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Boston-Logan International Airport

Terminal Lease

between

The Massachusetts Port Authority

and

Hyannis Air Service, Inc.

d/b/a Cape Air

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LEASE AGREEMENT
by and between
the Massachusetts Port Authority
and
Hyannis Air Service, Inc.
d/b/a Cape Air

THIS LEASE (the "Lease") is made and entered into this _____ day of _____, 200~~2~~³, by and between the **Massachusetts Port Authority** (the "Authority"), a body politic and corporate organized and existing in accordance with Chapter 465 of the Massachusetts Acts of 1956, as amended (as so amended from time to time, the "Act"), having a usual place of business at One Harborside Drive, East Boston, MA 02128-2909, and **Hyannis Air Service, Inc., d/b/a Cape Air** (the "Tenant"), a Delaware corporation, with a principal place of business at 660 Barnstable Road, North Ramp, Barnstable Municipal Airport, Hyannis, Massachusetts 02601.

The Authority and the Tenant hereby agree as follows:

ARTICLE 1
DEFINITIONS AND ATTACHMENTS

1.1 Basic Data.

Each reference in this Lease to any of the following subjects shall incorporate the data or definition specified below:

Date:	May 1, 2002
Authority:	Massachusetts Port Authority
Authority's Address:	One Harborside Drive, Suite 200S East Boston, MA 02128-2909
Address for Payment of Rent:	P.O. Box 5853 – Accounts Receivable Boston, MA 02206, or as otherwise directed by the Authority
Tenant:	Hyannis Air Service, Inc., d/b/a Cape Air
Tenant Address:	660 Barnstable Road, North Ramp Barnstable Municipal Airport Hyannis, MA 02601
Premises:	That portion of Terminal C at the Airport, as more particularly shown on Exhibits A-1 and A-2 (dated

May 1, 2002) as the "Premises." The Premises contain approximately 3,165 rentable square feet of area, to be measured and subject to change in accordance with Section 4.3.

Permitted Uses:

As provided in ARTICLE 7.

Commencement Date:

The date on which Tenant commences operations at the Premises, which date shall be confirmed in writing by the Authority and Tenant.

Expiration Date:

The last day of the calendar month containing the Commencement Date and thereafter from calendar month to calendar month until terminated by the Tenant or the Authority, as provided herein, unless earlier terminated in accordance with the terms of this Lease.

Term:

That period commencing on the Commencement Date and ending on the Expiration Date, unless earlier terminated pursuant to the terms hereof.

Rent:

Rent will be calculated by the Authority by multiplying the rentable area allocable to the Premises (subject to adjustment in accordance with Section 4.3), by the annual rent rate as may be established from time to time by the Authority (the "Annual Rent Rate"). Rent and the Annual Rent Rate are subject to adjustment as provided in Section 6.1.

Security Deposit:

The amount initially equal to one (1) months rent, as further provided in Section 6.5 subject to Sections 6.6 and 6.7.

Tenant's Minimum Insurance Limits:

- A. Commercial General Liability Insurance - \$50,000,000 combined single limit and \$50,000,000 for damage to property.
- B. All Risk Property Insurance - full replacement cost of the insured property.
- C. Workers' Compensation as required by law and Employers' Liability of \$1,000,000.
- D. Automobile Liability and Physical Damage - \$10,000,000.

1.2 Additional Defined Terms.

As used herein, the following terms shall have the meanings set forth below:

- (a) "Act" means Chapter 465 of the Massachusetts Acts of 1956, as amended from time to time.
- (b) "Airport" means the General Edward Lawrence Logan International Airport located in the East Boston section of the City of Boston, Massachusetts.
- (c) "Airport Facilities" is defined in Section 4.4.
- (d) "Annual Rent Rate" is defined in Section 1.1 and is subject to adjustment as provided in Section 6.1.
- (e) "Approved Aircraft Parking Plan" shall mean the aircraft parking plan attached hereto as **Exhibit C**, and any revisions thereto, which may be approved from time to time by the Authority. Any such plan shall include the types of aircraft which may contact the Gate and types of aircraft parking on adjacent Gates, all lead-in and stop lines, safety setback lines around the aircraft, equipment staging and parking plans, compactor location, and passenger paths in the case of hardstand operations.
- (f) "Common Areas" means those areas and facilities in the Airport which may be furnished or designated from time to time by the Authority for the common or public use of the Authority, tenants and other occupants of the Airport, and others entitled thereto, their agents, employees, contractors, licensees and invitees, including, without limitation,
 - (i) common walkways, sidewalks and roadways necessary for access to the Terminal in which the Premises is located, but excluding the Gates, the Ramp Area and airfield areas,
 - (ii) common lobbies, corridors, stairways, escalators, elevators, loading docks, delivery passages, comfort stations or rest rooms, and other similar areas used in common with others, and
 - (iii) the lines, mains, shafts, pipes, ducts, conduits, wires, and appurtenant fixtures and equipment serving the Premises in common with others.
- (g) "Costs of Collection" means all attorneys' reasonable fees and out-of-pocket expenses incurred by the Authority and all reasonable costs and expenses associated with travel on behalf of the Authority, which costs and expenses are directly or indirectly related to the Authority's efforts to collect or enforce this Lease or any of the Authority's rights, remedies, powers, privileges or discretion against or in respect to Tenant hereunder (whether or not suit is instituted in connection with the foregoing).
- (h) "Days" shall refer to calendar days, unless otherwise specified herein.
- (i) "Default Rate" means the rate of one and one-half percent (1½%) per month or the highest rate permitted by applicable law, whichever is less.
- (j) "Environmental Laws" means all laws, ordinances, statutes, rules, regulations and directives of local, state or federal entities, including any regulations or directives of the

Authority (whether now existing or hereafter enacted or promulgated, as they may be amended from time to time) pertaining to environmental regulations, spill prevention, contamination, clean-up or disclosures, and any judicial or administrative interpretations thereof, including any judicial or administrative orders or judgments, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq. ("CERCLA" or "Superfund"); the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq. ("RCRA"); the Clean Water 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. ("TSCA"); the Hazardous Materials Transportation Act, 49 U.S.C. Appx. §§ 1801 et seq.; the Massachusetts Hazardous Waste Management Act, Mass.Gen.L. c. 21C §§ 1 et seq.; the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, Mass.Gen.L. c. 21E §§ 1 et seq.; the Massachusetts Toxic Use Reduction Act, Mass.Gen.L. c. 21I §§ 1 et seq.; the Underground Storage Tank Petroleum Product Cleanup Fund, Mass.Gen.L. c. 21J §§ 1 et seq.; or any other applicable federal or state statute or municipal ordinance regulating the generation, storage, use, containment or disposal of any Hazardous Material or providing for the protection, preservation or enhancement of the natural environment; any rules or regulations promulgated pursuant to any of the foregoing statutes or ordinances, including but not limited to laws relating to groundwater and surface water pollution, air pollution, transportation, storage and disposal of oil and hazardous wastes, substances and materials, stormwater drainage, and underground and above ground storage tanks; and any amendments, modifications or supplements of any such statutes, ordinances, directives, rules and regulations.

(k) "Existing Contamination" shall mean any and all pollution or contamination caused by any Hazardous Material that previously existed or exists in, or was released onto, the soil or groundwater at or beneath the Premises as of the earlier of (i) the date the Authority first delivered the Premises to Tenant for Tenant's occupancy under this Lease, or (ii) the date on which the Tenant first used or occupied all or any part of the Premises.

(l) "Gates" shall mean that portion of the Ramp Area encompassing the aircraft parking position footprint, as depicted on the Approved Aircraft Parking Plan, adjacent areas to the footprint to allow equipment staging and access, that portion of the Ramp Area immediately in front of the largest aircraft capable of being handled at the Gate from a line ten feet outside the wing tips of such aircraft extending to the exterior Terminal wall (or, where adjacent gates are used by airlines other than Tenant, the line will be twelve and one-half feet outside the wing tips of the aircraft).

(m) "Hazardous Materials" means, but shall not be limited to, any oil, petroleum product and any hazardous or toxic waste or substance, any substance which because of its quantitative concentration, chemical, radioactive, flammable, explosive, infectious or other characteristics, constitutes or may reasonably be expected to constitute or contribute to a danger or hazard to public health, safety or welfare or to the environment, including without limitation any asbestos (whether or not friable) and any asbestos-containing materials, lead paint, waste oils, solvents and chlorinated oils, polychlorinated biphenyls (PCBs), toxic metals, explosives, reactive metals and compounds, pesticides, herbicides, radon gas, urea formaldehyde foam insulation and chemical, biological and radioactive

wastes, or any other similar materials which are included under or regulated by any Environmental Law.

(n) "Laws" means all present and future laws, rules, regulations, permits, executive orders, other governmental orders and conditions of any permits or other governmental approvals applicable to Tenant, the Terminal, the Premises or the use thereof, or any of them from time to time, foreseen, unforeseen, and whether or not the same necessitate structural or other extraordinary changes to the Premises or Terminal or interfere with Tenant's use; provided, however, that rules and regulations of the Authority shall only be deemed "laws" if generally applicable at the Airport. "Laws" includes all Environmental Laws.

(o) "LSP" shall mean a Licensed Site Professional (as the same is defined in the MCP) that is acceptable to the Authority.

(p) "MCP" shall mean the Massachusetts Contingency Plan promulgated by the Massachusetts Department of Environmental Protection, as amended from time to time.

(q) "Official Airline Guide" shall mean the Official Airline Guide published by Official Airline Guides or if publication of such guide is discontinued, a successor or comparable publication reasonably designated by the Authority.

(r) "Person" means a corporation, association, partnership, limited partnership, limited liability partnership, limited liability company, joint venture, trust, organization, business, individual or government or any governmental agency or political subdivision thereof.

(s) "Ramp Area" means that portion of the apron adjacent to the Gates and the associated airfield ramp areas, but not including any taxiways and runways, in which aircraft maneuver on the ground, park or are serviced between flights, all as more specifically shown on the Approved Aircraft Parking Plan in effect from time to time.

(t) "Regional Aircraft Parking Position" shall mean an aircraft parking position that is shown on the Approved Aircraft Parking Plan and indicated thereon as serving regional aircraft.

(u) "Regional Jet Aircraft" shall mean all jet aircraft with less than one hundred (100) seats.

(v) "TAA" as defined in Section 9.8.

(w) "TAA Process" as defined in Section 9.8.

(x) "Terminal" means the terminal building in which the Premises are located, as identified in Section 1.1 hereof.

1.3 **Attachments.** The following documents attached hereto or delivered separately

to Tenant, as well as all drawings and documents prepared pursuant thereto, are hereby made a part hereof:

Exhibit A	Premises
Exhibit B	Maintenance and Repair
Exhibit C	Aircraft Parking Plan
Exhibit D	Preferential Gate Use Policy
Exhibit E	Wiring Instructions
Exhibit F	Letter of Credit
Exhibit G	Disclosure of Beneficial Interests
Exhibit H	Compliance with Laws Certificate

ARTICLE 2

REPRESENTATIONS OF TENANT

Tenant, as of the Commencement Date, hereby represents and warrants to the Authority as follows:

2.1 **Existence.** Tenant is a corporation validly existing under the laws of Delaware and has full power and authority to execute, deliver and perform its obligations under this Lease.

2.2 **Valid Obligations.** Tenant has taken all necessary action and has complied with all provisions of federal, state and local law, required to make this Lease the valid obligation of Tenant which it purports to be; and, when executed and delivered by Tenant and the other parties thereto, this Lease will constitute the valid and binding agreement of Tenant 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 to the extent that the same may be constitutionally applied.

2.3 **Legal Proceedings.** There is no action, suit, proceeding or investigation at law or in equity before or by any court or public board or body pending or, to the knowledge of Tenant, threatened against it, wherein an unfavorable decision, ruling or finding would in any material respect adversely affect the validity of any of this Lease.

2.4 **Compliance with Law; Consents, etc.** The execution and delivery by Tenant of this Lease will not violate or constitute a default of any term or provision of any mortgage, lease, agreement or other instrument, or of any judgment, decree, governmental order, statute, rule or regulation by which Tenant is bound or to which any of its assets is subject. No approval by, authorization of, or filing with any federal, state or municipal or other governmental commission, board or other governmental authority is necessary in connection with the execution and delivery by Tenant of this Lease.

ARTICLE 3

AGREEMENTS OF TENANT

3.1 Tenant to Maintain Its Legal Existence. Tenant will at all times during the term of this Lease (i) maintain legal existence, (ii) be a federally certificated air carrier and (iii) be qualified to do business in Massachusetts.

3.2 Financial Reports. Tenant shall provide to the Authority the following financial reports; provided, however, that as long as Tenant is required to file reports with the Securities and Exchange Commission on Form 10-K, 10-Q or 8-K, the proper filing of any such report with the Securities and Exchange Commission shall constitute delivery of such report to the Authority:

(a) Annual Reports. As soon as available to Tenant, but in any event within one hundred and twenty (120) calendar days after the end of each of Tenant's fiscal years during the Term, plus any period of extension for filing Tenant's 10-K permitted by Securities and Exchange Commission regulations, copies of Tenant's 10-K Report, as filed with the Securities and Exchange Commission (or if Tenant is not required to file such 10-K Report, then financial statements prepared in accordance with generally accepted accounting principles, audited and certified by the unqualified opinion of a certified public accountant);

(b) Quarterly Reports. As soon as available to Tenant, but in any event within sixty (60) calendar days after the end of each of Tenant's fiscal quarters during the Term, plus any period of extension for filing Tenant's 10-Q permitted by Securities and Exchange Commission regulations, copies of Tenant's 10-Q Report, as filed with the Securities and Exchange Commission (or if Tenant is not required to file such 10-Q Report, then quarterly financial statements, including a statement of income and cash flow for Tenant with respect to the period then ended, certified by Tenant's chief financial officer or president); and

(c) Current Reports. Simultaneously with the filing by Tenant with the Securities and Exchange Commission, copies of any Form 8-K Current Reports.

3.3 Operational Reports. From time to time during the Term, Tenant shall provide to the Authority reports describing its operations at the Terminal, including the number of passengers on each of its flights, flight schedule information and such other information that the Authority may require.

ARTICLE 4 **PREMISES**

4.1 Grant of Premises. Subject to the terms and conditions contained herein, the Authority hereby leases to Tenant and Tenant hereby accepts from the Authority, the Premises for the Term and at the Rent hereinafter described. The Premises shall be limited to the area from above the floor slab on which the space is located, to beneath the slab of the floor (or roof) above the space, and shall include the inner surfaces of the perimeter walls of the space, perimeter doors and windows, but shall not include the roof or any utility or telecommunications lines, mains, shafts, pipes, conduits, ducts, wires or other building systems running through and

not exclusively serving, the Premises.

Tenant agrees that the Authority retains the right to place in, through or over the Premises utility lines, mains, telecommunication lines, shafts, pipes, ducts, conduits, wires and the like for the use and benefit of the Authority and other tenants and occupants of the Airport and to replace and maintain, repair and relocate such lines, mains, shafts, pipes, ducts, conduits, wires and the like, in, over and upon the Premises. When exercising its rights under this Section 4.1, the Authority agrees to use reasonable efforts not to materially interfere with Tenant's use of the Premises. Any such lines, mains, pipelines, shafts, ducts, conduits, wires and the like in, through or over the Premises not exclusively serving the Premises shall not be deemed to be a part of the Premises.

The Authority shall have the right to install public conveniences such as telephones, information kiosks and other public conveniences at the Authority's expense in portions of the Premises leased to Tenant, provided that if any such installation reduces the floor area available for airline use, such floor area will be reclassified as Common Area, as appropriate, for purposes of calculating Rent.

4.2 "As Is" Condition. Tenant acknowledges that Tenant is leasing the Premises after having an opportunity to conduct a full and complete examination of the Premises, including, without limitation, subsurface conditions, existing structures thereon, the presence of any Hazardous Materials located on the Premises, and laws, ordinances and regulations affecting the Premises. Tenant hereby accepts the same "as is" generally in the same condition in which they or any part thereof now are, and, except as hereinafter expressly provided in this Section 4.2, assumes all risks in connection therewith, without any representation or warranty, express or implied, in fact or by law, on the part of the Authority and without recourse to the Authority. Except for Existing Contamination, Tenant takes the Premises "as is" and assumes responsibility to assess, characterize, manage, dispose of, treat and reuse, all sites and sources of contamination within the Premises subject to the provisions of ARTICLE 11. Tenant agrees that the Authority shall have no obligation to do any work on, or make any improvements to or with respect to the Premises or the condition thereof.

4.3 Confirmation of Premises. In the event that following the commencement of the Term (or following any change in the configuration of the Premises or areas allocable thereto during the Term), the Authority measures the rentable area of the Premises and certifies to Tenant that such calculations differ from those set forth in Section 1.1 hereof, the rentable area of the Premises and the corresponding calculation of Rent shall be so modified. The Authority shall determine the rentable area of the Premises using the following measuring conventions and such measurements shall, in the absence of manifest error, be conclusive and binding on the Tenant.

In measuring the rentable area of the interior portions of the Premises, the Authority shall measure (i) to the middle of the demising wall separating the Premises from the premises of other tenants at the Airport, (ii) to the outside of the demising wall separating the Premises from Common Areas or other portions of the Terminal controlled by the Authority, and (iii) to the inside of any exterior wall (around exterior column lines) at the Premises.

4.4 Appurtenant Rights. Tenant shall have the following rights, as appurtenant to

the Premises, subject, however, to the payment by Tenant of any nondiscriminatory fees and charges of general application customarily charged by the Authority for such rights and Tenant's compliance with the terms and conditions of this Lease, including, without limitation, Tenant's maintenance and repair obligations set forth in ARTICLE 9, Tenant's insurance and indemnification obligations set forth in ARTICLE 12 and the limitations on Tenant's use set forth in ARTICLE 7, and Tenant's compliance with all applicable rules and regulations established from time to time by the Authority:

(a) Access to Premises/Common Areas. The Authority hereby grants Tenant, its employees, agents, guests, customers, invitees, contractors, suppliers and furnishers of service a nonexclusive license to use, in common with others, the Common Areas, subject to the exclusive control and management thereof at all times by the Authority, for the purposes of moving to and from the Premises to engage in the uses of the Premises permitted in this Lease, provided that the Authority reserves the right to make any changes which it deems appropriate to said Common Areas to assure public safety and convenience or to assure efficient operation of the Airport. All rights of access granted hereunder shall be subject to and in accordance with the terms of this Lease and all applicable rules and regulations established from time to time by the Authority.

(b) Access to Airport Facilities. The Authority grants Tenant a nonexclusive license to use, in common with others, subject to the exclusive control and management thereof at all times by the Authority, the Airport's landing field facilities for taxiing, landing, taking off, or flying aircraft in its air transportation business, and for the operation of motor vehicles for servicing, fueling, or loading and unloading said aircraft (the "Airport Facilities"), provided that the Authority reserves the right to make any changes which it deems appropriate to said Airport Facilities, including, without limitation, relocating or eliminating Airport Facilities, to assure public safety and convenience or efficient operation of the Airport, provided any changes to said Airport Facilities shall provide Tenant with reasonable access to the Airport Facilities to engage in the foregoing airside activities. All rights of access granted hereunder shall be subject to and in accordance with all the terms of this Lease, and all applicable rules and regulations established from time to time by the Authority.

(c) Shared Use of Outbound and Inbound Baggage Space. Tenant acknowledges that the outbound baggage space and the inbound baggage space shall be shared between Tenant and other air carriers approved by the Authority. Tenant agrees to pay Rent on a pro-rata basis using the percentage of check-in counters assigned to Tenant and the total number of check-in counters serving to the outbound baggage room times the square footage of the outbound and inbound baggage rooms.

(d) Holdroom. Tenant shall have an appurtenant right to utilize the holdroom associated with Gate 33. Tenant acknowledges that the holdroom to Gate 33 shall be shared between Tenant and another air carrier approved by the Authority. The holdroom associated with Gate 33 consists of approximately 2,200 rentable square feet and tenant agrees to pay Rent on approximately 849 rentable square feet. Tenant's use of the holdroom is subject to all applicable rules and regulations adopted from time to time by the Authority.

ARTICLE 5

TERM

5.1 Commencement Date. The Term shall commence on the Commencement Date specified in Section 1.1.

5.2 Termination. The Lease shall commence on the Commencement Date and shall continue thereafter from calendar month to calendar month until terminated by either party giving to the other thirty (30) days prior written notice thereof, unless sooner terminated as provided herein. The Authority shall have the right to terminate this Lease as to all or any portion of the Premises giving Tenant thirty (30) days prior written notice. In the event that the Authority elects to terminate this Lease to a portion of the Premises, the Rent set forth in Section 1.1 shall be reduced proportionately. Tenant 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 Authority obtains possession of the Premises in any lawful manner. Such termination of the Lease, as provided herein, and the removal, restoration and surrender obligations of Tenant, shall in no event give rise to any claims for or rights to payment to Tenant by the Authority, including without limitation, (i) any and all awards in the nature of land damages under all applicable laws, including without limitation, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646), as amended, and Massachusetts General Laws, Chapter 79 and 79A, and (ii) any and all rights under the terms of this Lease, and (iii) incidental, consequential or severance damages on account of the Tenant's occupancy and/or abandonment of the Premises.

5.3 Surrender. Tenant covenants and agrees to surrender possession of the Premises upon termination of this Lease (whether by termination, expiration or otherwise) in as good condition as on the Commencement Date (or in the case of improvements or alterations made or fixtures installed subsequent thereto, then as of the date such improvements, alterations, or fixtures were made or installed), reasonable wear and tear, and damage from casualty as described in ARTICLE 13 resulting in the termination of this Lease and repairs which are the responsibility of the Authority, excepted. No act or thing done by the Authority during the Term shall be deemed an acceptance of a surrender of the Premises and no agreement to accept such surrender shall be valid, unless in writing signed by the Authority. The delivery of keys to any employee of the Authority or of the Authority's agents shall not operate as a termination of the Lease or a surrender of the Premises.

If upon such termination Tenant shall fail to remove any personal property or trade fixtures (which Tenant is allowed under the terms hereof to remove) on or before the date of termination, the Authority may, but without the obligation to do so, remove said personal property and hold it for the owners thereof or may place the same in a public warehouse, all at the expense and risk of the owners thereof. Tenant shall reimburse the Authority for any reasonable expense incurred by the Authority in connection with such removal and storage. Tenant shall indemnify, release and hold harmless the Authority from any and all damage, costs and expenses related to said removal or storage. In addition, the Authority shall have the right, but not the obligation, to dispose of such property as waste or sell such stored property and the proceeds of such sale shall be applied, first, to the cost of the sale, second, to the payment of charges for storage and removal, third, to the payment of Rent or any other obligation which may

then be due from Tenant to the Authority and the balance, if any, shall be paid to the Authority. In the event the expenses of such removal, storage, disposal and sale shall exceed the proceeds of sale, Tenant shall pay such excess to the Authority upon demand.

5.4 **Holding Over.** If Tenant holds over after the expiration or termination of this Lease, Tenant shall be deemed to be a tenant-at-sufferance and shall be bound by all applicable provisions of this Lease and shall be liable for the use and occupancy of the Premises for each month in an amount equal to one hundred and fifty percent (150%) of the Rent and Additional Rent payable during the last full month of the Term, unless the Authority expressly consents in writing to a different amount of Rent and Additional Rent. The foregoing provisions shall not serve as permission to Tenant to hold over, nor serve to extend the Term (although Tenant shall remain bound to comply with all provisions of this Lease until Tenant vacates the Premises). The provisions of this Section shall not operate as a waiver of any right of re-entry provided to the Authority in this Lease.

ARTICLE 6

RENT, FEES AND CHARGES

6.1 Rent.

(a) **Rent.** During the Term, the Tenant shall pay Rent to the Authority in an annual amount described in Section 1.1, subject to measurement as described in Section 4.3 and to adjustment as provided below. One-twelfth of the annual Rent shall be payable, in advance, on the first day of each calendar month during the Term.

(b) **Annual Adjustment.** Tenant acknowledges that the annual Rent has been determined by multiplying the rentable square footage of the Premises by the current Annual Rent Rate schedule approved by the Authority's Board of Directors and that said Annual Rent Rate is subject to change, from time to time, by the Authority's Board of Directors at their sole discretion. In the event of any adjustment in the Annual Rent Rate for the Premises, Tenant agrees that the Rent payable under Section 1.1 hereof shall be adjusted automatically to reflect such change in the Annual Rent Rate schedule, effective upon that date set forth as the effective date of adjustment in the resolution adopted by the Authority's Board of Directors adjusting the Annual Rent Rate schedule. In the event the resolution does not by its terms establish such an effective date, the Rent shall adjust effective as of the first day of the first calendar month following the date such resolution was adopted by the Authority's Board of Directors.

6.2 **Additional Rent.** During the Term, the Tenant shall pay the following as additional rent (such items are collectively referred to herein as "Additional Rent") by the due date set forth in the invoice therefor:

(a) **Utility Charges.** The Tenant shall pay the Authority on a pro rata per square foot basis, or on a metered basis, at the election of the Authority, for all utilities that are not included in the Annual Rent Rate and that are supplied by the Authority to the Premises and the Ramp Area, together with Tenant's pro rata share of the cost of utilities supplied to the Common Areas, all in accordance with this Lease at charges which will reflect fully compensatory, non-discriminatory, standard rates established by the Authority from time to time. If charges are

determined on a pro-rata basis, the Tenant shall pay the Authority its proportionate share of such charges. Tenant's proportionate share shall be that fraction, the numerator of which is the rentable area of the Premises and the denominator of which is the rentable area in the Terminal (excluding Common Areas) available for tenant occupancy and use.

(b) Sewer Use and Fire Pipe Charges. With respect to the Premises, the Tenant shall pay to the Authority a pro-rata share of any non-discriminatory sewer use charge and/or fire pipe charge assessed for such facilities at the Airport. The sewer use charge shall be calculated in accordance with the total amount of water used as separately metered. The fire pipe charge shall be calculated in accordance with the diameter of the pipe.

(c) Taxes. Tenant shall be solely responsible for the payment of any real estate taxes, payments in lieu thereof, including, without limitation, payments in lieu of taxes due under the Authority's Agreement with the City of Boston dated as of March 14, 1995, or any other taxes (other than taxes calculated on the income or profit of the Authority), levies, betterments or assessments, fees or charges, whether in existence on the date hereof or becoming applicable during the Term, which may be assessed against Tenant or the Authority in relation to the Premises, the occupation or operation thereof, the revenue derived therefrom, or any personal property or fixtures located thereon (singularly, a "Tax" and collectively, "Taxes") without right of reimbursement in whole or part from the Authority. Tenant shall pay all Taxes directly to the taxing authority before delinquency and before any fine, interest or penalty shall become due or be imposed by operation of law for their nonpayment.

Tenant may contest, in good faith for its own account and at its own expense, the validity or amount of any Tax, provided Tenant shall indemnify the Authority against any resulting loss, cost and expense, and shall provide security satisfactory to the Authority with respect to its performance of such indemnification. Tenant shall not permit or suffer a lien or encumbrance on the Premises or any of Tenant's property located therein by reason of failure to pay any Tax.

The Tenant and the Authority expressly agree, as contemplated in Massachusetts General Laws, Chapter 59, Section 12C, that any amounts paid or payable by the Tenant for real estate taxes or any other taxes may not be recovered in an action against the Authority and may not be retained out of rent or fees paid to the Authority.

(d) Common Area/Airport Facilities Charges. The Tenant shall pay to the Authority any other fees and charges relating to the Authority's operation and maintenance of the Airport, provided such fees and charges are assessed to Tenant on a non-discriminatory basis in accordance with standard rates established by the Authority from time to time. Such other fees and charges shall include, but not be limited to, capital, administrative, maintenance and operating expenses, landing fees, passenger fees, aircraft parking fees, State Police charges, and fees for Security badges, parking stickers and ramp permits.

(e) Other Amounts Due. The Tenant shall pay to the Authority any other amount owing by the Tenant to the Authority pursuant to a term of this Lease, including, but not limited to, amounts paid or costs incurred by the Authority to cure the Tenant's default under or other failure to comply with this Lease.

6.3 Method of Payment.

(a) Address for Rent Payments. Tenant shall forward all payments of Rent and Additional Rent to the Authority's Address for Payment of Rent set forth in Section 1.1, or by means of electronic transfer as set forth in **Exhibit E** attached hereto, or as otherwise directed by the Authority.

(b) Partial Months. For any partial month at the beginning or end of the Term, Rent and Additional Rent payable on a monthly basis hereunder shall be paid by Tenant to the Authority on a pro rata basis, based on the actual number of days in such months, and, if the Term commences on a day other than the first day of a calendar month, the first payment which Tenant shall make to the Authority shall be a payment equal to a proportionate part of such monthly Rent for the partial month from the Commencement Date to the first day of the succeeding calendar month.

(c) Interest on Amounts Unpaid. Without prejudice to any other rights and remedies of the Authority with respect to any default by the Tenant, in the event Tenant fails to make payment of Rent or Additional Rent when due, Tenant shall also pay interest thereon at the Default Rate from date due until paid.

6.4 No Waiver or Setoff. The Tenant's obligations to pay Rent shall be absolute and unconditional and shall not be subject to any right of recoupment or set-off and Tenant shall make all payments in full without notice or demand and without deduction, setoff or counter-claims of any form or nature. Acceptance by the Authority of any payment or partial payment of Rent, Additional Rent, fees or charges shall not constitute a waiver of any right on the part of Authority. No such payment shall be deemed to be other than a payment on account of the earliest rental payment then due, nor shall any endorsement of any check or payment be deemed an accord and satisfaction unless specifically agreed to in writing by the Authority and the Authority may accept such check or payment without prejudicing in any way its right to recover the balance of such Rent.

6.5 Security Deposit. Prior to the Commencement Date, the Tenant will deposit with the Authority the Security Deposit described in Section 1.1 as security for the full and faithful performance of every provision of this Lease to be performed by the Tenant. If the Tenant defaults with respect to any provision of this Lease, including but not limited to the provisions relating to the payment of Rent or Additional Rent, the Authority may use, apply or retain all or any part of the Security Deposit for the payment of any Rent, Additional Rent or any other sum in default, or for the payment of any other amount which the Authority may spend or may become obligated to spend by reason of the Tenant's default or to compensate the Authority for any other loss, cost or damage which the Authority may suffer by reason of the Tenant's default. Such application shall not preclude the Authority from recovering greater damages if the same can be established. If any portion of the Security Deposit is so used or applied, the Tenant shall, within five (5) days after written demand therefore, deposit cash with the Authority in an amount sufficient to restore the Security Deposit to its original amount, and the Tenant's failure to do so shall be a material breach of this Lease. The Authority shall not, unless otherwise required by law, have any obligation to pay interest on the Security Deposit or keep the Security Deposit separate from its general funds. If the Tenant shall fully and faithfully perform every provision

of this Lease to be performed by it, the Security Deposit or any balance thereof shall be returned to the Tenant (or, at the Authority's option, to the last transferee of the Tenant's interest hereunder) within a reasonable time after both the expiration of the Lease Term and the Tenant's delivery of the Premises to the Authority in compliance with the requirements of this Lease, provided, however, that the Authority may retain the Security Deposit until such time as any amount due from the Tenant under this Lease has been determined and paid in full. The Tenant shall not assign nor encumber its contingent rights in the Security Deposit separate from this Lease, and neither shall the Authority nor its successors or assigns be bound by any such assignment or encumbrance.

6.6 Letter of Credit in Lieu of Security Deposit. Tenant may, upon prior written approval by the Authority, submit an irrevocable letter of credit ("Letter of Credit") in lieu of the Security Deposit provided for in Section 6.5. Said Letter of Credit shall be in the form attached hereto as **Exhibit F** for a term of not less than one (1) year, and shall be drawn on a domestic commercial bank located in Boston, New York City or another city on the east coast of the United States reasonably acceptable to the Authority with at least a single A credit rating from Standard & Poor's or Moody's (the "Bank") acceptable to the Authority, in the same amount as that required for the Security Deposit in Section 6.5. Tenant shall post a substitute Letter of Credit not less than thirty (30) days prior to the expiration of the then effective Letter of Credit, provided that if said substitute Letter of Credit is with a bank other than the Bank who provided the then effective Letter of Credit, said substitute Letter of Credit shall be posted not less than ninety (90) days prior to the expiration of the then effective Letter of Credit. The substitute Letter of Credit shall be on the same terms as the original Letter of Credit, whether or not any amounts have been drawn on any previous Letter of Credit. If a substitute Letter of Credit is not provided in accordance with this Section 6.6, the Authority may draw upon the Letter of Credit prior to expiration and hold such sum as the Security Deposit. In the event that Tenant does not submit a Letter of Credit as provided herein, Tenant shall submit a Security Deposit as provided in Section 6.5. The Authority shall be entitled to draw on such Letter of Credit and apply the amounts so drawn, pro tanto, in the same manner and to the same extent as provided for with the Security Deposit in Section 6.5.

6.7 Waiver of Security Deposit Requirement. In the event that Tenant maintains a good payment history of all amounts due to the Authority and is in compliance with all other terms and conditions of this Lease, the Authority may waive the requirements of Section 6.5 and/or Section 6.6, as applicable. A good payment history shall mean that, for the prior three-year period (a) Tenant has paid all undisputed amounts due to the Authority under this Lease and its other agreements with the Authority (e.g. Rent, landing fees, passenger fees, aircraft parking, security badges, ramp permits, signage, etc.) within three (3) business days of the due date ("Payment Due Date"); (b) Tenant has identified any and all disputed amounts by the Payment Due Date and has made best efforts to resolve and/or pay the disputed amounts within sixty (60) days of the Payment Due Date; and (c) Tenant has reported and paid all Rent, as required. In the event that Tenant at any time during the Term fails to maintain a good payment history, the waiver of the security deposit requirement may be rescinded, and Tenant shall comply with Sections 6.5 and/or 6.6 as applicable within ten (10) days of its receipt of written notice therefor.

ARTICLE 7

USE OF PREMISES

7.1 **Permitted Uses.** The Premises shall be used only for the following uses ("Permitted Uses") in accordance with the provisions specified herein, and for no other purposes whatsoever.

(a) **Premises.** The Authority hereby grants to Tenant the permission and privilege of utilizing and Tenant hereby covenants to use the Premises from time to time located in the Terminal in connection with Tenant's business of transportation by passenger aircraft as an air transportation company duly certificated by the Federal Aviation Administration (which shall not involve general aviation or air taxi operations, as defined in Title 14, Section 298 of the Code of Federal Regulations), for the following purposes and activities only which shall be directly related to Tenant's authorized operations:

- (i) For the reservation of space and the sale of tickets for transportation on aircraft;
- (ii) For the reservation and the sale of tickets for air transportation by other carriers but only as incidental to or in connection with air transportation or for the accommodation or convenience of the incoming or outbound passengers at the Airport. Tenant shall conduct all such operations at the Terminal for the reservation of space and the sale of tickets, including by automated ticketing machines ("ATMs"), on the Premises and not in any other part of the Terminal;
- (iii) For the handling of unclaimed baggage and lost and found articles;
- (iv) For the conduct of operations, communications, reservations, and administrative office functions and activities in connection with air transportation performed by Tenant and Tenant's permitted subtenants as provided in ARTICLE 16, and other airlines operating under permitted handling agreements as provided in Section 16.4;
- (v) For use as crew quarters to be used by personnel of Tenant during layovers between flights;
- (vi) For the loading and unloading of passengers, baggage, mail, and air cargo on passenger flights at the Terminal;
- (vii) For the training of personnel employed or to be employed by Tenant;
- (viii) For the purchase, on or off Airport, and receipt by Tenant (i.e., for Tenant's own aircraft/equipment only) of gasoline, fuel, lubricating oil, grease and other aircraft supplies and food and other passenger supplies, provided that aircraft fuel shall be stored and delivered on-Airport only from an Authority authorized Airport fuel distribution system;
- (ix) For the handling of baggage, whether by Tenant's own employees,

by Tenant's employees in conjunction with the employees of other airlines or by the employees of an authorized independent contractor the operations of which shall be the sole responsibility of Tenant;

(x) For the check-in of passengers;

(xi) For the installation, operation, and maintenance of telecommunications equipment customarily used in air transportation operations, subject to approval under the TAA Process; and

For the conduct of other activities incidental to the provision of passenger air transportation subject to the Authority's prior written approval which may be withheld for any reason which the Authority determines has or may have an impact upon the Authority, the Airport or its efficient or productive operations, provided that any approval of any additional use may be conditioned upon a reasonable increase in the Rent reflective of such increase in activities and inclusion of additional provisions in this Lease.

(b) Ramp Area. Subject to the Authority's policies of general applicability, Tenant shall also have the right to use the Ramp Area for the purpose of operational staging of equipment for fueling, servicing, loading, unloading or routine line maintenance of Tenant's aircraft and conducting any activities on behalf of aircraft owned by other air carriers, as may be approved by the Authority, subject to the following:

(i) Nothing in this subsection (c) shall be implied or construed to grant to Tenant rights to (A) fuel aircraft (including non-jet aircraft) owned or operated by other air carriers; or (B) stage or park any non-jet aircraft or Regional Jet Aircraft owned or operated by Tenant or other air carriers; or (C) stage or park any international aircraft;

(ii) Nothing herein shall be implied or construed to grant to Tenant rights to store or park equipment on the Ramp Area;

(iii) The Authority shall have final right of approval over the use of the Ramp Area consistent with the rights expressly granted Tenant hereunder;

(iv) Without limitation of the rights reserved to the Authority elsewhere in this Lease to provide directions and establish rules and regulations, Tenant shall assure that its operations within the Ramp Area are conducted in a safe and orderly manner and that the Ramp Area is kept in a safe, clean and neat condition and in compliance with the terms of the Lease;

(v) Tenant shall not perform major aircraft maintenance of any kind in the Ramp Area;

(vi) Not later than the Commencement Date, Tenant shall submit to the Authority an Approved Aircraft Parking Plan. Tenant shall comply with the Approved Aircraft Parking Plan. Upon request by the Authority, in the event of recapture of Gates pursuant to the Preferential Gate Use Policy attached hereto as **Exhibit D**, or in the event that Tenant's schedule change in the Official Airline Guide results in a change of gate

utilization or type of aircraft not previously approved by the Authority, Tenant shall submit a revised Approved Aircraft Parking Plan for the Authority's approval under its TAA Process either forty-five (45) days after said request or recapture, or forty-five (45) days prior to the implementation of said schedule change; and

(vii) Upon request of the Authority, Tenant shall submit an equipment staging plan for the Ramp Area for the Authority's approval under its TAA Process.

(c) Use of Premises by Others. The Premises will be used solely by Tenant or a sublessee or assignee operating with the consent of the Authority, as provided under the provisions of ARTICLE 16.

7.2 Prohibited Uses. Tenant shall not use the Premises for any use not specifically granted herein without the prior written approval of the Authority, which approval may be withheld based on any factor which the Authority, in its sole determination, determines has or may have an impact upon the Authority, the Airport or its efficient or productive operations, provided that any approval of any additional use may be conditioned upon a reasonable increase in the Rent reflective of Tenant's additional use and inclusion of additional provisions in this Lease. Prohibited uses are expressly agreed to include, but not be limited to, the following:

- (a) Loading, unloading or handling of passengers, baggage, mail or air cargo to or from nonjet aircraft, Regional Jet Aircraft or international aircraft at the Airport to the extent that the Authority determines that any such operation conflicts or interferes with any jet operations;
- (b) Sale of goods of any kind, including, without limitation, sundries, gifts, newspapers, souvenirs, or any other article customarily sold in airport gift shop, newsstand, duty-free or other concessions, and including any other items which fall within the rights provisions of the Authority's contracts with concessionaires;
- (c) The provision or sale of food or beverages on the Premises or in any area of the Airport, provided that the provision or sale of food or beverages to Tenant's passengers in Tenant's club or lounge on the Premises free of charge shall be permitted if the incidental to the provision of airline services;
- (d) Any preparation of food or beverages for in-flight use or terminal use (other than food preparation and beverages in an airline club or lounge, in a manner approved by the Authority);
- (e) Commercial parking;
- (f) Loading, unloading, or handling of cargo in connection with services provided in all-cargo aircraft;
- (g) Display of advertising for persons other than Tenant, or services other than air transportation unless approved by the Authority under the TAA Process, which approval may be withheld in the Authority's sole discretion; and

(h) Installing or operating or causing to be installed or operated any coin-operated, credit card operated, or other user-paid machine(s) or device(s), including, but not limited to any communications device or any device using telecommunications transmissions of any nature, except for ATMs or similar devices for sale of Tenant's tickets located on the Premises or to serve Tenant's own internal communications, provided such communications are non-revenue generating and are approved through the TAA process.

ARTICLE 8 **OPERATIONS**

8.1 Required Certificates. Tenant represents and warrants that it holds all certificates, permits, licenses or other entitlements required by federal, state or local laws, rules, or regulations in order to enable Tenant to conduct its operations and to engage in its Permitted Uses and that said certificates, permits, licenses or other entitlements are and will be kept current, valid and complete.

8.2 Laws, Rules and Regulations. Tenant shall, at its sole cost and expense, comply and cause employees, agents, contractors, licensees and invitees to comply, with all present and future Laws of all applicable federal, state and local governmental or quasi-governmental authorities, subdivisions, departments, agencies and the like, including any regulations of the Authority (including without limitation those codified at 740 CMR 1.00 et seq.), which impose any duty upon the Authority or Tenant with respect to the use, occupancy or alteration of the Premises and with the rules, regulations and requirements of the Authority's and Tenant's insurance underwriters with respect to the Premises. Tenant shall obtain any permits necessary to occupy the Premises and the Gates and Ramp Area for the Permitted Uses and shall promptly pay all fines, penalties, expenses to remedy or correct any violations of applicable Laws, and damages that may arise out of or be imposed because of its failure to comply with the provisions of this Section. Nothing herein shall be deemed to limit or modify the parties' respective obligations or agreements pursuant to ARTICLE 12. The provisions of this Section 8.2 shall survive the expiration or termination of this Lease.

8.3 Authority Rules and Regulations. Tenant shall faithfully observe and comply with any rules which the Authority may from time to time make and communicate in writing to Tenant, provided that such rules apply to all similarly situated tenants and are reasonably related to the safety, care, appearance, reputation, operation or maintenance of the Terminal, the Common Areas or the Airport Facilities, or the comfort of tenants or others using such areas or facilities. The Authority shall not have any duty or obligation to Tenant to enforce such rules or the terms and conditions in any other lease as against any other tenant, and the Authority shall not be liable to Tenant for violations of the same by other tenants, their employees, contractors, agents, invitees or licensees.

8.4 Tenant's Employees, Contractors and Subcontractors to Work in Harmony. Tenant agrees that in the use of the Premises or any work performed by or on behalf of Tenant in or about the Premises it will employ, directly or indirectly, only labor which can work in harmony with that being employed by the Authority at its facilities, and that being employed by other tenants at the Airport if Tenant is working side by side with such other tenants (for

example, ticket counters and baggage handling). Tenant will not employ or permit the use of labor or otherwise take any action, which might result in a labor dispute involving personnel performing work or providing services at the Authority's facilities by or on behalf of Tenant. Further, in the event of any such interference or conflict, Tenant, upon demand of the Authority, shall cause such contractors, mechanics or laborers causing such interference or conflict to leave the Airport immediately. In the event that the Authority determines that it is necessary for public safety or the efficient operation of the Airport to post police details or to take other actions as a result of the inability of Tenant's employees, contractors, subcontractors, or other parties performing work on or about the Premises to work in harmony with other elements of labor employed at the Airport, Tenant shall reimburse the Authority for all reasonable costs incurred by the Authority in doing so.

8.5 Vendors, Suppliers and Contractors. Except as otherwise provided herein, Tenant shall have the right to obtain supplies or services from suppliers, vendors or contractors of its own choice for its operations at the Airport, provided that the Authority reserves the right to license and regulate all persons or companies doing business on the Airport and to impose non-discriminatory charges for the privilege of conducting any such business and to prohibit persons from engaging in aeronautical activities, the provision of ground transportation services or any commercial activities at the Airport except in accordance with this Lease and agreements, concession contracts, permits or operating agreements entered into between the Authority and said persons. A charge will not be considered discriminatory for the purposes of this Lease which is more for businesses located on the Airport than for businesses located off the Airport.

8.6 Security. Tenant shall, at Tenant's sole cost and expense, take all security precautions and provide all personnel and equipment necessary to comply with all applicable laws and regulations for passenger screening and other security services for passengers using the Gates, including, without limitation, laws, rules and regulations promulgated by the Federal Aviation Administration ("FAA") and the Transportation Security Administration ("TSA") from time to time, and shall use contractors acceptable to the Authority. Tenant will make all necessary arrangements with the Authority and pay for all services for law enforcement or security officers required under this Section 8.6.

Tenant shall also be required during the Term of this Lease, at Tenant's sole cost and expense, to take such security precautions, with respect to the Premises and Ramp Area and Tenant's operations and service personnel related thereto, as the Authority in its sole and absolute discretion may, from time to time, require pursuant to generally applicable policies or directives of the Authority. Tenant further stipulates that it shall be solely responsible for providing security to and within the Premises and Ramp Area with no right of reimbursement from the Authority. Tenant further agrees to reimburse the Authority for all fines or charges imposed by the FAA and/or the TSA against the Authority as a result of Tenant's violation of any laws, rules and regulations promulgated by the FAA and the TSA.

8.7 Efficient Use of Space. Tenant acknowledges that a portion of the Premises is to be used by the traveling public. Tenant shall make available such space to its passengers and to the traveling public on a nondiscriminatory basis, including ensuring accessible paths of travel for disabled persons, and shall make reasonable efforts to coordinate its activities and operations with abutting tenants and the Authority so as to maximize efficient use of available space.

8.8 No Waste or Nuisance. Tenant covenants and agrees that it shall not injure, deface or otherwise harm the Premises or use the Premises in any manner that will constitute waste, and that it shall not cause or permit any unlawful conduct, unreasonable annoyance or nuisance to exist on the Premises, nor permit any activity or omission which constitutes or results in unlawful conduct, unreasonable annoyance or nuisance, nor permit the emission of any objectionable noise, vibration or odor, nor overload the floor of the Premises, nor permit any use of the Premises which will invalidate or increase the premiums on any of the Authority's insurance; provided that the conduct of Tenant's air transportation operations in accordance with applicable law and the provisions of ARTICLE 7 hereof shall not be deemed a nuisance or an unreasonable annoyance.

8.9 Compliance with ADA and other Disability Access and Nondiscrimination Laws. Tenant agrees that, with respect to the Premises, including all real and personal property, buildings, structures and equipment (including communications equipment) thereon, Tenant shall comply, and cause its agents, subtenants, licensees and contractors to comply, with the Americans with Disabilities Act of 1990 ("ADA", 42 U.S.C. §§ 12101 et. seq.) and the Regulations and Accessibility Guidelines for Buildings and Facilities issued pursuant thereto ("ADAAG") and the regulations of the Massachusetts Architectural Access Board, 521 CMR 1.1 et. seq. Tenant recognizes that the Authority is a public entity subject to Title II of the ADA. To the extent permitted by law, Tenant shall assume and comply, and cause its agents, subtenants, licensees and contractors to comply, with any obligations to which the Authority may be subject under Title II of the ADA with respect to alterations or construction conducted in the Premises or in the operation of programs, services or activities relating to this Lease. Tenant shall further comply, and cause its agents, subtenants, licensees and contractors to comply, with all applicable accessibility and non-discrimination laws and regulations, including, but not limited to, the Air Carriers Access Act ("ACAA", 49 U.S.C. § 41705), and regulations implementing the ACAA.

Within five (5) days after receipt, Tenant shall advise the Authority in writing and provide copies of (as applicable), any notices, claims made or threatened, or any governmental or regulatory actions or investigations instituted or threatened alleging violation of the ADA or any other Law pertaining to accessibility for disabled persons which relates to any portion of the Premises or operations or activities relating thereto.

If Tenant fails to comply with the requirements of this Section, the Authority, upon reasonable notice to Tenant and an opportunity to cure, shall have the right, but not the obligation, to enter the Premises and perform all necessary tasks to ensure Tenant's compliance with the ADA and other disability access and nondiscrimination laws and requirements as set forth in this Section 8.9. Tenant shall indemnify and save harmless the Authority from all injury, loss or damage to any person or property occasioned by the Authority's completion of any necessary tasks to ensure compliance with this Section, except to the extent such loss or damage is the result of the negligence or willful misconduct of the Authority, its employees, agents or contractors. Tenant shall reimburse the Authority for any and all actual costs plus an administrative fee equal to fifty (50%) percent of such costs incurred in completing such necessary tasks to ensure Tenant's compliance with this Section, including, but not limited to, reasonable attorneys' and consultants' fees and disbursements and costs of corrective measures. Any such costs incurred by the Authority shall be reimbursed by Tenant as Additional Rent or

pursuant to a reasonable payment schedule established by the Authority.

8.10 Transportation Management Association. Tenant acknowledges that the Authority is committed to a Transportation Management Association (the "TMA") at the Airport for employees of the Authority and its tenants and employees (the "Employees"). The purpose of the TMA is to provide commuter-related information and services to Employees and to develop transportation demand management strategies to reduce the number of employee-related vehicle trips. Tenant recognizes that the TMA may assist Tenant in meeting its legal obligations under 310 CMR 7.16 and may result in cost savings for Tenant and its employees as parking at the Airport becomes more scarce and more expensive in future years. Accordingly, Tenant agrees to participate in the TMA at the Airport.

8.11 Airport-Wide Programs. Tenant agrees to use reasonable efforts to participate in any lawful Airport-wide programs or initiatives of general applicability as the Director of the Airport may require upon notice to Tenant.

8.12 Signs/Corporate Identification. Tenant shall not place on the walls of the Premises (including both interior and exterior surfaces of windows and doors) any signs, symbols, advertisements or the like that are visible from any public areas without the prior written consent of the Authority, which consent may be withheld in the Authority's sole discretion and which shall be further subject to the TAA Process described in Section 9.8 hereof. Tenant shall be prohibited from placing any signs, symbols, advertisements or the like on any part of the Terminal outside of the Premises. Notwithstanding the foregoing, Tenant acknowledges and agrees that the Authority at Tenant's sole expense, shall install signs to identify Tenant's name and Terminal location in the Authority's standard locations and graphics.

8.13 Rubbish Removal. Tenant will provide for the removal of rubbish and refuse or any other material from the Premises at times and in a manner which will cause the minimum of interference with the use of the Airport and passenger terminals by the traveling public and other authorized persons. Tenant shall remove such rubbish, refuse and any other material and make any and all deliveries only in such manner, at such times and at such locations as the Authority in its discretion might from time to time determine. The Authority shall require Tenant to contract for a compactor to store all rubbish, refuse or other waste. The installation of a trash compactor shall be considered a Tenant Improvement and shall be subject to the provisions of ARTICLE 9.

8.14 Snow Removal. The Authority shall remove all snow and ice from the entry and sidewalks of the Terminal, the access roadways to the Terminal and any parking areas appurtenant to the Terminal as part of its regular snow removal operations at the Airport. Tenant acknowledges that the timing of such snow removal is dependent on overall public safety and operational concerns at the Airport. Tenant shall remove snow from the Ramp Area in cooperation with adjacent tenants and the Authority's snow removal plan.

8.15 Cleaning and Janitorial. Tenant shall provide cleaning and janitorial services, including any required pest control, to its Premises. The Authority shall provide cleaning and janitorial services only in Common Areas as described in **Exhibit B**.

8.16 **Waiver of Visual Artists Rights.** Tenant shall not install any object in the Terminal or commence construction of any Tenant Improvements that constitutes a work of visual art under the Visual Artists Rights Act of 1990 ("VARA"), unless and until Tenant has provided to the Authority either: (i) written confirmation that VARA does not apply, or (ii) a written waiver from the author of a work of visual art, in form and substance reasonably satisfactory to the Authority, which identifies specifically the work of visual art and the uses of that work to which the waiver applies in accordance with 17 U.S.C. §106A(e)(1).

ARTICLE 9

ALTERATIONS, MAINTENANCE AND REPAIR

9.1 **Authority Improvements.** The Authority shall not be obligated to make or cause to be made any improvements of any nature to the Premises. In the event that the Authority makes or causes any improvements to be made ("Authority Improvements"), the Authority shall own and maintain said Authority Improvements, unless otherwise agreed to in writing.

9.2 Authority Maintenance and Repair.

(a) **Premises/Terminal.** The Authority shall repair and maintain the structural portions of the Terminal and the Premises in accordance with **Exhibit B**, including the roof and the basic plumbing, HVAC and electrical building systems installed or furnished by the Authority and not required to be maintained by Tenant under Section 9.3.

(b) **Ramp.** The Authority shall perform structural maintenance and structural repairs to the Ramp Area, reasonable wear and tear excepted. Ordinary maintenance and repair of the Ramp Area shall be the Tenant's responsibility as provided in Section 9.3 (b) below.

(c) **Limitation on Authority's Obligations.** The Authority shall not be responsible to make any repairs other than as expressly provided in this Section 9.2. The Authority shall undertake any such required maintenance and repairs within a reasonable time after the Authority determines the need for such maintenance or repairs provided that the Authority shall not be liable for any failure to make such repairs unless Tenant has given the Authority notice of the need to make such repairs and the Authority has failed to commence such repairs within a reasonable time thereafter. The Authority shall not be liable for any maintenance and repairs that are necessitated in part or in whole by the act, neglect, fault, omission, negligence or willful misconduct of the Tenant, its agents, servants, employees, visitors, suppliers, contractors, subcontractors or furnishers of service or by the presence or installation of any Tenant Improvements. There shall be no abatement of Rent or liability of the Authority by reason of any injury to or interference with the Tenant's business arising from the making of any repairs, alterations or improvements in or to any portion of the Premises.

9.3 Tenant's Maintenance and Repair.

(a) **Premises.** The Tenant shall, at Tenant's sole cost and expense, keep and maintain in good condition (including any Tenant Improvements) in good, clean and safe order, condition and repair in accordance with **Exhibit B**, excepting only (i) reasonable wear and tear, (ii) damage caused by fire or other casualty or resulting from the exercise of the power of eminent

domain, which in each case results in termination of this Lease, and (iii) those repairs expressly required to be made by the Authority. The Tenant's obligations hereunder shall include any building systems (e.g., plumbing, electrical and HVAC), which exclusively serve the Premises, from the point of connection of such system to the Authority's base building systems, but shall not include the roof or structure. The exception of ordinary wear and tear shall not apply so as to permit the Tenant to keep the Premises in anything less than suitable and efficient and usable condition, considering the nature of the Premises and the use reasonably made thereof.

(b) Ramp Area. The Tenant shall perform, at its sole expense, maintenance and repair (other than structural maintenance or structural repair required to be performed by the Authority under Section 9.2) to the Ramp Area in accordance with **Exhibit B**, including, but not limited to, cleaning and non-structural surface maintenance, removal of snow, debris, spillage, any other foreign matter and environmental cleanup.

(c) Maintenance Plan. Prior to the Commencement Date, the Tenant shall provide for the Authority's review and approval under the TAA Process, a comprehensive preventive maintenance program for all of the equipment Tenant is responsible for maintaining pursuant to this ARTICLE 9 (hereinafter referred to as the "Maintenance Plan"). In addition, Tenant shall, on each anniversary of the Commencement Date, provide the Authority with an update of the Maintenance Plan in form and substance acceptable to the Authority.

Notwithstanding the foregoing Section 9.2, Tenant shall not be responsible for the repair of any damage caused solely by the negligence or willful misconduct of the Authority or its agents, contractors or employees.

9.4 Tenant Improvements. The Tenant shall not place or construct any improvements, structures, alterations, modifications, signs, communications equipment, wiring or additions in, to, or upon the Premises without the prior written approval of the Authority which may be withheld in its sole and absolute discretion. Any such improvements, structures, alterations, modifications, signs, communications equipment, wiring or additions are hereinafter referred to as the "Tenant Improvements". In addition, the Tenant shall obtain the Authority's prior written approval of any of Tenant's Improvements in accordance with the TAA Process described in Section 9.8 hereof, as such process may be amended from time to time. In the event Tenant fails to obtain the Authority's prior written approval, the Authority may, without limiting other remedies available to it, direct in writing that Tenant modify, reconstruct or remove any work done without the approval of the Authority.

9.5 Ownership of Tenant Improvements. Tenant Improvements placed or installed in the Premises by the Tenant shall become part of the Premises, and upon the expiration or earlier termination of this Lease title thereto shall vest in the Authority (unless the Authority elects otherwise), except with respect to trade fixtures or equipment, which may be removed by Tenant provided (i) Tenant is not in default; (ii) such removal can be accomplished without damage to the Premises; and (iii) Tenant obtains the Authority's approval of such removal pursuant to the TAA process. Upon termination of the Tenant's occupancy of the Premises or the expiration of the Term, the Tenant shall, upon request of the Authority, remove any Tenant Improvements and restore the Premises to the condition as of the date hereof, reasonable wear and tear excepted. If the Tenant does not promptly remove such Tenant Improvements upon

request of the Authority and restore the Premises, the Authority may enter the Premises and remove the Tenant Improvements and restore the Premises. The Tenant shall indemnify and save harmless the Authority from all injury, loss or damage to any person or property occasioned by said work except to the extent such loss or damage arises as a result of the gross negligence or willful misconduct of the Authority. The Tenant shall reimburse the Authority for any and all reasonable costs incurred in so doing, together with interest thereon, at the Default Rate, from the date the Authority incurred such costs until paid.

9.6 Performance of Tenant Improvements, Maintenance and Repairs. The Tenant shall promptly make all repairs, replacements and restorations to the Premises, whether ordinary or extraordinary, foreseen as well as unforeseen. The Tenant shall perform all construction of Tenant Improvements, maintenance or repairs promptly in conformance with all applicable statutes, ordinances, building codes, rules, regulations and directives of any local, state or federal entity having jurisdiction, including all generally applicable procedures and requirements of the Authority, and in a good and workmanlike manner, in accordance in all material respects with the drawings and specifications as may be approved by the Authority pursuant to the TAA Process, as it may be amended from time to time, and as set forth in Section 9.8. The Tenant shall bear any and all costs of compliance with the requirements of this Section.

All Tenant Improvements shall be (a) subject to the TAA Process described in Section 9.8, (b) constructed in accordance with the requirements of Section 9.7, and (c) constructed pursuant to construction contracts in conformity with the requirements of Section 9.9. In completing any Tenant Improvements, maintenance and repairs hereunder, Tenant shall keep the Premises free of any liens in accordance with the requirements of Section 9.10.

9.7 Construction. All Tenant Improvements shall: (a) be constructed in accordance with the Authority's building standards and plans approved in writing by the Authority; (b) be constructed by contractors or mechanics pursuant to written construction contracts entered into between the Tenant and the contractor named therein; (c) be constructed and installed in a good and workmanlike manner using only new materials; (d) be constructed in compliance with all applicable statutes, ordinances, building codes, codes and rules, regulations, directives of any local, state or federal entity having jurisdiction and all generally applicable procedures and requirements of the Authority including the Authority's TAA process set forth in Section 9.8; (e) be constructed at Tenant's sole expense and at such times and in such manner as the Authority may from time to time designate without unreasonable interference with or disruption of the operations of tenants or other occupants of the Terminal and the Airport and Tenant shall, at its expense, remove from the Premises all trash which may accumulate in connection with Tenant's activities and, should Tenant fail to do so, the Authority may, in addition to any other right or remedy of the Authority, remove such trash without notice to Tenant, at Tenant's expense, and the expenses so incurred by the Authority shall be due and payable by Tenant, as Additional Rent, upon demand; and (f) become part of the Premises unless the Authority elects otherwise. Tenant expressly acknowledges and agrees that Tenant shall be responsible for obtaining all necessary permits, approvals and variances and for compliance with all of the foregoing laws and regulations.

Prior to commencing any construction, Tenant shall provide the Authority with: (i) copies of the final plans, as approved; (ii) fully executed construction contract(s); (iii) evidence

that the contractor thereunder will perform satisfactorily, including in the Authority's reasonable discretion, lien, performance and payment surety bonds in the form and amount satisfactory to the Authority; and (iv) copies of all licenses, permits, approvals and all other necessary or appropriate actions of any federal, state or city authorities required to enable construction, maintenance or operation of the Tenant Improvements; and (v) all policies of insurance required under the terms of ARTICLE 12. The Tenant shall bear any and all costs of compliance, direct or indirect, with the requirements of this Section.

9.8 Tenant Alteration Application Process. Prior to undertaking the construction or renovation of any proposed improvement, structure, alteration, modification, sign or addition, the Tenant shall submit a complete Tenant Alteration Application ("TAA") in form satisfactory to the Authority, and include with any request for the Authority's approval of the TAA preliminary engineering, architectural plans or other information, in accordance with the requirements of the Authority's TAA process in effect from time to time during the Term (the "TAA Process"). Tenant's application shall be accompanied by the required deposit, which deposit shall be returned to Tenant upon satisfactory completion of the proposed work and submittal of as-built drawings as required.. The Authority's approval of any TAA may be withheld, granted or conditioned upon factors which it determines in its sole discretion has or may have an impact upon the Authority, the Airport, its efficient or productive operation, including but not limited to, the removal of any Tenant Improvement upon termination of the Tenant's occupancy of the Premises or expiration of the Term.

The Authority's approval of any TAA shall not be deemed or be construed to indicate or demonstrate adequacy of the design, construction or safety of the proposed Tenant Improvement. Upon completion of the proposed Tenant Improvement, the Tenant, at its own cost, shall make or have made as-built plans of said Tenant Improvement and submit said plans to the Authority within ninety (90) days of completion of said Tenant Improvement. The Tenant shall submit all as-built plans on the version of AutoCAD required from time to time pursuant to the Authority's Tenant Construction Guidelines.

If the Tenant does not obtain the prior written approval of the Authority or, if such approval is obtained, it is not complied with, or Tenant does not submit as-built plans, the Authority may, upon reasonable prior notice, enter the Premises and restore the condition of the Premises, complete the proposed improvement, structure, alteration, modification, sign or addition as described in the approved TAA and/or have as-built plans prepared, as the Authority deems appropriate. The Tenant shall indemnify and save harmless the Authority from all injury, loss or damage to any person or property occasioned by said work except to the extent such loss or damage arises from the gross negligence or willful misconduct of the Authority. In addition, the Tenant shall reimburse the Authority for any and all reasonable costs incurred hereunder by the Authority (including an amount for fully allocated administrative charges) together with interest thereon at the Default Rate from and after the date upon which the Authority incurred such costs.

9.9 Contracts for Tenant Improvements. All contracts relating to Tenant Improvements shall expressly require all contractors and subcontractors to provide only labor that can work in harmony with other elements of labor being employed at the Airport and will prohibit employment or use of any labor or any other action which might result in a labor dispute

involving personnel performing work or providing services at the Airport. Such contracts shall include provisions of insurance and suretyship reasonably satisfactory to the Authority for the protection of the Authority's laborers, suppliers, contractors, subcontractors and the public, and shall also require all contractors and subcontractors to comply with all applicable provisions of this Lease.

9.10 No Liens. No work which the Authority permits Tenant to do or which Tenant is obligated to perform pursuant to this Lease, whether in the nature of erection, construction, alteration or repair, shall be deemed to be for the immediate use and benefit of the Authority. Tenant shall not, directly or indirectly, create or permit to be created or permit to remain, and shall discharge, any mechanic's or other lien placed on the estate of the Authority in the ordinary course of business or with respect any work performed by or on behalf of Tenant on or about the Premises. Tenant shall pay promptly all persons furnishing labor or materials with respect to any work performed by Tenant or its contractor on or about the Premises. Tenant shall procure unconditional waivers and releases of lien claims (and/or notices of completion) in form acceptable to the Authority from all persons furnishing labor or materials with respect to any work performed on behalf of Tenant in the Premises, at the time each progress payment and/or final payment is made.

In the event any mechanic's or other lien shall at any time be filed against the Premises by reason of work, labor, services or materials performed or furnished, or alleged to be performed or furnished, to Tenant or to anyone holding the Premises through or under Tenant, Tenant shall, within ten (10) days after notice of its recordation, cause the same to be discharged of record or bonded to the satisfaction of the Authority. If Tenant fails to cause such lien forthwith to be so discharged or bonded after being notified of the filing thereof, then, in addition to any other right or remedy of the Authority, the Authority may discharge the same by paying the amount claimed to be due or may cause the same to be bonded. The amount so paid by the Authority, including reasonable attorneys' fees incurred by the Authority in either defending against such lien or procuring the discharge or bonding of such lien, together with interest thereon at the Default Rate, shall constitute Additional Rent and shall be payable by Tenant to the Authority on demand.

9.11 Right of Authority. If the Tenant does not, upon reasonable notice and reasonable opportunity to the Tenant to cure, considering the nature of the maintenance or repair, commence such maintenance and repairs as set forth herein or fails to diligently continue to complete such maintenance or repairs, then the Authority, in addition to any other remedy which may be available to it, may enter the Premises and perform such maintenance or repair, as the Authority determines, in its sole and absolute discretion, is required. The Tenant shall indemnify and save harmless the Authority from all injury, loss or damage to any person or property occasioned by the Authority's completion of such maintenance or repair, except to the extent such loss or damage is solely the result of the negligence or willful misconduct of the Authority, its employees, agents or contractors. The Tenant shall reimburse the Authority for any and all reasonable costs incurred in completing such maintenance or repair (including without limitation an administrative fee equal to fifty (50%) percent of such costs), together with interest thereon at the Default Rate from the date the Authority incurred such costs.

ARTICLE 10
UTILITIES

10.1 Utilities to the Premises.

(a) **Electricity.** The Authority shall be the sole provider of electricity to the Premises and shall be obligated to provide electricity to the Premises only by means of wiring installations in existence at the commencement of the Term. Tenant shall not install, maintain or repair any electrical fixtures, appliances or equipment within the Premises without the Authority's prior written approval, and the Tenant agrees that its use of electric current shall never exceed the capacity of the wiring installation in place.

(b) **HVAC.** The Authority shall provide utility systems to provide heat and air conditioning to the Premises by means of utility installation in existence as of the Commencement Date. The Tenant agrees that its use of said utility systems shall never exceed the capacity of the utility installation in place.

(c) **Water.** The Authority shall provide potable water to the Premises only by means of plumbing installations in existence as of the Commencement Date.

(d) **Telephone/Telecommunications.** The Authority shall have no obligation to provide telephone or data communication services to the Premises.

(e) **Tenant's Responsibility.** If Tenant shall require utilities in excess of reasonable quantities to be provided through existing installations at the Terminal, and if (i) in the Authority's judgment, the existing facilities are inadequate for such excess requirements, or (ii) such excess use shall cause an additional burden on the existing utility systems, Tenant shall, subject to the Authority's approval, at Tenant's sole cost and expense, furnish and install such additional wires, conduits, feeders, switchboards and related equipment as reasonably may be required to supply such additional requirements of Tenant. Tenant shall be solely responsible for the operation of all equipment, systems, piping, tie-ins, utilities, lines and connections, mechanical, electrical, communication and other systems located within and exclusively serving the Premises and shall perform, in accordance with the provisions of ARTICLE 9, all preventative maintenance, repairs, replacements and rebuilding of such systems.

10.2 Improvement of Utility System. In the event existing sources of utility supply hereunder are subsequently deemed inadequate for the Tenant's needs as a result of the Tenant's increased utility demands, expansion or improvements, the Tenant, at its sole cost and expense, may upon written prior approval of the Authority, improve such systems, provided such improvements are undertaken in conformance with the provisions of this Lease including, without limitation, the TAA Process.

10.3 Tenant's Acts. Tenant shall not do or permit to be done anything which may interfere with the effectiveness or accessibility of any drainage and sewerage system, water system, ventilation, air-conditioning and heating systems, communications system, key card

access systems, elevators and escalators, electrical system, fire-protection system, sprinkler system, alarm system, fire hydrants and hoses and other utility and other systems, if any, installed or located on, under, in or adjacent to the Premises now or in the future.

10.4 No Constructive Eviction. The Authority shall make diligent efforts to supply Tenant with utility services as specified above; however, if the Authority makes such diligent efforts, but fails to provide said utility services, said failure shall not constitute a constructive eviction. Further, the Authority shall not be liable to Tenant in damages, or for any reduction in Rent, or otherwise, for any interruption of utility services (including heating) (i) to the extent any utility shall become unavailable from any public utility company, public authority or any other person or entity supplying or distributing such utility, or (ii) for any interruption in any service hereunder (including, without limitation, any heating, ventilation or air-conditioning) caused by the making of any necessary repairs or improvements (unless and to the extent such repairs are necessitated by the negligence or willful misconduct of the Authority); or (iii) which results from any cause beyond the reasonable control of the Authority. In no event shall the Authority be liable to Tenant for indirect or consequential damages.

10.5 Charges. The Authority shall charge Tenant and Tenant shall pay for utility services in accordance with Section 6.2.

10.6 Energy Conservation. The Authority shall have the right to institute such policies, programs and measures as may be necessary or desirable, in the Authority's discretion, for the conservation and/or preservation of energy or energy related services, or as may be required to comply with any applicable codes, rules and regulations, whether mandatory or voluntary.

ARTICLE 11 **ENVIRONMENTAL**

11.1 Environmental Laws. Tenant shall observe, obey and cause its employees, agents, contractors, subcontractors, and licensees to observe and obey all applicable Environmental Laws.

11.2 Environmental Representations and Warranties. Tenant hereby represents and warrants to the Authority as follows:

(a) Except as may be permitted by and only in compliance with applicable Laws, including without limitation Environmental Laws, Tenant shall not allow any Hazardous Materials to exist or be stored, located, discharged, possessed, managed, processed, or otherwise handled on the Premises, and shall strictly comply with all Environmental Laws affecting the Premises, including, without limitation, those laws regarding the generation, storage, disposal, release and discharge of Hazardous Materials. Without limiting the generality of the foregoing, Tenant has not been, is not, and will not become involved in operations at the Premises involving Hazardous Materials, except as expressly permitted by and only in compliance with applicable Law. Moreover, at the request of the Authority, Tenant shall become a co-permittee with the Authority, and with other tenants at the Airport if required by the Authority, for stormwater discharge permits under applicable federal or state law. Tenant expressly warrants, represents

and covenants that Tenant, its employees, agents, contractors and subcontractors, licensees and invitees shall strictly comply with the requirements of all Environmental Laws affecting the Premises and shall immediately notify the Authority of any release or threat of release of Hazardous Materials at, upon, under or within the Premises.

(b) Except for Existing Contamination, neither Tenant nor, to Tenant's knowledge, the Premises (i) has received notice of any private or governmental lien or judicial or administrative notice, order or action relating to Hazardous Materials or environmental liabilities or violations with respect to the Premises, or (ii) is in, or with any applicable notice or lapse of time, or failure to take certain curative or remedial actions, will be in, either direct or indirect violation of any Environmental Laws.

(c) No activity shall be undertaken on the Premises that would cause (i) the Premises to be considered a hazardous waste treatment, storage or disposal facility as defined under any Environmental Laws; (ii) a release or threatened release of Hazardous Materials into any watercourse, surface or subsurface water or wetlands; or (iii) the discharge into the environment of any Hazardous Materials in each case requiring a permit under any Environmental Laws and for which no such permit has been issued.

(d) Tenant shall immediately notify the Authority in writing of (i) any release or threatened release of Hazardous Materials or the occurrence of any other environmental problem or liability with respect to the Premises or any real property adjoining or in the vicinity of the Premises or such other property which could subject Tenant or the Premises to a claim under any Environmental Laws or to any restriction in ownership, occupancy, transferability or use of the Premises under any Environmental Laws; (ii) any lien filed, action taken or notice given of the nature described in subparagraph (b) above; (iii) any notice given to Tenant from any subtenant or other occupant of the Premises authorized by the Authority pursuant to the terms of this Lease or any notice from any governmental authority with respect to any release or threatened release of Hazardous Materials; or (iv) the commencement of any litigation or any information relating to any threat of litigation relating to any alleged unauthorized release of any Hazardous Materials or other environmental contamination, liability or problem with respect to or arising out of or in connection with the Premises.

(e) Tenant shall be responsible for and shall, with all due diligence, and at its sole cost and expense, take all actions (to the extent and at the time or from time to time) as shall be necessary or appropriate for the remediation of all releases of Hazardous Materials at or from the Premises, including the removal, containment and remedial actions in accordance with all applicable Environmental Laws (and in all events in a manner reasonably satisfactory to the Authority), and shall further pay or cause to be paid at no expense to the Authority all clean-up, administrative, and enforcement costs of applicable government agencies or the parties protected by such Environmental Laws which may be asserted against the Premises. All costs (including without limitation those costs set forth above), damages, liabilities, losses, claims, expenses (including reasonable attorneys' fees and disbursements) which are incurred by the Authority in connection with any of Tenant's obligations, or warranties and representations, or other matters addressed in this Lease, without the requirement that the Authority wait for the ultimate outcome of any litigation, claim or other proceeding, shall be paid as Additional Rent, by Tenant to the Authority within thirty (30) days after notice to Tenant from the Authority itemizing the amounts

incurred to the effective date of such notice with interest thereon at the Default Rate from the date of payment by the Authority.

(f) Tenant, upon execution of this Lease, shall furnish the Authority with a copy of any Material Safety Data Sheets and any updates thereto or any list of substances listed on the so-called Massachusetts Substance List, established pursuant to Mass. Gen. L. c. 111F which Tenant is required to prepare, file or maintain pursuant to said chapter for any substances used or stored on the Premises. If said Material Safety Data Sheets or lists should be changed or updated during the Term of this Lease, Tenant shall promptly furnish a copy of such updated or changed Material Safety Data Sheets or list to the Authority.

11.3 Notices. Tenant shall provide the Authority with copies of any notices of releases of Hazardous Materials which are given by or on behalf of Tenant to any federal, state or local agencies or authorities with respect to the Premises. Such copies shall be sent to the Authority concurrently with their being mailed or delivered to the governmental agencies or authorities. Tenant also shall provide the Authority with copies of any notices of responsibility or any other notices received by or on behalf of Tenant from any such agencies or authorities concerning any non-compliance with Environmental Laws on or about the Premises, including but not limited to notices regarding Hazardous Materials or substances located on or about the Premises. In addition, in connection with any litigation or threat of litigation affecting the Premises, Tenant shall deliver to the Authority any documentation or records as the Authority may reasonably request in connection with all such notices, inquiries and communications, and shall give written notice to the Authority of any subsequent developments.

11.4 Environmental Compliance Audit. Tenant shall conduct, using a qualified independent environmental auditor reasonably approved by the Authority, an annual environmental compliance audit of the Premises and the Tenant's operations, equipment, facilities and fixtures thereon to assess environmental compliance and pollution practices. The Tenant shall submit a current report of the audit results to the Authority on the annual anniversary of the Commencement Date. If the resulting audit report reveals non-compliance by the Tenant or any other party with any Environmental Laws on the Premises, then the Tenant shall deliver to the Authority a corrective action plan ("Corrective Action Plan"), within thirty (30) days of the submission of the Audit Report, containing an explanation of the non-compliance and a Corrective Action Plan and a schedule for the Authority's approval. If the Authority disagrees with any portion of the Corrective Action Plan, Tenant and Authority agree to attempt to resolve the disagreement through informal good faith negotiations. If the parties are unable to reach an agreement through informal negotiations, either party may request the selection of a neutral panel including a neutral environmental professional familiar with environmental laws and regulations to resolve the dispute. The parties shall jointly select, retain, and share the cost of, a neutral panel agreed to by both parties. This neutral panel shall receive submissions from both parties and shall render a written decision, which shall be final and binding on the parties. Within thirty (30) days after the Authority approves the Corrective Action Plan, the Tenant shall commence and expeditiously proceed to complete at its cost and expense the remediation plan set forth therein subject to the conditions, if any, of the Authority's approval. Notwithstanding the foregoing, if any local, state or federal agency with jurisdiction over the Premises establishes a corrective action plan or schedule for the Premises, such agency's plan or schedule shall control. If the Tenant does not complete the required actions in

the time periods set forth above, the Authority shall have the right, but not the obligation, to enter upon the Premises without abatement of rent and implement any remediation actions which it deems necessary or prudent to address such non-compliance. If the Authority implements any action pursuant to the foregoing sentence, the Tenant shall pay the Authority's entire cost of performing such work (including an amount for fully allocated administrative charges), plus liquidated damages equal to fifty percent (50%) of such cost, without limitation of other claims or damages that the Authority may have against the Tenant arising out of the terms of this Lease or otherwise.

Notwithstanding anything contained in this Section, the Authority shall have the right to conduct an Environmental Compliance Audit of the Premises and the Tenant's operations, equipment, facilities and fixtures thereon. The Authority's audit shall have the same effect as an audit by the Tenant and at the discretion of the Authority may be substituted for the Tenant's annual audit.

11.5 Underground and Aboveground Storage Tanks. In the event that Tenant is permitted to place any underground or aboveground storage tanks on the Premises, including all pipes associated with such storage tanks (collectively referred to as "Storage Tanks"), said Storage Tanks shall be maintained in a safe, efficient and orderly manner and shall conform to all applicable Laws of applicable governmental agencies (federal, state and local) having jurisdiction including, without limitation, executive orders from the Executive Director of the Authority and the Chief of the Fire Department of the Authority. All Storage Tanks shall be equipped with oil spill detection instruments and alarms as well as oil spill containment and overflow devices, which Tenant shall maintain in proper working condition, in accordance with the highest standards of the industry. Tenant shall be considered the owner and operator of the Storage Tanks and, as owner and operator of the Storage Tanks, shall comply with all provisions of all Laws applicable to the "owner" or "operator" of the Storage Tanks. Nothing contained herein shall diminish the unconditional obligation of Tenant to remove the Storage Tanks during the Term pursuant to a mandate from an appropriate governmental entity, which in all events shall include the Chief of the Fire Department for the Authority, nor any of the obligations of Tenant to remove the Storage Tanks, and to remediate the presence of any Hazardous Materials or other contaminants released from such Storage Tanks, at the later of (i) expiration or termination of this Lease; (ii) the end of any holdover period consented to by the Authority; and (iii) the end of any month to month tenancy consented to by the Authority. If Tenant fails to remove the Storage Tanks upon request of the Authority or any other appropriate government entity, the Authority may remove the same, all at Tenant's expense and take such other measures as it deems necessary for the protection of people, property and the environment and any reasonable expenses of the Authority related thereto shall be paid by Tenant as Additional Rent. Tenant agrees to cooperate with the Authority or any other governmental entity in furnishing such information related to the Storage Tanks as is required by the Authority or by any other governmental entity.

11.6 Environmental Indemnity. Tenant hereby unconditionally, irrevocably and absolutely agrees to pay, indemnify, defend with counsel reasonably acceptable to the Authority and save harmless the Authority, its members, officers, employees, agents, successors and assigns (the "Indemnified Parties") for, from and against any and all damages, losses, liabilities, obligations, claims, litigation, demands, defenses, judgments, suits, proceedings, fines, penalties,

costs, disbursements and expenses (including, without limitation reasonable attorneys' and experts' fees and expenses, clean-up costs, waste disposal costs and those costs, expenses, penalties and fines within the meaning of CERCLA), of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against any of the Indemnified Parties and arising from any violation or alleged violation of Environmental Laws, environmental problem or other environmental matter described herein, relating to the Premises, or as a consequence of any of Tenant's or the Indemnified Parties' interest in or operation of the Premises, including, without limitation, matters arising out of any breach of Tenant's covenants, representations and warranties. Tenant does further agree and covenant that none of the Indemnified Parties shall assume any liability or obligation for loss, damage, fines, penalties, claims or duty to clean up or dispose of Hazardous Materials, or other wastes or materials on or relating to the Premises regardless of any inspections or other actions made or taken by the Authority on such property or as a result of any re-entry by the Authority onto the Premises or otherwise. Notwithstanding the foregoing, the indemnity obligation of Tenant shall not apply to any liability, loss, or claim (a) caused by actions taken by or on behalf of the Authority which are caused solely by the gross negligence or willful misconduct of the Authority or (b) caused by the Existing Contamination or (c) to the extent Tenant demonstrates that such liability, loss or claim was caused by the negligence or intentional misconduct of any contractor working at the direction of the Authority. All warranties, representations and obligations set forth herein shall be deemed to be continuing and shall survive the expiration or termination of this Lease. In addition, the covenants and indemnities of Tenant contained herein shall survive any exercise of any remedy by the Authority under the Lease. Tenant agrees that the indemnification granted herein may be enforced by any of the Indemnified Parties; however, that nothing contained shall prevent the Authority from exercising any other rights under this Lease. Tenant shall give the Authority prompt written notice of any claims threatened or made or suit instituted against it which could result in a claim of indemnification hereunder.

For purposes of Sections 11.2 and 11.4 above, Tenant's obligations thereunder shall not apply to the extent Tenant demonstrates that the discharge of Hazardous Materials giving rise to Tenant's obligations was caused (i) solely by the gross negligence or willful misconduct of the Authority or (ii) by the negligence or intentional misconduct of any contractor working at the direction of the Authority.

ARTICLE 12

INSURANCE AND INDEMNITY

12.1 **Tenant's Insurance.** Tenant, at its expense, shall maintain the following insurance coverage at all times during the Term:

(a) **Liability Insurance** Commercial general liability insurance including products (except manufacturer's products) and completed operations and contractual liability coverage of Tenant's indemnification obligations under Section 12.4 for the mutual benefit of the Authority and Tenant and naming the Authority as an additional insured on a primary basis against claims for personal injury, death or property damage arising out of or in connection with Tenant's use, occupancy or activities under the Lease or occurring upon, in or about the Airport, including claims arising from the use of all equipment, hoists, motor vehicles and aircraft on the Airport or in connection with hauling of materials or debris therefrom, with primary plus excess coverage

limits of not less than \$50,000,000 per occurrence and \$50,000,000 for damage to property. Coverage provided under this policy of insurance shall be primary, over and above any other policy held by the Authority.

(b) All Risk Property Insurance. Property insurance, naming the Authority and Tenant as their respective interests may appear, insuring (i) that portion of the Premises which Tenant is required to maintain under Section 9.3, and (ii) any of Tenant's personal property at the Premises (including without limitation, inventory, trade fixtures, floor coverings and furniture) against all risk of direct physical loss or damage as may from time to time be included within the definition of an "All Risk Insurance Policy" with extended broad form coverage, including without limitation, breakdown of boilers, machinery and electrical equipment, and such other risks as the Authority may reasonably designate, and business interruption coverage covering a period of not less than twenty-four (24) months. The insurance also shall cover increased costs of construction, demolition and debris removal coverage, and contingent liability arising out of the enforcement of building laws and ordinances governing repair and reconstruction. Such insurance shall be in an amount equal to the full replacement cost of the insured property.

(c) Workers' Compensation Insurance. Workers' compensation insurance as required by law, and employers' liability insurance with minimum limits of \$1,000,000.

(d) Builder's Risk Insurance. During construction or alteration of any Tenant Improvements, all risk builder's risk insurance against loss or damage on a completed value basis, from such hazards and in such amounts as the Authority may reasonably require. Builder's risk coverage may be provided as part of Tenant's property insurance policy or under a separate policy.

(e) Comprehensive Automobile Liability Insurance. For bodily injury and property damage in the combined single limit of \$10,000,000 covering all owned, hired and non-owned vehicles and naming the Authority as an additional insured on a primary basis.

(f) Liquor Liability. If Tenant serves alcoholic beverages at its airline club, Tenant agrees to maintain liquor law liability (on an occurrence basis) with limits of liability of \$5,000,000 per occurrence, \$25,000,000 in the aggregate. Notwithstanding the foregoing, the Authority reserves the right upon thirty (30) days' notice to Tenant to require that it increase the coverage limits on such insurance. The foregoing insurance shall be in compliance with the requirements of this ARTICLE 12 and shall insure against all claims, demands or actions for injury to, or death of, one or more persons in one or more accidents, and for damage to property, as well as for damages due to time loss or means of support; so that at all times the Authority will be fully and completely protected against any claims that may arise by reason of the dispensing of beer, wine and other alcoholic beverages in the Premises. Tenant agrees to indemnify and hold harmless the Authority, its members, directors, officers, employees and agents, from and against any loss or claim relating to or arising under such exclusions, and the Authority agrees to accept such coverage.

12.2 Policy Requirements. Each policy of insurance required herein shall (a) be in a form and with a company reasonably satisfactory to the Authority that is authorized to do

business in the Commonwealth of Massachusetts having a Best rating of A-VI or better; (b) (other than on the worker's compensation and employers' liability) name the Authority, its directors, members, officers, employees and agents as additional insureds on a primary basis; (c) provide that it shall not be altered or cancelled by the insurer during its term without first giving at least thirty (30) days' prior written notice to the Authority; (d) provide that any act or omission of Tenant or the Authority shall not prejudice the rights of the Authority as a party insured under said policy; and (e) be subject to a commercially reasonable deductible in an amount generally maintained by companies of similar size, which amount shall be stated on the policy or certificate of insurance. The commercial general (airport contractor's) liability policy shall be endorsed specifically to recognize and insure the indemnification provision appearing in Section 12.4 of this Lease.

Prior to occupancy of the Premises (or any portion thereof), Tenant shall submit evidence of each policy of insurance required hereunder to the Authority, and Tenant shall deliver to the Authority not less than thirty (30) days prior to the expiration of any then-current policy, notice of such expiration, and evidence of renewal or replacement of such policy in replacement thereof. Upon request, Tenant shall deliver copies of such insurance policies to the Authority. Tenant acknowledges that the minimum insurance limits and types established herein may become inadequate during the Term, and Tenant agrees that it shall provide such increased limits or types of insurance to levels that the Authority may reasonably and in a non-discriminatory manner require during the Term. In the event Tenant carries limits of insurance higher than those required under the terms of this Lease, such higher limits shall be applicable to the Authority in addition to Tenant. If Tenant shall fail to perform any of its obligations under Section 12.1, then in addition to any other right or remedy of the Authority, the Authority may perform the same and the cost thereof shall be payable as Additional Rent.

In the defense of any claim, demand, expense or liability which is to be covered under insurance policies by Tenant as described in this Lease (even if such claim, demand, expense or liability is groundless, false or fraudulent), Tenant agrees on its own behalf and shall cause its insurers to agree not to, without obtaining express advance permission from the Chief Legal Counsel of the Authority, waive any defense involving in any way the jurisdiction of the tribunal over the person of the Authority, the immunity of the Authority, its members, officers, agents or employees, the governmental nature of the Authority or the provisions of any statutes respecting suits against the Authority.

12.3 Increase in Insurance Premiums. Tenant shall not do anything or keep anything in or about the Premises which may invalidate or conflict with or increase the premium for any policy of insurance carried by the Authority provided that Tenant has received notice that such activity may have such effect on the Authority's insurance. In the event the Authority's insurance premiums are increased as a result of Tenant's activity, the amount of such increase shall, at the Authority's sole election, be paid by Tenant to the Authority as Additional Rent.

12.4 Indemnification of Authority. To the extent not prohibited by applicable law, Tenant, at its sole cost and expense, shall indemnify and save harmless the Authority and its respective members, directors, officers, employees and agents and those in privity of estate with the Authority against and from any and all liability and expenses arising from (a) any and all claims, causes of action, suits by or on behalf of any Person arising out of (i) occupancy of the

Premises by Tenant, the conduct of any operations of Tenant on the Premises, Terminal, Gates, Ramp Area or elsewhere on the Airport, or the exercise by Tenant of its rights under the Lease, or (ii) the acquisition, installation, construction, reconstruction, improvement, equipping, furnishing, use, occupancy, conduct of any work or anything whatsoever done or omitted to be done in or about the Premises by or on behalf of Tenant, or (iii) any breach or default by Tenant of any of its obligations under the Lease, or (iv) any act, omission or negligence of Tenant or any of its agents, contractors, servants, employees, invitees or licensees, or (v) the failure of Tenant, Tenant's contractors, licensees, agents, servants or employees to comply with any rule, order, regulation or lawful direction now or hereafter in force of any governmental agency or public authority, in each case to the extent the same are related, directly or indirectly, to the Premises or Tenant's use thereof; or (vi) directly or indirectly, from any accident, injury or damage, however caused, to any Person or property on or about the Premises, or (vii) any accident, injury or damage to any Person or property occurring outside of the Premises but at the Airport, where such accident, injury or damage results, or is claimed to have resulted from, any act, omission or negligence on the part of Tenant, or Tenant's contractors, licensees, agents, servants or employees, invitees or customers, or anyone claiming by, through or under Tenant; or (viii) any act, omission or negligence of Tenant, or Tenant's contractors, licensees, agents, servants, invitees or employees, or any accident, injury or damage whatsoever caused to any person or to the property of any person occurring from and after the Commencement Date and until the end of the Term hereof, whether such accident, injury or damage occurs within the Premises, the Common Areas, the Ramp or Gate Areas, the Terminal, or otherwise which relates to the sale or serving of beer, wine or other alcoholic beverages at the Premises; (b) any and all losses, costs, reasonable counsel fees, investigation costs, adjusting fees or any other expenses or liabilities incurred in connection with any such claim or any action or proceeding brought thereon (including without limitation costs and fees of any experts in connection therewith), and (c) any Costs of Collection; provided, however, that Tenant shall not be required to indemnify any Person otherwise to be indemnified under this Section 12.4 for any liabilities or expenses incurred by such Person to the extent such liabilities or expenses are caused by or resulting solely from the negligence or willful misconduct of such Person.

In case any action or proceeding is brought against the Authority or any such member, director, officer, employee or agent by reason of any claim which may be subject to Tenant's indemnification obligations contained in this Section 12.4, Tenant, upon notice from the affected party, shall resist or defend such action or proceeding with counsel acceptable to the Authority. Subject to the foregoing, the Authority shall cooperate and join with Tenant at the expense of Tenant as may be required in connection with any action taken or defended by Tenant.

The foregoing express obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the Authority which would exist at common law or under other provisions of this Lease, and the extent of the obligation of indemnification shall not be limited by any provision of insurance undertaken in accordance with this Lease. The Authority shall give Tenant prompt written notice of any claims threatened or made or any suit instituted against it which could result in a claim of indemnification hereunder. This provision of indemnification shall survive the termination or expiration of this Lease.

12.5 Tenant's Risk. The Authority shall not be responsible or liable to Tenant, or to those claiming by, through or under Tenant, for any loss or damage to persons or property

resulting from any patent or latent defect in the Premises, the Terminal or any appurtenant areas or occasioned by or through the acts or omissions of persons occupying space adjoining the Premises or any other part of the Airport, or, to the maximum extent permitted by law, for any loss or damage resulting to Tenant, or those claiming by, through or under Tenant, or its or their property, from fire, snow, the breaking, bursting, stoppage or leaking of electrical cable and wires, or water (including sprinkler systems), gas, sewer or steam pipes, or from any other cause of whatever nature except to the extent, relating to the Premises only, such loss or damage results solely from the negligence or willful misconduct of the Authority, its officers, agents and employees. To the maximum extent permitted by law, Tenant agrees to use and occupy the Premises, and to use such other portions of the Common Areas and Airport, as Tenant is herein given the right to use, at Tenant's own risk and the Authority shall have no responsibility or liability for any loss of or damage to furnishings, fixtures, equipment or other personal property of Tenant, or of those claiming by, through or under Tenant.

ARTICLE 13 **CASUALTY AND CONDEMNATION**

13.1 No Surrender or Abatement. No destruction of or damage to the Terminal or the Premises or any part thereof by fire or any other casualty whether or not insured, shall permit Tenant to surrender this Lease or shall relieve Tenant from its liability to pay the Rent or Additional Rent or from any of its other obligations under this Lease. Tenant agrees that the restoration obligations contained in this ARTICLE 13 shall be Tenant's sole recourse in the event of casualty or condemnation, and Tenant waives any rights now or hereafter conferred upon it by statute or other applicable law to quit or surrender this Lease or the Premises or any part thereof, or to any suspension, diminution, abatement or reduction of Rent or Additional Rent on account of any such destruction or damage.

13.2 Casualty.

(a) **Casualty.** In the event that the whole or any part of the Premises, the Terminal (whether or not there is damage to the Premises), or access thereto, is damaged by fire or other casualty, then the Authority may terminate this Lease by written notice to Tenant of its election within thirty (30) days after the date of the damage specifying the effective date of termination. This Lease shall terminate as of the date specified in such notice as if such date were the originally scheduled Expiration Date hereunder.

In the event the Authority does not terminate this Lease under the foregoing provision, this Lease shall remain in full force and effect, subject to the following provisions. The Authority shall promptly repair any and all damage to the Premises, which is required to be repaired by the Authority under Section 9.2 of this Lease to substantially the condition the same was in immediately prior to such damage. Notwithstanding the foregoing, the Authority shall not be required to expend for such repairs and restoration, any amount in excess of any net insurance proceeds received. The Authority may, at its election, require the Tenant to undertake repairs to the Premises otherwise required hereunder to be completed by the Authority, provided the Authority reimburses Tenant (within thirty (30) days after submission of a request therefor containing such information as the Authority may reasonably require) for the reasonable costs thereof.

The Tenant shall promptly repair any and all damage to the Premises and Tenant Improvements which Tenant is required to repair and maintain under Section 9.3 in accordance with the requirements of ARTICLE 9 and shall return such portions of the Premises substantially to the condition existing immediately prior to such casualty. The Tenant shall use diligent efforts to complete all repairs and restoration to be made by Tenant as expeditiously as possible, but in any event within ninety (90) days after the date of the damage. In the event Tenant fails to complete its repairs within such period, the Authority shall have the right thereafter to terminate this Lease by giving Tenant thirty (30) days written notice.

(b) Adjustment. In the event the Premises are damaged by fire or casualty and such damage materially interferes with Tenant's use of the Premises as contemplated by this Lease, then a just proportion of the Rent, according to the nature and extent of the damage as determined by the Authority, shall abate proportionately for the period from the date of such damage until the Lease is terminated or the Premises are restored, in accordance with the provisions of Section 13.2. Notwithstanding the foregoing, in the event the Premises shall be damaged by fire or other casualty resulting from the act or neglect of Tenant, its agents, contractors, employees, licensees or invitees, and this Lease shall not be terminated by the Authority as a result of such damage, Tenant shall not be released from any of its obligations hereunder and shall not be entitled to any abatement or reduction in Rent.

13.3 Condemnation. In the event that there is a taking or condemnation (or conveyance under threat of a taking or condemnation) of all of the Terminal or the Premises or all reasonable access thereto (or any portion of the Terminal or the Premises such that the Authority determines, in its sole discretion, within thirty (30) days after notice of such taking, that the balance thereof is rendered unsuitable for Tenant's purposes as contemplated under this Lease), then this Lease shall terminate effective as of the date title vests in the taking authority as if such date were the originally scheduled Expiration Date hereunder. Tenant shall have no claim against the Authority for the value of the unexpired Term.

In the event of any taking of a portion of the Premises or Terminal and this Lease is not terminated in accordance with the preceding provision, then the Authority shall promptly restore the Premises to the extent feasible, in the Authority's reasonable determination, but in no event shall the Authority be required to undertake such restoration if the cost thereof would exceed the amount of the award(s) of damages on account of such taking received by the Authority, after deducting the reasonable cost of obtaining the award. In the event the award is greater than the sum of the cost of restoration and the Authority's cost of obtaining the award, any excess shall be retained by the Authority. Rent shall abate proportionately according to the nature and extent of the taking, as determined by the Authority, while such repairs are being made. Following completion of restoration, the obligations of the Tenant under this Lease shall be unaffected by such taking, except that there shall be an equitable abatement of Rent in direct proportion to the extent of the Premises so taken.

The Authority shall have and hereby reserves and excepts, and Tenant hereby grants and assigns to the Authority, all rights to recover for damages to the Premises, and the leasehold interest created by this Lease, and to compensation accrued or hereafter to accrue by reason of such taking, damage or destruction. Tenant therefor grants and assigns, and covenants with the Authority to grant and assign to the Authority, all rights to such damages or compensation.

Nothing contained herein shall be construed to prevent Tenant from prosecuting in a separate proceeding a claim for its trade fixtures and removable personal property so taken or damaged, or relocation, moving or other relocation expenses, but only if such proceeding will not diminish the damages or compensation payable to the Authority. Tenant and Authority shall cooperate in order to recover taking proceeds, provided that no settlement on account of any damages caused by such condemnation shall be effective without the consent of the Authority.

ARTICLE 14

CERTAIN RIGHTS OF AUTHORITY

14.1 Right to Enter, Inspect and Repair. Nothing contained herein shall be deemed to bar the free and unrestricted access by the Authority, or its respective officers, employees, agents, contractors, licensees, invitees, vendors and suppliers into, across or out of any areas in which Tenant is permitted to operate or which Tenant is permitted to use, subject to reasonable and nondiscriminatory rules and regulations promulgated from time to time by the Authority. In addition, the Authority, its authorized officers, employees, agents, contractors, subcontractors and other representatives shall have the right upon prior notice to Tenant (except in the case of an emergency when notice shall not be required) to enter upon the Premises at all reasonable times (and at any time in the case of an emergency), without abatement of Rent, for the following purposes:

(a) To inspect the Premises during regular business hours upon reasonable advance notice (or at any time in the case of emergency, in which case no notice shall be required) to ascertain the condition of the Premises and to determine Tenant's compliance with the terms of this Lease. The right of inspection shall impose on the Authority no duty to inspect and shall impart no liability upon the Authority for failure to inspect.

(b) To perform any obligation, to perform maintenance and make repairs and replacements in any event where Tenant is obligated to do so under this Lease and has failed to perform such obligation or to initiate such repairs and maintenance within the time periods provided for in the Lease, if applicable, or, if no time period is provided, within thirty (30) days after written notice from the Authority, and thereafter to expeditiously complete such repairs or replacements, or at any time with or without written notice, in the event that the Authority, in its sole discretion, deems that it is necessary or prudent to do so to preserve all or any part of the Terminal, Gates, Ramp Areas or Common Areas from damage or to correct any condition likely to lead to injury or damage.

(c) To perform any obligation of the Authority under this Lease and to make additions, alterations, maintenance and repairs to the Terminal, subject to the limitations set forth herein.

14.2 Accommodation of Airport Construction.

(a) Tenant acknowledges that from time to time the Authority may undertake construction, repair or other activities related to the operation, maintenance and repair of the Terminal or the Airport, which will require temporary accommodation by Tenant. In addition, the Authority reserves the right to permanently reconfigure the Common Areas as necessary to

accommodate the construction of connections from the Terminal to other terminals or facilities at the Airport or relocate or reconfigure the Gates and Ramp Area. The Authority agrees to use reasonable efforts to minimize disruption in Tenant's business operations during such period of construction.

(b) Without limiting the generality of the foregoing, the Authority may temporarily or permanently close, alter, change, modify and/or relocate any entrances, passageways, doors and doorways, corridors, elevators, escalators or other parts of the Common Areas or the Terminal (other than the Premises); and the Authority may at any time and from time to time make such changes, alterations, additions, improvements, repairs or replacements in or to the Terminal, as well as in or to the entrances, passages, elevators, escalators, and stairways thereof, as it may deem necessary or desirable, and to change the arrangement and/or location of entrances, passageways, doors and doorways, and corridors, elevators, stairs, toilets, or other public parts of the Common Areas or the Terminal (other than the Premises), and may stop or interrupt any service or utility system, when necessary by reason of accident or emergency or construction work until the necessity for the interruption or stoppage has ended. The Authority will endeavor to give Tenant advance notice of such work whenever possible (except in the case of an emergency, in which case no notice shall be required).

(c) Tenant further acknowledges that such improvements may require substantial construction work in the Terminal during normal business hours, which may disrupt Tenant's business operations and create noise, dust and other concomitants of construction work. Tenant agrees that it shall have no right except as expressly provided herewith, to any abatement of Rent, Additional Rent or other compensation or to any claim of breach of the Authority's covenant of quiet enjoyment (express or implied) or an actual or constructive eviction or for loss of business or inconvenience, or in any event for consequential damages on account of any such construction work, and without incurring any liability to Tenant or otherwise affecting Tenant's obligations under this Lease. Tenant agrees to accommodate the Authority in such activities even though Tenant's own operations may be inconvenienced or partially impaired.

(d) In the event the Authority elects to exercise its rights under this Section to close any portion of the Premises, it shall give Tenant not less than fifteen (15) days' notice (except in the case of an emergency in which case no notice shall be required) of the Authority's intent to temporarily close any portion of the Premises, which portion shall be described in such notice (hereinafter the "Affected Space"). In the event of any substantial impairment, as reasonably determined by the Authority, of Tenant's conduct of the Permitted Use at the Premises as a result of the Authority's exercise of its rights under this Section, Tenant shall be entitled to a temporary abatement of the Rent for the Affected Space beginning on that date upon which Tenant is deprived of use of the Affected Space until the date Tenant reopens operations at the Affected Space.

14.3 Inspection of Records/Reports. Tenant shall maintain complete and accurate records, accounts and other documentation pertaining to Tenant's use of the Premises, its operations at the Premises and the Airport, its performance of the terms and conditions of this Lease, and any subleases authorized by the Authority under ARTICLE 16. The Authority, its agents or designees, shall have the right at any time upon reasonable notice to Tenant, to inspect

and audit at the Premises or within the greater Boston area any such information, books, records, sublease and handling arrangements, documents and other records as the Authority may from time to time reasonably request. Upon notification to Tenant of the Authority's intent to conduct such inspection or audit, Tenant agrees to fully cooperate with the Authority, its agents or designees. Such cooperation shall include, but not be limited to: making available for on-site physical inspection any aspect of Tenant's operations at the Premises and/or the Airport; making available all books, sublease and handling arrangements, documents and other records; and answering inquiries in any such manner as the Authority deems appropriate, including personal interviews of Tenant's employees, agents or subcontractors. Tenant shall retain the foregoing information, books, records, documents and other records relating to a particular fiscal year of Tenant for no less than six (6) years from the end of such fiscal year, or in the event of litigation or claims arising out of or related to this Lease, until such time such litigation or claims are completely disposed of and all time limits for appeal are expired. Any failure by Tenant to cooperate with the Authority's inspection or audit or to provide any documentation requested hereunder shall constitute an Event of Default under Section 18.1.

14.4 Status Report. Recognizing that the Authority may find it necessary to establish to third parties the then-current status of performance hereunder, Tenant shall, upon the request of the Authority from time to time, promptly furnish a statement of the status of any matter pertaining to this Lease.

14.5 Eminent Domain. Nothing in this Lease shall be construed to limit any of the Authority's rights to acquire property by eminent domain under the Act and Mass.Gen.L. c. 79.

ARTICLE 15 **GATE USE**

15.1 Preferential Gate Use. Tenant's use of the Premises and any preferential Gates associated therewith shall be subject to the Authority's then-current preferential gate use policy, a copy of which is attached hereto as **Exhibit D**, as such policy may thereafter be amended by the Authority to conform to the preferential gate use policy adopted pursuant to the resolutions of the Authority from time to time. Such policy as so amended from time to time is hereinafter referred to as the "Preferential Gate Use Policy."

ARTICLE 16 **ASSIGNMENT/SUBLETTING**

16.1 Restriction on Transfers. Except as expressly provided herein, Tenant shall not (i) assign, transfer, license, permit, contract or otherwise transfer this Lease or the term and estate hereby granted, (ii) sublet the Premises or any part thereof or allow the same to be used or occupied by others, or (iii) mortgage, pledge, license, or encumber this Lease or the Premises or any part thereof in any manner by reason of any act or omission on the part of Tenant without, in each instance, obtaining the prior written consent of the Authority, which approval may be withheld in the Authority's sole and absolute discretion. Any attempted transfer of this Lease shall, at the Authority's option, terminate this Lease. In the event of such a termination, the Tenant shall remain liable for all Rent and Additional Rent due under this Lease and all damages suffered by the Authority on account of said breach by the Tenant. This prohibition includes any

subletting or assignment which would otherwise occur by operation of law, merger, consolidation, reorganization, transfer, takeover or other change of Tenant's corporate or proprietary structure, or an assignment or subletting to or by a receiver or trustee in any Federal or state bankruptcy, insolvency, or other proceedings. For purposes of this Section: (A) the transfer of a majority of the issued and outstanding capital stock of any corporate tenant, or of a corporate subtenant, or the transfer of a majority of the total interest in any partnership tenant or subtenant which results in a change of control, however accomplished, whether in a single transaction or in a series of related or unrelated transactions, shall be deemed an assignment of this Lease, or of such sublease, as the case may be, except that the transfer of the outstanding capital stock of any corporate tenant, or subtenant, shall be deemed not to include the sale of such stock by persons or parties, through the "over the counter market" or through any recognized stock exchange, other than those deemed "insiders" within the meaning of the Securities Exchange Act of 1934 as amended, (B) a takeover agreement shall be deemed a transfer of this Lease, (C) any person or legal representative of Tenant, to whom Tenant's interest under this Lease passes by operation of law, or otherwise, shall be bound by the provisions of this ARTICLE 14, (D) any dissolution, sale or other transfer of substantially all of the assets of Tenant shall be deemed an assignment of this Lease, and (E) a modification or amendment of a sublease extending the term thereof, expanding the premises demised thereunder or otherwise substantially altering the nature or extent of the occupancy contemplated thereby, shall be deemed a new sublease. As used herein, the term "control" shall mean the power and ability to direct the management and affairs of the corporation or partnership involved. Consent by the Authority to any assignment or subletting shall not constitute a waiver of the requirement for such consent to any subsequent assignment or subletting.

16.2 Conditions of Assignment/Subletting/Transfer. Any assignment or transfer shall be made only if, and shall not be effective until, the assignee shall execute, acknowledge and deliver to the Authority a recordable agreement, in form and substance reasonably satisfactory to the Authority, whereby the assignee shall assume the obligations and performance of this Lease and agree to be bound by and upon all of the covenants, agreements, terms, provisions and conditions hereof on the part of Tenant to be performed or observed and whereby the assignee shall agree that the provisions of ARTICLE 16 hereof shall, notwithstanding such an assignment or transfer, continue to be binding upon it in the future or if such assignment or assumption is effected as a matter of law, then the assignee shall execute, acknowledge and deliver an instrument in form and substance reasonably satisfactory to the Authority confirming the assumption of the obligations and performance of this Lease as aforesaid and shall deliver to the Authority such evidence as the Authority may reasonably request that an assumption in accordance with the terms of this Lease has been effected as a matter of law. Tenant shall pay the Authority the reasonable out-of-pocket costs (including attorneys' fees) incurred by the Authority to review the proposed assignment within thirty (30) days of requesting the Authority's consent thereto. Tenant covenants that, notwithstanding any assignment or acceptance of Rent by the Authority from an assignee or transferee or any other party, Tenant shall remain fully and primarily liable for the payment of the Rent, Additional Rent and any other sums due and to become due under this Lease and for the performance of all of the covenants, agreements, terms, provisions and conditions of this Lease on the part of Tenant to be performed or observed. To charge Tenant named in this Lease and its successors in interest, no demand or notice of any default shall be required; Tenant and each of its successors in interest hereby expressly waives any such demand or notice. Further and without limiting the generality of the foregoing, the

Authority is expressly entitled to condition its approval to any sublease on the following:

(a) The Tenant shall pay the Authority as Additional Rent ten percent (10%) of the Tenant's gross revenue from the services and facilities it provides to the Sublessee;

(b) The inclusion of the following provisions in each sublease:

(i) The Sublessee shall be required to enter into arrangements with the Authority satisfactory to assure the payment of landing fees or other fees and otherwise govern the Sublessee's use of the common use landing field facilities;

(ii) The Sublessee shall be required to enter into arrangements or agreements, concession contracts, permits or operating agreements with the Authority if the Sublessee engages in aeronautical activities, the provision of ground transportation services or any commercial activities at the Airport;

(iii) The sublease is subject and subordinate to all the terms, covenants, agreements, provisions, and conditions of this Lease, including, without limitation, Tenant's obligation to comply with all applicable directives, rules, regulations, directions and laws of the Authority, local, state and federal entities, including but not limited to, those relating to Airport operations, airfield security and access;

(iv) The subtenant or assignee of the subtenant, as the case may be, does not have the right to a further assignment thereof or to sublease thereunder, or to allow the demised premises to be used by others, without the consent of the Authority in each instance in accordance with the requirements of ARTICLE 16 of the Lease;

(c) Together with requesting the Authority's consent hereunder, Tenant shall have paid the Authority any reasonable out-of-pocket costs (including attorneys' fees) incurred by the Authority to review the proposed subletting.

16.3 Consent by Authority. The Authority's written consent to any sublease or assignment shall not be deemed or construed to modify, amend or affect the terms and provisions of this Lease, or Tenant's obligations hereunder, which shall continue to apply to the occupants thereof, as if the sublease or assignment had not been made. Notwithstanding any assignment or sublease, Tenant shall remain fully liable for the payment of Rent and Additional Rent and for the other obligations of this Lease on the part of Tenant to be performed or observed. In the event that Tenant defaults in the payment of any Rent, or Additional Rent, the Authority is authorized to collect any rents due or accruing from any assignee, subtenant or other occupant of the Premises and the receipt of any such amounts by the Authority from an assignee or subtenant, or other occupant of any part of the Premises, shall not be deemed or construed as releasing Tenant from Tenant's obligations hereunder or the acceptance of that party as a direct tenant. Approval by the Authority to any sublease shall not be in any way be construed to relieve Tenant from obtaining further approval for any subsequent sublease. The acceptance by the Authority of the payment of Rent or Additional Rent following any assignment or other transfer prohibited by this ARTICLE 16 shall not be deemed to be a consent by the Authority to any such assignment or other transfer nor shall the same be deemed to be a waiver of any right or

remedy of the Authority hereunder.

16.4 Handling Services. Provided Tenant is providing baggage and other ramp services, Tenant may, with the Authority's consent as provided below, permit other scheduled air carriers certified in accordance with 49 U.S.C. Section 1301 to use portions of the Premises during the provision of such services by Tenant for the operation of, or incident to, or in connection with the air transportation business performed or to be performed by said carrier. Any such contract, relationship or arrangement (each, a "handling agreement") relating to such handling services shall be subject to the Authority's prior written consent, which may be withheld in the Authority's sole discretion. The Authority shall condition its consent, if granted to any handling agreements with any party, on payment by Tenant to the Authority as Additional Rent five percent (5%) of Tenant's gross revenue from the handling services it provides to the certificated air carrier. All such handling agreements will be terminable by either party upon not more than thirty (30) days' prior written notice. To the extent that gross revenue from handling services cannot be distinguished from gross revenue derived through a sublease arrangement of facilities and related services, it shall be presumed that said gross revenue is from a sublease and is subject to the ten percent fee described in Section 16.2.

16.5 Assignment by Authority. The Authority reserves the right to assign, transfer, pledge or sell its interest in this Lease. In such event, the Authority shall notify Tenant as to whom such interest was assigned, transferred, pledged or sold, and Tenant agrees that in the event of any such transfer the Authority shall automatically be released from all liability under this Lease after the date of transfer and Tenant agrees to look solely to such transferee for the performance of the Authority's obligations hereunder after the date of transfer.

ARTICLE 17

NONDISCRIMINATION AND AFFIRMATIVE ACTION

17.1 Compliance with Civil Rights Laws. With respect to Tenant's exercise of all uses, rights and privileges herein granted, Tenant hereby agrees not to discriminate and to undertake equal opportunity and affirmative action as required by all Laws pertaining to civil rights and equal opportunity, including but not limited to 49 CFR Part 21; 49 CFR Parts 23 and 26; 14 CFR Part 152, Subpart E and 41 CFR Part 60, Subpart C, Executive Orders 11246 and 11478, and Section 504 of the Rehabilitation Act of 1973, to the extent applicable, and as such laws, rules, regulations and orders may be amended. Tenant agrees that Tenant shall comply with any affirmative action plans submitted on its own behalf or by the Authority pursuant to the directives of any federal agency and in accordance with federal law.

17.2 Authority Policy. In accordance with the Airport-wide policies adopted by the Authority, Tenant agrees:

(a) Tenant and Tenant's contractors shall not discriminate by segregation or otherwise against any person, employee or applicant for employment because of race, color, creed, national origin, sex, sexual orientation, disability or Vietnam era veteran status in the use of the Premises, including the hiring and discharging of employees, providing and using of services and activities conducted thereon, and the selection of suppliers and contractors.

(b) Tenant and Tenant's contractors shall use diligent efforts to encourage recruitment of minorities, women, disabled persons, Vietnam era veterans and residents of Impacted Communities (which include, for purposes of this ARTICLE 17, Chelsea, Winthrop, South Boston, East Boston, Revere and Charlestown).

(c) Tenant and Tenant's contractors shall use diligent efforts to contact, encourage and utilize business enterprises located in the Impacted Communities in the procurement of materials and equipment.

(d) Tenant and Tenant's contractors shall use diligent efforts to contact, encourage and utilize Disadvantaged Business Enterprises ("DBE") in the purchase of goods and services. DBE means an enterprise of which at least fifty-one percent (51%) is beneficially owned and controlled by one or more socially and economically disadvantaged individuals. Socially and economically disadvantaged individuals are those who are citizens of the United States and who are women, minorities or individuals certified as a bona fide DBE by the Massachusetts State Office of Minority and Women Business Assistance ("SOMWBA").

(e) Tenant and Tenant's contractors shall comply with all federal and state laws and Authority regulations pertaining to Civil Rights and Equal Opportunity, including executive orders and rules and regulations of appropriate federal and state agencies unless otherwise exempt therein.

(f) At the sole discretion of the Authority there may be established a Liaison Committee consisting of representatives of the Authority and Tenant. Tenant shall recognize the Liaison Committee and shall establish a continuing working relationship with the Liaison Committee for purposes of consultation on all matters relating to non-discrimination, minority and female business enterprise utilization.

(g) Tenant shall indemnify and hold harmless the Authority from any claims and demands of third persons resulting from Tenant's non-compliance with any of the provisions of this ARTICLE 17 and in case of termination or cancellation of this Agreement as a result of Tenant's failure to comply with the requirements of this ARTICLE 17, Tenant shall indemnify the Authority during the remainder of Term against any loss or damage suffered by reason of such termination.

ARTICLE 18

DEFAULT AND TERMINATION

18.1 Events of Default. It shall be an Event of Default if:

(a) Tenant fails to enter into an operating agreement with the Authority, on the Authority's standard form, as such form may be amended from time to time (the "Operating Agreement"), by the date of execution of this Lease;

(b) Tenant fails to pay any other Rent, Additional Rent or other charge or any portion thereof when due under this Lease and such failure continues for five (5) business days;

(c) Tenant shall fail to carry insurance as required under this Lease or to comply with any applicable law, rule or regulation concerning security, and such failure continues for 48 hours after notice from the Authority thereof;

(d) Tenant fails to keep or perform any other covenant, condition or provision herein or under the Operating Agreement within the time provided herein, as applicable or in the event no time is specified, within thirty (30) days after written notice from the Authority of such failure (unless such default is of a nature that it cannot be cured within such thirty day period, in which event no default shall occur so long as Tenant shall commence the curing of the default within the thirty day period and promptly prosecute the curing of the same);

(e) Tenant abandons for a period of thirty (30) successive days or more the conduct of its operations at the Premises;

(f) A governmental authority, board, agency or officer of the United States or with competent jurisdiction terminates or suspends any certificate, license, permit or authority held by Tenant without which Tenant shall not be lawfully empowered to operate its air carrier operations at the Airport;

(g) A court of competent jurisdiction enters a judgment or an injunction which remains in force for a period of at least sixty (60) days, the effect of which is to prevent or prohibit Tenant from operating its air carrier operations at the Airport;

(h) Except as otherwise provided by applicable law, if the estate hereby created shall be taken on execution or by other process of law, or if Tenant shall be judicially declared bankrupt or insolvent according to law, or if any assignment shall be made of the property of Tenant for the benefit of creditors, or if a receiver, guardian, conservator, trustee in involuntary bankruptcy or other similar officer shall be appointed to take charge of all or any substantial part of Tenant's property by a court of competent jurisdiction, or if a petition shall be filed for the reorganization of Tenant under any provisions of law now or hereafter enacted, and such proceeding is not dismissed within sixty (60) days after it is begun, or if Tenant shall file or consent to a petition for such reorganization, or for arrangements under any provisions of such laws providing a plan for a debtor to settle, satisfy or extend the time for the payment of substantially all or general payment of debts.

18.2 Authority's Remedies. Upon the occurrence of an Event of Default, the Authority may, without notice to Tenant (except as expressly provided herein) do one or more of the following, in its sole discretion:

(a) Without demand or notice (and Tenant expressly waives any notice to quit the Premises), the Authority may elect to terminate this Lease and the tenancy created hereby; thereupon the Authority may re-enter the Premises, by summary proceedings or otherwise.

(b) Exercise its right of self-help provided in Section 14.1.

(c) With or without terminating the Lease, the Authority may reenter, by summary proceedings or otherwise, terminate possession of the Premises by Tenant and relet the Premises

and bring an action for Rent and/or damages. Notwithstanding any such reentry or termination, Tenant shall remain liable for the full Rent and Additional Rent. The Authority may bring an action from month to month for the Rent and/or damages, which accrue in accordance with this subsection. The Authority may accelerate Rent, Additional Rent and bring an action for the unpaid Rent, Additional Rent and all Rent and Additional Rent payable for the remainder of the Term, and all accrued interest and all costs associated with such redemption. In the event the Authority elects to accelerate the unpaid Rent and Additional Rent, Tenant shall pay to the Authority an amount equal to the excess of the then value, if any, of the total Rent, Additional Rent and other benefits which would have accrued to the Authority under this Lease for what would be the remainder of the Term, over the aggregate projected rental value of the Premises, estimated as of the date of such election, as a single lump sum, for the balance of such period.

(d) By any suitable action or proceeding in equity or at law, enjoin such Event of Default and/or any threatened breach by Tenant of any of the agreements, terms, covenants or conditions contained in this Lease and invoke any right or remedy allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Lease.

18.3 Additional Provisions.

(a) The Authority's re-entry or taking of possession of the Premises shall not be construed as an election to terminate this Lease unless the Authority gives written notice of such termination. Any re-entry or taking of possession by the Authority shall not affect or diminish the ongoing obligation or liability of Tenant for all Rent and Additional Rent and other obligations due and owing under this Lease. Wherever in this Lease the Authority has reserved or is granted the right of re-entry into the Premises, the use of such word is not intended, nor shall it be construed to be limited to its technical legal meaning. If the Authority re-enters, it may take possession of the Premises, remove all persons and property from the Premises and store such property in a public warehouse or elsewhere at Tenant's expense without resort to legal process and without the Authority being deemed guilty of trespass or becoming liable for any loss or damage occasioned thereby and without prejudice to any other remedies which the Authority may have hereunder, at law or in equity.

(b) The covenant to pay Rent, Additional Rent and other amounts hereunder and to perform all obligations hereunder are independent covenants from the other terms and provisions of this Lease and, except as expressly provided herein, Tenant shall have no right to hold back, offset or fail to pay any such amounts for any alleged default by the Authority or for any other reason whatsoever. Except as otherwise set forth herein, any obligations of Tenant as set forth herein (including, without limitation, rental and other monetary obligations, repair obligations and obligations to indemnify the Authority) shall survive the expiration or earlier termination of this Lease, and Tenant shall immediately reimburse the Authority for any expense incurred by the Authority in curing Tenant's failure to satisfy any obligation (notwithstanding the fact that such cure might be effected by the Authority following the expiration or earlier termination of this Lease).

(c) The remedies described herein are not exclusive and are cumulative, and the Authority will be entitled to any and all other remedies now or hereafter provided by law or in

equity in the event of any default or breach by Tenant of the terms of this Lease. The Authority may pursue one or more remedies against Tenant and need not elect its remedy until such time as findings of fact have been made by judge or jury, whichever is applicable, in a trial court of competent jurisdiction. To the extent permitted by law, Tenant waives any right of redemption, re-entry or repossession.

(d) Tenant acknowledges that the continued operation of business in the Premises in the manner and upon the terms set forth in this Lease are of a special importance to the Authority and its operations at the Airport. Therefore, in the event this Lease is not canceled and terminated upon the occurrence of the events set forth in Section 18.1, then Tenant, and the trustee in bankruptcy or other representative of Tenant, or, in the event of an assignment, Tenant's assignee shall, prior to the assumption of this Lease by such representative or trustee or assignee, comply with all of the provisions of ARTICLE 16 hereof and, in addition, provide adequate assurance to the Authority of each of the following: the source of Rent, Additional Rent and other consideration payable under this Lease; the continued use of the Premises in accordance with the Permitted Uses only; that the operation of the business in the Premises shall continue to be of the high standard compatible with the Authority's other tenants in the Airport; the continuous operation of business in the Premises in strict accordance with the requirements of ARTICLE 7 hereof; that the design and furnishings of the Premises shall continue to be acceptable to the Authority in accordance with the terms hereof; and such other matters as the Authority may reasonably require at the time of such assumption or assignment. The furnishing of assurances in accordance with the foregoing, or as may be directed by a court of competent jurisdiction, shall not be deemed to waive any of the covenants or obligations of Tenant set forth in this Lease. In the event that any person assuming this Lease, or taking the same by assignment, shall desire to make alterations to the Premises, the Authority may further require adequate assurance, by lien and completion bond, cash deposit or such other means as the Authority may approve, of the source of payment for the estimated cost of any work to be performed in connection therewith. Notwithstanding the foregoing, such alterations shall be subject in all respects to the rights and obligations of the Authority or Tenant relating to such alterations, including, without limitation, those set forth in ARTICLE 9 hereof.

ARTICLE 19 **GENERAL PROVISIONS**

19.1 **Vending Machines.** Except ATM's or similar devices for sale of Tenant's tickets, Tenant shall not install or operate or cause to be installed or operated vending machines or other coin or credit card operated devices of any nature, including but not limited to any device using telephone transmissions, of any nature, ("Vending Machines") on the Premises without the prior written approval of the Authority. The Authority may condition its approval upon the payment of all net revenue derived by Tenant from the operation of the Vending Machines or, in the absence of net revenue, a reasonable minimum payment as determined by the Authority.

19.2 **Quiet Enjoyment.** Subject to the terms and conditions of this Lease, and payment of the Rent and charges provided herein and upon the performance of the covenants and agreements on the part of Tenant to be performed hereunder, Tenant shall peacefully have and enjoy the Premises and the rights and privileges granted by this Lease. The foregoing covenant

of quiet enjoyment is in lieu of any other covenant, express or implied.

19.3 Trust Agreement. Tenant acknowledges that the Authority is a party to a Trust Agreement dated as of the first day of August, 1978, between the Authority and State Street Bank and Trust Company as trustee. Tenant agrees to consent to amendments or modifications to this Lease reasonably required in the opinion of legal counsel to the Authority, who shall have recognized expertise in bond matters, to assure the Authority's compliance with its obligations thereof, or with the obligations of successor or additional Trust Agreements into which the Authority may enter in the course of issuing additional or refunding bonds as permitted by law.

19.4 Agreements with the United States. This Agreement is subject and subordinate to the provisions of any agreement heretofore or hereafter made between the Authority and the United States, the execution of which is required to enable or permit transfer of rights or property to the Authority for airport purposes or expenditure of federal grant funds for Airport improvement, maintenance or development. Tenant shall reasonably abide by requirements of agreements entered into between the Authority and the United States, and shall consent to amendments and modifications of this Lease if required by such agreement or if required as a condition of the Authority's entry into such agreements.

19.5 Subordination. Tenant's rights under this Lease shall remain subject and subordinate, to all matters of public record, as they now exist or may hereafter be amended, with respect to the Terminal.

19.6 No Personal Liability. No member, director, officer or employee of the Authority shall be personally liable for the performance of the Authority's obligations under this Lease or on account of any breach thereof or because of its execution or attempted execution.

19.7 Non-Waiver. No term or provision hereof shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for any different or subsequent breach.

19.8 Entire Agreement. This Agreement, including exhibits attached hereto at the time of its execution, and the other documents referred to herein constitute the entire agreement between the parties hereto.

19.9 Amendment. This Agreement may not be amended or modified except by a written instrument executed by both the Authority and Tenant.

19.10 Governing Law; Waiver of Jury Trial. The laws of the Commonwealth of Massachusetts shall govern the validity, performance and enforcement of this Lease. If either party institutes legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be the county in which the Airport is located, or the United States District Court having jurisdiction over such county, and the parties hereby waive any right to contest the appropriateness of any action brought in any such court based on lack of personal jurisdiction, improper venue or *forum non conveniens*. Tenant and the Authority hereby waive trial by jury in any action, proceeding or counterclaim brought by either party

against the other or any matter whatsoever arising out of or in any way connected with this Lease, the relationship of the Authority and Tenant created hereby, Tenant's use or occupancy of the Premises, and/or any claim for injury or damage. In the event the Authority commences any action or proceeding for non-payment of Rent, Tenant shall not interpose any counterclaim of any nature or description, other than a compulsory counterclaim, in any action or proceeding. The foregoing shall not be construed as a waiver of Tenant's right to assert such claim in a separate action or proceeding instituted by Tenant.

19.11 No Advertisement. Tenant shall not, without the Authority's prior written approval, refer to the Authority in any advertising, letterheads, bills, invoices, or in other printed matter.

19.12 Consequential Damages. Neither party nor any of its members, directors, officers, agents and employees, shall be liable to the other party for any loss of business or any indirect, incidental, special or consequential damages or lost profits arising out of or relating to this Lease or any party's performance or non-performance hereunder.

19.13 Force Majeure. In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, inability to procure labor or materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, fire or other casualty or other reason of a similar or dissimilar nature beyond the reasonable control of the party delayed in performing work or doing acts required under the terms of this Lease, then performance of such act shall be excused for the period of the actual delay attributable to such causes, and the period from the performance of any such act shall be extended for a period equivalent to the period of such delay (any such delay is herein referred to as an "Unavoidable Delay"). This Section shall not be applicable to Tenant's obligations to procure insurance or to pay Rent, Additional Rent or any other sums, moneys, costs, charges or expenses required to be paid by Tenant hereunder. If any provision of this Lease negates or limits the period of any force majeure extension, such provision shall override this Section. Tenant shall not be entitled to an extension for any Unavoidable Delay unless Tenant has given the Authority notice of the delay within a reasonable time following the occurrence of the delaying event.

19.14 Headings. The captions and headings throughout this Lease are for convenience and reference only, and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any of the provisions or the scope of intent of this Lease.

19.15 Invalid Provisions. If any provision of this Lease, or the application thereof to any person or circumstances, shall to any extent be held invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law unless one or both parties would be substantially and materially prejudiced.

19.16 Authority Employees. Tenant shall not during the Term of this Lease, hire or employ, on either a full-time or part-time basis, person or persons so long as Tenant knows or

has reason to know that such person is concurrently employed by Authority, unless Tenant has obtained the prior written consent of the Authority, to be granted or withheld in the Authority's sole discretion, and such employment does not violate Massachusetts General Laws, Chapter 268A.

19.17 Disclosure and Revenue Enforcement Statements. In compliance with the provisions of General Laws, Chapter 7, Section 40J relative to the filing of disclosure statements, signed under the penalties of perjury, of persons who have or will have a direct or beneficial interest in the real property described herein, Tenant upon execution of this Lease, shall furnish to the Authority for filing with the Deputy Commissioner of Capital Asset Management, a signed statement as required, a copy of a form for which is attached hereto as **Exhibit H**.

Tenant, upon execution of this Lease, shall furnish the Authority a signed statement of compliance with laws certifying (a) in compliance with the provisions of Chapter 233 of the Acts of 1983 relative to the certification of payment of state taxes, that to the best of its knowledge, it has filed all state tax returns and paid all state taxes required by law, (b) that Tenant is in compliance with the Massachusetts Employment Security Law, Mass. Gen. L. c. 151A § 19A(b) relating to unemployment compensation contributions and payments in lieu thereof, (c) Tenant's status concerning compliance with Massachusetts Child Care Law, Chapter 521 of the Massachusetts Acts of 1990, as amended from time to time, and (d) Tenant's compliance with the provisions of G.L. c. 7, § 22C, regarding doing business in or with Northern Ireland. A copy of such statement is attached hereto as **Exhibit I**.

19.18 Notices. All notices required to be given shall be in writing and shall be deemed duly given, when sent via facsimile (with a confirmation copy by certified mail, hand delivery or overnight courier, as provided herein), when mailed, certified mail, return receipt requested, or when received or refused, if hand delivered or sent by a nationally recognized overnight courier to the following addresses:

Authority: Massachusetts Port Authority
One Harborside Drive, Suite 200S
East Boston, MA 02128-2909
Attention: Director, Airport Business Office
FAX: (617) 561-1891

and

Massachusetts Port Authority
One Harborside Drive, Suite 200S
East Boston, MA 02128-2909
Attention: Chief Legal Counsel
FAX: (617) 568-3161

Tenant: Hyannis Air Service, Inc.
d/b/a Cape Air
660 Barnstable Road
Barnstable Municipal Airport
Hyannis, MA 02601
Attention: Daniel Wolf

with a copy to:

Mr. Charles Ferrara
Director of Airport Services
Hyannis Air Service, Inc. d/b/a Cape Air
300 Terminal C
Logan International Airport
East Boston, MA 02128-2057

or to such other addresses as may from time to time be specified in writing by any party hereto. Any notice so addressed and so delivered or mailed shall be deemed duly given when delivery is tendered, whether or not tender of delivery is accepted.

19.19 No Brokers. Tenant and the Authority mutually represent that they have dealt with no broker in connection with this Lease or the Premises. Tenant and the Authority agree to indemnify and save the other harmless from any and all loss, cost, damage or expense incurred arising from their respective dealing with a broker.

19.20 Provisions Binding, Etc. Except as herein otherwise expressly provided, the terms hereof shall be binding upon and shall inure to the benefit of the successors and assigns, respectively, of the Authority and Tenant and the terms "Tenant" and "Authority" shall include their respective successors and assigns. Each term and each provision of this Lease to be performed by Tenant shall be construed to be both a covenant and a condition. The reference to the successors and assigns of Tenant is not intended to constitute a consent to assignment by Tenant, but has reference only to those instances in which the Authority may later give consent to a particular assignment as required by the provisions of this Lease. If Tenant be several persons, natural or corporate, the liability of such persons for compliance with the obligations of Tenant under this Lease shall be joint and several.

19.21 When Lease Becomes Binding. This document shall become effective and binding only upon the execution and delivery hereof by both the Authority and Tenant. All negotiations, consideration, representations and understandings between the Authority and Tenant are incorporated herein and may be modified or altered only by written agreement signed by both the Authority and Tenant, and no act or omission of any employee or agent of the Authority or course of prior dealings between the parties, shall alter, change or modify any of the provisions hereof.

IN WITNESS WHEREOF, the Authority and Tenant have hereto set their duly authorized hands and seals as of the date of this Lease set out in Section 1.1.

TENANT:

Hyannis Air Service, Inc.
d/b/a Cape Air

By: 

Title: 118 Airport Services Project's & Facilities

Date: 3/3/03

Massachusetts Port Authority

By: 

Title: ASSISTANT SECRETARY-TREASURER

Date: 4/4/03

Exhibits:

Exhibit A	Premises
Exhibit B	Maintenance and Repair
Exhibit C	Aircraft Parking Plan
Exhibit D	Preferential Gate Use Policy
Exhibit E	Wiring Instructions
Exhibit F	Letter of Credit
Exhibit G	Disclosure of Beneficial Interests
Exhibit H	Compliance with Laws Certificate

J:\ABO\COMMONAIRLINES\CAPEAIR\capeairleasefinal03.doc

CLMS Detailed Premises Report
Massachusetts Port Authority
 Airport Business Office

Tenant Name: Hyannis Air Service, Inc.
 Exhibit A-1 - Premises as of 05/01/2002

<u>Agreement # / Space #</u>	<u>Floor #</u>	<u>Room #</u>	<u>Room Description</u>	<u>Room Area (sf)</u>
16161 / 01 Counter/Booths - Airline Ticketing				
Terminal C (Main Terminal) - Bldg 22	2	24D	Check-In Counter	70
Total Area for Space # 01				70 sf
16161 / 02 Holdroom -				
Terminal C (Pier C) - Bldg 23	2	117A	Holdroom Gate 33	849
Total Area for Space # 02				849 sf
16161 / 03 Office - Ramp Operations				
Terminal C (Pier C) - Bldg 23	1	178	Break/Locker Room	271
Terminal C (Pier C) - Bldg 23	1	250	Operations	149
Total Area for Space # 03				420 sf
16161 / 04 Baggage - Inbound				
Terminal C (Pier D) - Bldg 24	1	101B	Inbound Baggage	589
Total Area for Space # 04				589 sf
16161 / 05 Baggage - Outbound				
Terminal C (Main Terminal) - Bldg 22	1	49B	Outbound baggage	717
Total Area for Space # 05				717 sf
16161 / 06 Office - Administration				
Terminal C (Main Terminal) - Bldg 22	1	31	Office	122
Terminal C (Main Terminal) - Bldg 22	1	31C	Office	125
Terminal C (Main Terminal) - Bldg 22	1	31D	Office	150
Terminal C (Main Terminal) - Bldg 22	1	31E	Office	123
Total Area for Space # 06				520 sf
Total Area for Agreement # 16161				3,165 sf

Note: Only spaces that have rooms associated to them will show on this report.



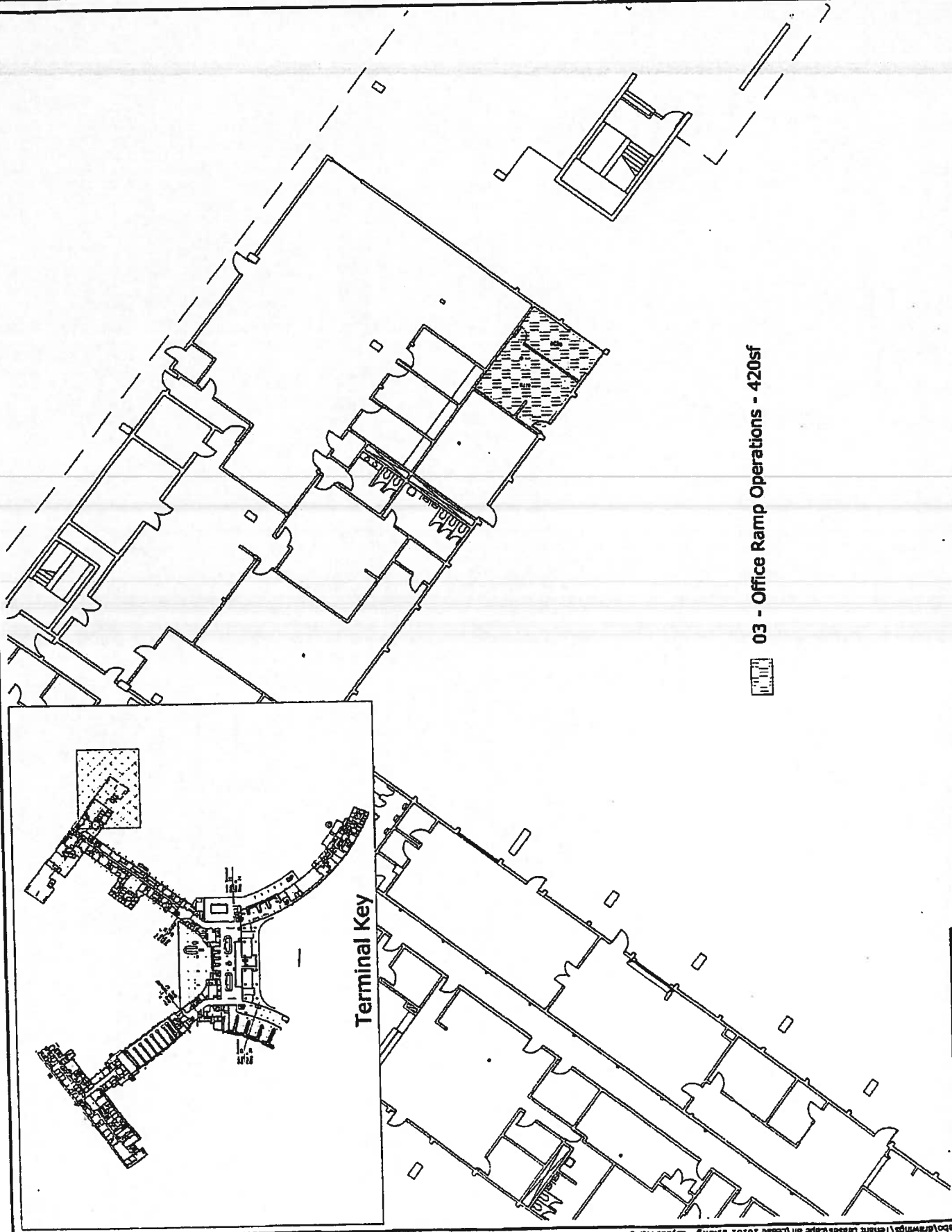
Airport Business Office
 Leasing
 Concessions
 Property Management

Terminal C 1st Floor

Logan International
Airport

Massachusetts Port Authority
One Harborside Drive Suite 2005
East Boston, MA 02128-2909

Source:	ABO
Drawn By:	KUG
Revised By:	JMS
Date:	08/20/2002
Hyatt Air Services, Inc. dba: Cape Air Leased Premises As of 05/01/2002 Agent # 16161	
Scale:	As Indicated
Sheet	1 of 4



03 - Office Ramp Operations - 420sf

Exhibit A-2

Disclaimer: Information presented on this drawing is subject to change without notice. The user of this drawing is responsible for its use. ANY KMP/OTHER EMPLOYEES OR AGENTS OF THE PORT AUTHORITY OF MASSACHUSETTS ARE NOT TO BE HELD RESPONSIBLE FOR ANY ERRORS OR OMISSIONS. Information is planning oriented and may not reflect actual field conditions. All square footage numbers are subject to field survey verification.

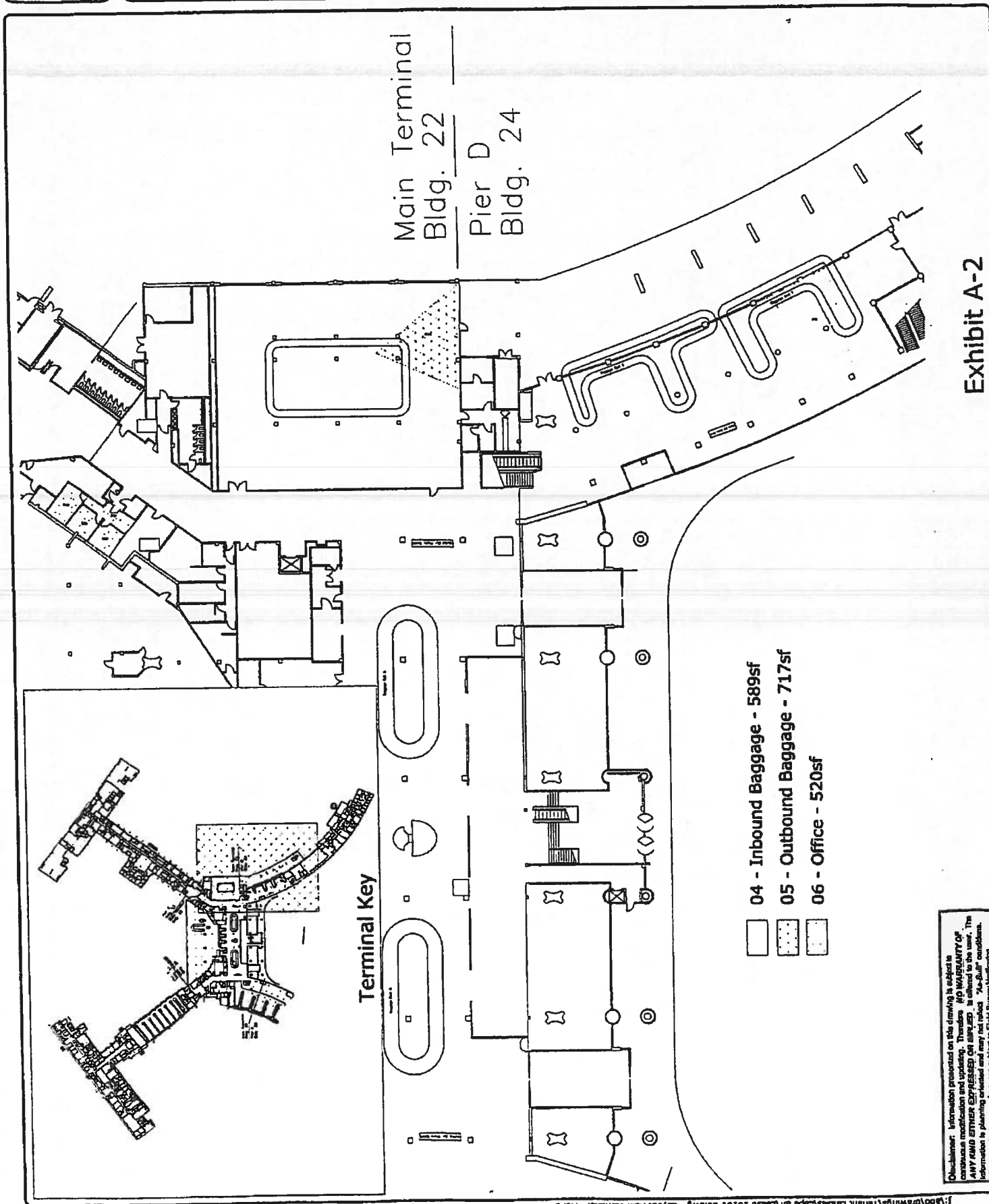


Exhibit A-2

Disclaimer: Information presented on this drawing is subject to change without notice. The user of this drawing assumes all responsibility for its use. ANY KIND EITHER EXPRESSED OR IMPLIED, is intended to the user. The information is planning oriented and may not reflect "As-Built" conditions. All square footage numbers are subject to Field Survey Verification.



Terminal C 2nd Floor, Pier C

Logan International
Massachusetts Port Authority
One Harborside Drive Suite 2005
East Boston, MA 02128-2909

ASO
Drawn By: KCG
Reviewed By: JMS
Date: 08/20/2002
Hyatt Air
Service, Inc.
dba Cape Air
Leased Premises
As of 05/01/2002
Agmt # 16161

Scale: As Indicated
Sheet
3 of 4

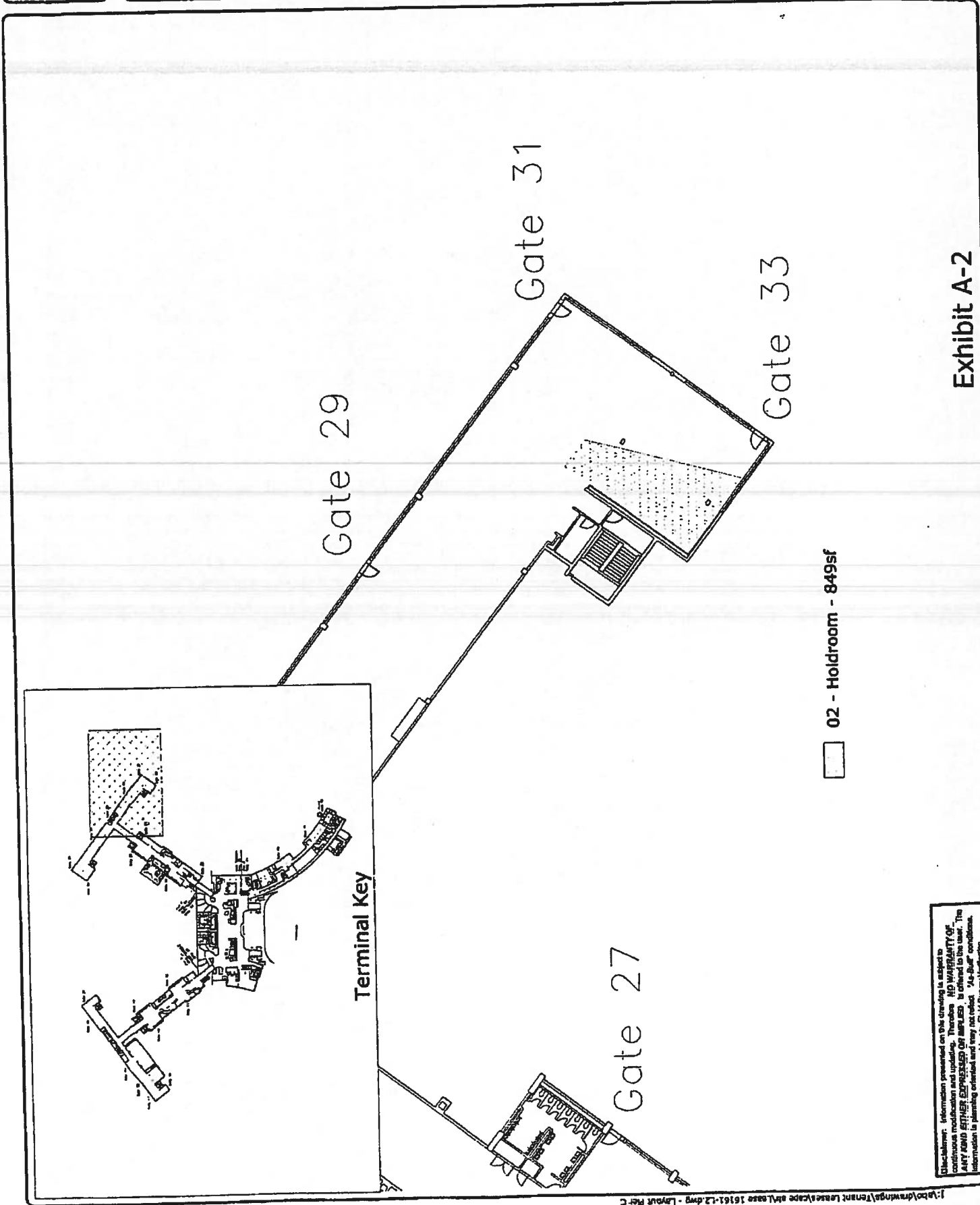


Exhibit A-2

Disclaimer: Information presented on this drawing is subject to continuous modification and updating. Therefore, NO WARRANTY OF ANY KIND EITHER EXPRESSED OR IMPLIED, is made by the architect. The information is planning oriented and may not be used for construction. All square footage numbers are subject to Field Survey Verification.



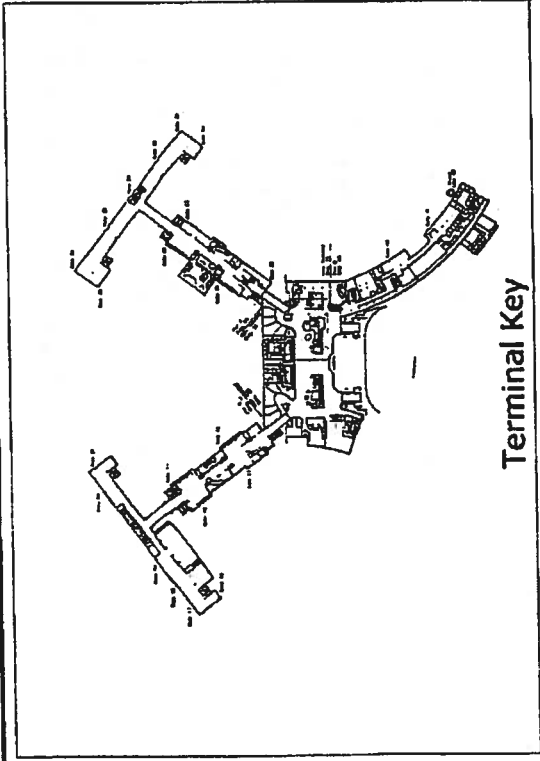
Massport
Airport Business
Office

Terminal C 2nd Floor

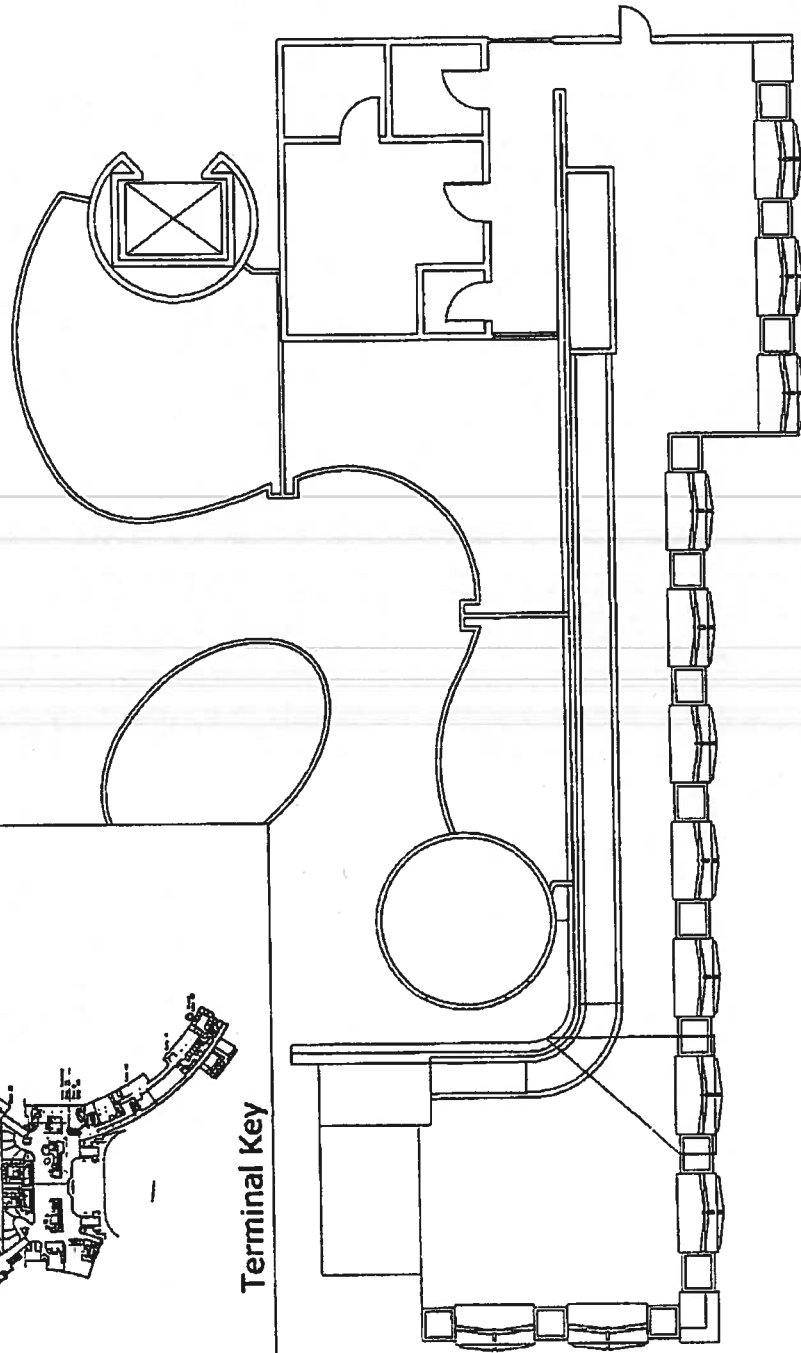
Logan International
Airport

Massachusetts Port Authority
One Harbor Side Drive Suite 2005
East Boston, MA 02128-2909

Source:	ABO
Drawn By:	KLG
Requested By:	JKS
Date:	08/20/2002
Hyattsville Air Service, Inc. dba Cape Air Leases Facilities As of 05/01/2002 Agmt # 15151	
Scale:	As Indicated
Sheet	4 of 4



Terminal Key



01 - Check-In Counters - 70sf

Exhibit A-2

Disclaimer: Information presented on this drawing is subject to
conditions modification and updating. Therefore, NO WARRANTY OF
ANY KIND EITHER EXPRESSED OR IMPLIED is offered to the user. The
information is planning oriented and may not reflect "As-Built" conditions.
All square footage numbers are subject to Field Survey Verification.

EXHIBIT B

MASSACHUSETTS PORT AUTHORITY

I. MAINTENANCE AND REPAIR RESPONSIBILITIES

LOCATION: Terminal C	TENANT: Hyannis Air Service, Inc. d/b/a Cape Air	DATE: 05/01/02
Responsibility Center	Definition or Reference Item	Responsible Party
Heat/Air Conditioning		
Central System	1a,b,d,e,f,i	Authority
Associated System	1c,g,h,j,k,m,n	Tenant
Tenant-installed equipment		Tenant
Water & Sewerage	2b,e 2a,c,d	Authority Tenant
Fire Protection System	3b,c,d,e,g 3a,f	Authority Tenant
Building Structure		
Interior	4a-g	Tenant
Exterior	4a,e,f,g,i	Tenant
Exterior	4b,c,d,h	Authority
Cleaning	5	Tenant
Extermination	Within Leasehold	Tenant
Window Washing		
Interior		Tenant
Exterior		Tenant
Common Areas		Authority
Electrical		
Interior	6a-g	Tenant
Exterior	6a,e	Authority
Exterior	6b,c,d,f	Tenant
Plumbing & Fixtures		
Within Leasehold	7	Tenant
Common area	7	Authority

Assigned Ramp & Apron

8

Tenant

Security Access Points and
Associated Controls

9

Authority

Environmental, Health & Safety

10

Tenant

Miscellaneous:

11a,b,d
11c

Tenant
Authority

II. DEFINITIONS OF LANDLORD/TENANT MAINTENANCE AND REPAIR RESPONSIBILITIES

1. Air Conditioning/Heating

Air distribution which includes:

- a. Supply, return and exhaust duct work in ceiling space of tenant areas
- b. Associated hardware with duct work such as volume dampers and diverting vanes in ceiling of tenant areas
- c. All ceiling diffusers for supply, return and exhaust air repair of and cleaning within tenant areas
- d. Balancing of system.
- e. Air handlers and associated controls
- f. Provision of conditioned air to space

Hot water/Steam reheat Coils within tenant areas which include:

- g. Cleaning of coil face annually
- h. Associated piping, valves and strainers
- i. All pipe covering in ceiling
- j. Associated dampers. Linkage and motors (mixing boxes)

Temperature Controls which include:

- k. All thermostats pneumatic or electric maintenance and calibration within tenant areas
- l. All wiring and pneumatic control tubing from thermostats to operating device to ceiling within tenant areas
- m. Pneumatic control and electric control valves, including diaphragms, valve stem and seat within tenant areas
- n. Thermostats and maintenance and repair of other unit heaters which supplies tenant areas

2. Water and Sewer

- a. Domestic water supply lines and waste water lines within lease line
- b. Domestic water supply lines and waste water lines up to lease line
- c. Supplemental systems installed by tenant
- d. Sewer drainage system to Y connection at main drain or upon determination of cause of any drain plugs
- e. Sewer drainage system beyond Y connection, not included in (d).

3. Fire Protection

- a. Sprinklers within leasehold area
- b. Fire Hoses
- c. Fire Alarm

- d. Common Area Fire Extinguishers
- e. Hydrants
- f. Fire Extinguishers within leasehold area
- g. Testing in all public and leasehold areas

4. Building Structure

Interior

- a. Walls, maintenance and repairs such as painting, plastering, wallpapering and cove base
- b. Maintenance and repair of metal and wooden doors and associated hardware such as hinges, door knob assemblies, locks and latch assemblies
- c. Maintenance and repair of any glass panels or door glass
- d. Maintenance and repair to plaster, dropped or metal ceilings and associated framework
- e. Maintenance and repairs to ceramic tile, wooden and carpeted floors
- f. Maintenance, repairs and cleaning of signs
- g. Maintenance and repair of ticket counters and holdroom furniture/fixtures

Exterior

- a. Painting, maintenance and repair of exclusive area such as overhead doors, window and door framework
- b. Caulking of walls, panels and framework
- c. Masonry and carpentry repairs to architectural facades or building skin
- d. Roof drains to remain free of debris
- e. All attached enclosures such as canopies and conveyor housing
- f. Maintenance, repairs and cleaning of tenant signs
- g. Cleaning and repairs to glass
- h. Roof maintenance
- i. Security access doors and associated hardware, including hinges, lock mechanisms, and latch assemblies

5. Cleaning

Cleaning of demised premises which includes:

- a. Walls
- b. Ceilings
- c. Floors
- d. Windows
- e. Fixtures
- f. Furniture
- g. Ceiling Diffusers
- h. Trash Removal and trash enclosure

- i. Equipment storage areas
- j. Holdrooms

6. Electrical
Interior

- a. Cleaning of fixtures and shades
- b. Replacement of burnt bulbs
- c. Replacement of burnt ballasts and starters
- d. Repairs to wall outlets and wall switches
- e. All associated wiring within Tenant's space
- f. Replacement of burnt bulbs and ballast for signs
- g. Tenant installed panels

Exterior

- a. Maintenance, repairs, and cleaning of perimeter flood, parking lot, apron, and obstruction lighting and associated wiring and conduit
- b. Maintenance and repairs to weatherproof outlets, electrical panels, transformers, local disconnects and associated wiring and conduit installed by tenant
- c. Maintenance and repairs to luminated tenant signs
- d. Ramp lighting for Tenant operations/Tenant-installed lighting
- e. Ground power supply
- f. Ground power cables from junction box at gate to aircraft

7. Plumbing

- a. All water closets, lavs, urinal and associated piping and hardware such as flushometers, faucets and soap dispensers
- b. Sanitary Napkin dispensers
- c. Towel dispensers and trash containers
- d. Partitions and hardware such as hinges, door latch assembly and coat hooks
- e. Water fountains piping and refrigeration compressors and controls
- f. Floor and storm drains are to have proper catch basin with strainer to keep drain free of debris

8. Assigned Ramp and Apron

- a. Daily FOD inspection and removal of debris, grease, oil, fuel or other foreign material on ramp or apron areas
- b. Cleaning with decreasing solvent on a routine basis consistent with usage

- c. Maintenance and repairs to bumpers, rails or other guides
- d. Striping for parking aircraft and ground equipment in accordance with approved Authority procedures
- e. Ramp and apron drains to be cleaned of debris on a regular basis
- f. Minor pavement repairs
- g. Sweeping
- h. Snow and ice removal

9. Security Access

Maintenance of all security access points and associated equipment and controls not included in 4(i).

10. Environmental Health and Safety

a. Storage Tank Systems

- 1) Maintenance, management, and associated documentation for any storage tanks located on leased premises including responsibility for releases and remedial actions
- 2) Compliance with all applicable Federal, State, and Massport Authority Rules and Regulations, and laws.

b. Oil, gas, grease, sand, and any other similar interceptors and or separators

- 1) Required maintenance and associated documentation to ensure efficient operation and proper disposal per applicable regulations of any residuals

c. Spill Prevention and Control Countermeasures (SPCC)

- 1) Maintenance of and compliance with a current certified SPCC Plan, which is reviewed annually and updated and re-certified by a professional engineer every 3 years
- 2) Reporting of releases which exceed Reportable Quantities to appropriate Federal and State Agencies and Authority personnel

d. Environmental Health and Safety

Compliance with all applicable Federal, State, and Authority Regulations pertaining to all environmental health and safety issues

11. Miscellaneous

- a. Maintenance of mechanical support equipment, including inbound and outbound baggage systems, etc., by an acceptable contractor or by maintenance personnel
- b. Maintenance of flight information display systems
- c. Maintenance of existing public address system
- d. Tenant installed finishes and improvements

EXHIBIT C

AIRCRAFT PARKING PLAN

EXHIBIT D

BOSTON-LOGAN INTERNATIONAL AIRPORT PREFERENTIAL GATE USE POLICY

The Massachusetts Port Authority (the "Authority") has determined that the facilities at Logan International Airport ("Logan") are limited and that there is a need to maximize the efficient use of all gates at Logan. The Authority is subject to demands for gate use rights at Logan from various incumbent and new entrant air carriers; these demands require an effective allocation mechanism to ensure maximum efficiency and utilization of gates at Logan. The directives have been set forth herein to ensure that the preferential rights concept works effectively and the airlines' access needs are accommodated within the constraints at Logan. The defined time periods will maintain a certain amount of flexibility in order to achieve these efficiency requirements, particularly, in the event of wide spread delays attributable to air traffic control, weather or similar causes. The obligation to cooperate shall include the towing, upon reasonable notice, at the airline's cost of any aircraft parked at a preferential gate. The provisions herein are directed toward gate use only; no provision herein shall restrict the Authority's right to make any determinations or take any actions regarding tenancy or use and occupancy of any terminal or support space at Logan.

DEFINITIONS:

Aircraft: Aircraft shall only mean jet aircraft.

Base Peak: Base Peak shall mean the maximum number of times per day that a scheduled carrier, in accordance with the Official Airline Guide ("OAG") schedule, simultaneously occupies all of its preferential gates (or former preferential gates, in the situation where there has been a Change in Gate Status) during the average day during the six months prior to the date of determining the Base Peak.

Common Use Gate: A Common Use Gate shall be a gate which is scheduled and controlled by the Authority.

Low Utilization Carrier. Based upon a comparative analysis of gate use of individual gates or of an airline, the Authority may determine that an airline's gate use has fallen below the average gate utilization for comparable operations at Logan. Upon such a determination, the Authority may designate an airline as a Low Utilization Carrier. The Authority shall inform the airline of this determination. In performing utilization calculations, the Authority shall consider the activities of subtenant airlines which use a jetway for their passenger loading operations, but shall not consider activities of subtenant airlines which occupy a jetway structured gate position but conduct a Ramp loading operation for passengers.

Period of Use: The Scheduled Carrier's Period of Use for a Scheduled Operation at a gate is as follows:

1) For arrivals and departures of turn-around flights for aircraft that are scheduled to arrive at Logan and depart directly, the Period of Use shall commence thirty (30) minutes prior to the time of the scheduled arrival and shall terminate thirty (30) minutes after the scheduled departure time. The Period of Use shall terminate upon the actual departure of the aircraft from the gate or thirty (30) minutes after the scheduled departure time, whichever is the earlier to occur. However, the thirty (30) minute limit shall be extended if the aircraft is being boarded and actively preparing for departure, but only until the completion of the boarding process.

2) For arrival of terminating flights for aircraft which terminate at Logan (such as overnight aircraft or aircraft that have been removed from the gate to accommodate the operations of another carrier), the Period of Use shall commence thirty (30) minutes prior to a scheduled arrival. The Period of Use for a terminating flight shall expire sixty (60) minutes after scheduled arrival or upon the completion of the deplaning process, whichever is the earlier to occur. The sixty (60) minute limit on arrivals shall be extended if the terminating aircraft is actively in the process of deplaning passengers. In such instances, the extension shall extend only to the completion of the active deplaning process.

3) For departure of originating flights for aircraft which originate from Logan (such as overnight aircraft or aircraft that have been removed from the gate to accommodate the operations of another carrier), the Period of Use shall commence sixty (60) minutes prior to a scheduled departure. The Period of Use for an originating flight shall expire at the scheduled departure time. The departure time shall be extended if the originating aircraft is being boarded and actively preparing for departure. In such instances, the extension shall extend only to the completion of the active boarding process.

The time periods defined above represent what the Authority believes are reasonable parameters for operational activities. The Authority recognizes that the Scheduled Carrier's or the Airport's operations may require flexibility in the use of these parameters.

Preferential Gate: A Preferential Gate shall mean a gate at which the Authority has granted Preferential Use to a passenger terminal tenant.

Preferential Use: Preferential Use of a gate shall mean scheduling preference accorded to the passenger terminal tenant for the use of a gate during the applicable Periods of Use for its Scheduled Operations, scheduled changes or extra sections operations and/or flights delayed outside of the Period of Use (collectively referred to as "flights") over similar operations by another Scheduled Carrier. Preferential Use shall not and may not be assigned by the Preferential User to any other party.

Preferential User: A Preferential User shall be an air carrier who has entered into an operating agreement and an arrangement with the Authority for the use and occupancy of preferential gates and associated passenger terminal operations space.

Reasonable Notice: Reasonable Notice, as provided herein, is a variable period of time and is a function of the advanced notice available to the Authority, the need for Gate Control to conduct a safe and efficient operation, and the ability of a Preferential User to make a gate operationally available. The use of these gates, subject to notice, in the non-preferential periods does not supersede any rights granted to a Preferential User for Preferential Gates. Although the following examples provide a conceptual framework for the term "Reasonable Notice", they are not absolute minimums nor maximums, and where Reasonable Notice cannot be given the airline, the Authority shall cooperate and use their combined best efforts to accommodate flights whose notice period does not meet such times. The Authority agrees to provide the airline with information related to such operations as it becomes available to the Authority. The examples include:

Type of Operation	Notice Period
- Daily use of gate for scheduled flights	45 days
- Repeated use of gate for a particular regular charter flight	14 days
- Use of gate for re-scheduled charter flight	1 day
- Use of gate to accommodate diversions from other airports (e.g. JFK)	3 hrs.
- Use of gate to accommodate activity diverted from Common Use Gates due to delays associated with aircraft mechanical difficulties, fueling problems, towing of aircraft, etc.	30 mins.

Requesting Airline: A Requesting Airline shall mean a Scheduled Carrier without adequate gate access desirous of operating from Logan.

Scheduled Carrier: A Scheduled Carrier shall mean an air carrier (as defined in 49 U.S.C. Section 1301) performing scheduled passenger service operations.

Scheduled Operation: A Scheduled Operation is a Scheduled Carrier's operation (arrival or departure) which occurs pursuant to a schedule published in the OAG or any successor publication, and made available to the Authority at least forty-five (45) days prior to the commencement of such operations.

Reasonable Fees: Reasonable Fees shall be fees which are reasonable and non-discriminatory and shall include only directly related capital and operating costs for the provision of applicable services or facilities, a reasonable administrative charge and related Authority fees.

PROCEDURES

1) Grant of Preferential Use: The Authority may grant Preferential Use rights to certain gates at Logan. Any such grant shall be in a written agreement pursuant to authorization by the Authority's Board.

2) Use of Gates: A Preferential User shall have Preferential Use of its gates to embark and disembark passengers from jet aircraft only.

3) Gate Utilization Information: Upon request, the Preferential User shall provide the Authority with gate utilization information. This information will include, for each gate, (a) the Preferential User's flight schedules, including arrival and departure schedules with flight numbers, aircraft types and historic on-time performance by flight number; (b) identification of which aircraft remain overnight and which are towed to remote parking positions; and (c) arriving and departing passenger totals by gate for each operation.

4) Authority's Scheduling Rights: The Authority shall have the right, upon Reasonable Notice to the Preferential Users, to schedule at a Preferential Gate arrivals and departures by other air carriers at all other periods other than the Preferential User's Period of Use for that Preferential Gate. In accommodating the Authority in its right to schedule operations hereunder, the Preferential User shall allow and provide for use of its holdroom, loading bridge, baggage claim and such other facilities as may be required for the functional use of the gate. At the Preferential User's discretion it may make available other equipment and personnel as requested by Authority or air carrier, in conjunction with the use of the gate. The Preferential User at its election may assess Reasonable Fees on the air carrier(s) for the facilities used and services rendered. At the Tenant's request, the Authority and/or air carrier, as applicable, shall indemnify the Preferential User from and against all claims based upon or arising out of the Authority's scheduling of other air carriers at the Preferential User's Gate under this section, except to the extent caused by the fault or negligence of the Preferential User.

5) Requesting Airlines:

A) Accommodation of Requesting Airlines. If

a) A Requesting Airline has requested accommodation of space at a Preferential User's gate; and

b) said Requesting Airline can demonstrate that it has been unable to make arrangements with any passenger terminal tenant with whom it could be accommodated at the Airport; and

c) the Authority has informed the Preferential User that it has received a low utilization designation; and

d) the Authority has determined that the Preferential User's gate is an appropriate location for the Requesting Airline after giving comparative consideration to compatibility of operations with existing air carriers, type or character of air service, aircraft type, airport congestion, facility utilization, and the availability of space;

then the Preferential User, in furtherance of the public interest by having the premises fully and most effectively utilized, shall accommodate the request of said Requesting Airline to the extent such request does not specifically interfere with the Preferential User's Period of Use.

If the Preferential User then fails to accommodate said Requesting Airline, the Authority may inform the Preferential User that the Preferential Gate(s) required by the Requesting Airline will be governed by the Change of Gate Status provision hereunder.

B) Agreement with Requesting Airline. If the Preferential User accommodates a Requesting Airline, as set forth above, such accommodation may be accomplished by the Preferential User pursuant to a handling agreement or a sublease. Such an agreement shall be subject to all terms and conditions of the Preferential User's lease or use and occupancy arrangement with the Authority and in accordance with the following:

a) The Preferential User shall accommodate the Requesting Airline by allowing and providing for the use of its holdroom, loading bridge, passenger ticketing and baggage handling facilities as may be required for the use of the gate, subject to the Preferential User's operational requirements. Such accommodation shall take into consideration the then existing utilization of the facilities by the Preferential User, Authority-approved subtenants or other Requesting Airlines already being accommodated. At the Preferential User's discretion it may make available other equipment and personnel as requested by Requesting Airline, in conjunction with the use of the gate.

(b) Pursuant to such handling agreement or sublease, the Preferential User may charge the Requesting Airlines Reasonable Fees for the facilities used or the services rendered.

c) The agreement shall be subject to the approval of the Authority.

6) **Lack of Agreement with Airline.** In the event that there is no handling agreement or sublease between the Preferential User and an accommodated airline (accommodated under Section 4 or 5 above), the Preferential User shall provide written notice to the accommodated airline of any Reasonable Fees for the facilities used or the services rendered. Reasonable Fees which are due and owing for more than thirty days shall be considered delinquent. The Preferential User shall provide written notice (by certified mail, return receipt requested) of such delinquency to the accommodated airline and the Authority within fifteen days. After receipt by the accommodated airline of said notice, the Preferential User shall not be required to accommodate the accommodated airline until the accommodated airline remits payment for said Reasonable Fees.

7) **Change in Gate Status:** If the Preferential User fails to accommodate a Requesting Airline as required in the Accommodation of Requesting Airline provision above, the Authority may convert a Preferential Gate to a Common Use Gate. Upon conversion to a Common Use Gate, the former Preferential User of that gate shall retain for the remainder of its tenancy, scheduling preference rights on that gate to achieve its Base Peak schedule. As a condition of retaining said Base Peak scheduling preference rights, the former Preferential User, if requested by the Authority, shall provide access to the holdroom, loading bridge, baggage claim and such other facilities as may be required for the functional use of the gate by other carriers. The former Preferential User's rent shall be reduced in proportion to the space relinquished and user fees may apply. The Reasonable Notice provisions shall apply if changes by another carrier are required to accommodate the former Preferential User's operations.

EXHIBIT E

WIRING INSTRUCTIONS

BASIC INFORMATION:

Bank: State Street Bank & Trust Company
Two International Place
Boston, MA 02110 Attn: Corporate Trust Department

ABA#: 011-0000-28

Account Name: Massport Revenue Fund
Account Number: 9307-648-7
Company: Massachusetts Port Authority
One Harborside Drive, Suite 200S
East Boston, MA 02128
Telephone: (617) 478-6962
Fax: (617) 478-6949

IF WIRING FUNDS TO MASSPORT, PLEASE COMPLETE THE FOLLOWING
INFORMATION AND SEND BY FAX TO (617) 478-6949.

My Company _____ has wired to the Massachusetts

Port Authority the amount of \$ _____ relating to the following items:

" Rent or Percentage Rent for _____ (months)

" Invoice Number(s) _____

" If, none of the above, a description of the items covered by the payment: _____

EXHIBIT F

LETTER OF CREDIT

Irrevocable Standby Letter of Credit
Letter of Credit No. _____
Effective Date: _____, 2002

BENEFICIARY:

Massachusetts Port Authority
One Harborside Drive, Suite 200S
East Boston, MA 02128

Gentlemen:

1. We hereby establish an irrevocable letter of credit in favor of the Beneficiary for the account of the Applicant in an aggregate amount not to exceed the sum of _____ and 00/100 US Dollars (\$_____.00), to be available for payment of the Beneficiary's drafts drawn at sight on us and accompanied, in the case of each draft, by:

(a) A statement purportedly signed by an authorized officer of the Beneficiary to the effect that "The amount represented by the draft accompanying this statement is the amount required to be paid to the Beneficiary on account of the default of the Applicant under the Lease dated _____, 2002 (the "Agreement" by and between the Beneficiary, as landlord, and the Applicant, as tenant; and

(b) The original Letter of Credit.

2. This letter of credit shall expire on _____, 20__.

3. Each draft must indicate the name of the issuer and be marked "Drawn under Irrevocable Standby Letter of Credit No. _____ dated 200__."

4. We hereby agree to honor each draft drawn under and in compliance with the terms of this credit if duly presented at our offices at _____ on or before the close of business on the expiration date.

5. Except so far as otherwise expressly stated herein, this letter of credit is subject to the Uniform Customs and Practices for Documentary Credits, International Chamber of Commerce Publication No. 500 (1993 Revision).

6. Full, partial and multiple drawings are permitted.

7. It is a condition of this letter of credit that it shall be deemed automatically extended without amendment for additional periods of one year from the present expiration date and the expiration date of such one year extension periods hereof, unless no later than sixty (60) days prior to any expiration date, we shall advise you by certified mail that we elect not to so extend this letter of credit for any such additional period. Upon receipt by you of such notice, you may draw hereunder your sight draft(s) on ourselves accompanied by the above certification.

8. We hereby agree with you that all drafts drawn under and in compliance with the terms of this letter of credit will be duly honored on presentation to us.

[BANK]

By: _____

Name: _____

Title: _____

Hereunto duly authorized.

EXHIBIT G

Statement Re Beneficial Interest Required by
G.L. Chapter 7, Sec. 40J (St. 1980, C.579, Sec. 12)

In compliance with the provisions of Chapter 7, Sec. 40J of the General Laws, I hereby state, under the penalties of perjury, that the true names and addresses of all persons who have or will have a direct or indirect beneficial interest in the real property, subject to this Lease dated October, 2002, between Hyannis Air Service, Inc., d/a/ a Cape Air, as Tenant, for premises in the building known as Terminal C located at Logan International Airport, East Boston, MA 02128, are as follows:

Name and residence of all persons with beneficial interests:

1. Daniel A. Wolf, President - Shareholder 660 Barnstable Rd., Hyannis, MA 02601
2. Grant Wilson, Treasurer - Shareholder 111 Pond St., Cohasset, MA 02025
3. Jeffrey Flaherty, Asst. Secretary 660 Barnstable Rd., Hyannis, MA 02601
4. W. Scott LaForge, Ex. V.P. - Shareholder 660 Barnstable Rd., Hyannis, MA 02601
5. J. David Luening - Shareholder - 1033 Fearrington Post Rd., Pittsboro, NC 27312
6. George P. Bauer - Shareholder - 128 Dunning Road, New Canaan, CT 06840
7. ESOP (Employee Stock Ownership Plan) c/o Dan Wolf 660 Barnstable Rd., Hyannis MA
8. Russell & Lisa Price - Shareholders - 272 Whistleberry Dr., Marstons Mills, MA
02148

Signed: 

Daniel A. Wolf

Its: President

EXHIBIT HCERTIFICATE OF COMPLIANCE WITH LAWSMassachusetts Employment Security Law

Pursuant to G.L. c. 151A19A(b), the undersigned hereby certifies under the penalties of perjury that Tenant, with D.E.T. ID Number 80433640, has complied with all laws of the Commonwealth relating to unemployment compensation contributions and payments in lieu of contributions.

[Compliance may be certified if Tenant has entered into and is complying with a repayment agreement satisfactory to the Commissioner, or if there is a pending adjudicatory proceeding or court action contesting the amount due pursuant to G.L. c. 151A19A(c).]

or check the following:

 The undersigned certifies that the Massachusetts Employment Security does not apply to it because Tenant does not have any individuals performing services for it within the Commonwealth to the extent that it would be required to make any contributions or payments to the Commonwealth.

Massachusetts Child Care Law

Pursuant to Chapter 521 of the Massachusetts Acts of 1990, as amended by Chapter 329 of the Massachusetts Acts of 1991, the undersigned hereby certifies that Tenant (please check applicable item):

1. employs fewer than fifty (50) full-time employees; or
- NA 2. offers either a dependent care assistance program or a cafeteria plan whose benefits include a dependent care assistance program; or
3. offers child care tuition assistance, or on-site or near-site subsidized child care placements.

Revenue Enforcement and Protection Program

Pursuant to G.L. c. 62C49A, the undersigned hereby certifies under the penalties of perjury that Tenant's tax payer identification number is (complete applicable item): Social Security No. is or Federal Identification No. 04-3005476 and that to the best of his/her knowledge and belief Tenant has complied with all laws of the Commonwealth relating to taxes, the reporting of employees and contractors, and withholding and remitting of child support. (04-3005476)

To comply with all laws of the Commonwealth relating to taxes, the undersigned certifies that it (please check applicable item):

