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B-152722, AUG. 16, 1965

TO GENERAL WILLIAM F. MCKEE, ADMINISTRATOR, FEDERAL AVIATION AGENCY:

A LETTER DATED MAY 7, 1965, FROM YOUR PREDECESSOR REQUESTS A DECISION AS TO WHETHER THE GENERAL ACCOUNTING OFFICE WOULD BE REQUIRED TO TAKE EXCEPTION TO THE EXPENDITURE OF APPROPRIATED FUNDS BY THE FEDERAL AVIATION AGENCY (FAA) FOR THE ALTERATION, IMPROVEMENT AND REPAIR OF RENT-FREE SPACE IN BUILDINGS FURNISHED TO FAA PURSUANT TO THE PROVISIONS OF FORMER SECTION 11 (5) OF THE FEDERAL AIRPORT ACT, 49 U.S.C. 1110 (5), AS THAT SECTION EXISTED PRIOR TO ITS AMENDMENT IN 1961 BY PUBLIC LAW 87-255, APPROVED SEPTEMBER 20, 1961, 75 STAT. 523. SPECIFICALLY, ADVICE WAS REQUESTED AS TO WHETHER WE WOULD BE REQUIRED TO TAKE EXCEPTION TO PAYMENTS UNDER THE FOLLOWING CIRCUMSTANCES:

"/A) IF THE EXPENDITURES AGGREGATE MORE THAN 15 PERCENT OF THE FAIR VALUE OF THE RENT-FREE SPACE, OR

"/B) IF THE EXPENDITURES AGGREGATE 15 PERCENT OR LESS OF THE FAIR MARKET VALUE OF THE RENT-FREE SPACE?

REFERENCE WAS MADE TO OUR CIVIL ACCOUNTING AND AUDITING DIVISION REPORT DATED JANUARY 29, 1965, PERTAINING TO THE LOGAN INTERNATIONAL AIRPORT, BOSTON, MASSACHUSETTS. THE REPORT CONCLUDED THAT UNDER OUR DECISIONS WHICH HAVE REGARDED THE COST OF SUCH WORK AS PAYMENT IN KIND FOR RENT, THE FACT THAT RENT-FREE SPACE WAS FURNISHED BY THE OPERATOR PURSUANT TO SECTION 11 (5) OF THE FEDERAL AIRPORT ACT COULD NOT BE USED AS JUSTIFICATION FOR PAYMENTS IN EXCESS OF THE 25 PERCENTUM LIMITATION OF SECTION 322 OF THE ECONOMY ACT, 40 U.S.C. 278C, FOR REPAIRS, ALTERATIONS AND IMPROVEMENTS TO OTHER SPACE OCCUPIED UNDER A REGULAR RENTAL BASIS. WAS STATED THAT THE IMPLICATIONS OF THE CONCLUSIONS IN THE ABOVE REPORT APPEAR TO PRECLUDE THE EXPENDITURE OF FUNDS FOR ALTERATIONS, IMPROVEMENTS AND REPAIRS OF SUCH RENT-FREE SPACE AND THAT SUCH CONCLUSIONS BRING INTO QUESTION SOME PENDING PROJECTS INVOLVING EXPENDITURES FOR THE ALTERATIONS OR IMPROVEMENTS TO SPACE USED BY YOUR AGENCY FOR AIR TRAFFIC CONTROL ACTIVITIES AND ACQUIRED AT GRANT-ASSISTED AIRPORTS IN ACCORDANCE WITH FORMER SECTION 11 (5).

AS INDICATED ABOVE, THE REPORT OF JANUARY 29, 1965, CONCERNED EXPENDITURES BY FAA IN EXCESS OF THE 25 PERCENTUM LIMITATION FOR IMPROVEMENTS IN THE CONTROL TOWER BUILDING AT THE LOGAN INTERNATIONAL AIRPORT, OCCUPIED BY FAA UNDER A REGULAR RENTAL BASIS UNDER LEASE NO. C1CA -3094-A, EFFECTIVE JULY 1, 1956, AND SUPPLEMENTS THERETO, THROUGH JULY 20, 1962. THE AUDIT REPORT CONCLUDED THAT THE RENT-FREE SPACE WHERE NO ALTERATIONS, IMPROVEMENTS AND REPAIRS HAD BEEN MADE AND WHICH SPACE WAS FURNISHED TO FAA PURSUANT TO THE TERMS OF THE GRANT AGREEMENT EXECUTED UNDER FAA'S PROGRAM FOR FEDERAL AID TO AIRPORTS COULD NOT BE CONSIDERED

IN COMPUTING THE AMOUNT AUTHORIZED FOR IMPROVEMENTS TO THE LEASED SPACE OCCUPIED UNDER A REGULAR RENTAL BASIS.

SECTION 11 (5) OF THE FEDERAL AIRPORT ACT, 60 STAT. 170, 176, PRIOR TO THE AMENDMENT OF SEPTEMBER 20, 1961, PROVIDED THAT:

"SEC. 11. AS A CONDITION PRECEDENT TO THIS APPROVAL OF A PROJECT UNDER THIS ACT, THE ADMINISTRATOR SHALL RECEIVE ASSURANCES IN WRITING, SATISFACTORY TO HIM, THAT---

"/5) THE AIRPORT OPERATOR OR OWNER WILL FURNISH TO ANY CIVIL AGENCY OF THE GOVERNMENT, WITHOUT CHARGE (EXCEPT FOR LIGHT, HEAT, JANITOR SERVICE, AND SIMILAR FACILITIES AND SERVICES AT THE REASONABLE COST THEREOF), SUCH SPACE IN AIRPORT BUILDINGS AS MAY BE REASONABLY ADEQUATE FOR USE IN CONNECTION WITH ANY AIR TRAFFIC CONTROL ACTIVITIES, OR WEATHER-REPORTING ACTIVITIES AND COMMUNICATIONS ACTIVITIES RELATED TO AIR TRAFFIC CONTROL, WHICH SUCH AGENCY MAY DEEM IT NECESSARY TO ESTABLISH AND MAINTAIN AT THE AIRPORT; "

THE ORIGINAL PERTINENT REGULATIONS AND THE APPLICATION FOR GRANT AGREEMENTS FOLLOW GENERALLY THE STATUTORY PROVISIONS.

SUMMARIZED, IT IS YOUR AGENCY'S POSITION THAT THE PROVISIONS OF THE FEDERAL AVIATION ACT AND THE FEDERAL AIRPORT ACT COUPLED WITH THE PROVISIONS OF THE AGENCY'S APPROPRIATION CONSTITUTE CLEAR STATUTORY AUTHORITY FOR THE EXPENDITURE OF APPROPRIATED FUNDS BY FAA TO EFFECT ALTERATIONS, IMPROVEMENTS, OR REPAIRS IN THE RENT-FREE SPACE NECESSARY OR DESIRABLE FOR THE INSTALLATION, IMPROVEMENT AND MORE EFFICIENT OPERATION OF AIR TRAFFIC CONTROL AND RELATED FACILITIES IN SUCH RENT FREE SPACE. SUPPORT OF THE AGENCY'S POSITION IT IS STATED THAT THE AIR TRAFFIC CONTROL ACTIVITIES AND RELATED ACTIVITIES MENTIONED IN FORMER SECTION 11 (5) CLEARLY INVOLVE THE OPERATION OF "AIR-NAVIGATION FACILITIES" WITHIN THE MEANING OF SECTION 101 (8) OF THE FEDERAL AVIATION ACT, 49 U.S.C. 1301 (8); AND THAT WITHIN THE LIMITS OF AVAILABLE APPROPRIATIONS, SECTION 303 (C) OF THAT ACT, 49 U.S.C. 1344 (C), AUTHORIZES FAA TO "ACQUIRE BY PURCHASE, CONDEMNATION, LEASE, OR OTHERWISE REAL PROPERTY OR INTERESTS THEREIN.' REFERENCE WAS MADE TO SECTION 307 (B) OF THE FEDERAL AVIATION ACT, 49 U.S.C. 1348 (B), WHICH AUTHORIZES THE ADMINISTRATOR, WITHIN THE LIMITS OF AVAILABLE APPROPRIATIONS TO ACQUIRE, ESTABLISH AND IMPROVE AIR- NAVIGATION FACILITIES WHEREVER NECESSARY. IN ADDITION, IT WAS POINTED OUT THAT THE ADMINISTRATOR IS EMPOWERED BY SECTION 313 (A), 49 U.S.C. 1354 (A), TO PERFORM SUCH ACTS, PURSUANT TO AND CONSISTENT WITH THE FEDERAL AVIATION ACT, AS HE SHALL DEEM NECESSARY TO CARRY OUT THE PROVISIONS OF, AND TO EXERCISE AND PERFORM HIS POWERS AND DUTIES UNDER THAT ACT. ALSO, REFERENCE IS MADE TO THE FACT THAT THE INDEPENDENT OFFICES APPROPRIATION ACT REGULARLY HAS CONTAINED APPROPRIATION LANGUAGE SIMILAR TO THAT IN THE 1965 ACT WHICH APPROPRIATED FUNDS "FOR AN ADDITIONAL AMOUNT FOR THE ACQUISITION, ESTABLISHMENT AND IMPROVEMENT BY CONTRACT OR PURCHASE AND HIRE OF AIR NAVIGATION * * * FACILITIES, INCLUDING THE ACQUISITION OF NECESSARY SITES BY LEASE OR GRANT.'

IT IS CONCLUDED THAT THE FOREGOING STATUTORY PROVISIONS CONSTITUTE EXPRESS AUTHORITY OF LAW FROM WHICH IT MUST REASONABLY BE CONCLUDED THAT IT WAS NOT INTENDED THAT THE ADMINISTRATOR OF FAA IN ESTABLISHING AIR NAVIGATION (AIR TRAFFIC CONTROL) AND RELATED FACILITIES AT AIRPORTS SHOULD BE RESTRICTED BY THE GENERAL RULE AGAINST EXPENDITURE OF APPROPRIATED FUNDS FOR THE IMPROVEMENT OF LEASED PROPERTY INVOLVING SPECIALIZED INSTALLATION OF AIR TRAFFIC CONTROL FACILITIES AT AIRPORTS UNDER THE INVOLVED CIRCUMSTANCES. IT IS URGED THAT EVEN

IF THE ABOVE GENERAL CONCLUSIONS AS TO THE AUTHORITY FOR EXPENDITURES FOR AIR NAVIGATION FACILITIES BE DISREGARDED THE AGENCY WOULD BE AUTHORIZED, AT THE VERY LEAST, UNDER THE DECISIONS IN 21 COMP. GEN. 906 AND 30 ID. 304, TO EXPEND UP TO 15 PERCENT OF THE FAIR VALUE OF THE RENT-FREE PREMISES FOR ALTERATIONS, IMPROVEMENTS AND REPAIRS THERETO.

THE ESTABLISHED RULE IS THAT APPROPRIATED FUNDS ORDINARILY MAY NOT BE USED FOR PERMANENT IMPROVEMENTS TO PRIVATE PROPERTY UNLESS SPECIFICALLY AUTHORIZED BY LAW. 5 COMP. DEC. 478; 6 ID. 295; 2 COMP. GEN. 606; 15 ID. 761; 19 ID. 528. AS STATED IN 42 COMP. GEN. 480, 482, HOWEVER, THE 25 PERCENTUM LIMITATION OF SECTION 322 OF THE ECONOMY ACT RELATING TO ALTERATIONS, IMPROVEMENTS AND REPAIRS HAS BEEN HELD TO BE A LIMITED EXCEPTION TO THAT RULE. 29 COMP. GEN. 279. AN AMENDMENT OF MARCH 3, 1933, 47 STAT. 1517, HAD THE EFFECT OF RESTRICTING APPLICATION OF THE 15 PERCENTUM LIMITATION OF SECTION 322 TO LEASES "WHERE THE RENTAL TO BE PAID SHALL EXCEED $2,000 PER ANNUM.' THE AMENDMENT, HOWEVER, DID NOT RESTRICT APPLICATION OF THE 25 PERCENTUM LIMITATION RELATING TO ALTERATIONS, IMPROVEMENTS AND REPAIRS. THUS, IN EFFECT, THE 25 PERCENTUM LIMITATION IS APPLICABLE REGARDLESS OF THE AMOUNT OF THE ANNUAL RENTAL RATE. 21 COMP. GEN. 906, 909.

SECTION 322 WAS FURTHER AMENDED BY THE ACT OF APRIL 28, 1942, 56 STAT. 247, 40 U.S.C. 278B, WHICH PROVIDED THAT THE PROVISIONS OF SECTION 322 SHOULD NOT APPLY DURING WAR OR A NATIONAL EMERGENCY DECLARED BY THE CONGRESS OR BY THE PRESIDENT TO SUCH LEASES OR RENEWALS OF EXISTING LEASES OF PRIVATELY OR PUBLICLY OWNED PROPERTY AS ARE CERTIFIED BY THE SECRETARY OF WAR (NOW DEFENSE) OR THE SECRETARY OF THE NAVY, OR BY SUCH PERSON OR PERSONS AS DESIGNATED BY THEM AS COVERING PREMISES FOR MILITARY, NAVAL, OR CIVILIAN PURPOSES NECESSARY FOR THE PROSECUTION OF THE WAR OR VITAL TO THE NATIONAL EMERGENCY. THE LEGISLATIVE HISTORY OF THE APRIL 23, 1942, AMENDMENT SHOWS THAT IT WAS INTENDED TO RENDER THE 15 AND 25 PERCENTUM LIMITATIONS INAPPLICABLE TO WAR DEPARTMENT LEASES FOR SPECIAL PURPOSES (INFORMATION AND FILTER CENTERS) AND ANY OTHER TYPES OF NATIONAL DEFENSE LEASES, AS FOR EXAMPLE, LEASES FOR HOSPITALS AND MEDICAL WAREHOUSES.

WE DO NOT AGREE WITH YOUR AGENCY'S CONTENTION THAT THE FEDERAL AVIATION ACT, THE FEDERAL AIRPORT ACT, AND YOUR AGENCY'S APPROPRIATIONS CONSTITUTE CLEAR STATUTORY AUTHORITY TO EFFECT ALTERATIONS, IMPROVEMENTS OR REPAIRS IN RENT-FREE SPACE FOR THE OPERATION OF AIR TRAFFIC CONTROL AND RELATED FACILITIES WITHOUT REGARD TO THE 25 PERCENT LIMITATION. WHEREVER THE CONGRESS HAS INTENDED THAT THE STATUTORY LIMITATION SHOULD NOT APPLY IT HAS USED SPECIFIC LANGUAGE TO AVOID THE OPERATION OF THE 1932 PROHIBITIONS. FOR EXAMPLE, SEE THE ABOVE AMENDMENT OF APRIL 28, 1942, WHICH PROVIDED THAT THE STATUTORY LIMITATIONS SHOULD NOT APPLY DURING WAR, OR A NATIONAL EMERGENCY DECLARED BY CONGRESS OR THE PRESIDENT, TO SUCH LEASES OR RENEWALS OF EXISTING LEASES OF PRIVATELY OR PUBLICLY OWNED PROPERTY AS ARE CERTIFIED BY THE SECRETARY OF WAR (NOW DEFENSE) OR THE SECRETARY OF THE NAVY OR BY SUCH PERSONS AS DESIGNATED BY THEM AS COVERING PREMISES FOR MILITARY, NAVAL, OR CIVILIAN PURPOSES NECESSARY FOR THE PROSECUTION OF THE WAR OR VITAL TO THE NATIONAL EMERGENCY. SEE ALSO, THE ACT OF MAY 6, 1939, 53 STAT. 673, PROVIDING THAT SECTION 322 "SHALL NOT APPLY WITH RESPECT TO THE RENTAL OF TEMPORARY QUARTERS FOR HOUSING FEDERAL ACTIVITIES DURING THE REPLACEMENT OR REMODELING OF BUILDINGS AUTHORIZED UNDER THIS OR PREVIOUS ACTS; SECTION 1A OF THE ACT OF OCTOBER 14, 1940, 54 STAT. 1125 ENTITLED "AN ACT TO EXPEDITE THE PROVISION OF HOUSING IN CONNECTION WITH NATIONAL DEFENSE AND FOR OTHER PURPOSES," WHICH AUTHORIZED THE FEDERAL WORKS ADMINISTRATOR TO ACQUIRE "IMPROVEDOR UNIMPROVED LANDS OR INTERESTS IN LAND BY * * * LEASE (WITHOUT REGARD TO SECTION 322 OF THE ACT OF JUNE 1932, 47 STAT. 412, AS AMENDED, * * *); " SECTION 100 OF THE

SERVICEMAN'S READJUSTMENT ACT OF 1944, AS AMENDED BY THE ACT OF JUNE 22, 1946, 60 STAT. 299, AUTHORIZING THE ADMINISTRATOR OF VETERANS AFFAIRS TO ENTER INTO LEASES OR RENEWALS OF EXISTING LEASES WITHOUT REGARD TO SECTION 322, AS AMENDED; SECTION 210 (A) (5) OF THE FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949, AS AMENDED. 40 U.S.C. 490 (5), AUTHORIZING THE ADMINISTRATOR OF GENERAL SERVICES TO PAY RENTAL AND MAKE REPAIRS, ALTERATIONS AND IMPROVEMENTS WITHOUT REGARD TO THE LIMITATIONS OF 322 WITH RESPECT TO ANY LEASE ENTERED INTO BY OR TRANSFERRED TO GENERAL SERVICES ADMINISTRATION FOR HOUSING OF ANY AGENCY WHICH ON JUNE 30, 1950, WAS SPECIFICALLY EXEMPTED BY LAW FROM SUCH LIMITATIONS; THE ACT OF JULY 15, 1952, PROVIDING THAT APPROPRIATIONS PROVIDED FOR THEREIN FOR ECONOMIC OR TECHNICAL ASSISTANCE AND ALLOCATIONS FROM ANY APPROPRIATIONS TO THE DIRECTOR OF MUTUAL SECURITY, OR THE MUTUAL SECURITY AGENCY OR THE DEPARTMENT OF STATE SHALL BE AVAILABLE FOR QUARTERS OUTSIDE THE CONTINENTAL LIMITS OF THE UNITED STATES TO HOUSE EMPLOYEES OF THE UNITED STATES WITHOUT REGARD TO THE LIMITATIONS OF 322, AS AMENDED; THE SUPPLEMENTAL APPROPRIATION ACT OF SEPTEMBER 27, 1950, 64 STAT. 1044, 1056, PROVIDING FOR EMERGENCY EXPENSES OF GENERAL SERVICES ADMINISTRATION FOR RENTAL OF BUILDINGS OR PARTS OF BUILDINGS IN THE DISTRICT OF COLUMBIA AND ELSEWHERE INCLUDING REPAIRS, ALTERATIONS, AND IMPROVEMENTS WITHOUT REGARD TO 322, AS AMENDED; AND SECTION 210 (A) (8) OF THE FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT, AS AMENDED. 40 U.S.C. 490 (A) (8), AUTHORIZING THE ADMINISTRATOR, GSA, TO REPAIR, ALTER AND IMPROVE RENTED PREMISES WITHOUT REGARD TO THE 25 PERCENTUM LIMITATION UPON HIS DETERMINATION THAT THE EXECUTION OF SUCH WORK, WITHOUT REFERENCE TO SUCH LIMITATIONS IS ADVANTAGEOUS TO THE GOVERNMENT IN TERMS OF ECONOMY, EFFICIENCY, OR NATIONAL SECURITY; AND PUBLIC LAW 74, 82D CONGRESS, 65 STAT. 115, AUTHORIZING THE LEASE AND PURCHASE OF THE YOUNG MAN'S CHRISTIAN ASSOCIATION BUILDING AND PREMISES IN PHOENIX, ARIZONA, WITHOUT REGARD TO THE PROVISIONS OF SECTION 322.

IT IS A WELL-SETTLED PRINCIPLE OF STATUTORY CONSTRUCTION THAT SPECIFIC TERMS COVERING THE GIVEN SUBJECT MATTER WILL PREVAIL OVER GENERAL LANGUAGE OF THE SAME OR ANOTHER STATUTE WHICH MIGHT OTHERWISE PROVE CONTROLLING. KAPNER V. UNITED STATES, 195 U.S. 100, 125. SEE ALSO, BALTIMORE NATIONAL BANK V. STATE TAX COMMISSION, 297 U.S. 209; ABATE V. UNITED STATES, 270 F. 735; NIAGARA FIRE INSURANCE CO. V. RALEIGH HARDWARE CO.; 62 F.2D 705; 50 AM.JUR. 565-6.

IN VIEW OF THE ABOVE SPECIFIC STATUTORY EXEMPTIONS INDICATING THE REQUIREMENT OF SPECIFIC EXCEPTIONS TO THE SECTION 322 LIMITATIONS, AS WELL AS THE APPLICABLE PRINCIPLES OF STATUTORY CONSTRUCTION OUR OFFICE DOES NOT FEEL JUSTIFIED IN CONCLUDING THAT ALTERATIONS, IMPROVEMENTS AND REPAIRS MAY BE MADE TO THE RENT-FREE SPACE WITHOUT CONSIDERATION OF THE 25 PERCENT LIMITATION. AS HERETOFORE INDICATED, SINCE THE RENT-FREE SPACE IN THIS INSTANCE WAS PROVIDED IN THE MANNER CONTEMPLATED BY FORMER SECTION 11 (5) IT WAS CONCLUDED THAT YOUR AGENCY WOULD NOT BE LEGALLY JUSTIFIED IN INCLUDING THE SPACE PROVIDED WITHOUT CHARGE FOR THE PURPOSE OF COMPUTING THE AMOUNT JUSTIFIED FOR REPAIRS, ALTERATIONS AND IMPROVEMENTS TO THE SPACE OCCUPIED ON A REGULAR RENTAL BASIS. WHILE IT MIGHT BE ARGUED THAT FORMER SECTION 11 (5) OF THE FEDERAL AIRPORT ACT OBLIGATED THE SPONSORS TO TAILOR THE RENT-FREE SPACE FURNISHED BY THE AIRPORT SPONSORS COMPLETELY TO THE SPECIAL NEEDS OF THE GOVERNMENT ON A CONTINUING BASIS THE LEGISLATIVE HISTORY DOES NOT SUPPORT SUCH AN INTERPRETATION. ON THE CONTRARY, THE LEGISLATIVE HISTORY INDICATES THAT ALL THAT WAS REQUIRED OF THE SPONSORS WAS THAT THEY MAKE CERTAIN SPACE AVAILABLE FOR WHICH THE GOVERNMENT WOULD NOT "PAY ANY RENTAL" AND THAT THE GOVERNMENT WOULD PROVIDE ITS OWN SPECIAL SERVICES, ETCETERA. THERE IS NOTHING IN THE LEGISLATIVE HISTORY INDICATING THAT IT WAS INTENDED THAT THE SPONSORS, AFTER MAKING THE SPACE AVAILABLE, WOULD BE OBLIGATED TO EFFECT CHANGES IN THE SPACE FROM TIME TO TIME AS MIGHT BE REQUIRED

BECAUSE OF THE CHANGING NEEDS OF THE GOVERNMENT AND FORMER SECTION 11 (5) WILL NOT BE SO INTERPRETED FOR AUDIT PURPOSES. ANY PAYMENTS THAT MAY BE MADE FOR CHANGES IN THE SPACE FURNISHED BY THE SPONSORS WITHOUT CHARGE AFTER ACCEPTANCE BY THE GOVERNMENT AS "REASONABLY ADEQUATE" WILL BE REGARDED AS PAYMENTS IN KIND IN LIEU OF RENT IN ACCORDANCE WITH THE DECISIONS OF OUR OFFICE WHICH HAVE AUTHORIZED THE COST OF ALTERATIONS, IMPROVEMENTS AND REPAIRS ON RENT-FREE OR NOMINAL RENT PROPERTY UP TO 15 PERCENT OF THE FAIR MARKET VALUE OF THE RENTED PREMISES AT DATE OF THE LEASE. 21 COMP. GEN. 906.

ACCORDINGLY, IN ANSWER TO THE TWO QUESTIONS SUBMITTED, YOU ARE ADVISED THAT (A) IF THE AGGREGATE EXPENDITURES FOR ALTERATIONS, IMPROVEMENTS AND REPAIRS EXCEED 15 PERCENT OF THE FAIR MARKET VALUE OF RENT-FREE SPACE AT DATE OF THE LEASE OUR OFFICE WOULD BE REQUIRED TO TAKE EXCEPTION TO SUCH EXCESS PAYMENTS BUT THAT, (B) IF THE EXPENDITURES FOR SUCH CHANGES AGGREGATE 15 PERCENT OR LESS THAN THE FAIR MARKET VALUE OF THE RENT-FREE SPACE AT THE DATE OF THE LEASE, OUR OFFICE WOULD NOT BE REQUIRED TO TAKE EXCEPTION TO SUCH PAYMENTS.