights or any other of its rights or remedies under this Agreement or otherwise at any subsequent time.

Section 32.7 No Abrogation

Nothing in this Article 32 (*Requesting Airlines at LGA Airport*) shall be deemed to have abrogated, changed or affected any restrictions, limitations or prohibitions on assignment, subletting or use of the Premises by others under this Agreement nor shall in any manner affect, waive or change any of the provisions thereof.

ARTICLE 33

DISPUTE RESOLUTION PROCEDURES

Section 33.1 General

(a) Except as expressly set out in this Agreement, subject to Section 33.9 (*Notice Requirements*), as applicable, upon the referral by either Party of any Dispute for resolution in accordance with the procedures for resolving disputes set forth in this Article 33 (*Dispute Resolution Procedures*) (the "**Dispute Resolution Procedures**"), a designated senior representative of each Party will meet and use all Reasonable Efforts to resolve the Dispute between the Parties for a period of at least fifteen (15) days. Statements made by representatives of the Parties during any such meetings and documents specifically prepared for such meetings shall be considered part of settlement negotiations and shall not be admissible as evidence in any proceeding between the Parties of any kind without the mutual written consent of the Parties. If the Port Authority and the Lessee succeed in resolving a Dispute through their designated senior representatives, they shall memorialize the resolution in writing, including execution of change orders as appropriate, and promptly perform their respective obligations in accordance therewith.

(b) If the designated senior representatives of each Party are unable to resolve the Dispute in accordance with Section 33.1(a), unless the Parties agree to extend the fifteen (15)-day negotiation period, then either Party may request non-binding mediation of the Dispute. If the Dispute has not been resolved within sixty (60) days after the initiation of mediation proceedings or, if both Parties do not agree to mediation, either Party will have the right to proceed in accordance with Sections 33.2 (*Litigation*) and 35.9 (*Submission to Jurisdiction*); provided, that any Dispute of a technical nature relating to the Design and Construction Requirements shall be determined by the Chief Engineer, in his or her sole discretion, as set forth in Section 33.3 (*Chief Engineer's Jurisdiction*). The first face-to-face meeting between the mediator and both Parties will be deemed to be the initiation of mediation.

(c) Any of the time periods specified in this Section 33.1 (*General*) may be extended by mutual agreement of the Parties.

Section 33.2 Litigation

(a) Compliance with the statutory conditions precedent to suit in New York Unconsolidated Laws Sections 7101-7112; 7131-7136 and N.J.S.A. 32:1-157 to 32:1-168; 32:1-169 to 32:1-176, will be a jurisdictional prerequisite to suit against the Port Authority.

(b) Unless there is a good faith determination by the disputing Party that a statute of limitations would expire pending such process, satisfaction of the procedures set forth in Section 33.1 (*General*) will be a condition precedent to instituting a legal action in court by either Party; provided, that the Port Authority will be entitled to take whatever steps it deems appropriate and to initiate litigation of the matter in court without first submitting the Dispute to the Dispute Resolution Procedures set forth in this Article 33 (*Dispute Resolution Procedures*) if the Port Authority determines, in its sole discretion, that such actions are necessary to (i) respond to an Emergency or to safeguard life, health, property or the public welfare or (ii) to ensure compliance or to avoid or mitigate any non-compliance by the Port Authority with the Basic Lease or any applicable FAA regulations or policies or the Airport Operating Certificate.

(c) Any Dispute not resolved in accordance with Section 33.1 (*General*) shall be subject to litigation in court in accordance with Sections 35.9 (*Submission to Jurisdiction*) and 35.10 (*Waiver of Right to Trial by Jury*). Any Dispute referred to litigation shall be reviewed and judged by a court of competent jurisdiction *de novo*.

Section 33.3 Chief Engineer's Jurisdiction

(a) Notwithstanding any other provision in this Agreement to the contrary, any aspect of a Dispute that involves a technical or engineering matter that is governed by or based upon the Applicable Standards, the Released For Construction Documents, the General Conditions or the Design and Construction Requirements, in each case, with respect to the D&C Work and any capital improvements or replacement or renovation work performed by the Lessee on the Premises during the O&M Period, shall be determined by the Chief Engineer in his or her sole discretion, and (subject to any remedies that the Lessee may have as a matter of public law in respect of the Chief Engineer's determination) shall be conclusive, final and binding on the Parties; provided, that the designated senior representatives of the Parties shall have first attempted to resolve the Dispute by good faith negotiations pursuant to Section 33.1(a). The effect of the Chief Engineer's determination shall not be impaired or waived by any negotiations or settlement offers, whether or not the Chief Engineer participated therein himself or herself, or by any conclusions reached by the designated senior representatives, which conclusions are subject to review by the Chief Engineer, or by any termination or cancellation of this Agreement.

(b) All Disputes of the nature described in Section 33.3(a) must be submitted in writing by the designated senior representatives of the Parties to the Chief Engineer for his or her decision, together with all evidence and other pertinent information in regard to such Dispute, in order that a fair and impartial decision may be made.

Section 33.4 Disputes with Respect to Other Redevelopments

(a) The Parties recognize that, due to the potential concurrent performance of the Work and the Other Redevelopments (and notwithstanding the approval by the Port Authority of a TAA submitted by Delta and the provision of a Port Authority Change or a Directive Letter to the Lessee), the performance of construction work carried out by Delta and/or its contractors at or immediately adjacent to the Premises during the Construction Period may lead to material damage or disruption to the Work. The Lessee shall comply with the dispute resolution procedures set forth in this Section 33.4 upon the occurrence of an event described in the immediately preceding sentence, by providing a prompt written notice to the Port Authority of any such damage or disruption. If the dispute resolution procedure set forth in this Section 33.4 is triggered, a designated senior representative of the Lessee shall meet with a representative of Delta (together with senior representatives of their respective contractors) as soon as possible and use all Reasonable Efforts to resolve the issue for a period of no more than ten (10) days, and the Lessee shall, and shall cause its contractors to provide, and the Port Authority shall cause Delta to provide and to ensure that its contractors provide, all relevant information pertaining to such dispute to the other parties and the Port Authority. The Port Authority shall participate in the initial negotiations if it determines, in its reasonable discretion, that the Port Authority's interests may be affected thereby, or if its participation is requested by both the Lessee and Delta. The obligation of the Lessee to negotiate with Delta in good faith is a prerequisite to the availability of any other recourse or remedy under this Agreement in connection with such issue and the Lessee must adequately demonstrate such efforts to the Port Authority as a condition to referring the issue or disagreement for Port Authority decision pursuant to Section 33.4(c).

(b) If the designated senior representatives of the Lessee and Delta and their respective contractors (and, if applicable, the Port Authority) succeed in resolving the issue, the parties shall memorialize the resolution in writing. Unless the Port Authority has participated in the negotiations as provided above, the Lessee shall notify the Port Authority in writing with the terms of such resolution, and the Port Authority shall approve or disapprove such terms within fifteen (15) days of receipt; provided, that the Port Authority shall have the right to disapprove any such resolution at its sole discretion if such resolution is likely is reasonably likely to result in an entitlement by the Lessee to a change order or a Directive Letter pursuant to this clause (b). Upon the Port Authority's approval, if applicable, or upon reaching the agreement (to the extent the Port Authority's approval is not required), the Lessee and Delta shall promptly perform their respective obligations in accordance with such agreement. [redacted] If (i) the parties are unable to resolve the issue in accordance with Section 33.4(a), (ii) the Port Authority does not approve such resolution, or (iii) the Lessee or Delta reasonably determines prior to the expiration of the ten (10)-day period

that a resolution is not likely to be achieved, then any party may refer the issue to the Port Authority's Chief Engineer for resolution in accordance with Section 33.4(c).

(c) Notwithstanding anything herein to the contrary, any issue among the parties which fails to be resolved in accordance with the procedures set forth in this Section 33.4 (*Disputes with Respect to Other Redevelopments*) shall be (subject to any remedies that the Lessee may have as a matter of public law in respect of the Chief Engineer's determination) decided by the Port Authority's Chief Engineer (or his or her designee) in his or her sole discretion, and such decision shall be conclusive, final and binding on the Port Authority, Lessee, Delta and their respective contractors. The effect of the Chief Engineer's decision shall not be impaired or waived by any negotiations or settlement offers, whether or not the Chief Engineer participated therein himself or herself, or by any conclusions reached by the designated senior representatives, which conclusions are subject to review by the Chief Engineer, or by any termination or cancellation of this Agreement.

(d) The Lessee and the Port Authority shall provide the Chief Engineer all evidence, documentation and other pertinent information available to it in regard to such issue, in order that a fair and impartial decision may be made. The Chief Engineer (or his or her designee) shall render a decision within thirty (30) days following receipt of all evidence, documentation and other information relevant to the issue.

(e) Subject to the procedures set forth herein, the Lessee and the Port Authority hereby agree to submit to the exclusive jurisdiction of the Port Authority's Chief Engineer with respect to any dispute or disagreement coming under the purview of this Section 33.4 (*Disputes with Respect to Other Redevelopments*), subject to any remedies that the Lessee may have as a matter of public law in respect of the Chief Engineer's determination.

[redacted]

Section 33.5 Board Approval

Notwithstanding any other provision in this Article 33 (*Dispute Resolution Procedures*) to the contrary, the Lessee agrees that any resolution of a Dispute determined pursuant to these Dispute Resolution Procedures that requires a payment by the Port Authority to the Lessee is subject to the prior written approval of the Board of Commissioners in accordance with the

Bylaws; provided, however, that approval of the Board of Commissioners which would otherwise be required by the Bylaws will not be required for a final judgment for payment by a court of competent jurisdiction, for which all rights to appeal have either been exhausted or have expired. If approval of the Board of Commissioners is required in accordance with the Bylaws, the Port Authority will seek to obtain it in an expeditious and diligent manner, consistent in all respects with Applicable Law.

Section 33.6 Conduct During Pendency of Dispute

(a) Notwithstanding anything to the contrary in this Agreement, neither Party will be required to await the resolution of Dispute Resolution Procedures regarding the reasons for terminating this Agreement before exercising such Party's termination rights.

(b) Pending final resolution of any Dispute (except a Dispute regarding the cause for terminating this Agreement), the Parties will continue to fulfill their respective obligations under this Agreement. During the course of the Dispute Resolution Procedures, the Lessee will continue with the Work (including any Work that is the subject of the Dispute) in a diligent manner and without delay, and will be governed by all applicable provisions of this Agreement, and each of the Lessee and the Port Authority shall continue to make its respective payments of any amounts not in dispute pursuant to the terms of this Agreement.

Section 33.7 Joinder of Actions

(a) If any Dispute undergoing the Dispute Resolution Procedures raises issues which relate to any dispute between the Lessee, on the one hand, and the Lead Contractor under the D&C Contract, the Terminal Operator under the O&M Contract or the Concessions Manager under the Concessions Management Contract, on the other hand, then the Lessee may join any such Dispute between it and the Lead Contractor, the Terminal Operator or the Concessions Manager, as the case may be, under the Dispute Resolution Procedures.

(b) The Port Authority shall have no liability to any Lead Firm arising out of or in connection with any decision rendered pursuant to the Dispute Resolution Procedures or in respect of the costs incurred by any Lead Firm as a result of participating in the resolution of any Dispute under this Agreement.

Section 33.8 Costs of Dispute Resolution

(a) Each Party will bear its own attorneys' fees and costs in any Dispute or litigation arising out of or pertaining to this Agreement and no Party will seek or accept an award of attorneys' fees or costs, except as otherwise expressly provided herein.

(b) The fees and costs of any mediator will be borne equally by each Party.

Section 33.9 Notice Requirements

(a) No Claim against the Port Authority shall be made or asserted in any action or proceeding at law or in equity, and the Lessee shall not be entitled to allowance of such claim,

unless the Lessee shall have complied with the statutory conditions precedent to suit in New York Unconsolidated Laws Sections 7101-7112; 7131-7136 and N.J.S.A. 32:1-157 to 32:1-168; 32:1-169 to 32:1-176.

(b) In addition, the Lessee shall comply with the following notice requirements with respect to the making of any Claim against the Port Authority. The failure of the Lessee to comply with such notice requirements with respect to any Claim shall be conclusively deemed to be an irrevocable waiver by the Lessee of such Claim:

(i) In the case of any claims for a [redacted] or a Delay Event, the notice requirements set forth in Article 14 ([redacted] *Delay Events*) of this Agreement shall apply.

(ii) In the case of all other Claims, notice of such Claim shall have been given to the Authorized Representative of the Port Authority, in writing, as soon as practicable, and in any case, within thirty (30) days, after the date on which the Lessee first become aware (or should have become aware, using all reasonable diligence) that the act, omission, or other circumstance has occurred upon which the Claim is or will be based, together with a statement as fully as practicable at the time all information relating thereto. Such information shall be supplemented with any further information as soon as practicable after it becomes, or should have become, known to the Lessee.

(iii) The notice requirements set forth in this Section 33.8 (*Notice Requirements*) are for the purpose of enabling the Port Authority to avoid waste of public funds by affording it promptly the opportunity to cancel or revise any order, change its plans, mitigate or remedy the effects of circumstances giving rise to a Claim or take such other action as may seem desirable and to verify any claimed expense or circumstances as they occur, and the notice requirements are essential to this Agreement and are in addition to any notice that may be required by statute with respect to Claims against the Port Authority.

(iv) The notices and information required pursuant to this Section 33.8 (*Notice Requirements*) are required whether or not the Port Authority is aware of the existence of any circumstances which might constitute a basis for a Claim and whether or not the Port Authority has indicated it will consider a Claim.

ARTICLE 34

CONSEQUENTIAL LOSSES; DOUBLE RECOVERY; NON-EXCLUSIVE REMEDIES; PAYMENTS BY THE PORT AUTHORITY

Section 34.1 Consequential Losses

Except as expressly provided in this Agreement to the contrary, neither Party shall be liable to the other for indirect, incidental or consequential damages of any nature, whether arising in contract, tort (including negligence) or other legal theory. The foregoing limitation shall not, however, in any manner:

(a) limit either Party's liability for any type of damage arising out of such Party's obligation to indemnify, defend and hold each Port Authority Indemnified Party or Lessee Indemnified Party, as applicable, harmless from Third-Party Claims under this Agreement; or

(b) limit the Lessee's liability for any type of damage to the extent covered by the proceeds of insurance carried by the relevant Party or are required to be insured against pursuant to Article 20 (*Insurance*).

Section 34.2 No Double Recovery

Notwithstanding any other provisions of this Agreement to the contrary, neither Party shall be entitled to recover compensation or make a claim under this Agreement in respect of any Loss that it has incurred to the extent that it has already been compensated in respect of that Loss pursuant to this Agreement or otherwise.

Section 34.3 Remedies to be Non-Exclusive

Except as otherwise expressly provided in this Agreement, all remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of or exclusive of each other or of any other remedy available to the Port Authority or to the Lessee at law or in equity, and the exercise of any remedy, or the existence herein of other remedies or indemnities shall not prevent the exercise of any other remedy.

Section 34.4 Payments by the Port Authority

(a) Upon agreement or determination of Lessee Damages in accordance with Section 14.1 [redacted] the Port Authority Termination Sum in accordance with Section 24.2 (*Termination Rights of the Lessee*), the Unamortized Costs Termination Sum in accordance with Section 24.2 (*Termination Rights of the Lessee*) or such other amounts due and owing by the Port Authority from time to time under this Agreement for which prior written approval by the Board of Commissioners is required in accordance with the Bylaws, the Port Authority staff will, with all practical dispatch, consistent in all respects with Applicable Law and the Port Authority's obligations pursuant to this Agreement, seek to have Port Authority funds allocated to such amounts due and owing by the Port Authority (which, if necessary, will include presenting a good faith request for such allocation to the Board of

Commissioners at the next available opportunity); provided, however, that approval of the Board of Commissioners which would otherwise be required by the Bylaws will not be required for a final judgment for payment by a court of competent jurisdiction, for which all rights to appeal have either been exhausted or have expired. The Port Authority shall notify the Lessee promptly upon becoming aware of any determination by the Board of Commissioners which refuses to act favorably on an allocation of such payment to the Lessee.

(b) The Parties hereto agree and acknowledge that, subject to approval by the Board of Commissioners, such obligation of the Port Authority to pay Lessee Damages, the Port Authority Termination Sum, the Unamortized Costs Termination Sum and other amounts that may become due and owing by the Port Authority from time to time under this Agreement was and is a material inducement and consideration for the execution and delivery of this Agreement by the Lessee.

ARTICLE 35

MISCELLANEOUS

Section 35.1 Entire Agreement

This Agreement consists of the following: Articles 1 (*Definitions; Project Documents*) through 35 (*Miscellaneous*), inclusive, and Exhibits 1 (*Existing Facilities Map and New Facilities Map*) through 39 (*Form of Concession Sublessee Certification*). This Agreement, together with the attachments hereto, contains all of the promises, agreements, conditions, inducements and understandings between the Port Authority and the Lessee concerning the Work and the Premises, and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, express or implied, between them other than as expressly set forth herein and therein or as may be expressly contained in any enforceable written agreements or instruments executed simultaneously herewith by the Parties hereto.

Section 35.2 Amendments

No covenant, agreement, term or condition of this Agreement or any other Project Document to which the Port Authority and the Lessee are parties shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination executed by the Lessee and the Port Authority.

Section 35.3 Waiver

No failure by the Port Authority to insist upon the strict performance of any agreement, covenant, term or condition of this Agreement or to exercise any right or remedy consequent upon the breach or default of any agreement, covenant, term, or condition of this Agreement, and no extension, supplement or amendment or this Agreement during or after such breach or default, unless expressly stated to be a waiver, and no acceptance by the Port Authority of any rental after or during the continuance of any such breach or default, shall constitute the waiver of such breach or default. No waiver of any default shall affect or alter this Agreement, but each

and every agreement, covenant, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent default thereof.

Section 35.4 Relationship between the Parties

(a) Nothing in the Project Documents is intended or shall be construed to create any partnership, joint venture or similar relationship between the Port Authority and the Lessee for any purpose, including federal, state and local income tax purposes. In no event shall either Party take a position in any tax return or other writing of any kind that a partnership, joint venture or similar relationship exists.

(b) Neither the performance of the D&C Work nor anything contained in the Project Documents shall be construed as constituting any relationship with the Port Authority other than that of lessee of the Existing Facilities and the New Facilities and independent contractor in connection with the performance of the D&C Work relating to the New Improvements and the Work relating to the Central Hall (both of which are owned by the Port Authority) only.

(c) In no event shall the relationship between the Port Authority and the Lessee be construed as creating any relationship whatsoever between the Port Authority and the Lessee's employees. Neither the Lessee nor any of its employees is or shall be deemed to be an employee of the Port Authority. Except as otherwise specified in the Project Documents, the Lessee has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Contractors and Suppliers and for all other Persons that the Lessee or any Contractor or Supplier hires to perform or assist in performing the Work.

(d) For federal income tax purposes, the Parties intend to treat this Agreement as giving rise to the acquisition by the Lessee of a leasehold interest, and not an ownership interest, in the Bond-Financed Assets.

Section 35.5 Successors and Assigns

The Project Documents shall be binding upon and inure to the benefit of and be enforced by the Port Authority and the Lessee and their respective permitted successors and assigns, whether so expressed or not.

Section 35.6 Designation of Representatives; Cooperation With Representatives

The Port Authority and the Lessee shall each designate an individual or individuals who shall be authorized or shall be able to procure proper authorization to make decisions and bind the Parties on matters relating to the Project Documents (each, an "**Authorized Representative**"). The Lessee shall from time to time designate in writing an office within the Port of New York District and an officer or representative whose regular place of business is at such office upon whom Notices may be served. Exhibit 9 (*Initial Designation of Authorized Representatives*) to this Agreement provides the initial Authorized Representative designations.

Such designations may be changed by a subsequent writing delivered to the other Party in accordance with Section 35.12 (*Notices and Communications*).

Section 35.7 Survival

The Lessee's and the Port Authority's representations and warranties, the Dispute Resolution Procedures contained in Article 33 (*Dispute Resolution Procedures*), the indemnifications and releases contained in Article 21 (*Indemnity*), the rights to all indemnities and compensation contained in Articles 24 (*Grounds for Termination by the Lessee; Other Termination*) through 27 (*Actions Upon Termination*), the handback obligations contained in Section 11.12 (*Handback Requirements*) and any other obligations to pay amounts hereunder and under the other Project Documents, Article 31 (*Intellectual Property*), Article 35 (*Miscellaneous*), Section 3.3 *(Liens*), Section 27.6 (*Acceptance of Surrender of Lease*), any obligation or liability accrued or incurred prior to the expiration or Early Termination of this Agreement, and all other provisions, which by their inherent character should survive expiration or Early Termination and/or completion of the Work under this Agreement, shall survive the expiration or Early Termination and/or the completion of the Work under this Agreement; provided, that the Port Authority's representation and warranty set forth in Section 22.2(k) shall survive until the first (1st) anniversary of the Lease Commencement Date, and, unless a claim for indemnification under Section 21.2(b) has been submitted to the Port Authority prior to such date, after such date the Port Authority's obligation under Section 21.2(b) shall cease and be of no force and effect, whether or not a Third-Party Claim was filed against the Lessee or Losses were actually suffered or incurred by the Lessee or any Lessee Indemnified Party prior to such date. The fact that certain of the terms and provisions hereunder are expressly stated to survive expiration or Early Termination and/or the completion of the Work under this Agreement shall not mean that those provisions hereunder which are not expressly stated to survive shall terminate or expire on the expiration or Early Termination and/or the completion of the Work under this Agreement and do not survive such termination or Early Termination and/or the completion of the Work under this Agreement.

Section 35.8 Limitation on Third-Party Beneficiaries

Except as specified in this Section 35.8 (*Limitation on Third-Party Beneficiaries*), there shall be no third-party beneficiaries of this Agreement. This Agreement shall be effective only as between the Parties hereto (and their successors and assigns, if, as and to the extent permitted under this Agreement), and shall not be construed as creating or conferring upon any person or entity any right, remedy or claim under or by reason of this Agreement. Notwithstanding the foregoing, (a) a Recognized Mortgagee shall be a third-party beneficiary of only the rights and obligations expressly accorded to it pursuant to Article 18 (*Lenders' Rights and Remedies; Refinancing*) and any other provision in this Agreement that expressly accords rights and obligations to the Recognized Mortgagee, and (b) an Indemnified Party (other than the Port Authority or the Lessee, as applicable) shall be a third-party beneficiary of only the rights and obligations expressly accorded to it pursuant to Article 21 (*Indemnity*).

Section 35.9 Submission to Jurisdiction

Subject to compliance with the statutory conditions precedent to suit against the Port Authority in New York Unconsolidated Laws Sections 7101-7112; 7131-7136 and N.J.S.A. 32:1-169 to 32:1-176, the Port Authority and the Lessee each agree to submit, to the fullest extent permitted by Applicable Law, to the exclusive jurisdiction of any New York State court or the U.S. District Court for the Southern District of New York sitting in the City and County of New York, and any appellate court from any thereof, for the settlement of any dispute in connection with this Agreement or any transaction contemplated hereby. The Lessee and the Port Authority each also waive, to the fullest extent permitted by Applicable Law, any objection that it may have now or hereafter to the laying of venue in such courts on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with this Agreement or any transaction contemplated hereby.

Section 35.10 Waiver of Right to 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 35.11 Governing Law

THIS AGREEMENT AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT AND THE LETTING HEREUNDER SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE, AND TO BE PERFORMED SOLELY WITHIN, SUCH STATE, WITHOUT REGARD TO CHOICE OF LAW PRINCIPLES.

Section 35.12 Notices and Communications

(a) Except where expressly required or permitted herein to be oral, all notices, directions, requests, consents and approvals required to be given to or by either party (each, a "**Notice**") shall be in writing, and each Notice shall be (i) personally delivered to the duly designated officer or representative of such Party; (ii) delivered to the office of such officer or representative during regular business hours or (iii) forwarded to such officer or representative at such address by certified or registered mail or a reputable express overnight courier, with delivery receipt requested.

(i) All notices, correspondence and other communications to the Lessee shall be delivered to the following address or as otherwise directed by the Lessee's Authorized Representative:

LaGuardia Gateway Partners, LLC
LaGuardia Airport CTB
Room #3862
Flushing, NY 11371
United States

Attention: Stewart Steeves
Phone: (604) 269-3803
Email: ssteeves@laguardiacentral.com

(ii) All notices, correspondence and other communications to the Port Authority shall be marked as regarding the Premises and shall be delivered to the following address or as otherwise directed by the Port Authority's Authorized Representative:

The Port Authority of NY & NJ
4 World Trade Center – 18th Floor
150 Greenwich Street
New York, NY 10007
Attn: Thomas Bosco, Director of Aviation
Telephone: (212) 435-3720
E-mail: tbosco@panynj.gov

With a copy to:

Office of General Counsel
4 World Trade Center – 23rd Floor
150 Greenwich Street
New York, NY 10007
Attn: Timothy Stickelman, Esq.
Telephone: (212) 435-3425
E-mail: tstickel@panynj.gov

(b) Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private carrier or other Person making the delivery. If mailed, the Notices herein required to be served shall be deemed effective and served as of the

date of the return of verification of delivery of certified or registered mailing thereof, or one (1) day after deposit with a reputable express overnight courier.

Section 35.13 Severability

If any term or provision of this Agreement or the application thereof to any Person or circumstances shall to any extent be held invalid and unenforceable, the remainder of this Agreement, or the application of such term or provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by Applicable Law.

Section 35.14 Counterparts

This Agreement and any attached Project Document or Exhibit requiring signatures may be executed in any number of counterparts, but not facsimile counterparts, each of which shall constitute an original agreement, and all of which taken together shall be deemed one and the same document.

Section 35.15 Non-liability of Individuals

Without limiting any other exclusion from liability expressly provided in this Agreement, no Commissioner, officer, agent or employee of the Port Authority shall be charged personally with any liability or held personally liable under any term or provision of this Agreement or because of acts or omissions of any such individual or because of any breach or attempted or alleged breach of any of the provisions of this Agreement, it being understood that all such liability, if any, shall be that of the Port Authority alone.

Section 35.16 Late and Service Charges

(a) Late Charges. If the Lessee should fail to pay any amount required under this Agreement when due to the Port Authority, including any payment of basic, percentage, variable or other rental or any payment of utility, or other charges or fees or if any such amount is found to be due as the result of an audit, then, in such event, the Port Authority may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount for each late charge period (hereinbelow described) during the entirety of which such amount remains unpaid, each such late charge not to exceed an amount equal to eight-tenths of one percent (0.8%) of such unpaid amount for each late charge period. There shall be twenty four (24) late charge periods during each Calendar Year; each late charge period shall be for a period of at least fifteen (15) calendar days except one late charge period each Calendar Year may be for a period of less than fifteen (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 Port Authority audit findings shall consist of each late charge period following the date the unpaid amount should have been paid under this Agreement. Each late charge shall be payable immediately upon demand made at any time therefor by the Port Authority. No acceptance by the Port Authority of payment of any unpaid amount or of any unpaid late charge amount shall be deemed a waiver of the right of the Port

Authority to payment of any late charge or late charges payable under the provisions of this Section with respect to such unpaid amount. Each late charge shall be recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the rental as set forth in Article 4 (*Rental*). Nothing in this Section 35.16 (*Late and Service Charges*) is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) any rights of the Port Authority under this Agreement, including without limitation the Port Authority's rights set forth in Article 23 (*Lessee Events of Default*) and Article 27 (*Actions Upon Termination*) or (ii) any obligations of the Lessee under this Agreement. In the event that any late charge imposed pursuant to this Section 35.16(a) (*Late Charges*) 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.

(b) Service Charge. In the event that upon conducting an examination and audit the Port Authority determines that unpaid amounts are due to the Port Authority by the Lessee, the Lessee shall be obligated, and hereby agrees to pay to the Port Authority, a service charge in the amount of five percent (5%) of each amount determined by the Port Authority audit findings to be unpaid. Each such service charge shall be payable immediately upon demand (by notice, bill or otherwise) made at any time therefor by the Port Authority. Such service charge(s) shall be exclusive of, and in addition to, any and all other moneys or amounts due to the Port Authority by the Lessee under this Agreement or otherwise.

Section 35.17 Public Release of Information

The Lessee shall not, and shall cause (by way of contract and enforcement thereof) all Lessee-Related Entities not to, issue or permit to be issued any press release, advertisement, public statement or literature of any kind, or make any statements or comments through the media (including print, television or internet) which refers to the Port Authority, the Work, the Premises or any of the services or obligations to be performed in connection with the Project Documents, without first obtaining the prior written approval of the Port Authority. Such approval may be withheld if for any reason the Port Authority believes that the publication of such information would be harmful to the public interest or is any way undesirable.

Section 35.18 Confidentiality

(a) Subject to clause (c) below, the Lessee shall, and shall cause all Lessee-Related Entities to, treat confidentially, and shall not, and shall cause all Lessee-Related Entities not to, disclose, all information relating to the Work, the Premises or the Port Authority that has been identified as "confidential" in writing; provided, that, the Lessee shall have the right to disclose such information with the Port Authority's approval, which approval shall not be unreasonably withheld, to (i) its Lenders, to the extent required under the Financing Documents, or its potential Lenders, (ii) its Contractors, to the extent necessary for the performance of obligations under this Agreement, (iii) its Equity Members, to the extent necessary for management or board approval of the transactions contemplated under this Agreement or (iv) pursuant to a request or demand made by a regulatory body with jurisdiction over any of the foregoing. The Lessee shall inform its Contractors, Suppliers, vendors, officers, directors, managers (if the Lessee is a limited liability entity), members (if the Lessee is a limited liability

entity), partners (if the Lessee is a partnership) and employees of its obligations under this Section 35.18 (*Confidentiality*) and shall cause each of them to be subject to the confidentiality obligations consistent with this Section 35.18 (*Confidentiality*).

(b) Subject to clauses (c) and (d) below, the Port Authority shall treat confidentially, and shall not disclose, all information provided to the Port Authority by the Lessee relating to the Work, the Premises, the Lessee, the Equity Members, the Contractors or the Suppliers that has been identified as "confidential" in writing.

(c) If either Party is required pursuant to the provisions of this Section 35.18 (*Confidentiality*) to keep or maintain any data or information which it may acquire from the other in confidence, such Party shall prevent the disclosure thereof to any person or organization, other than to employees, contractors and consultants of such Party, who, in the regular course of their duties will have access thereto, in the case of the Lessee to its Lenders and potential Lenders, to the Equity Members and to regulatory bodies with jurisdiction over any of the foregoing; and in the case of the Port Authority to its lenders and bondholders and the regulatory bodies with jurisdiction over the Port Authority or the airports for which the Port Authority is the airport operator; provided, however, that a Party keeping or maintaining any data or information that it may acquire from the other in confidence shall not be required to prevent the disclosure of, and shall not be liable for the disclosure of any information which:

(i) was in the public domain at the time it was disclosed;

(ii) was known to the Party receiving it at the time of disclosure;

(iii) was disclosed with the prior approval of the other Party;

(iv) the Party's attorneys or accountants are required to disclose by rules of professional responsibility;

(v) subject to clause (d) below, the Party is required to disclose pursuant to Applicable Law or court order;

(vi) with respect to the Port Authority, the Port Authority is required to disclose pursuant to its bond resolutions or its finance documents or the Port Authority discloses to potential lenders and bondholders; or

(vii) with respect to the Port Authority, the Port Authority discloses pursuant to the request or demand of any regulatory bodies with jurisdiction over the Port Authority or the airports for which the Port Authority is the airport operator.

(d) In the event that (i) either Party is requested by subpoena, court order or other similar process to disclose information relating to the Work, the Premises, the Port Authority or any Lessee-Related Entity that has been identified as confidential by the other Party or (ii) if the Port Authority receives a freedom of information request under the Port Authority's Freedom of Information Code (the "**FOIC**") seeking disclosure of the materials described in this Section 35.18 (*Confidentiality*), the party receiving such request (the "**Disclosing Party**")

shall (unless prohibited by Applicable Law) promptly, but in all cases prior to complying with such subpoena, court order or similar process or freedom of information request, provide the other Party (the "**Other Party**") with written notice of such request, including a description of the documents or information requested thereby, and to the extent that the Other Party determines that the requested documents or information contain trade secrets or other proprietary or confidential information, then the Other Party shall provide to the Disclosing Party within ten (10) Business Days of notification a letter setting forth which documents or information it seeks to have withheld and the basis for its determination. If, after reviewing such request to withhold documents or information, the Disclosing Party determines that it must disclose or cause its agents or representatives to disclose any such requested documents or information, it shall (unless prohibited by Applicable Law) promptly notify the Other Party of such determination. The Disclosing Party shall not release or share such documents or information until after said ten (10)-Business Day period, except to the extent required by Applicable Law or the FOIC. Nothing in this Section 35.18 (*Confidentiality*) generally, or this clause (d) specifically, shall or is intended to require the Port Authority to violate the provisions of the FOIC with respect to time periods in which it is obligated to respond, materials which it is obligated to disclose, or otherwise and, as between the provisions of the FOIC and this Agreement, the FOIC shall govern and control. Further, in its application of the FOIC, the Port Authority shall be entitled to exercise its good faith judgment.

Section 35.19 Brokerage

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

Section 35.20 Governmentally-Owned Property; Waiver of Depreciation

(a) The Parties acknowledge their intent, and the Port Authority (to the extent within its control) and the Lessee each covenants that:

(i) For federal income tax purposes, the Bond-Financed Assets (other than Demolition Facilities and Existing Leased Property) will be owned by a governmental unit (within the meaning of section 142(b)(1) of the Code) and leased to the Lessee pursuant to this Agreement.

(ii) The Term is not more than 80% of the weighted average Reasonably Expected Economic Life of the Bond-Financed Assets (other than Demolition Facilities and Existing Leased Property) to which proceeds of any "issue" (as defined in Treasury Regulations Section 1.150-1(c)) of Tax-Exempt Bonds have been allocated, determined on an issue-by-issue basis.

(b) The Lessee hereby irrevocably elects in accordance with section 142(b)(1)(B)(i) of the Code, as amended, not to claim for purposes of federal, state or local taxation of income any depreciation deductions or investment credits with respect to the Bond-Financed Assets unless, after all Lessee Tax-Exempt Bonds are no longer outstanding for federal income tax purposes, the Lessee receives a written opinion, with respect to each issue of Lessee Tax-Exempt Bonds, of nationally recognized bond counsel that is reasonably acceptable to the Applicable Issuer of the respective issue of Lessee Tax-Exempt Bonds that any such claim for depreciation deductions or investment credits thereafter will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the respective issue of Lessee Tax-Exempt Bonds. The Lessee shall promptly provide to all Applicable Issuers a copy of such election not to claim depreciation deductions or investment credits except upon receipt of such written opinion and after all Lessee Tax-Exempt Bonds are no longer outstanding for federal income tax purposes. The Lessee further agrees that this irrevocable election shall be binding upon its successors in interest, if any, under this Agreement, and as a condition of any permitted sale or assignment of Lessee's interest under this Agreement any successor in interest shall make an irrevocable election in writing and in accordance with the above requirements and the requirements of section 142(b)(1)(B)(i) of the Code, and shall promptly provide a copy of such election to all Applicable Issuers of any Tax-Exempt Bonds. The foregoing shall not grant or be deemed to grant to the Lessee the right to sell or assign, in any manner, its interests under this Agreement.

(c) In the event the Lessee records any documents in lieu of recording this Agreement, said documents shall incorporate the substance of Section 35.20(b).

(d) Notwithstanding that any fee title to the Premises shall be in the City, the Lessee shall not take any position for title, tax and accounting purposes which is inconsistent with the Port Authority or the City being the owner of the Bond-Financed Assets.

(e) The Parties acknowledge their intent that all of the Tax-Exempt Bonds will be issued subject to and in accordance with the provisions of Sections 103 and 141 through 150 of the Code, and that the interest on the Tax-Exempt Bonds will not be includible, for federal income tax purposes, in the gross income of the recipients thereof under Section 103(a) of the Code except for any period that the Tax-Exempt Bonds shall be held by a "substantial user" or "related person" of facilities provided from the proceeds of the Tax-Exempt Bonds, within the meaning of Section 147(a) of the Code. To that end, each of the Port Authority (to the extent within its control) and the Lessee (in the case of Tax-Exempt Bonds other than Lessee Tax-Exempt Bonds, to the extent within the Lessee's control) covenants for the benefit of the holders of the Tax-Exempt Bonds that it (1) shall take any and all actions under the Code to assure that no portion of the proceeds of the Tax-Exempt Bonds will be used in a manner, and that it (2) shall neither take any actions nor fail to take any actions under the Code with respect to the use of the Bond-Financed Assets, the revenues therefrom and the proceeds of the Tax-Exempt Bonds, in either case as would cause interest on the Tax-Exempt Bonds to be includible, for federal income tax purposes, in the gross income of the recipients thereof (except as aforesaid) under Section 103(a) of the Code.

[Remainder of the page intentionally left blank. Signatures follow.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized officers as of the date first written above.

LAGUARDIA GATEWAY PARTNERS, LLC

By: _____
Name: STEWART STEEVES
Title: CHIEF EXECUTIVE OFFICER.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By: _____
Name: Patrick J. Foye
Title: Executive Director.

EXHIBIT 1

EXISTING FACILITIES MAP

[See attached]

EXHIBIT 2

ASSIGNED TERMINAL B FACILITIES AGREEMENTS

1. Existing Airline Subleases (as set forth in Exhibit 3 (*Existing Airline Subleases*)).

2. MarketPlace Agreement.

3. MarketPlace Consents to Sublease.

4. Service Contract dated July 15, 2014, by and between the Port Authority and Associated Boiler Line Equipment Co., Inc. and identified by Contract No. 4600010000 (as supplemented from time to time).

5. Service Contract dated March 12, 2014, by and between the Port Authority and Oxford Electronics, Inc. (d/b/a Oxford Airport Technical Services) and identified by Contract No. 4600009836 (as supplemented from time to time).

6. Service Contract dated August 9, 2011, by and between the Port Authority and American Revolving Door Co., Inc. and identified by Contract No. 4600008759 (as supplemented from time to time).

7. Service Contract dated December 1, 2013, by and between the Port Authority and Guardian Service Industries, Inc. and identified by Contract No. 4600009641 (as supplemented from time to time).

8. Agreement of Lease dated January 1, 2016, by and between the Port Authority and Robert Trager, DDS and identified by the Port Authority Lease No. AGB-065 (as supplemented from time to time prior to the Lease Commencement Date).

9. Space Permit dated January 1, 2016, granted by the Port Authority to Aeronautical Radio, Inc. and identified by the Port Authority Permit No. AGB-067 (as supplemented from time to time).

10. Space Permit dated January 1, 2016, granted by the Port Authority to Certified Aviation Services, LLC and identified by the Port Authority Permit No. AGB-075 (as supplemented from time to time).

11. Space Permit dated January 1, 2016, granted by the Port Authority to Allied Aviation Holdings Corp. and identified by the Port Authority Permit No. AGB-061 (as supplemented from time to time).

12. Space Permit dated January 1, 2016, granted by the Port Authority to Oxford Electronics, Inc. (d/b/a Oxford Airport Technical Services) and identified by the Port Authority Permit No. AGB-066 (as supplemented from time to time).

13. Space Permit dated January 1, 2016, granted by the Port Authority to Swissport USA, Inc. and identified by the Port Authority Permit No. AGB-072 (as supplemented from time to time).

14. Space Permit dated January 1, 2016, granted by the Port Authority to Transportation Security Administration and identified by the Port Authority Permit No. AGB-064 (as supplemented from time to time).

EXHIBIT 3

EXISTING AIRLINE SUBLEASES

1. Agreement of Lease dated July 1, 1995, by and between the Port Authority and Air Canada and identified by the Port Authority Lease No. AGA-377 (as supplemented from time to time prior to the Lease Commencement Date).

2. Agreement of Lease dated January 1, 1957, by and between the Port Authority and American Airlines, Inc. and identified by the Port Authority Lease No. AG-416 (as supplemented from time to time prior to the Lease Commencement Date).

3. Agreement of Lease dated July 6, 1999, by and between the Port Authority and American Eagle Airlines, Inc. (now Envoy Air, Inc.) and identified by the Port Authority Lease No. AGA-524 (as supplemented from time to time prior to the Lease Commencement Date), assigned to American Airlines, Inc. in Supplement No. 8 effective January 1, 2011.

4. Agreement of Lease dated April 1, 2009, by and between the Port Authority and Southwest Airlines Co. and identified by the Port Authority Lease No. AGA-849 (as supplemented from time to time prior to the Lease Commencement Date).

5. Agreement of Lease dated September 1, 2003, by and between the Port Authority and AirTran Airways, Inc. and identified by the Port Authority Lease No. AGA-643 (as supplemented from time to time prior to the Lease Commencement Date), assigned to Southwest Airlines Co., as reflected in an Assignment and Consent Agreement dated December 31, 2011 and consented to by the Port Authority.

6. Agreement of Lease dated May 15, 2004, by and between the Port Authority and Spirit Airlines, Inc. and identified by the Port Authority Lease No. AGA-644 (as supplemented from time to time prior to the Lease Commencement Date).

7. Agreement of Lease dated January 1, 1957, by and between the Port Authority and United Airlines, Inc. and identified by the Port Authority Lease No. AG-419 (as supplemented from time to time prior to the Lease Commencement Date).

8. Agreement of Lease dated January 1, 1957, by and between the Port Authority and Eastern Air Lines, Inc. and identified by the Port Authority Lease No. AG-417 (as supplemented from time to time prior to the Lease Commencement Date), assigned to Continental Airlines, Inc., as reflected in an Assignment and Consent Agreement dated June 1, 1991 and consented to by the Port Authority.

9. Agreement of Lease dated June 8, 2012, by and between the Port Authority and JetBlue Airways Corporation and identified by the Port Authority Lease No. AGA-991 (as supplemented from time to time prior to the Lease Commencement Date).

10. Agreement of Lease dated August 1, 2014, by and between the Port Authority and Virgin America, Inc. and identified by the Port Authority Lease No. AGB-028 (as supplemented from time to time prior to the Lease Commencement Date).

11. Aircraft Parking Permit dated June 1, 2014, granted by the Port Authority to American Airlines and identified by the Port Authority Use Agreement No. AGB-020 (as supplemented from time to time).

12. Gate Use Agreement dated August 1, 2004, by and between the Port Authority and JetBlue Airways Corporation and identified by the Port Authority Use Agreement No. AGA-666 (as supplemented from time to time prior to the Lease Commencement Date).

13. Gate Use Agreement dated April 1, 2009, by and between the Port Authority and Southwest Airlines, Co. and identified by the Port Authority Use Agreement No. AGA-847 (as supplemented from time to time prior to the Lease Commencement Date).

14. Gate Use Agreement dated September 1, 1998, by and between the Port Authority and Spirit Airlines, Inc. and identified by the Port Authority Use Agreement No. AGA-490 (as supplemented from time to time prior to the Lease Commencement Date).

15. Gate Use Agreement dated October 8, 2014, by and between the Port Authority and Frontier Airlines, Inc. and identified by the Port Authority Use Agreement No. AGB-037 (as supplemented from time to time prior to the Lease Commencement Date).

16. Gate Use Agreement dated June 1, 2012, by and between the Port Authority and United Airlines, Inc. and identified by the Port Authority Use Agreement No. AGA-988 (as supplemented from time to time prior to the Lease Commencement Date).

17. Space Permit dated June 23, 2004, granted by the Port Authority to JetBlue Airways Corporation and identified by the Port Authority Permit No. AGA-665 (as previously supplemented).

18. Space Permit dated January 1, 2016, granted by the Port Authority to Shuttle America and identified by the Port Authority Permit No. AGB-079.

19. Space Permit dated January 1, 2016, granted by the Port Authority to Shuttle America and identified by the Port Authority Permit No. AGB-078.

20. Space Permit dated November 8, 2014, granted by the Port Authority to Frontier Airlines, Inc. and identified by the Port Authority Permit No. AGB-030 (as supplemented from time to time).

21. Space Permit dated August 1, 2009, granted by the Port Authority to Southwest Airlines Co. and identified by the Port Authority Permit No. AGA-860 (as supplemented from time to time).

22. Space Permit dated January 1, 2015, granted by the Port Authority to United Airlines, Inc. and identified by the Port Authority Permit No. AGB-063 (as supplemented from time to time).

EXHIBIT 4

PORT AUTHORITY GOVERNMENTAL APPROVALS

1. Major Governmental Approvals

2. New York State Department of Environmental Conservation (NYSDEC) State Pollution Discharge Elimination System (SPDES) Permit for Storm Water Discharges at LGA (Permit No. NY-0008133/DEC No. 2-6301-00106/00023)

3. New York State Department of Environmental Conservation State Air Permit – LGA Facility DEC ID: 2630100106

EXHIBIT 5

DISCLOSED ENVIRONMENTAL REPORTS

1. Soil and Groundwater Environmental Condition Survey for the CTB Replacement Project, April 22, 2013, Port Authority of NY & NJ

2. Soil and Groundwater Environmental Condition Survey Supplemental Data for the CTB Replacement Project, August 2013, Port Authority of NY & NJ

3. Environmental Data Resources report for LaGuardia Airport, April 22, 2013, Port Authority of NY & NJ

4. LaGuardia Airport Redevelopment Program, Environmental and Demolition for Hangars 1, 2 and 4 Appendix, April 25, 2013, Port Authority of NY & NJ

5. CTB (Buildings 75 and 89) Universal Waste Inventory Report for LaGuardia Airport Central Terminal Building Replacement Project, April 22, 2013, Port Authority of NY & NJ

6. CTB (Buildings 75 and 89) Asbestos Inspection Report for LaGuardia Airport Central Terminal Building Replacement Project, April 22, 2013, Port Authority of NY & NJ, Revised January 31, 2014

7. CTB Concourses (Buildings 76, 77, 78, 79, 80 and 88) Asbestos Inspection Report for LaGuardia Airport Central Terminal Building Replacement Project, April 22, 2013, Cardno ATC, Revised January 31, 2014

8. CTB Concourses (Buildings 75, 76, 77, 78, 79, 80, 88 and 89) Supplemental Inspection Report for LaGuardia Airport Central Terminal Building Replacement Project, January 31, 2014, Cardno ATC

9. CTB Universal Waste Inventory Report for LaGuardia Airport Central Terminal Building Replacement Project, April 22, 2013, Cardno ATC, Revised January 31, 2014

10. LGA-Parking Garage (Building 74) Asbestos, Lead, PCB and Universal Waste Inventory Report for LaGuardia Airport Central Terminal Building Replacement Project, April 22, 2013, Cardno ATC

11. LGA-Hangar 1 and Building 19 Asbestos, Lead, PCB and Universal Waste Inventory Report for LaGuardia Airport Central Terminal Building Replacement Project, April 22, 2013, Cardno ATC

12. Amoco Station Subsurface Investigation Final Report, Vol. I, October 1998. Port Authority Engineering Department

13. Building 91 Former Amoco Station Site Underground Storage Tank Remedial Closure Report, December 2003, Port Authority Engineering Department

14. UST Closure Report for Former Amoco Station USTs, Volume I, August 2001, LMS Engineers

15. UST Closure Report for Former Amoco Station USTs, Volume II, August 2001, LMS Engineers

16. UST Closure Report for Former Amoco Station USTs, Volume III, August 2001, LMS Engineers

17. Closure Report Jet Fuel Farm UST Removal and Site Remediation, American Airlines, October 23, 1996, Dames and Moore

18. Revised Site Assessment and Closure Report, Underground Storage Tank Sites in the Hangar 4 Vicinity, LaGuardia Airport, February 1992, Burns and McDonnell

19. Closure Report Underground Storage Tank Removals United Airlines Hangar 2 Facility, April 1992, Burns & McDonnell Waste Consultants

20. Site Investigation Report and Exposure Assessment, United Airlines Hangar 2, September 2000, ENSR Corporation

21. Environmental Site Assessment and Proposed Corrective Action Plan, Former Trans World Airlines, Hangar 4, March 14, 2003, URS Corp.

22. Decommissioning and Remedial Excavation Associated with Underground Storage Tanks, American Airlines, Hangar 5, November 13, 2001, URS Corporation

23. Remedial Investigation Report, Hangar 4, August 28, 2013, American Airlines

24. Supplemental Remedial Investigation Report, Hangar 4, December 12, 2013, American Airlines

25. Site Health and Safety Plan, Underground Storage Tank Activities, American Airlines, Hangar 5, March 1, 2002

26. Environmental Investigation, Hangar 5B, Volume 1, August 1995, Port Authority Engineering Department

27. Summary of Additional Sampling Activities Streetside UST, American Airlines, March 23, 1998, Dames and Moore

28. Closure Report Streetside Underground Storage Tank, American Airlines, August 19, 1996, Dames and Moore

29. Supplemental Environmental Investigation Report and Risk Assessment, Streetside USTs, American Airlines, September 3, 1997, Dames and Moore

30. Environmental Investigation Report and Risk Assessment, Streetside USTs and Oil-Water Separators, American Airlines, December 6, 1996, Dames and Moore

31. Monitoring Well Coordinates - 2013 (file name: "Complete List MW Coordinates.xlsx")

32. Hazardous Materials Initial Survey Findings and Sampling Locations for P2 Garage, prepared by Parsons Brinkerhoff, dated 11/12/15. This report was submitted with TAA R-1130. Link to materials on share drive is Z:\0001-Technical\1000-SITE-WIDE\1100- PNTP-Submissions\1130-TAA\R-1130-Asbestos_Survey_Plan_and_Coordination_for_P2_Parking_Garage\0-Issued_for_Review\2015-11-30 Rider A

33. Hazardous Materials Survey Findings and Sampling Locations for CHRP and CES, prepared by Parsons Brinkerhoff, dated 12/21/15. This report was submitted with TAA R-1131. Link to materials on share drive is Z:\0001-Technical\1000-SITE-WIDE\1100- PNTP-Submissions\1130-TAA\R-1131-Asbestos_Survey_Plan_and_Coordination_for_CHRP\0-Issued_for_Review\2016-01-11 Submission

34. Asbestos and Regulated Materials Inspection Report, Building 30, LaGuardia Airport, Queens, New York, by TRC Engineers, Inc., dated November 23, 2015.

EXHIBIT 6

ADDITIONAL ENVIRONMENTAL REQUIREMENTS

29 C.F.R. 1910.120 – Hazardous Waste Operations and Emergency Response

29 C.F.R. 1920.134 – Respiratory Protection

29 C.F.R. 1926 – Safety and Health Regulations for Construction

29 C.F.R. 1926.51 – Sanitation

29 C.F.R. 1926.62 – Lead

29 C.F.R. 1926.1101 – Asbestos

40 C.F.R. 261-264 – Identification and Listing of Hazardous Waste; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

40 C.F.R. 265.13 – General Waste Analysis

40 C.F.R. 268 – Land Disposal Restrictions

49 C.F.R. 171-179 – Department of Transportation Hazardous Materials Regulations

New York State Department of Environmental Conservation (NYSDEC) State Pollution Discharge Elimination System (SPDES) Permit for Storm Water Discharges at LGA (Permit No. NY-0008133/DEC No. 2-6301-00106/00023)

NYSDEC SPDES Permit for Storm Water Discharges from Construction Activity (Permit No. GP-0-10-001)

New York State Department of Environmental Conservation State Air Permit – LGA Facility DEC ID: 2630100106

New York City Department of Environmental Protection Drainage, Sanitary and Water Design Approval, relating to sanitary sewer and water connections

NYSDEC Petroleum Contaminated Soil Guidance Policy STARS Memo #1 (August 1992)

DER-10: Technical Guidance for Site Investigation and Remediation (June 2010)

New York State - Operating in Accordance with a SPDES (6NYCRR-Part 750-02)

New York State - Air Resources (6NYCRR-Part 201)

New York State - Solid Waste Management Facilities (6NYCRR-Part 360)

New York State - Environmental Quality Review (6NYCRR-Part 617)

New York State - Hazardous Waste Management Regulations (6NYCRR Parts 364-373)

New York State - Asbestos (12NYCRR Part 56)

New York State Standards and Specifications for Erosion and Sediment Control (2005)

New York State Storm Water Management Design Manual (2010)

New York State Technical Guidance for Site Investigation and Remediation (NYSDEC DER-10)

Society for Protective Coatings (SSPC) Technology Guide 6 – Guide for Containing Surface Preparation Debris Generated During Paint Removal Operations

SSPC Guide 7 – Guide to the Disposal of Lead-Contaminated Surface Preparation Debris

Tenant Construction and Alteration Process Manual, Port Authority of New York and New Jersey, July 2013

Without limiting the Lessee's other obligations under the environmental approvals, the Lessee shall comply with the commitments, mitigation measures, and responsibilities included in the NEPA Documents.

EXHIBIT 7

[redacted]

EXHIBIT 8

[RESERVED]

EXHIBIT 9

INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES

LGP:

LaGuardia Gateway Partners, LLC
LaGuardia Airport CTB
Room #3862
Flushing, NY 11371
United States

Attention: Stewart Steeves
Phone: (604) 269-3803
Email: ssteeves@laguardiacentral.com

Port Authority:

The Port Authority of NY & NJ
4 World Trade Center – 18th Floor
150 Greenwich Street
New York, NY 10007
Attn: Thomas Bosco, Director of Aviation
Telephone: (212) 435-3720
E-mail: tbosco@panynj.gov

With a copy to:

Office of General Counsel
4 World Trade Center – 23rd Floor
150 Greenwich Street
New York, NY 10007
Attn: Timothy Stickelman, Esq.
Telephone: (212) 435-3425
E-mail: tstickel@panynj.gov

EXHIBIT 10

LAGUARDIA TERMINAL B SITE DIAGRAM

[See attached]

EXHIBIT 11-A

FORM OF HANDBACK PERFORMANCE SECURITY

ISSUER:	[●]
PLACE FOR PRESENTATION OF DRAFT IN PROGRESS:	(Name and Address of Bank/Branch—MUST be CITY OF NEW YORK, NEW YORK Bank/Branch)
APPLICANT:	[●]
BENEFICIARY:	THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY 4 World Trade Center 150 Greenwich Street, 21st Floor New York, NY 10007 Attn: Manager, Alternative Project Delivery
LETTER OF CREDIT NUMBER:	[●]
PLACE AND DATE OF ISSUE:	[●]
AMOUNT:	$[●]
EXPIRATION DATE:	[●]

Issuer hereby issues in favor of Beneficiary this Irrevocable Standby Letter of Credit No. [_] (this "Letter of Credit"), for the account of Account Party and on behalf of Applicant, available by draft at sight drawn on Issuer in an amount not to exceed **[•] ($[•])** (the "Stated Amount"). This Letter of Credit is issued to Beneficiary in respect of the obligations of Applicant pursuant to the Lease Agreement, dated June 1, 2016, by and between The Port Authority of New York and New Jersey and LaGuardia Gateway Partners, LLC (the "Lease"). Subject to the provisions herein, Issuer shall make funds available to Beneficiary under this Letter of Credit against presentation to Issuer of a sight draft that identifies this Letter of Credit by the name of Issuer, the Letter of Credit number, amount, and place of issue, and certification by the Port Authority to Issuer that the circumstances described in Section 11.12(d)(ii), Section 11.12(d)(iii), Section 11.12(d)(iv or Section 11.12(d)(iv) of the Lease has occurred and the Port Authority is entitled to draw on this Letter of Credit.

This Letter of Credit shall expire on Expiration Date set forth above. [This Letter of Credit shall automatically renew for successive terms of one year (and the Expiration Date shall automatically be extended for each such successive period) upon the then existing Expiration Date unless we provide the Beneficiary and the Applicant with a notice of non-renewal (each such notice, a "Notice of Non-Renewal") in a customary form on our letterhead at least thirty (30) days prior to the then existing Expiration Date. It is agreed that a Notice of Non-Renewal shall be deemed given without any further action by us with respect to any extension of the Expiration Date to any date occurring after December 31, 2052. To the extent a Notice of Non-

Renewal has been provided to the Beneficiary and Applicant in accordance herewith (except with regard to Notice of Non-Renewal deemed given with respect to any extension of the Expiration Date to any date occurring after December 31, 2052), the Beneficiary is authorized to draw on us up to the Available Amount of this Credit, by presentation to us, in the manner specified herein, of your written demand for payment

This Letter of Credit shall be honored by Issuer if presented at [CITY OF NEW YORK, NEW YORK Bank/Branch—Name & Address] on or before [_____] (the "Expiration Date"). If any request for payment hereunder is presented in compliance with the terms of this Letter of Credit to Issuer, payment by Issuer will be made within three (3) Business Days of receipt of such request for payment. A "Business Day" shall mean any day on which commercial banks are not authorized or required by law to close in New York, New York. The obligations of Issuer hereunder are primary obligations to Beneficiary and shall not be affected by the performance or non-performance by Applicant or Account Party under any agreement with Beneficiary or by any bankruptcy, insolvency or other similar proceeding initiated by or against Account Party or Applicant. Applicant or Account Party are not the beneficiaries under this Letter of Credit and possesses no interest whatsoever in proceeds of any draw hereon. This Letter of Credit shall terminate on the earlier of (i) 5:00 P.M. Eastern Time in New York, New York, on the Expiration Date, (ii) the date on which Issuer has honored one or more draws in the full amount of Stated Amount and (ii) the date this Letter of Credit is returned to Issuer for cancelation. This Letter of Credit may not be transferred by Beneficiary to any other person. Drawings by facsimile to facsimile number [●] are acceptable (each such drawing, a "Fax Drawing"); provided, however, that a Fax Drawing will not be effectively presented until Beneficiary confirms, by telephone, Issuer's receipt of such Fax Drawing by calling Issuer at telephone number [●]. Issuer will acknowledge Beneficiary's presentment by e-mail to the e-mail address provided to Issuer in the Fax Drawing.

All banking charges, including any advising and negotiating bank charges, are for account of Account Party.

To the extent not inconsistent with the express provisions hereof, this Letter of Credit is subject to the rules of the International Standby Practices ISP98 ("ISP98"), as interpreted under the laws of the State of New York, and shall, as to matters not governed by the ISP98, be governed and construed in accordance with the laws of the State of New York, without regard to principles of conflicts of law.

With respect to any suit, action or proceedings relating to this Letter of Credit ("Proceedings"), each of Issuer, Applicant, Account Party and Beneficiary irrevocably: (i) submits to the exclusive jurisdiction of any New York State or Federal court sitting in the City and County of New York and (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court and to any claim that such Proceedings have been brought in an inconvenient forum.

Issuer:	
By:	_____

Name:	[●]
Title:	[●]
	(Authorized Signatory of Issuer)

******* Please instruct your Issuer to have the Letter of Credit issued in the above format in "Draft" form and fax to the Port Authority Representative (at (212) 435-4695) for approval **PRIOR** to issuance in "Original" form. **If the draft is not reviewed in advance, the Letter of Credit may be rejected**. If you are in need of further assistance, please contact the Port Authority Representative.

EXHIBIT 11-B

FORM OF MAJOR MAINTENANCE PERFORMANCE SECURITY

ISSUER:	[●]
PLACE FOR PRESENTATION OF DRAFT IN PROGRESS:	(Name and Address of Bank/Branch—MUST be CITY OF NEW YORK, NEW YORK Bank/Branch)
APPLICANT:	LAGUARDIA GATEWAY PARTNERS, LLC LaGuardia Airport CTB Room #3862 Flushing, NY 11371
BENEFICIARY:	THE BANK OF NEW YORK MELLON 101 Barclay Street, Floor 7 West New York, New York 10286
LETTER OF CREDIT NUMBER:	[●]
PLACE AND DATE OF ISSUE:	[●]
AMOUNT:	$[●]
EXPIRATION DATE:	[●]

Issuer hereby issues in favor of Beneficiary this Irrevocable Standby Letter of Credit No. [_] (this "Letter of Credit"), for the account of and on behalf of Applicant, available by draft at sight drawn on Issuer in an amount not to exceed **[•] ($[•])** (the "Stated Amount"). This Letter of Credit is issued to Beneficiary in respect of the obligations of Applicant pursuant to: (i) the Lease Agreement, dated June 1, 2016 (the "Lease"), by and between The Port Authority of New York and New Jersey and LaGuardia Gateway Partners, LLC (the "Lessee"), and (ii) the Collateral Agency Agreement, dated as of May 1, 2016 (the "Collateral Agency Agreement"), among the Borrower and the Beneficiary as Collateral Agency, Securities Intermediation, Trustee and Deposit Account Bank. Subject to the provisions herein, Issuer shall make funds available to Beneficiary under this Letter of Credit against presentation to Issuer of a sight draft that identifies this Letter of Credit by the name of Issuer, the Letter of Credit number, amount, and place of issue, and certification by the Beneficiary to Issuer that the circumstances described in Section 5.10(d) or 5.10(e) of the Collateral Agency Agreement has occurred and the Beneficiary is entitled to draw on this Letter of Credit.

This Letter of Credit shall expire on Expiration Date set forth above. This Letter of Credit shall automatically renew for successive terms of one year (and the Expiration Date shall automatically be extended for each such successive period) upon the then existing Expiration Date unless we provide the Beneficiary and the Applicant with a notice of non-renewal (each such notice, a "Notice of Non-Renewal") in a customary form on our letterhead at least thirty (30) days prior to the then existing Expiration Date. It is agreed that a Notice of Non-Renewal

shall be deemed given without any further action by us with respect to any extension of the Expiration Date to any date occurring after [_____]. To the extent a Notice of Non-Renewal has been provided to the Beneficiary and Applicant in accordance herewith (except with regard to Notice of Non-Renewal deemed given with respect to any extension of the Expiration Date to any date occurring after [*insert date provided in prior sentence*]), the Beneficiary is authorized to draw on us up to the Available Amount of this Credit, by presentation to us, in the manner specified herein, of your written demand for payment

This Letter of Credit shall be honored by Issuer if presented at [CITY OF NEW YORK, NEW YORK Bank/Branch—Name & Address] on or before [_____] (the "Expiration Date"). If any request for payment hereunder is presented in compliance with the terms of this Letter of Credit to Issuer, payment by Issuer will be made within three (3) Business Days of receipt of such request for payment. A "Business Day" shall mean any day on which commercial banks are not authorized or required by law to close in New York, New York. The obligations of Issuer hereunder are primary obligations to Beneficiary and shall not be affected by the performance or non-performance by Applicant under any agreement with Beneficiary or by any bankruptcy, insolvency or other similar proceeding initiated by or against Applicant. Applicant is not the beneficiary under this Letter of Credit and possesses no interest whatsoever in proceeds of any draw hereon. This Letter of Credit shall terminate on the earlier of (i) 5:00 P.M. Eastern Time in New York, New York, on the Expiration Date, (ii) the date on which Issuer has honored one or more draws in the full amount of Stated Amount and (ii) the date this Letter of Credit is returned to Issuer for cancelation.

This Letter of Credit is transferable in its entirety (but not in part) by Issuer at the request of Beneficiary to any successor to the Beneficiary as Collateral Agent under the Collateral Agency Agreement (including any successor in connection with a merger or other organizational restructuring involving the Beneficiary); provided, however, no transfer of this Letter of Credit shall be effective until:

A. A transfer request, purportedly executed by an Authorized Officer of Beneficiary, in the form attached hereto ("Transfer Request") is delivered to Issuer; and

B. The original of this Letter of Credit, including the original(s) of any amendment(s) hereto, is/are returned to Issuer for Issuer's endorsement thereon of any transfer effected.

Drawings by facsimile to facsimile number [●] are acceptable (each such drawing, a "Fax Drawing"); provided, however, that a Fax Drawing will not be effectively presented until Beneficiary confirms, by telephone, Issuer's receipt of such Fax Drawing by calling Issuer at telephone number [●]. Issuer will acknowledge Beneficiary's presentment by e-mail to the e-mail address provided to Issuer in the Fax Drawing.

All banking charges, including any advising and negotiating bank charges, are for account of Applicant.

To the extent not inconsistent with the express provisions hereof, this Letter of Credit is subject to the rules of the International Standby Practices ISP98 ("ISP98"), as interpreted under the laws

of the State of New York, and shall, as to matters not governed by the ISP98, be governed and construed in accordance with the laws of the State of New York, without regard to principles of conflicts of law.

With respect to any suit, action or proceedings relating to this Letter of Credit ("Proceedings"), each of Issuer, Applicant and Beneficiary irrevocably: (i) submits to the exclusive jurisdiction of any New York State or Federal court sitting in the City and County of New York and (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court and to any claim that such Proceedings have been brought in an inconvenient forum.

Issuer:	
By:	_____
Name:	[●]
Title:	[●]
	(Authorized Signatory of Issuer)

******* Please instruct your Issuer to have the Letter of Credit issued in the above format in "Draft" form and fax to the Port Authority Representative (at (212) 435-4695) for approval **PRIOR** to issuance in "Original" form. **If the draft is not reviewed in advance, the Letter of Credit may be rejected**. If you are in need of further assistance, please contact the Port Authority Representative.

EXHIBIT 12

CERTAIN PUBLIC POLICY REQUIREMENTS

Port Authority Prevailing Wage

The Lessee shall pay or provide, and shall cause all Contractors and Suppliers to pay or provide, to their respective workmen, laborers and mechanics (who are employed by the Lessee or any of its Contractors or Suppliers to work on an hourly or daily basis in any trade or occupation at or about the Premises or the areas subject to the Temporary Rights of Access) at least the prevailing rate of wage and supplements for others engaged in the same trade or occupation in the locality in which the Work is being performed as determined by the Port Authority's Authorized Representative.

For purposes of this Agreement, the Port Authority's Authorized Representative has determined that the prevailing rates of wage and supplements for performance of the D&C Work and the Operations and Maintenance Work are those prevailing rates of wage and supplements established by the Secretary of Labor of the United States pursuant to the Davis-Bacon Act (40 U.S.C.A. 276a) for the locality in which the D&C Work and the Operations and Maintenance Work, as the case may be, is to be performed. The applicable rates shall initially be those which are in effect on the date of the Proposal Due Date.

The provisions of this Exhibit 12 (*Certain Public Policy Requirements*) are for the benefit of such workmen, laborers and mechanics as well as for the benefit of the Port Authority; and if the Lessee or any Contractor or Supplier shall pay or provide any such workman, laborer or mechanic less than the rates of wages and supplements above described, such workman, laborer or mechanic shall have a direct right of action against the Lessee or such Contractor or Supplier for the difference between the wages and supplements actually paid or provided and those to which he is entitled under this Exhibit 12 (*Certain Public Policy Requirements*). If such workman, laborer or mechanic is employed by any Contractor or Supplier whose Contract does not contain a provision substantially similar to the provisions of this Exhibit 12 (*Certain Public Policy Requirements*) (requiring the payment or provision of at least the above minimum, and providing for a cause of action in the event of the subcontractor's failure to pay or provide such wages and supplements), such workman, laborer or mechanic shall have a direct right of action against the Lessee. The Port Authority shall not be a necessary party to any action brought by any workman, laborer or mechanic to obtain a money judgment against the Lessee or any Contractor or Supplier pursuant to this Exhibit 12 (*Certain Public Policy Requirements*).

Nothing herein contained shall be construed to prevent the Lessee or any Contractor or Supplier from paying higher rates of wages or providing higher supplements than the minimum hereinbefore prescribed; and nothing herein contained shall be construed to constitute a representation or guarantee that the Lessee or any Contractor or Supplier can obtain workmen, laborers and mechanics for the minimum hereinbefore prescribed. All wages actually paid that are in excess of the prevailing wages in the performance of the additional or modified Work pursuant to any duly executed change order giving effect to a Port Authority Change or a Lessee Change or pursuant to a Directive Letter, if applicable, shall be subject, on each occasion, to the

initial and continuing approval of the Port Authority's Authorized Representative in advance of the performance of such Work, if applicable.

The Lessee shall post at the Premises and the areas subject to the Temporary Rights of Access, in a place that is prominent, accessible and visible to all employees of the Lessee and its Contractors and Suppliers during the daily time period that the Lessee, its Suppliers and/or Contractors performs Work at the Premises or the areas subject to the Temporary Rights of Access, the appropriate prevailing wage and supplement schedules. The Lessee must inform all employees, including those of its Contractors and Suppliers, that they may obtain a copy of the prevailing wage and supplement schedule from the Lessee.

The Lessee and every Contractor and Supplier shall make and maintain weekly payroll records during the course of the Work for all employees employed to perform the Work. Such records shall contain the name, address and last four digits of the social security number of each such employee (the Lessee, Suppliers and Contractors must maintain the full social security number of each employee and shall provide them upon request to the OIG), the employee's correct payroll classification, rate of pay and supplements, daily and weekly number of hours worked, deductions made and actual wages and supplements paid. The Lessee shall submit these weekly payroll records to the Port Authority (on forms furnished by the Port Authority) of all its payroll records and those of each of its Contractors and Suppliers as the Port Authority may require, together with an affidavit by the Lessee and by each Contractor and Supplier to the effect that such payroll records are correct and complete, the wage and supplement rates contained therein are not less than those required by the provisions of this Agreement, and the classifications set forth for each employee conform with the Work performed. Such copies and summaries and the original payroll records shall be available for inspection by the Port Authority (including the OIG), and the Lessee and its Contractors and Suppliers shall permit such representatives to interview employees during work hours at the Premises and the areas subject to the Temporary Rights of Access.

The Port Authority’s Authorized Representative may at any time request the Lessee to prepare a daily report on the Port Authority form entitled “Contractor/Supplier Daily Sign-In Sheet”, copies of which can be obtained from the Port Authority’s Authorized Representative. The Contractor/Supplier Daily Sign-In Sheet shall be completed as follows:

(a) At the beginning of each workday the Lessee’s Authorized Representative shall:

(i) fill in the top of the Contractor/Supplier Daily Sign-In Sheet, including the location, date, Contractor or Supplier name and contract number;

(ii) ensure that each employee, including those of Contractors and Suppliers, has printed and signed his or her name and indicated his or her work classifications, the last four digits of his or her social security number, and his or her starting time;

(b) At the end of each workday, the Lessee’s Authorized Representative shall:

(i) ensure that each employee, including those of subcontractors, has signed out and indicated his or her ending time;

(ii) sign the certification statement at the bottom of the form to indicate that the information contained in the Contractor/Supplier Daily Sign-In Sheet is true and accurate; and

(iii) submit the original completed form to the Port Authority's Authorized Representative.

In an area of its office at the Premises or the areas subject to the Temporary Rights of Access which is accessible to its employees, the Lessee shall display such printed material as may be provided by the Port Authority's Authorized Representative's setting forth information for the employees of the Lessee and its Contractors and Suppliers concerning the wage and supplemental benefit requirements set forth in this Exhibit 12 (*Certain Public Policy Requirements*). The Lessee shall also cause each of its Contractors and Suppliers to display such material in a similarly accessible place in any office which the Contractor or Supplier may maintain at the Premises or the areas subject to the Temporary Rights of Access.

The Lessee's failure to comply with any provision of this Exhibit 12 (*Certain Public Policy Requirements*) shall be deemed a substantial breach of this Agreement.

EXHIBIT 13

AFFIRMATIVE ACTION, EQUAL OPPORTUNITY, MINORITY BUSINESS ENTERPRISE AND WOMEN-OWNED BUSINESS ENTERPRISE REQUIREMENTS

PART I. Employment - Affirmative Action Guidelines - Equal Employment Opportunity

I. As a matter of policy the Port Authority hereby requires the Lessee and the Lessee shall require its Contractors and Suppliers to comply with the provisions set forth hereinafter in Part I of this Exhibit 13 (*Affirmative Action, Equal Opportunity, Minority Business Enterprise, Women-Owned Business Enterprise Requirements*) and in Section 15.9 (*Employment – Affirmative Action – Equal Opportunity*) of this Agreement.

The Lessee as well as each Contractor and Supplier of the Lessee must fully comply with the following conditions set forth herein as to each construction trade to be used in the performance of the Construction Work or the Asset Preservation Work or any portion thereof (said conditions being herein called the "**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 Conditions. The Lessee shall likewise require the Contractor and Supplier to commit themselves to the said goals for minority and female utilization set forth below and all other requirements, terms and conditions of the Conditions.

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

(a) The goals for minority and female participation expressed in percentage terms for the Contractor's or Supplier's aggregate workforce in each trade performing any of the Construction Work or the Asset Preservation 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%

The Contractor's or Supplier'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 and Supplier 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 or Supplier'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 and the Supplier shall provide written notification to the Lessee and the Lessee shall provide written notification to the Port Authority's Aviation Department and Office of Business Diversity and Civil Rights within ten (10) working days of award of any Contract in excess of $10,000 at any tier for Construction Work or Asset Preservation Work, as applicable. 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 the Supplier subcontracts a portion of the Construction Work or the Asset Preservation Work involving any construction trade, it shall physically include in each Contract in excess of $10,000 those provisions which include the applicable goals for minority and female participation.

(e) The Contractor and the Supplier shall implement the specific affirmative action standards provided in subparagraphs (1) through (16) of paragraph (h) below. The goals set forth above are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor and the Supplier should reasonably be able to achieve in each construction trade in which it has employees in the Premises or the Construction Site. The Contractor or the Supplier 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 or the Supplier has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's or the Supplier'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 and the Supplier during the training period, and the Contractor and the Supplier 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 and the Supplier shall take specific affirmative actions to ensure equal employment opportunity ("**EEO**").

The evaluation of the Contractor's and the Supplier's compliance with these provisions shall be based upon its good faith efforts to achieve maximum results from its actions. The Contractor and the Supplier 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 and the Supplier, where possible, will assign two or more women to each phase of the Construction Work or Asset Preservation Work, as applicable. The Contractor and the Supplier shall specifically ensure that all foremen, superintendents, and other supervisory personnel at the Premises are aware of and carry out the Contractor's or the Supplier's obligation to maintain such a working environment, with specific attention to minority or female individuals working at the Premises or the Construction Site.

(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, the Supplier or its respective unions have employment opportunities available, and maintain a record of the organizations' responses.

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

(4) Provide immediate written notification to the Lessee when the union or unions with which the Contractor or the Supplier has a collective bargaining agreement has not referred to the Contractor or the Supplier a minority person or woman sent by the Contractor or the Supplier, or when the Contractor or Supplier has other information that the

union referral process has impeded the Contractor's or the Supplier'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 or the Supplier's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor or the Supplier shall provide notice of these programs to the sources compiled under subparagraph (2) above.

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

(7) Review, at least every six months, the Contractor's or the Supplier's EEO policy and affirmative action obligations hereunder with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decision including specific review of these items with on-terminal supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of the Construction Work and the Asset Preservation Work at the Premises or the Construction Site. 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 or the Supplier'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 or the Supplier's EEO policy with other Contractors or Suppliers with whom the Contractor or the Supplier 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 or the Supplier'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 or the Supplier 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 the Construction Site and in areas of a Contractor's or Supplier's workforce.

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

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

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

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

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

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

(i) Contractors and Suppliers 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 or the Supplier is a member and participant, may be asserted as fulfilling any one or more of its obligations under paragraph (h) above; provided, that the Contractor or the Supplier 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 or the Supplier'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 or the Supplier. The obligation to comply, however, is the Contractor's or the Supplier's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's or the Supplier's non-compliance.

(j) Goals for minorities and for women have been established respectively. The Contractor or the Supplier, 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 or the Supplier may be in violation hereof if a

particular group is employed in a substantially disparate manner (for example, even though the Contractor or the Supplier 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 or the Supplier 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 or the Supplier shall not enter into any subcontract with any Person or firm debarred from Government contracts pursuant to Executive Order 11246.

(m) The Contractor or the Supplier 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 or Supplier who fails to carry out such sanctions and penalties shall be in violation hereof.

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

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

PART II. Minority Business Enterprises and Women-owned Business Enterprises

The Lessee acknowledges that one of the top-priority initiatives of the Port Authority is to encourage meaningful opportunities for Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs) across the full spectrum of infrastructure projects and related activities in the region. As a matter of policy, the Port Authority requires the Lessee to require that any Contractor or Supplier utilized by the Lessee to perform Work on the Premises or the areas subject to the Temporary Rights of Access, use every "good faith effort", as that

term is described in this Part II of Exhibit 13 (*Affirmative Action, Equal Opportunity, Minority Business Enterprise, Women-owned Business Enterprise Requirements*), to provide for meaningful participation by MBEs and WBEs in any portion of the Work that is sub-contracted by them pursuant to the provisions of this Part II of Exhibit 13 (*Affirmative Action, Equal Opportunity, Minority Business Enterprise, Women-owned Business Enterprise Requirements*). In recognition of these efforts in support of minority- and women-owned firms, the Port Authority has set goals of: (i) thirty percent (30%) combined MBE and WBE participation of the Contracted D&C Work Value and (ii) thirty percent (30%) combined MBE and WBE participation per annum of the total cost of Operations and Maintenance Work performed in the relevant year, for which Lessee utilizes Contractors (other than the Terminal Operator) and Suppliers during the O&M Period (clauses (i) and (ii), as applicable, the "**Participation Goal**").

With respect to the D&C Work, as of the Lease Commencement Date, the Port Authority and the Lessee shall have cooperated and coordinated with each other in good faith and agreed to a mutually satisfactory MBE/WBE Participation Plan (as modified by mutual agreement from time to time, the "**D&C Plan**") for the D&C Work, which D&C Plan shall set forth the Lessee's implementation strategy to engage MBEs and WBEs consistent with the Participation Goal for the D&C Work.

By no later than the first (1st) anniversary of the Substantial Completion Date, the Parties shall have cooperated and coordinated with each other in good faith and agreed to mutually satisfactory modifications to a Plan for Operations and Maintenance (the "**O&M Plan**") that incorporates the Lessee's implementation strategy to engage MBEs and WBEs consistent with the Participation Goal with respect to the Operations and Maintenance Work, including identification of specific categories, values and streams of Operations and Maintenance Work to which the Participation Goal will be applied. Recognizing that conditions may exist that make the Participation Goal difficult to achieve for certain aspects of the Operations and Maintenance Work, such modifications to the O&M Plan shall take into due consideration market capacity and feasibility, regional labor conditions, existing contractual obligations and other factors, as well as contract analysis that may be performed by the Port Authority. From the Lease Commencement Date to such time as the Parties agree in the modified O&M Plan to apply the Participation Goal to the Operations and Maintenance Work, the Lessee shall use good faith efforts to achieve an interim goal of twelve (12%) MBE and five (5%) WBE per annum of the total cost of Operations and Maintenance Work performed in such year for which Lessee utilizes Contractors (other than such Work performed by the Terminal Operator), taking into account the same considerations noted in the immediately preceding sentence.

The D&C Plan and O&M Plan shall be reviewed from time to time by the Parties and revised as appropriate as set forth above. For the avoidance of doubt, a failure by the Lessee to satisfy the Participation Goal at any time shall not constitute a breach of this Agreement nor shall such failure, in and of itself, give rise to an Event of Default, unless it is demonstrated that the Lessee consistently and materially failed to exercise all good faith efforts to comply with the terms of this Part II of Exhibit 13 (*Affirmative Action, Equal Opportunity, Minority Business Enterprise, Women-owned Business Enterprise Requirements*), and following receipt of written notice as provided in Section 23.1(r) of this Agreement.

For the purposes hereof, the following defined terms have the meanings set forth below:

"**Minority Business Enterprise**" or "**MBE**" shall mean any business enterprise which is at least fifty-one percent (51%) owned by, or in the case of a publicly held corporation, at least fifty-one percent (51%) of the ownership interest of which is owned by one or more members of one or more minority groups and whose management and daily business operations are controlled by one or more members of one or more minority groups who are citizens or permanent resident aliens.

"**Women-owned Business Enterprise**" or "**WBE**" shall mean any business enterprise which is at least fifty-one percent (51%) owned by, or in the case of a publicly held corporation, at least fifty-one percent (51%) of the ownership interest of which is owned by one or more women, and whose management and daily business operations are controlled by one or more women who are citizens or permanent resident aliens.

"**Minority**" shall have the meaning set forth in paragraph II(c) of Part I of this Exhibit 13 (*Affirmative Action, Equal Opportunity, Minority Business Enterprise, Women-Owned Business Enterprise Requirements*).

The Lessee shall use and document every good faith effort to comply with the plan submitted by or on behalf of the Lessee to comply with the participation goals set forth in this Part II (the "**MBE/WBE Participation Plan**"), and to permit its MBE/WBE subcontractors to perform. Participation percentages shall be monitored throughout the performance of this Agreement.

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

(a) Attendance at pre-bid meetings, if any, scheduled by the Authority;

(b) Utilizing the Port Authority's Directory of certified MBE/WBEs available on-line at http://www.panynj.gov/supplierdiversity and/or proposing for certification other MBE/WBEs which appear to meet the Port Authority's criteria for MBE/WBE certification and which are technically competent to perform the Work which the bidder plans to subcontract;

(c) Active and affirmative solicitation of bids for Contracts from MBE/WBEs including circulation of solicitations to minority and women-owned contractor associations. The Contractor or the Supplier 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 venture or subcontractor, the reason for such decision;

(d) Advertisement in general circulation media, trade association publications and minority-focused media for a reasonable period before commencement of the D&C Work or the Operations and Maintenance Work, as the case may be;

(e) Dividing the Work to be subcontracted into smaller portions or encouraging the formation of joint ventures, partnerships or similar arrangements among subcontractors in order to increase the likelihood of achieving the MBE/WBE goals;

(f) Providing a sufficient supply of drawings and specifications of prospective work to MBE/WBEs and providing appropriate materials to each in sufficient time to review; and

(g) Utilizing the services of available minority and women's community organizations; contractors' groups; local, State and Federal business assistance/development offices and other organizations that provide assistance to MBE/WBEs.

(h) Ensuring that progress payments are made in a timely fashion in accordance with the requirements of the relevant Contract;

(i) Where appropriate, not requiring bonds from and/or providing bonds and insurance for Contractors and Suppliers;

(j) Soliciting specific recommendations on methods for enhancing MBE/WBE participation from Authority staff responsible for such participation; and

(k) Nominating Contractors and Suppliers for participation in business assistance programs sponsored by the Port Authority or the Regional Alliance of Small Contractors such as the Loaned Executive Assistance Program (L.E.A.P.).

The MBE/WBE Participation Plan may be modified only with the written approval of the Port Authority's Authorized Representative.

Certification of MBEs and WBEs hereunder shall be made by the Office of Business Diversity and Civil Rights of The Port Authority of New York and New Jersey (the "**OBDCR**") or by the Empire State Development's Division of Minority and Women's Owned Business Development ("**DMWBD**"). If the Contractor wishes to utilize a firm not already certified by the OBDCR or the DMWBD, the Contractor or the Supplier shall submit to the OBDCR 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 OBDCR. All such requests shall be in writing addressed to the Office of Business Diversity and Civil Rights, The Port Authority of New York and New Jersey, 2 Montgomery – 3rd Floor, Jersey City, New Jersey, 07302 or such other address as the Port Authority may specify by notice to the Lessee. Certification shall be effective only if made in writing by the Director in charge of the OBDCR. The determination of the OBDCR shall be final and binding.

Each of the Port Authority and Empire State Development have compiled and made available on-line a MBE/WBE Directory which sets forth the firms that the Port Authority and/or Empire State Development have determined to be (1) MBEs/WBEs and (2) experienced in performing work in the trades and contract dollar ranges indicated in the Directories. The Directories can be accessed at http://www.panynj.gov/supplierdiversity and https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=4687. The

Port Authority makes no representation as to the financial responsibility of such firms or their ability to perform Work required under this Agreement.

Only MBE's and WBE's certified by the OBDCR and/or DMWBD 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 for the Construction Work. 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.

The Lessee shall ensure that all approved MBE/WBE Contractors and Suppliers maintain a regular on site presence at the Premises or the areas subject to the Temporary Rights of Access, as applicable, for the portions of the Work they are subcontracted to perform and that they exercise financial and operation management and control of such portions of the Work.

_____

For the Port Authority

Initialed:

_____

For the Lessee

EXHIBIT 14

LOCAL BUSINESS ENTERPRISE AND EMPLOYMENT OPPORTUNITY

As a matter of policy the Port Authority hereby requires the Lessee, and the Lessee shall require any Contractor or Supplier utilized by the Lessee to perform Work on the Premises or the areas subject to the Temporary Rights of Access, to comply with the provisions set forth hereinafter in this Exhibit 14 (*Local Business Enterprise and Employment Opportunity*).

PART I. Local Business Enterprise

The Lessee and each Contractor and Supplier shall use every good faith effort to maximize the participation of Local Business Enterprises (LBEs) in the Work on the Premises, including the Construction Work. By accessing the link below the Lessee 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 Port 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 Lessee.

- 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 Agreement including the obligation to comply with the Affirmative Action-Equal Opportunity and Minority and Women-Owned Business Enterprises provisions set forth in Exhibit 13 (*Affirmative Action, Equal Opportunity, Minority Business Enterprise and Women-Owned Business Enterprise Requirements*) hereof.

Local Business Enterprise shall mean a business entity located within the County of Queens in the State of New York.

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 and Suppliers will work with the Council for Airport Opportunity (CAO) to utilize the labor talent available from local communities

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

- http://www.caony.com

A local resident is defined as a natural person residing within the County of Queens in the State of New York.

EXHIBIT 15

AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PARTICIPATION

In accordance with regulations of the US Department of Transportation 49 C.F.R. 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. 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 Lessee or another Concession Sublessee. 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 twenty percent (20%) or such other goal as may be set by the Port Authority 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 Lessee shall take all necessary and reasonable steps to comply with the requirements of the Port Authority's ACDBE program. The Lessee commits to making good faith efforts to achieve the ACDBE goal. Pursuant to 49 C.F.R. 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 (a) through joint ventures in which ACDBEs control a distinct portion of the joint venture business, and/or (b) purchase of goods and services from ACDBEs. In connection with the aforesaid good faith efforts, as to those matters contracted out by the Lessee in its performance of this Agreement, the Lessee shall use, to the maximum extent feasible and consistent with the Lessee'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 Lessee shall keep such records and provide such information to the Port Authority as shall enable the Port Authority to comply with its obligations under 49 C.F.R. 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 State Uniform Certification Program (UCP). The New York State UCP directory is available on-line at www.nysucp.net and the New Jersey State 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 the amount defined in 49 C.F.R. Part 23.33 as the same shall be modified pursuant to periodic Federal update. It must be (a) at least fifty-one percent (51%) owned and controlled by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least fifty-one percent (51%) of the stock is owned by one or more socially and economically disadvantaged individuals; and (b)

whose management and daily business operations are controlled by one or more of the socially or economically disadvantaged individuals who own it. Further, the ACDBE must meet the personal net worth standard established pursuant to 49 C.F.R. Part 23.35 as the same shall also be modified subject to periodic Federal update. The ACDBE may, if other qualifications are met, be a franchisee of a franchisor.

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 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 or 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 State 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 State 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 C.F.R. Part 23. All such requests shall be in writing, addressed to the Director, Office of Business Diversity and Civil Rights, 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 certhelp@panynj.gov for inquiries or assistance.

_____
For the Port Authority

Initialed:

_____
For the Lessee

EXHIBIT 16-A

FORM OF PORT AUTHORITY FUNDING DISBURSEMENT REQUEST CERTIFICATE

The Port Authority of New York and New Jersey
4 World Trade Center - 18th Floor
150 Greenwich Street
New York, New York 10007
Attn: Thomas Bosco, Director of Aviation

Re: LaGuardia Airport Central Terminal Building

Ladies and Gentlemen:

Pursuant to Article 9 (*Port Authority Funding*) of the Lease Agreement, dated June 1, 2016 (as the same may be amended from time to time, the "**Agreement**"), by and between The Port Authority of New York and New Jersey, as lessor (the "**Port Authority**") and LaGuardia Gateway Partners, LLC, as lessee (the "**Lessee**"), the Lessee hereby requests disbursement in the amount of $[_____] for PFC Eligible Project Costs. Capitalized terms used but not defined herein have the meaning set forth in the Agreement. In connection with this Disbursement Request, the undersigned hereby certifies and represents to the Port Authority as follows:

(a) The information contained in the documents attached hereto is true, complete and correct in all material respects.

(b) The proceeds of the PFC Funding for which this certificate is required to be delivered pursuant to Article 9 (*Port Authority Funding*) of the Agreement, are being used only to pay for PFC Eligible Project Costs.

(c) The use of the proceeds of the PFC Funding for which this certificate is required to be delivered pursuant to Article 9 (*Port Authority Funding*) of the Agreement comply with the requirements of Article 9 (*Port Authority Funding*) of the Agreement.

(d) The use of the proceeds of the PFC Funding for which this certificate is required to be delivered pursuant Article 9 (*Port Authority Funding*) of the Agreement comply with all Applicable Laws, including without limitation, PFC Regulations.

(e) This certificate is being delivered with respect to Disbursement Request No. *[insert number starting with "1"]*.

(f) The cumulative disbursements made to date without giving effect to the disbursement for which this certificate is being delivered is $[_____].

(g) The D&C Work associated with the Disbursement Request has been performed and furnished in compliance with the requirements of the Agreement, the Released For Construction Documents and FAA Grant Assurances.

(h) The amount specified in the Disbursement Request has been computed in accordance with, and is due and payable under, the terms and conditions of the Agreement, has not been the subject of any previous Disbursement Request (unless disputed or rejected for payment) and is not the subject of any pending Disbursement Request from the Lessee.

(i) As of the date of this Disbursement Request, the D&C Contractor is not barred or suspended from providing goods or services to any Governmental Entity or the Port Authority. Except for any specific Contractor listed as barred or suspended in an attachment to this Disbursement Request Certificate, each Contractor who has a direct Contract with the D&C Contractor has certified in its respective invoice to the D&C Contractor that such Contractor is not barred or suspended from providing goods or services to any Governmental Entity or the Port Authority, and to the Lessee's knowledge, no such Contractor has been so barred or suspended.

(j) No Event of Default shall have occurred and is continuing.

(k) Within twenty-two (22) days of the receipt by each Contractor of the payment pursuant to this payment request, the Lessee shall deliver to the Port Authority copies of unconditional releases and waivers of Liens, in the form attached to the Agreement as Exhibit 16-C-2 (*Form of Contractor's Unconditional Lien Waiver)*, from each Contractor whose release and waiver of Liens (if any) is required to be provided by the Lessee to the Port Authority pursuant to Section 9.2(b)(v) of the Agreement.

(l) The following information is attached to this payment request in compliance with Section 9.2(b) of the Agreement:

1. _____

2. _____

3. _____ .

(m) [This Disbursement Request is being submitted during a PAF Holdback Period as described in Section 9.2(i) of the Agreement. As of the date of this Disbursement Request, the Port Authority has withheld $[_____] as the aggregate PAF Holdback Amount during the current PAF Holdback Period and the aggregate PAF Holdback Amount that can be withheld from this Disbursement Request in accordance with Section 9.2(i)(iv) of the Agreement is $[_____].][3]

[3] To be included in any Disbursement Request submitted during a PAF Holdback Period.

LAGUARDIA GATEWAY PARTNERS, LLC

By: _____
Name: _____
Title: _____

EXHIBIT 16-B

FORM OF REQUEST FOR PAYMENT FOR PORT AUTHORITY FUNDING FOR THE NEW IMPROVEMENTS AND THE CENTRAL HALL

REQUEST FOR PAYMENT NO. ___

PAYMENT PERIOD: _____, 20___

The Port Authority of New York and New Jersey
4 World Trade Center - 18th Floor
150 Greenwich Street
New York, New York 10007
Attn: Thomas Bosco, Director of Aviation

Re: LaGuardia Airport Central Terminal Building

Ladies and Gentlemen:

Pursuant to Article 9 (*Port Authority Funding*) of the Lease Agreement, dated June 1, 2016 (as the same may be amended from time to time, the "**Agreement**"), by and between The Port Authority of New York and New Jersey, as lessor (the "**Port Authority**") and LaGuardia Gateway Partners, LLC, as lessee (the "**Lessee**"), the Lessee hereby requests payment in the amount of $[_____] for the performance of the D&B Work with respect to the New Improvements, as set forth in the New Improvements Payment and Milestone Schedule (the "**New Improvements Milestone Payments**"), and the Central Hall, as set forth in the Central Hall Payment and Milestone Schedule (the "**Central Hall Milestone Payments**", and together with the New Improvements Milestone Payments, the "**Milestone Payments**"). Capitalized terms used but not defined herein shall have their respective meanings as used in the Agreement. In connection with this payment request, the undersigned hereby certifies and represents to the Port Authority as follows:

(a) The information contained in the documents attached hereto (including the monthly progress report on the activities performed during the period covered by this payment request and such other information required to be provided by the Lessee pursuant to Sections 9.2(b)(ii) and (iii) and 9.4(d) of the Agreement) is true, complete and correct in all material respects.

(b) The proceeds of the Port Authority Funding for which this payment request is required to be delivered pursuant to Article 9 (*Port Authority Funding*) of the Agreement, are being used only to pay for Milestone Payments.

(c) The use of the proceeds of the Port Authority Funding for which this payment request is required to be delivered pursuant to Article 9 (*Port Authority Funding*) of the

Agreement, comply with the requirements of Article 9 (*Port Authority Funding*) of the Agreement.

(d) The use of the proceeds of the Port Authority Funding for which this payment request is required to be delivered pursuant to Article 9 (*Port Authority Funding*) of the Agreement, comply with all Applicable Laws, including without limitation, PFC Regulations.

(e) The cumulative payments made to date under the Agreement and the PNTP Agreement, without giving effect to the payment for which this payment request is being delivered, total $[_____].

(f) The D&C Work associated with this payment request has been performed and furnished in compliance with the requirements of the Agreement and the Released for Construction Documents.

(g) The amount specified in this payment request has been computed in accordance with, and is due and payable under, the terms and conditions of the Agreement, has not been the subject of any previous payment request (unless disputed or rejected for payment) and is not the subject of any pending payment request from the Lessee.

(h) As of the date of this payment request, the D&C Contractor performing the D&C Work is not barred or suspended from providing goods or services to any Governmental Entity or the Port Authority. Except for any specific Contractor listed as barred or suspended in an attachment to this payment request, each Contractor who has a direct Contract with the D&C Contractor with respect to the D&C Work has certified in its respective invoice to the D&C Contractor that such Contractor is not barred or suspended from providing goods or services to any Governmental Entity or the Port Authority, and to the Lessee's knowledge, no such Contractor has been so barred or suspended.

(i) As of the date of this payment request, the Lessee has paid the D&C Contractor all amounts previously paid to the Lessee on account of the D&C Work with respect to the New Improvements and/or the Central Hall, in accordance with the terms and conditions of the D&C Contract and the Agreement.

(j) No Event of Default shall have occurred and is continuing.

(k) The Construction Project and the Premises, and any and all interests and estates therein, and all improvements and materials placed on the Premises, for which payment has been received by the Lessee, are free and clear of any and all Liens or Claims arising out of or in connection with the performance of the D&C Work with respect to the New Improvements and/or the Central Hall performed by the Lessee or any of its Contractors, except for such Liens or Claims for which deposit bond or other security has been provided in accordance with Sections 3.3 and 9.2(b) of the Agreement.

(l) Within twenty-two (22) days of the receipt by the Lessee of the payment pursuant to this payment request, the Lessee shall deliver to the Port Authority copies of unconditional releases and waivers of Liens, in the form attached to the Agreement as Exhibit 16-C-2 (*Form of*

Contractor's Unconditional Lien Waiver), from each Contractor whose release and waiver of Liens (if any) is required to be provided by the Lessee to the Port Authority pursuant to Sections 9.2(b)(v) and 9.4(d) of the Agreement.

(m) The following information is attached to this payment request in compliance with Section 9.2(b) of the Agreement:

1. _____

2. _____

3. _____ .

LAGUARDIA GATEWAY PARTNERS, LLC

By: _____
Name: _____
Title: _____

EXHIBIT 16-C-1

FORM OF CONTRACTOR'S LIEN WAIVER

Form of Contractor's Conditional Lien Waiver[4]

LIEN WAIVER – CONTRACTOR

For the period ending: _____, 20___

Request for Payment No. _____

STATE OF NEW YORK)
:
COUNTY OF)

TO WHOM IT MAY CONCERN:

The undersigned is [___*title*___] of [__*name of Contractor*__], a [_____], (the "Contractor"), which has entered into that certain Design-Build Contract, dated June 1, 2016, with LaGuardia Gateway Partners, LLC, a Delaware limited liability company (the "Developer"), to furnish certain work described in the DB Disbursement Request Certificate dated [_____, __, 20__] (the "DB Disbursement Request") in connection with the redevelopment of LaGuardia Airport, in accordance with that certain Lease Agreement, dated June 1, 2016, entered into by and between the Developer and The Port Authority of New York and New Jersey (the "Port Authority").

Effective upon the Contractor's receipt of the payment of $_____, the undersigned, on behalf of the Contractor and its successors and assigns, DOES HEREBY WAIVE AND RELEASE:

> any and all rights, claims, liens, demands, security interests or encumbrances in the nature of mechanics', labor or materialmen's liens or otherwise, with respect to such work, the site on which such work has been performed and any and all interests and estates therein, and all improvements and materials placed on the site and the moneys, funds or other consideration due or to become due from the Port Authority or the Developer, in each case on account of labor, services, improvements, materials, fixtures, apparatus or machinery furnished to the date hereof by or on behalf of the Contractor with respect to such work, but only with respect to the work described in (i) the DB Disbursement Request and (ii) the Construction Account Withdrawal Certificate Requisition No. [__] submitted to the Collateral Agent pursuant to the Collateral Agency Agreement for which payment will be received; and represents that it has paid for all

[4] The Design-Builder shall be entitled to alter this form of lien waiver as necessary for use by its DB Subcontractors, so long as each such DB Subcontractor lien waiver complies with the requirements of the Design-Build Contract, the Lease Agreement and the Collateral Agency Agreement, and is acceptable to the Developer and the Port Authority (upon submission to the Port Authority pursuant to the Lease Agreement).

labor, materials and equipment contained in the aforementioned request for payment or will do so upon receipt of the funds from the Port Authority or the Developer covered by such request for payment and requisition.

The Port Authority, the Collateral Agent and the Developer may rely on this waiver and release as a third-party beneficiary thereof.

[Remainder of this page intentionally left blank. Signature and notarization follow.]

Signed this __ day of _____20___.

[*CONTRACTOR*]

By: _____
Name:
Title:

Subscribed and sworn to before me this ____ day of _____ 20____.

_____
Notary Public in and for said County and State

EXHIBIT 16-C-2

FORM OF CONTRACTOR'S UNCONDITIONAL LIEN WAIVER

Form of Contractor's Unconditional Lien Waiver[5]

LIEN WAIVER – CONTRACTOR

For the period ending: _____, 20___

Request for Payment No. _____

STATE OF NEW YORK)
:
COUNTY OF)

TO WHOM IT MAY CONCERN:

The undersigned is [___*title*___] of [__*name of Contractor*__], a [_____], (the "Contractor"), which has entered into that certain Design-Build Contract, dated June 1, 2016, with LaGuardia Gateway Partners, LLC, a Delaware limited liability company (the "Developer"), to furnish certain work described in the DB Disbursement Request Certificate dated [_____, __, 20__] (the "DB Disbursement Request") in connection with the redevelopment of LaGuardia Airport, in accordance with that certain Lease Agreement, dated June 1, 2016, entered into by and between the Developer and The Port Authority of New York and New Jersey (the "Port Authority").

For and in consideration of the Contractor's receipt of the payment of $_____ (the receipt of which is hereby confirmed), the undersigned, on behalf of the Contractor and its successors and assigns, DOES HEREBY WAIVE AND RELEASE:

> any and all rights, claims, liens, demands, security interests or encumbrances in the nature of mechanics', labor or materialmen's liens or otherwise, with respect to such work, the site on which such work has been performed and any and all interests and estates therein, and all improvements and materials placed on the site and the moneys, funds or other consideration due or to become due from the Port Authority or the Developer, in each case on account of labor, services, improvements, materials, fixtures, apparatus or machinery furnished to the date hereof by or on behalf of the Contractor with respect to such work, but only with respect to the work described in (i) the DB Disbursement Request and (ii) the Construction Account Withdrawal Certificate Requisition No. [__] submitted to the Collateral Agent pursuant to the Collateral Agency

[5] The Design-Builder shall be entitled to alter this form of lien waiver as necessary for use by its DB Subcontractors, so long as each such DB Subcontractor lien waiver complies with the requirements of the Design-Build Contract, the Lease Agreement and the Collateral Agency Agreement, and is acceptable to the Developer and the Port Authority (upon submission to the Port Authority pursuant to the Lease Agreement).

Agreement for which payment has been received; and represents that it has paid for all labor, materials and equipment contained in the aforementioned request for payment.

The Port Authority, the Collateral Agent and the Developer may rely on this waiver and release as a third-party beneficiary thereof.

[Remainder of this page intentionally left blank. Signature and notarization follow.]

Signed this __ day of _____20___.

[*CONTRACTOR*]

By: _____
Name:
Title:

Subscribed and sworn to before me this ____ day of _____ 20____.

_____
Notary Public in and for said County and State

EXHIBIT 17

[redacted]

EXHIBIT 18

[redacted]

EXHIBIT 19-A

[redacted]

EXHIBIT 19-B

[redacted]

EXHIBIT 19-C

[redacted]

EXHIBIT 20

[redacted]

EXHIBIT 21

[redacted]

EXHIBIT 22

[redacted]

EXHIBIT 23

FORM OF LESSEE ASSIGNMENT AND ASSUMPTION AGREEMENT

[Date]

To The Port Authority of New York & New Jersey
[●]

Copied to: [●]

From: [Substitute]

LAGUARDIA AIRPORT TERMINAL B REPLACEMENT PROJECT

LESSEE ASSIGNMENT AND ASSUMPTION AGREEMENT

Ladies and Gentlemen:

Reference is made to the Lease Agreement, dated June 1, 2016 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Lease Agreement"), between the Port Authority of New York and New Jersey (the "Port Authority") and LaGuardia Gateway Partners, LLC (the "Lessee").

Capitalized terms defined in the Lease Agreement and not otherwise defined herein shall have the same meaning given to them in the Lease Agreement.

1. We hereby confirm that we are a Qualified Terminal Operator pursuant to Section 18.6 (*Foreclosure*) of the Lease Agreement.

2. We acknowledge and agree that, upon and by reason of our execution of this Lessee Assignment and Assumption Agreement, we will become a party to the Lease Agreement and, accordingly, shall have the rights and powers and assume the obligations of Lessee under the Lease Agreement in accordance with the terms of the Lease Agreement.

3. Our address, fax and telephone number and address for electronic mail for the purpose of receiving notices are as follows:

   [contact details of Qualified Terminal Operator]

4. This Lessee Assignment and Assumption Agreement shall be governed by, and construed in accordance with, the law of the State of New York. [Venue for any legal action arising out of this Agreement shall lie in any New York State or Federal court sitting in the City and County of New York.]

The terms set forth herein are hereby agreed to:

[Substitute]

By: _____

Name:

Title:

Agreed for and on behalf of:

the Port Authority of New York and New Jersey

By: _____

Name:

Title:

[*Provided under separate cover*]

EXHIBIT 24

[redacted]

EXHIBIT 25

DISCLOSED EXISTING FACILITIES OPERATIONS AND MAINTENANCE INFORMATION[7]

1. LGA RFP info ARN
2. LGA RFP info MPD Sales by location
3. LGA RFP Rent chart
4. CTB Operating expenses including 2013 actuals – CY
5. LGA CTB Revenues 2008-2013 Actuals 2-27-14
6. LGA CTB Revenue request per CY 10-30-13
7. LGA Rental Rates for the period 2011 to 2015
8. LGA Terminal B MPD Concessions Expiration Dates
9. LGA-CTB-MPD Tenant Sales & Rent Detail-2010
10. LGA-CTB-MPD Tenant Sales & Rent Detail-2011
11. LGA-CTB-MPD Tenant Sales & Rent Detail-2012
12. CTB Expense in Object Code 99
13. LGA Water Meter Data and Estimates for CTB and CHRP
14. Common Area Cleaning Charges 2008-2012
15. LaGuardia Airport, CHRP Service Cost Formula – Annual Total Facility Cost for year 2008, 2009, 2010, 2011, and 2012
16. LGA Common Gate Usage – Total Revenue by Airline 2008 to 2013
17. LGA CTB Electric Usage
18. Gas and Fuel Oil Consumption
19. Estimated CTB revenue for G-L Source 400644 & 400761

[7] The documents in this Exhibit 25 (*Disclosed Existing Facilities Operations and Maintenance Information*) do not purport to be a complete or exhaustive list of all operations and maintenance-related documents and data.

20. PANYNJ LaGuardia Airport Central Terminal Building Mechanical, Electrical, Plumbing and Fire Protection Equipment Inventory. Prepared by URS Corporation

21. Advertising Sales and Revenue Data

22. CTB Asset Listing

23. LaGuardia Airport Central Terminal Building Revenue by Airline for the year 2013

24. LaGuardia Airport Central Terminal Building Revenue by Airline for the year 2014

25. Market Place Rent Calculation Report for Period 09/01/2014 - 01/31/2015

26. Market Place Rent Calculation Report for Period 09/01/2014 - 02/28/2015

27. Market Place Rent Calculation Report for Period 09/01/2014 - 03/31/2015

28. Market Place Rent Calculation Report for Period 09/01/2014 - 04/30/2015

29. Market Place Rent Calculation Report for Period 09/01/2014 - 05/31/2015

30. Market Place Rent Calculation Report for Period 09/01/2014 - 06/30/2015

31. Market Place Rent Calculation Report for Period 09/01/2014 - 07/31/2015

32. Market Place Rent Calculation Report for Period 09/01/2014 - 09/30/2014

33. Market Place Rent Calculation Report for Period 09/01/2014 - 10/31/2014

34. Market Place Rent Calculation Report for Period 09/01/2014 - 12/31/2014

35. Market Place Rent Calculation Report for Period 09/01/2014 - 01/31/2015

36. Market Place Rent Calculation Report for Period 09/01/2014 - 02/28/2015

37. Market Place Rent Calculation Report for Period 09/01/2014 - 03/31/2015

38. Market Place Rent Calculation Report for Period 09/01/2014 - 04/30/2015

39. Market Place Rent Calculation Report for Period 09/01/2014 - 05/31/2015

40. Market Place Rent Calculation Report for Period 09/01/2014 - 06/30/2015

41. Market Place Rent Calculation Report for Period 09/01/2014 - 07/31/2015

42. Market Place Rent Calculation Report for Period 09/01/2014 - 09/30/2014

43. Market Place Rent Calculation Report for Period 09/01/2014 - 10/31/2014

44. Market Place Rent Calculation Report for Period 09/01/2014 - 12/31/2014

45. LaGuardia Airport Concessions Monthly Sales Report for the year 2012

46. LaGuardia Airport Concessions Monthly Sales Report for the year 2013

47. LaGuardia Airport Concessions Monthly Sales Report for the year 2015

48. LaGuardia Airport Concessions Monthly Sales Report for the year 2014

EXHIBIT 26-A

[redacted]

EXHIBIT 26-B

[redacted]

EXHIBIT 26-C

[redacted]

EXHIBIT 27

ADJUSTMENTS TO CONTRACT COMPENSATION

PART A – ASPHALT AND CEMENT ADJUSTMENT

1. Adjustment to Contract Compensation as defined in the New Improvements Specifications: Technical Specification 02510 – Placement of Portland Cement Concrete Paving.

2. Adjustment to Contract Compensation as defined in the New Improvements Specifications: Technical Specification 02553 – Asphalt Concrete Paving.

3. Adjustment to Contract Compensation as defined in the New Improvements Specifications: Technical Specification 02561 – Asphalt Concrete Paving (FAA).

4. Adjustment to Contract Compensation as defined in the New Improvements Specifications: Technical Specification 03301 – Portland Cement Concrete, Long Form.

PART B – PERIMETER INTRUSION DETECTION SYSTEM (PIDS) ADJUSTMENT

The PIDS Work, as described in Section 24 of the Design and Construction Requirements, may become a part of the D&C Work pursuant to a Port Authority Change determined in accordance with Section 13.1 (*Port Authority Changes*). The Parties acknowledge and agree that the cost of the PIDS Work is not included in the initial contract price for the D&C Work (whether as an allowance or otherwise). The Port Authority Change described in this Part B of this Exhibit 27 shall be subject to the prior written approval by the Port Authority of the contract sum to be set forth in the contract entered into by the Lessee and the Port Authority's PIDS Provider.

EXHIBIT 28-A

[redacted]

EXHIBIT 28-B

EXISTING LEASED PROPERTY

[See attached]

EXHIBIT 28-C

PERMANENT RIGHTS OF ACCESS

[See attached]

EXHIBIT 28-D

NEW FACILITIES SITES

[See attached]

EXHIBIT 28-E

TEMPORARY RIGHTS OF ACCESS

[See attached]

EXHIBIT 28-F

CENTRAL HALL SITE

[See attached]

EXHIBIT 29

INDEPENDENT INSURANCE CONSULTANT

Willis

EXHIBIT 30

WAGE AND BENEFITS REQUIREMENTS

See Section 2.1.11 of Part B to Exhibit J of the ITP. Requirements are subject to change.

EXHIBIT 31

[redacted]

EXHIBIT 32

AVAILABLE DOCUMENTS

[See attached]

EXHIBIT 33

CENTRAL HALL PROVISIONS

SECTION 1. DESIGN AND CONSTRUCTION OF CENTRAL HALL

Annex A to this Exhibit 33 (*Central Hall Provisions*) contains the scope of work and the fixed price provided by the Lessee for the design and construction of the Central Hall. Annex B to this Exhibit 33 (*Central Hall Provisions*) contains the construction schedule for the Central Hall provided by the Lessee, including date certain for Central Hall Substantial Completion. Without limiting the effect of the provisions of this Agreement addressing the responsibility of the Lessee for the D&C Work in general, the Lessee acknowledges its obligation to develop, design and construct the Central Hall, in accordance with Annexes A and B to this Exhibit 33 (*Central Hall Provisions*), the terms and conditions of this Agreement and other applicable Project Documents, and in compliance with Best Management Practices, Applicable Laws, Applicable Standards, Governmental Approvals and the Requirements and Provisions for Work. The Lessee and the Port Authority acknowledge that any change to, deviation from or modification of Annexes A or B to this Exhibit 33 (*Central Hall Provisions*) shall be a Port Authority Change or a Lessee Change and shall be subject to the applicable provisions of Article 13 (*Port Authority and Lessee Changes; Directive Letters; Safety Compliance Orders*).

SECTION 2. CENTRAL HALL AMENDMENT

No later than one hundred eighty days (180) days prior to Central Hall Substantial Completion (as such date is determined by the Preliminary Baseline Construction Schedule), the Lessee and the Port Authority shall in good faith negotiate, finalize, execute and deliver an amendment to this Agreement setting forth the terms for the use, operation and maintenance of the Central Hall (the "Central Hall Amendment"). The provisions of the Central Hall Amendment shall be substantially consistent with the terms and conditions set forth in this Exhibit 33 (*Central Hall Provisions*) and, to the extent applicable, be consistent with or complement the other terms and conditions set forth in this Agreement.

SECTION 3. TERMS FOR USE AND OPERATION OF CENTRAL HALL

3.1 The Lessee may use and operate the Central Hall for the following purposes:

(a) The Central Hall may be used by Scheduled Aircraft Operators who are Airline Sublessees pursuant to Section 5.2 (*Air Transportation-Related Subleases*) of this Agreement or who have arrangements with an Airline Sublessee, solely in connection with their business of transportation by Aircraft, for the following purposes and for activities reasonably required for such purposes:

(i) for the reservation of space and the sale of tickets for transportation by Aircraft operated by each Airline Sublessee or Scheduled Aircraft Operator who has arrangements with an Airline Sublessee;

(ii) for the reservation of space and the sale of tickets for transportation by other Scheduled Aircraft Operators but only as an incident to or in connection with transportation performed or to be performed by an Airline Sublessee or a Scheduled Aircraft Operator who has arrangements with an Airline Sublessee, or as an incident to or in connection with the cancellation of such transportation, or for the accommodation or convenience of the incoming or outbound passengers of an Airline Sublessee or a Scheduled Aircraft Operator who has arrangements with an Airline Sublessee at the Premises. The occasional reservation of space and the sale of tickets for transportation by other Scheduled Aircraft Operators shall not be deemed to be prohibited by this Section 1 of Part I of this Exhibit 33 (*Central Hall Provisions*);

(iii) for the clearance, checking and rendering of service by each Airline Sublessee or Scheduled Aircraft Operator who has arrangements with an Airline Sublessee to its passengers and for the furnishing of information service to its passengers and the general public;

(iv) for providing lounges, rooms or space for the special handling of or the furnishing of special services by, each Airline Sublessee or Scheduled Aircraft Operator who has arrangements with an Airline Sublessee to its passengers, guests, or invitees, subject to and except as otherwise provided in Section 5.2 (*Air Transportation-Related Subleases*) and Section 6.6(a) of this Agreement;

(v) for the handling of baggage by each Airline Sublessee or Scheduled Aircraft Operator who has arrangements with an Airline Sublessee of its passengers, including baggage and parcels such passengers decide to send as air cargo;

(vi) for the handling of unclaimed baggage and lost and found articles;

(vii) for the conduct of operations, communications, reservations and administrative office functions and activities in connection with air transportation performed by each Airline Sublessee or Scheduled Aircraft Operator who has arrangements with an Airline Sublessee;

(viii) for the preparation, packaging and storage of food, beverages and commissary supplies to be consumed on Aircraft operated to and from the Premises by each Airline Sublessee or Scheduled Aircraft Operator who has arrangements with an Airline Sublessee;

(ix) for the storage of repair parts, supplies and other personal property owned or leased by each Airline Sublessee or by a Scheduled Aircraft Operator who has arrangements with an Airline Sublessee, and for the performance of

minor repairs to personal property of such Airline Sublessee or such Scheduled Aircraft Operator;

(x) for the storage of such automotive fuel and lubricants as may be approved by the Port Authority;

(xi) for use as crew quarters to be used by personnel of each Airline Sublessee or Scheduled Aircraft Operator who has arrangements with an Airline Sublessee, during layovers between flights and for the establishment of lounges for employees of such Airline Sublessee or such Scheduled Aircraft Operator;

(xii) for the loading and unloading of passengers, baggage, mail, air cargo and commissary supplies of each Airline Sublessee or Scheduled Aircraft Operator who has arrangements with an Airline Sublessee; provided, however, that the use of the Premises for the unloading and loading of passengers and their baggage from ground transportation vehicles shall be subject to limitations and restrictions, from time to time, as set forth in Section 6.1 (*Surface Carriers*);

(xiii) for the training of personnel employed or to be employed by each Airline Sublessee or Scheduled Aircraft Operator who has arrangements with an Airline Sublessee or other persons engaged in commercial transportation by Aircraft; provided, that unless consented to by the Port Authority, neither the Lessee nor any Airline Sublessee or Scheduled Aircraft Operator who has arrangements with an Airline Sublessee shall engage in the training of Persons employed by others or to be employed by others if the training of such Persons is in competition with any concessionaire, permittee or licensee of the Port Authority at LGA Airport (other than another Person engaged in the business of transportation by Aircraft);

(xiv) for the temporary storage of baggage and mail;

(xv) for the occasional and temporary storage of air cargo; and

(xvi) for any other use approved in advance by the Port Authority in writing.

(b) The Central Hall may be used by Aeronautical User Sublessees solely in connection with airline passenger terminal-related services at the Premises and for activities reasonably required for such purposes and for such purposes and activities only.

(c) The Central Hall may be used by Concession Sublessees solely in connection with retail sales of goods and services at the Premises and for activities reasonably required for such purposes and for such purposes and activities only.

(d) The Central Hall may be used by sublessees other than Airline Sublessees, Aeronautical User Sublessees or Concession Sublessees, in connection with operation of

conference centers, corporate meeting areas, office space rentals and related uses and for activities reasonably required for such purposes, in each case pursuant to one or more Subleases that complies at a minimum with the applicable provisions of Section 5.1 (*Subleases Generally*) of this Agreement and may be subject to further terms and requirements as the Port Authority may in its discretion deem necessary or appropriate and as agreed to by the Lessee.

(e) Notwithstanding anything to the contrary in the Agreement (but without affecting the requirement for a prior Port Authority consent to any Sublease other than an Exempt Sublease), the parties acknowledge that rates and fees payable by Airline Sublesees, Aeronautical User Sublessees or Concession Sublessees under Subleases in the Central Hall may be different from the rates and fees payable by the same or other Sublessees under Subleases for similar properties in the New Terminal B Facilities, and that by itself, such difference in rates, if any, shall not constitute a violation of Section 5.3(f) of this Agreement or any other provision of this Agreement.

(f) The Central Hall may be used by the Lessee and its agents, Contractors, employees and authorized representatives in the performance of the Work and for its administrative offices. The Lessee may conduct airport-related training programs for its employees at the Premises. Such programs may include employees of Lessee-Related Entities.

(g) The Lessee may use the Central Hall for any other purpose or activity, in addition to those specified in this Section 1 of Part I of this Exhibit 33 (*Central Hall Provisions*), for which the Premises are expressly authorized to be used by any other provision of the Agreement, including for the performance of the Work required under the Agreement, and for activities reasonably required for such purposes and for such purposes and activities only.

3.2 The Lessee hereby acknowledges and agrees that, subject to the modification of Annexes A and B to this Exhibit 33 (*Central Hall Provisions*) in accordance with Article 13 (*Port Authority and Lessee Changes; Directive Letters; Safety Compliance Orders*) of this Agreement, the Central Hall may be used as a base location for, and may itself be used for (i) the operation and maintenance of the AirTrain Station, an automated people mover and other public or airline passenger-related transportation facilities, and for activities reasonably required for such purposes and activities, and (ii) alternative uses not currently contemplated or provided for in this Agreement, including hotel accommodations. In connection with any such future use, the Lessee agrees to cooperate with the Port Authority and its contractors in good faith in connection with the implementation of such alternative uses and operation of the related facilities and, without limiting the generality of the foregoing, agrees to provide any easements and access rights to the Premises which may be reasonably requested by the Port Authority or its contractors in connection with such contemplated or alternative future uses. For the avoidance of any doubt, unless and until memorialized in an amendment to this Agreement and the other Project Documents that is executed and delivered by the Parties, none of any projected costs of the hotel design, construction, operation and maintenance, nor any projected revenues from such

operation, shall be considered for any purpose under this Agreement or the Central Hall Amendment.

3.3 In the event of a Partial Termination, the Port Authority shall use and operate the Central Hall, directly or through agents, subcontractors or lessees, for any purpose whatsoever, in its sole discretion; provided, that, for the duration of the Term:

(a) The Port Authority shall coordinate with the Lessee any offers to the Scheduled Aircraft Operators which are Airline Sublessees of the Lessee to sublease premises at the Central Hall;

(b) without the Lessee's prior consent, the Port Authority shall not sublease any portion of the Central Hall to Scheduled Aircraft Operators which are Airline Sublessees of the Lessee unless the occupancy rate of comparable spaces reserved for the Airline Sublessees at the New Terminal B is ninety-five percent (95%) or higher at the time of the commencement of the lease between the Port Authority and such Scheduled Aircraft Operator; provided, that the occupancy rate will be determined in reference to a similar type of space (such as lounges, or office space, etc.) rather than by average calculation of all airline space in the New Terminal B;

(c) to the extent the Lessee can demonstrate to the Port Authority's reasonable satisfaction that an increase by the Port Authority to the amount of concession space within the Central Hall by more than ten percent (10%) of the concession space available within the Central Hall as of Central Hall Substantial Completion would have a material adverse impact on the Lessee's retail revenues in the New Terminal B, the Port Authority will reasonably consult with the Lessee on the amount, type and location of concession space in the Central Hall and such increase shall be subject to the Lessee's prior consent, not to be unreasonably withheld; and

(d) to the extent the Lessee can demonstrate to the Port Authority's satisfaction, in the Port Authority's sole discretion, that a change in the use by the Port Authority of more than fifty percent (50%) of the concession space available within the Central Hall as of Central Hall Substantial Completion would have a material adverse impact on the Lessee's retail revenues in the New Terminal B, the Port Authority will reasonably consult with the Lessee with respect to such change in use and such change in use shall be subject to the Lessee's prior consent, not to be unreasonably withheld.

SECTION 4. CENTRAL HALL OPERATION AND MAINTENANCE

4.1 Without limiting the effect of any provision of this Agreement addressing the responsibility of the Lessee for the Operations and Maintenance Work in general, the Lessee acknowledges its obligation to operate and maintain the Central Hall in accordance with the CH Budget, the CH Renewal Work Plan and the terms and conditions of this Agreement, the Central Hall Amendment and other applicable Project Documents, and in compliance with Best Management Practices, Applicable Laws, Applicable Standards, Governmental Approvals and the Requirements and Provisions for Work; provided, however, that the Lessee will not be

required to expend any of its own funds on such Operations and Maintenance Work in the Central Hall other than in the case of any deficiency arising from any misuse of the Port Authority funds designated for the CH O&M Expenses.

4.2 CH O&M Expenses. The Port Authority shall be responsible for any and all Permitted O&M Expenses incurred by or on behalf of the Lessee in connection with the operation and maintenance of the Central Hall which were (i) reflected in the approved CH Annual Budget, and (ii) if not reflected in the approved CH Annual Budget, separately approved in advance in writing by the Port Authority (such expenses, the "**CH O&M Expenses**").

4.3 Not later than 180 days prior to projected Central Hall Substantial Completion, the Lessee shall prepare and submit to the Port Authority for its review, comment and approval, an asset management plan for the capital assets of the Central Hall (the "**CH Capital Asset Management Plan and Budget**"). The CH Capital Asset Management Plan and Budget shall be the principal guide for scheduling and performing renewal Work by the Lessee with respect to the Central Hall (the "**CH Renewal Work**").

As part of the CH Capital Asset Management Plan and Budget, the Lessee shall prepare a budget setting forth the projected costs of performing CH Renewal Work (such budget shall be reflected in the CH Annual Budget) and schedule for the performance of such CH Renewal Work (the "**CH Renewal Work Schedule**" and, together with the CH Capital Asset Management Plan and Budget, the "**CH Renewal Work Plan**").

After the Port Authority's review and approval, in accordance with Article 8 (*Submittals; Open Dialogue and Cooperation*), of the initial CH Renewal Work Plan, the Lessee shall prepare and submit to the Port Authority, not later 120 days before the beginning of each subsequent calendar year, either: (a) a revised CH Renewal Work Plan or (b) the then-existing CH Renewal Work Plan, accompanied by a statement that the Lessee intends to continue such plan in effect without revision. Further, during any calendar year, the Lessee may prepare and submit to the Port Authority from time to time, if necessary, a revised CH Renewal Work Plan, and any such revised CH Renewal Work Plan shall also be subject to review and approval by the Port Authority. Subject to Sections 13.1 (*Port Authority Changes*) and 13.2 (*Directive Letters*) of this Agreement, under the Central Hall Amendment, the Lessee shall only be required to perform CH Renewal Work as set forth in the then current CH Renewal Work Plan and the Lessee shall not be authorized to carry out any other renewal work with respect to the Central Hall.

Any actual costs incurred by the Lessee in performing CH Renewal Work in accordance with the CH Renewal Work Plan (which, for the avoidance of doubt, shall include such costs incurred with respect to any CH Renewal Work that differs in timing of performance or cost from the lifecycle expectations set forth in the initial CH Renewal Work Plan) will be paid by the Port Authority as provided in Section 4.2 of this Exhibit 33 (*Central Hall Provisions*). The Port Authority will not be responsible under the Central Hall Amendment for costs incurred by the Lessee in performing any renewal work with respect to the Central Hall that is not contemplated by the CH Renewal Work Plan.

The Lessee shall be entitled to the full reimbursement of the documented reasonable third-party costs (other than the Terminal Operator's costs) incurred by the Lessee in preparing

the CH Renewal Work Plan, which reimbursement shall be at the time and in the amount set forth in the first CH Annual Budget.

4.4 Partial Termination. On the Partial Termination Date, the Lessee will (i) hand back the Central Hall to the Port Authority, at no charge to the Port Authority, (ii) execute and deliver such instruments as may be required by the Port Authority to effectuate such transfer and conveyance and (iii) relinquish and surrender, on the Partial Termination Date, full control and possession of the Central Hall to the Port Authority or the Port Authority's Authorized Representative, and cause all Persons claiming under or through the Lessee to do likewise; provided, however, that the Lessee shall assign to the Port Authority, and the Port Authority shall assume and continue in effect, any and all Subleases then in effect at the Central Hall which have been entered into by the Lessee in accordance with this Agreement. As of the Partial Termination Date, the Lessee shall no longer be responsible for the Central Hall, without derogation of any provisions in this Agreement with respect to any failure of the Lessee to perform its obligations under this Agreement. The Port Authority shall have the right to conduct an inspection of the Central Hall's assets in the period beginning ninety (90) days prior to, and ending thirty (30) days after, the Partial Termination Date, and to issue a report with respect to the condition of the Central Hall capital assets. If such report identifies Defects existing during the applicable Warranty Period, the provisions of Section 10.8 (*Design and Construction Warranties*) shall apply and the Lessee shall perform the necessary repair(s) to remedy any such Defects. If such report identifies Defects which are caused by the Lessee's failure to perform its obligations under the Central Hall Amendment (including its failure to perform the CH Renewal Work in accordance with the CH Renewal Work Plan), the Lessee shall be liable to the Port Authority for the damages in the amount of the cost of remedying any such Defect; provided, however, that the Lessee's liability for failure to perform such obligations shall not exceed, in the aggregate, the management fees paid to the Lessee by the Port Authority during the prior twelve (12) Calendar Years (or, in the case of Partial Termination occurring earlier than twelve (12) years after the Central Hall Substantial Completion, the aggregate management fees paid to the Lessee), as such fees are described in Section 4.7 of this Exhibit 33 (*Central Hall Provisions*) (except that such limitation on liability shall not apply with respect to any amount of Port Authority funds that is designated to be applied toward CH O&M Expenses but that is instead applied or used by the Lessee for another purpose that is not authorized by the CH Renewal Work Plan, in which case the Lessee shall also be liable for such amount). Any damages paid by the Lessee to the Port Authority pursuant to this Section 4.4 shall not constitute Permitted O&M Expenses.

4.5 CH Annual Budget. Simultaneously with the delivery of an Annual Budget in accordance with Section 11.3(a) of this Agreement, the Lessee will provide to the Port Authority a separate annual budget for the operation and maintenance of the Central Hall (commencing with the Calendar Year (or remaining portion of the Calendar Year) in which the Certificate of Central Hall Substantial Completion is reasonably projected to be issued), which shall provide detailed information with respect to the projected revenues, CH O&M Expenses and projected costs of CH Renewal Work, in each case, with respect to the Central Hall only (the "**CH Annual Budget**"). The CH O&M Expenses in the proposed CH Annual Budget shall be comparable (in terms of moneys to be spend on a particular activity or category of assets) to the expenditures

included in the Annual Budget for the New Facilities which the Lessee is required to prepare and submit to the Port Authority for informational purposes in accordance with Section 11.3(a) of this Agreement. The CH Annual Budget shall be subject to Port Authority Approval in accordance with Article 8 (*Submittals; Open Dialogue and Cooperation; Other Redevelopments*) of this Agreement; provided, that the Port Authority shall have the right, after submission by the Lessee of its proposed budget, to provide to the Lessee, in the Port Authority's sole discretion, an operating budget for the applicable year, which will become the CH Annual Budget for the applicable year, or an amendment to the then applicable CH Annual Budget; provided that, without the Lessee's consent, not to be unreasonably withheld, the total annual operating and maintenance costs does not materially decrease (as compared with the immediately preceding year or, in the case of the budget for the initial year, as compared with the budget proposed by the Lessee). In the event the Lessee shall fail to submit a budget or the Port Authority shall fail to approve a budget, the budget for the previous year shall continue in full force as the CH Approved Budget until superseded by a new CH Approved Budget for the then applicable year.

If from time to time during any budget year the Lessee shall desire an amendment (including any increase, decrease, or reallocation among line items) to the CH Approved Budget, the Lessee shall submit such proposed amendment to the Port Authority for its approval. Upon approval by the Port Authority in its sole discretion, the CH Approved Budget shall be deemed amended accordingly.

4.6 Revenues. All revenues from the operation of the Central Hall shall accrue to the Port Authority. The Lessee is hereby appointed an agent of the Port Authority for the purpose of collecting all Central Hall revenues.

4.7 Compensation. The Lessee's annual management fee for operating and maintaining the Central Hall (including its services as the Port Authority's agent for the purposes of collecting all Central Hall revenues) shall be equal to five percent (5%) of the Gross CH Revenues for the applicable calendar year, to be paid to the Lessee in monthly installments, subject to true-up in accordance with the annual report setting forth the CH O&M Expenses and Gross CH Revenues (the "**CH Cost and Revenue Report**"), to be prepared and submitted by the Lessee with respect to each Calendar Year within thirty (30) days after the end of such year, and approved by the Port Authority; provided that no revenues from any future hotel are to be included in this amount.

4.8 Invoicing. Payment of the CH O&M Expenses by the Port Authority to the Lessee shall be made in monthly installments in accordance with the following:

(a) On or before the fifth (5th) day of each and every calendar month (except the calendar month in which the commencement date of the operation and maintenance of the Central Hall shall fall), and on or before the fifth (5th) day of the calendar month following the calendar month in which the expiration of the Term or Partial Termination shall fall, as applicable, the Lessee shall submit to the Port Authority an itemized invoice for the previous calendar month setting forth the total CH O&M Expenses. The Lessee shall, in addition, furnish any and all pertinent information in connection with the invoiced amounts as may be required from time to time by the Port Authority.

(b) Unless otherwise agreed by the Parties, the Central Hall Amendment will provide for the payment of the CH O&M Expenses by the Port Authority in accordance with one of the following options, or a combination thereof, to be selected by the Port Authority at its sole discretion: (A) within thirty (30) calendar days of its receipt of the invoice required pursuant to Section 4.8(a) of this Exhibit 33 (*Central Hall Provisions*), the Port Authority will pay to the Lessee an amount equal to 100% of the total approved amount of such invoice; and/or (B) the Port Authority shall reimburse the Lessee for the CH O&M Expenses through a setoff against monetary obligations due and payable by the Lessee to the Port Authority (excluding any such monetary obligations that are disputed by the Parties).

(c) Payments made hereunder are subject to such adjustments as may be necessitated following Port Authority verification of the accuracy of amounts invoiced.

Annex A

[redacted]

Annex B

Construction Schedule for Central Hall

Refer to Exhibit 31 [redacted] for the construction schedule for the Central Hall prior to approval of the initial Project Baseline Schedule by the Port Authority in accordance with Section 10.1(f)(i) of this Agreement. Following approval of the initial Project Baseline Schedule by the Port Authority, the construction schedule for the Central Hall will be as set forth in the Project Baseline Schedule.

EXHIBIT 34

[redacted]

EXHIBIT 35-A

[redacted]

EXHIBIT 35-B

[RESERVED]

EXHIBIT 36

BUDGETED DISPOSAL LOCATIONS

Disposal Locations for Excavated Materials and Estimated Unit Costs ($/ton unless otherwise stated)

Material Category	Name of Facility	Budgeted Transportation Cost[2]	Budgeted Tipping Fee[3]
Contaminated Non-Hazardous Soil	Bethlehem Earth	N/A	Day: $54.00 Night: $56.00
Contaminated Non-Hazardous Soil	Soil Safe (Metro 12)	N/A	Day: $58.00 Night:$62.00
Contaminated Non-Hazardous Soil	Clean Earth Carteret	N/A	Day: $56.00 Night: $58.00
Contaminated Non-Hazardous Soil (elevated contaminants)	Clean Earth Carteret	N/A	Day: $68.00 Night: $70.00
Contaminated Non-Hazardous Soil	SLRD Company Mullica Hill, LLC	N/A	Day: $76.00 Night: N/A
Contaminated Non-Hazardous Soil (elevated contaminants)	Middlesex County Utilities Authority Landfill	N/A	Day: $77.00 Night: N/A
Contaminated Non-Hazardous Soil (elevated contaminants)	Tunnel Hill (via Westside Transload)	N/A	Day: $115.00 Night: $125.00
Hazardous Waste Soil (Level 1)	Clean Earth North Jersey	N/A	Day: $175.40 Night: N/A
Hazardous Waste Soil (Level 2)	Clean Earth North Jersey	N/A	Day: $223.14 Night: N/A
Hazardous Waste Soil (Level 3)	Clean Earth North Jersey	N/A	Day: $294.64 Night: N/A
Hazardous Waste Soil (Level 4)	Clean Earth North Jersey	N/A	Day: $423.25 Night: N/A
Hazardous Waste Soil (Level 5)	Clean Earth North Jersey	N/A	Day: $357.31 Night: N/A

Notes:
[1]N/A = Not Applicable

[2]Costs for soil waste characterization are not reflected in the costs shown above as they remained in the base bid.

[3]Costs for transportation of excavated material are included in the "Budgeted Tipping Fee".

[4]Costs to be charged against the Soil Disposal Cost Budget for contaminated non-hazardous soils are limited to those costs associated with the transportation and disposal of excavated soils. Every six (6) months or as otherwise required by disposal facility pricing changes, the parties shall review and make any determination whether adjustments to the unit rates are necessary to reflect changes to third party fees and charges imposed by disposal facilities. The Port Authority may disapprove continued use of any Budgeted Disposal Location pursuant to Section 16.4(d) for increases in fees and charges.

[5]Elevated contaminants for the purposes of disposal acceptance at Clean Earth Carteret means levels of lead between 1,700 and 3,000 parts per million (ppm), Polychlorinated Biphenyl (PCB) levels between 3.5 and 5 ppm, Toxicity Characteristic Leaching Procedure (TCLP) lead values between 2 and 2.5 mg/L.

[6]Level 1 hazardous waste means soil concentrations exceeding the Resource Conservation and Recovery Act (RCRA) toxicity characteristic for lead, and meeting all other alternative soil treatment standards.

[7]Level 2 hazardous waste means soil concentrations exceeding the RCRA toxicity characteristic for chromium, and meeting all other alternative soil treatment standards, total hexavalent chromium concentrations less than 1,000 ppm, and Toxicity Characteristic Leaching Procedure (TCLP) chromium concentrations less than 25 mg/L.

[8]Level 3 hazardous waste means Toxic Substances Control Act (TSCA) regulated PCB soils.

[9]Level 4 hazardous waste means TSCA regulated PCB soil with PCB concentrations less than 500 ppm, soil concentrations exceeding the RCRA toxicity characteristic for lead, and no Underlying Hazardous Constituents (UHCs) exceeding alternative soil treatment standards.

[10]Level 5 hazardous waste means soil concentrations exceeding the RCRA toxicity characteristic for lead with organic UHCs exceeding treatment standards.

EXHIBIT 37

LESSEE DAMAGES DETERMINATION

Applicable New Facilities Construction Milestone or Date	Applicable Daily Amounts
Partial Completion of Concourse B1	$58,598.95
Partial Completion of Concourse B2	$26,627.26
Partial Completion of Head House	$261,292.13
Partial Completion of Concourse A1	$38,938.45
Partial Completion of Concourse A2	$112,923.60
Substantial Completion – New Facilities	$53,093.83 – To and including December 31, 2022 $83,756.82 – After December 31, 2022

EXHIBIT 38

[redacted]

EXHIBIT 39

FORM OF CONCESSION SUBLESSEE CERTIFICATION

In connection with that certain [*insert name of new Sublease or amendment to existing Sublease*] (the ["New Sublease"] ["Sublease Amendment"]) proposed to be entered into between the LaGuardia Gateway Partners, LLC (the "Lessee") and [*insert name of new proposed Concession Sublessee*] (the "Sublessee"), the Sublessee hereby certifies the following:

(a) Neither the Sublessee nor any officer, director, other senior executive, lobbyist or other agent thereof has made any offers or agreements, or given or agreed to give anything of value or taken any other action with respect to any Port Authority Commissioner, officer or employee, or any public official, public appointee or public employee, political candidate, party or party official, or any person formerly in any such position, or immediate family member thereof, in each case in connection with obtaining the [New Sublease] [Sublease Amendment] and which would constitute a breach of ethical standards under the public officers laws of the State of New York or the State of New Jersey or the Port Authority Code of Ethics and Financial Disclosure dated as of April 11, 1996, nor does the Sublessee have any knowledge of any act which would constitute a breach of said ethical standards.

(b) The Sublessee has not offered, promised or given, demanded or accepted, any undue advantage, directly or indirectly, to or from a Port Authority Commissioner, officer or employee, or any public official, public appointee or public employee, political candidate, party or party official, in connection with obtaining the [New Sublease] [Sublease Amendment].

The foregoing certifications shall be deemed to have been made by the Sublessee as follows: if the Sublessee is a corporation, such certification shall be deemed to have been made not only with respect to the Sublessee itself, but also with respect to each parent, affiliate, director and officer of the Sublessee, as well as, to the best of the certifier's knowledge and belief, each stockholder of the Sublessee with an ownership interest in excess of 10%; if the Sublessee is a partnership, such certification shall be deemed to have been made not only with respect to the Sublessee itself, but also with respect to each partner. Moreover, the foregoing certification, if made by a corporation, shall be deemed to have been authorized by the Board of Directors of the corporation.

The foregoing certifications shall be deemed to have been made by the Sublessee with full knowledge that it will become a part of the records of the Port Authority and that the Port Authority will rely on its truth and accuracy. In the event that the Port Authority should determine at any time prior or subsequent to the execution of the Sublease that the Sublessee has falsely certified as to any material item in the foregoing certification, or has not fully and accurately represented any circumstance with respect to any item in the foregoing certification required to be disclosed, the Port Authority may exercise any rights or remedies as provided in Section 5.1(b)(ii) of the Lease Agreement.

The Sublessee is advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see *e.g.*, New York Penal Law, Section 175.30 et seq.).

Dated: _____

[SUBLESSEE]

By: _____

Name: _____

Title: _____