

Intro. Res. No. 1766-2009  
Introduced by Presiding Officer, on request of the County Executive

Laid on Table 8/18/2009

**RESOLUTION NO. 803 -2009, AUTHORIZING A LEASE  
AGREEMENT WITH NORTHSIDE HANGARS, FOR USE OF  
PROPERTY AT FRANCIS S. GABRESKI AIRPORT**

**WHEREAS**, Suffolk County owns and through its Department of Economic Development and Workforce Housing operates and maintains Francis S. Gabreski Airport in Westhampton; and

**WHEREAS**, Northside Hangars has submitted an application to develop 2.59 acres of property for the purpose of constructing aircraft hangars; and

**WHEREAS**, this project is in compliance with the adopted 1990 Airport Master Plan Update, the 2008 Airport Master Plan Draft Update, the 1995 Central Pine Barrens Comprehensive Land Use Plan, the 1992 Long Island Comprehensive Special Groundwater Protection Area Plan, the 1999 Town of Southampton Comprehensive Update Implementation Strategies Plan and the Town of Southampton Aquifer Protection Overlay District requirements; and

**WHEREAS**, through Executive Order 26-2006 the County Executive created the Airport Conservation and Assessment Panel (ACAP), comprised mostly of local community group representatives, to evaluate applications for proposed leases, lease renewals, lease extensions, lease modifications and licenses and to issue formal recommendations to the County Executive, the CEQ and the County Legislature; and

**WHEREAS**, the Airport Conservation and Assessment Panel reviewed the proposed development and recommends that the lease be approved as noted in the Panel's written recommendations attached as Exhibit A; and

**WHEREAS**, through resolution 791-2007 the Suffolk County Legislature as SEQRA Lead Agency determined that the proposed development by Northside Hangars, constitutes a Type I Action for which they issued a determination on Non-Significance and therefore SEQRA is complete; and

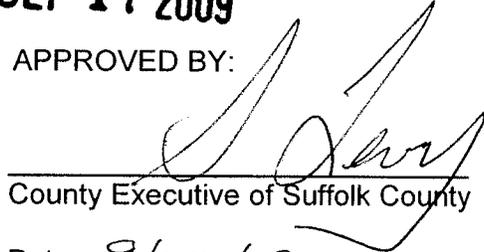
**WHEREAS**, the lease agreement, for 30 years at an initial annual lease rate of \$18,648, is submitted for legislative consideration; now, therefore be it

**1<sup>st</sup>** **RESOLVED**, that the County Executive or his designee, is authorized to execute a license agreement for the use of the above described property between Northside Hangars and the County of Suffolk, in substantial accordance with the agreement annexed as Exhibit B.

DATED:

**SEP 17 2009**

APPROVED BY:

  
\_\_\_\_\_  
County Executive of Suffolk County

Date: 9/25/09

# EXHIBIT "A"

Airport Conservation and Assessment Panel  
Report of  
May 2, 2007 Meeting

## Northside Hangars, Inc.:

### Background:

On May 9, 2006, Suffolk County Executive Order No. 26-2006 created the Airport Conservation and Assessment Panel (ACAP). The panel is charged with evaluating applications for leases, lease renewals, extensions and modifications, licenses, and issuing recommendations to the County Legislature, the CEQ and County Executive on the environmental, economic and community impacts of a lease or license application at Gabreski Airport and to report its advisory findings and recommendations to the above parties.

The scope of the ACAP review shall be limited to assessing applications and proposals for the environmental compatibility and economic benefit to the people of the County of Suffolk and are in the public interest as a support, advance, or enhancement of a specifically articulated public policy objective.

A meeting of ACAP was held at 3:30 PM on May 2, 2007 to review the Northside Hangars, Inc. application submitted on April 2, 2007.

### Summary of SEQRA Recommendations/ACAP Findings:

Based on our assessment of the rules governing the implementation of SEQRA, we find the subject application to be an unlisted action.

A Negative Declaration is recommended.

### Recommendations:

There is no objection to the approval of this application contingent on the following conditions:

The hangars to be constructed are for private owner operator use only; the applicant agrees that no portion of the premises will be used for on-demand charter service or by any other commercial use tenant.

Term of the lease is recommended to be 30 years. At the termination of the 30 years the buildings are to revert back to the County. The tenant will then have the option to lease both the land and the existing buildings for another 30 year term based on their market value.

Any modification or alteration of this space must have the prior approval of ACAP, CEQ, the County of Suffolk and/or any other entity endowed in the future with oversight of airport lease applications.

Any proposed reassignment of the lease requires review and approval by ACAP, CEQ, the County of Suffolk and/or any other entity endowed in the future with oversight of airport lease applications.

Voluntary Noise Abatement Procedures – signage on site is to provide instructions to conform with current voluntary noise abatement procedures. Noise abatement procedure documents must be provided to all subtenants and be included in the applicant's lease and any/all subsequent subleases of individual hangars.

Waste Oil Removal – signage must provide complete instructions as to the proper removal of waste oil from the site to conform with regulations of the NYSDEC and the County of Suffolk and such language is to be included in the lease.

Tenant will be required to connect to waste treatment lines when the system becomes available.

Lease boundaries are to provide for adequate setbacks.

Parking spaces - The number of parking spaces will be determined by Suffolk County and will conform to code and regulations to include handicapped access.

# EXHIBIT "B"

FRANCIS S. GABRESKI

LEASE AGREEMENT

between

COUNTY OF SUFFOLK

and

NORTHSIDE HANGARS

Date: \_\_\_\_\_, 2009

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## LEASE AGREEMENT

THIS AGREEMENT, made as of @, by and between the COUNTY OF SUFFOLK, a municipal corporation whose address is COUNTY Center, Riverhead, New York (hereinafter the "COUNTY"), acting through its duly constituted Department of Economic Development and Workforce Housing, Aviation Division (hereafter "Airport Management"), located at Francis S. Gabreski Airport, Administration Building # 1, Westhampton Beach, New York 11978 and Northside Hangars, with an address at 1725 Hobart Road, Southold, NY 11971, (hereinafter called the "TENANT");

### WITNESSETH, THAT:

NOW, THEREFORE, in consideration of the mutual agreements and respective promises herein contained and made by the parties hereto, the parties hereby agree, effective as the last date of execution below (the "Effective Date" of this Agreement) unless otherwise stated, as follows:

#### Section 1. Term

The "Term" of this Agreement and TENANT's obligation to pay rent shall commence within sixty (60) days after a building permit is issued by the Suffolk County Department of Public Works (DPW) (the "Commencement Date"). This is being done in anticipation of the Federal Aviation Administration (FAA) review and approval of the Notice of Proposed Construction on Airports form (7460-1). Upon FAA approval, DPW will issue a building permit based on plans that have been submitted, reviewed, and approved by their department. Upon issuance of a building permit, construction must commence in accordance with the time schedule included in Exhibit D. The FAA 7460-1 must be completed by the tenant and submitted to Airport Manager as soon as possible, but no later than 60 days after the Effective Date.

The Term shall expire at 5:00 p.m. on the last day of the month on the thirtieth (30th) anniversary of the Commencement Date (the "Expiration Date"), or on such earlier date that this Agreement may terminate or expire as provided for herein; provided, however, that if such date does not fall on a "Business Day," defined below, then this Agreement shall end on the next Business Day.

For the purposes of this Agreement, and any agreements supplemented to this Agreement, the term "Business Day" shall mean any day except a Saturday, a Sunday, or any day in which commercial banks are required or authorized to close in Suffolk County, New York.

#### Section 2. Space

*Section 2.01* On and after the Effective Date, and in consideration of and subject to the terms, covenants, agreements, provisions, conditions, and limitations set forth in this Agreement, the COUNTY hereby agrees to lease to TENANT approximately 2.59 acres, as identified in the legal description attached hereto, and made a part hereof and designated "Exhibit A," and as further identified on the survey map attached hereto as "Exhibit B," together with all buildings, structures, improvements, additions, and permanent installations constructed and installed or to be constructed and installed therein, thereon, or there under during the term of this Agreement.

*Section 2.02* TENANT accepts the entire Space in its "as is" physical condition without any representation or warranty by the COUNTY as to the condition thereof or as to the use or occupancy which may be made thereof under any existing or future law, rule, regulation, or ordinance.

### Section 3. Purpose

*Section 3.01* The parties hereto acknowledge that the COUNTY is a municipal corporation and is entering into and executing this Agreement by virtue of the authority of Resolution No. \_\_\_\_-2009 of the Suffolk County Legislature, dated the \_\_\_\_ day of \_\_\_\_\_, 2009 (the "**Resolution**"), for the use, purpose and intent expressed in the Resolution, that the Resolution is incorporated herein by reference, and further that TENANT has examined the Resolution and is fully aware of the intended purpose thereof.

*Section 3.02* In accordance with applicable federal, state and local laws, rules and regulations, TENANT shall use and occupy the Space for the following purposes only and for no other purpose whatsoever:

- (1) For the storage, and maintenance, repair, assembly and other purposes directly related to TENANT's aircraft only as stipulated in Federal Aviation Regulations Part 43.3(g), Appendix A, and Section 21 of this Agreement.
- (2) For the parking of automobiles and other vehicles operated by TENANT and permitted subtenants, invitees and business visitors; it being understood that all parking of vehicles on areas of the Space shown on Exhibit C, the "Site Plan," shall not be for long term storage and is subject to the prior written, and continuing approval of Airport Management;
- (3) For the parking and tie-down storage of aircraft;

*Section 3.03* In the use of the Space, TENANT has read and agrees to observe, obey and abide by all reasonable ordinances, the "Airport Rules and Regulations" (defined at Section 21), the "Minimum Standards" (defined at Section 21), and any other directives of Airport Management or other governmental authorities including the Federal Aviation Administration and the Transportation Security Administration, applicable to the Space, and the common and joint use of the Airport Facilities and the maintenance and conduct of all operations thereon, which are now or may hereafter be imposed or promulgated by the County of Suffolk or any such other governmental authority with control over the Airport.

*Section 3.04* TENANT's use of the Space shall be subject to, and in accordance with all rules, regulations, laws, ordinances, statutes, and requirements of all governmental authorities and any Fire Insurance Rating Organization, Board of Fire Underwriters, and/or similar bodies having jurisdiction thereof. TENANT shall insure that the use of the Space shall remain in compliance with all applicable laws, including the American Disabilities Act, the Department of Health, and Article 28 of the New York State Public Health Law, if applicable, throughout the term of this Agreement.

### Section 4. Rent

*Section 4.01* "Annual Rent" for the Space for the first year of the Term shall be EIGHTEEN THOUSAND SIX HUNDRED FORTY EIGHT DOLLARS and XX/100 (\$18,648.00) annually, or ONE THOUSAND FIVE HUNDRED FIFTY FOUR and XX/100 (\$1,554.00) Dollars per month payable by the TENANT to the COUNTY, at the address first set forth above for the Airport Manager, or at such other place designated by the COUNTY in writing, in equal monthly installments, in advance, on the first day of each calendar month during the Term, beginning on the Commencement Date. Partial months shall be prorated.

*Section 4.02* Commencing on the first anniversary date of the Commencement Date, and on each anniversary date thereafter, Annual Rent shall increase by two and one half (2.5%) percent over the Annual Rent in the preceding year.

*Section 4.03* The COUNTY reserves the right from time to time, at its option, to request appraisals of the Space for the purpose of adjusting Annual Rent according to the following provisions:

- (a) The COUNTY shall notify TENANT in writing that it is requesting appraisal of the Space. No request for an appraisal shall be made by the County prior to the tenth (10<sup>th</sup>) anniversary date of the Commencement date, and no subsequent request may be made until the expiration of ten (10) years from the preceding request pursuant to which an appraisal has been made.
- (b) New rental rates, if any, will be determined considering real estate appraisals, prepared by MIA certified appraisers, obtained by the COUNTY in the year prior to the effective dates of such new rates. The Space shall be appraised at its fair market value as if unencumbered and free of this Agreement, and based on the condition of the Space at the time of execution of this Agreement, and excluding any improvements constructed on the Space by the TENANT pursuant to the terms of this Agreement, and shall be based upon comparable properties within New York airports, if available. If not available, then fair market value shall be based upon comparable properties at comparable airports outside the State of New York, where such information is available.
- (c) Notwithstanding any increase in Annual Rent by reason of appraisal hereunder, the Annual Rent shall continue to be subject to subsequent annual increases as provided in *Section 4.02*.
- (d) It is agreed that any appraiser selected to conduct an appraisal of the Airport shall be selected by the COUNTY. In the event TENANT objects to the appraisal, TENANT shall have the right to hire an appraiser at TENANT's sole cost and expense to perform an independent appraisal. To the extent that the discrepancy between TENANT's appraisal and the COUNTY's appraisal is ten (10%) percent or greater, the appraisals shall be averaged, and the average shall be used to calculate the Annual Rent. In the event the discrepancy between TENANT's appraisal and the COUNTY's appraisal is less than ten (10%) percent, the COUNTY's appraisals shall be used to calculate the Annual Rent. In no event shall the rent adjustment to Annual Rent be less than 2.5%.

*Section 4.04* Any sums, charges, fees, expenses, or amounts to be paid by TENANT pursuant to the provisions of this Agreement other than Annual Rent, shall be designated as and deemed to be "**Additional Rent**" and shall be payable by TENANT to COUNTY within thirty (30) days after COUNTY gives TENANT written notice that such payment is due. COUNTY shall have the same rights against TENANT for default in the payment of Additional Rent as for default in the payment of Annual Rent.

*Section 4.05* TENANT further understands and agrees that, in the event the Agreement is terminated, TENANT's obligation to pay the amounts due the COUNTY under *Section 4* hereof through the date of termination shall survive such termination of the Agreement and shall remain in full force and effect until such amounts are paid. TENANT hereby specifically acknowledges that neither the survival of the obligation with respect to any such amounts nor any other provision of the Agreement

shall grant or shall be deemed to grant any rights whatsoever to TENANT to have the term of the Agreement extended for any period beyond the end of the term as provided in Section 1 hereof, or affect in any way the COUNTY's right to terminate the Agreement under Section 30 hereof.

*Section 4.06* Should TENANT neglect to pay any charges for services supplied by the COUNTY (if any) when the same become due and payable, then the amount of said charges shall forthwith become Additional Rent and shall under all circumstances and conditions be considered and be collectible as such.

*Section 4.07* TENANT agrees to pay any taxes, assessments, or Payments In Lieu of Taxes ("PILOTS") which may be lawfully levied against TENANT's occupancy or use of the Space or any improvements placed thereon. Should any governmental authority require that a tax, assessment, and PILOT be paid by TENANT but collected by the COUNTY, for and on behalf of said government authority, and from time to time forwarded by the COUNTY to such governmental authority, the same shall be paid by TENANT to COUNTY when billed.

*Section 4.08* TENANT shall pay all Rent without set-off, abatement, deductions, defense or claims, except as specifically set forth herein, to COUNTY at COUNTY's address set forth herein or at such other place as COUNTY may designate in writing in lawful currency of the United States of America. All remittances shall be made payable to "Suffolk County Treasurer's Office."

## **Section 5. Security Deposit**

*Section 5.01* Upon execution and delivery of this Agreement by TENANT to the COUNTY, TENANT shall deposit with Airport Management, as security for the faithful performance and observation by TENANT of the terms, provisions, covenants, and conditions of this Agreement, and any modification, extension, or renewal thereof, the sum of \$15,000.00 (such security deposit shall hereafter be called the "Security"). The Security may be paid by TENANT, in TENANT's sole discretion by: (i) cashier's check, wire transfer; (ii) posting of a surety bond with a surety licensed to do business in the State of New York, in a form approved by Airport Management, which approval will not unreasonably be withheld; or (iii) an irrevocable letter of credit with an institutional lender, guaranteed by an independent, third party, which shall be acceptable to the County, which acceptance shall not unreasonably be withheld.

*Section 5.02* If TENANT defaults in its payment of rent or performance of any of its other obligations under Agreement, and any renewals or extensions thereof, COUNTY may, at its sole option, whether before or after enforcing its remedies against the TENANT under this Agreement, retain, use or apply the whole or any part of the Security to the extent required for payment of any: (i) Annual Rent; (ii) Additional Rent; (iii) Any other amounts TENANT is obligated to pay under the Agreement; (iv) Any amount that COUNTY may expend or may be required to expend by reasons of TENANT's Default of this Agreement; (v) Loss or damage that COUNTY may suffer by reason of TENANT's default, including, without limitation, any damages incurred by COUNTY, whether such damages accrue before or after summary proceedings or other reentry by COUNTY; or (vi) Costs incurred by COUNTY in connection with the cleaning or repair of the Space upon the expiration or earlier termination of this Agreement.

*Section 5.03* (a) In no event shall COUNTY be obligated to apply the Security to rent obligations of TENANT. In addition, the application of the Security is not a prerequisite COUNTY's right to resort to its remedies against TENANT under this Agreement or by law or in equity.

(b) COUNTY's right to resort to its remedies under this Agreement, including, but not limited to, its right to bring an action or special proceeding to recover damages, or to obtain possession of the Space, whether before or after COUNTY terminates this Agreement for nonpayment or for any other reasons, or by law or in equity, shall not be affected by COUNTY's decision not to apply the Security.

*Section 5.04* The Security shall not be a limitation on COUNTY's damages or other rights and remedies available under this Agreement or at law or equity; nor shall the Security be a payment of liquidated damages.

*Section 5.05* The Security shall not be an advance payment of the rent.

*Section 5.06* If COUNTY uses, applies, or retains all or any portion of the Security, TENANT shall restore the Security to its original amount with thirty (30) days after written demand from COUNTY. TENANT shall be in Default of this Agreement if TENANT fails to timely comply with this *Section 5.06*.

*Section 5.07* After the expiration or earlier termination of this Agreement, and upon the condition that TENANT shall not be in Default under any part of this Agreement, as this Agreement may have been amended, and upon written request therefore by TENANT, the COUNTY will return the deposit to TENANT, less the amount of any and all unpaid claims and demands (including estimated damages) of the COUNTY by reason of any Default or breach by TENANT of this Agreement or any part thereof. TENANT agrees that it will not assign or encumber the deposit. TENANT may collect or receive any interest paid on cash deposited in interest-bearing bank accounts, less any part thereof or amount which the COUNTY is or may hereafter be entitled or authorized by law to retain or to charge in connection therewith, whether as or in lieu of an administrative expense, or custodial charge, or otherwise provided.

*Section 5.08* The acceptance by COUNTY of the Security submitted by TENANT shall not render this Agreement effective unless and until COUNTY delivers to TENANT a fully executed copy of this Agreement.

#### **Section 6. Time of Payment and Computation of Amounts**

*Section 6.01* TENANT shall pay to the COUNTY the monthly payments of the Rent, as specified in Section 4 hereof, within ten (10) days of invoicing by the COUNTY, until the termination of this Agreement; provided, however, if this Agreement is terminated on other than the last day of the month, the last payment shall be the then-effective monthly rent, prorated in the same proportion as the number of days the Agreement was in effect in the month during which such termination takes place.

*Section 6.02* If this Agreement is terminated on other than the last day of the term, the County shall refund any prepaid rent to TENANT.

*Section 6.03* Nothing contained in the foregoing shall affect the survival of the obligation of TENANT as set forth in the Sections of this Agreement covering the survival of TENANT's obligations.

#### **Section 7. Late Charges**

*Section 7.01* If TENANT should fail to pay any amount required to be paid by TENANT under this

Agreement within ten (10) days of the due date for such payment to the COUNTY, including without limitation, any payment of fees or any payment of utility or other charges, or if any such amount is found to be due as the result of an audit, then, in such event, the COUNTY may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount, in the amount of 2.5% of any part of the invoiced amount which has become past due for each thirty (30) day period the subject payment is late. Such penalty shall accrue on the unpaid balance until said unpaid balance is liquidated.

*Section 7.02* Each late charge shall be payable immediately upon demand made at any time therefore by the COUNTY. No acceptance by the COUNTY of payment of any unpaid amount or of any unpaid late charge amount shall be deemed a waiver of the right of the COUNTY of payment of any late charge or late charges payable under the provisions of this Section with respect to such unpaid amount. Each late charge shall be and become additional fees, recoverable by the COUNTY in the same manner and with like remedies as if it were originally a part of the fees payable hereunder. Nothing in this Section is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) any rights of the COUNTY under this Agreement, including without limitation the COUNTY's rights set forth in Section 33 of this Agreement or (ii) any obligations of TENANT under this Agreement. In the event that any late charge imposed pursuant to this Section shall exceed a legal maximum, such late charge payable under this Agreement shall be payable instead at such legal maximum.

#### **Section 8. Construction by TENANT**

*Section 8.01* TENANT hereby agrees to design and construct hangar and aircraft facilities along with the installation of related facilities, parking, improvements, and permanent installations therein, thereon, or thereunder in accordance with this Agreement and published Airport Development Standards, and as more fully described in the "Site Plan", attached hereto as Exhibit C. TENANT reserves the right to submit proposals for changes to the Site Plan to the COUNTY for its prior written approval, as the Interim Plans and Specifications are completed, and that the square footages set forth above may be modified by TENANT with the prior written approval of the COUNTY, with the caveat that modifications shall not deviate in any substantial form with the Site Plan. Such design, construction and installation shall be performed and completed in accordance with the Construction Schedule attached hereto as Exhibit D. Substantial completion of all design, construction and installation, as reasonably determined by the County, shall be performed in accordance with the "Construction Schedule." With respect to TENANT's obligation to substantially complete all work in accordance with said Construction Schedule, time is of the essence. By executing this Agreement, TENANT confirms that the Construction Schedule sets forth a reasonable time period for performing the "Construction Work", defined at *Section 8.04*.

*Section 8.02* Within one hundred and eighty (180) days from the Effective Date, TENANT shall, in accordance with *Sections 8.03 through 8.10* hereof, submit to the COUNTY for its approval TENANT's "Interim Plans and Specifications" for the design, construction and installation of a new hangar complex consisting generally of the hangars, aircraft ramp/taxiway facilities, and parking (hereinafter sometimes collectively called the "New Facility").

*Section 8.03* If, as, and when the COUNTY approves said plans ("Final Plans and Specifications") for the New Facility and, upon receipt of requisite permits and approval of FAA Form #7460, Notice of the Proposed Construction to the FAA for approval, TENANT shall proceed expeditiously and with all commercially reasonable diligence to perform, at its own cost and expense, the construction, in accordance with the Final Plans and Specifications and the Construction Schedule of:

- (1) hangars, taxilanes, and related facilities, parking, improvements, and permanent installations;
- (2) all appropriate lines, mains, cables, manholes, wires, conduits, meters and other facilities, on and off the Space, required in connection with or relating to the mechanical, utility, electrical, storm sewer, sanitary sewer, telephone, fire alarm, fire protection, gas and other systems needed for said facilities, including all necessary relocations and upgrades with sufficient capacity for said facilities;
- (3) all necessary roadways, ramps and pedestrian circulation areas, together with all associated and related areas and facilities;
- (4) all necessary aircraft ramp, taxiways and apron areas, together with all associated and related areas and facilities; and
- (5) all grading and paving of ground areas and appropriate landscaping.

*Section 8.04* All of the foregoing design, construction, and installation work shall be performed by TENANT on the Space, and off the said Space subject to approval by Airport Management, where required for the purposes of this Agreement. The foregoing are sometimes collectively referred to herein as the "Construction Work." The New Facility shall be complete and erected wholly within the boundary lines of the Space and shall be and become a part of the Space under this Agreement.

*Section 8.05* If TENANT is unable to complete any phase of the Construction Work in accordance with the Construction Schedule as set forth on Exhibit D, subject to "Excusable Delays," defined below, then during the period commencing on the first day subsequent to the last day that phase was to be completed and ending on the date which is three (3) months subsequent to said last day for completion of the phase ("TENANT's Extension Period"), annual rent for the Space shall be increased by ten percent (10%) per month, until such facilities are completed; provided, however, that (i) TENANT's Extension Period shall be extended by one day for each day of delay in TENANT's completing that phase of construction which results from a COUNTY Delay or Excusable Delays and (ii) the number of days for which TENANT is required to pay COUNTY the increased rent shall be reduced, pro rata, by one day for each day of delay in TENANT's completing the construction which results from a COUNTY Delay or Excusable Delays. TENANT shall, within ten (10) days from the beginning of any such delay, provide notice to COUNTY of the causes of the delay. This remedy is not exclusive, but is in addition to any other remedies and damages that may be available under this Agreement or at law.

*Section 8.06* As used in this Agreement, the term "Excusable Delays" means delays to the Construction Schedule, as extended by *Section 8.05*, at any time thereafter, arising without the fault or negligence of TENANT or TENANT's contractors, subcontractors, and suppliers, and shall include, without limitation: Acts of God or of the public enemy, fire, floods, unusual severe weather, epidemics, quarantine restrictions, strikes, labor disputes, major material shortages preventing procurement of such materials, riots, war insurrection, inaction or delay by governmental authorities on permits or other necessary government actions or approvals, or other unforeseeable causes beyond the control and without the fault or negligence of TENANT, its contractors, and subcontractors. The term "Excusable Delays" shall also mean any delays to the Construction Schedule approved in advance by the County, which approval shall be in writing.

*Section 8.07* The Interim Plans and Specifications shall be submitted by TENANT to the COUNTY for its approval and the COUNTY may refuse to grant approval if, in its opinion, any of the proposed

Construction Work as set forth in said Interim Plans and Specifications (all of which shall be in such detail as may reasonably permit the COUNTY to make a determination as to whether the requirements hereinafter referred to are met) would:

- (1) be structurally unsound or unsafe or hazardous for human occupation or improper for the use and occupancy for which it is designed;
- (2) not comply with all the requirements of this Agreement;
- (3) not comply with the COUNTY's standards for harmony of external architecture of similar or future construction at the Airport;
- (4) not comply with the standards set by the COUNTY with respect to utility or rentability;
- (5) be so located that there will not be sufficient clearance in respect to existing or planned projecting aprons, runways, or taxiways adjacent thereto;
- (6) be designed for use for purposes other than those for which TENANT is permitted to use the Space under this Agreement;
- (7) be in violation of any local code, law, ordinance, enactment, resolution, regulation, rule, or order of any governmental authority having jurisdiction over the Airport if the COUNTY were a private corporation;
- (8) set forth ground elevations or heights other than those that are consistent with the proper operation and use of the Airport;
- (9) not provide adequate circulation arteries for vehicular and pedestrian traffic and firefighting equipment;
- (10) not be at locations or not be oriented in accordance with the approved comprehensive plans for the Airport;
- (11) not comply with requirements of the Suffolk County Department of Public Works, the Suffolk County Department of Health Services or other "Legal Requirements," defined below;
- (12) not substantially comply with the Site Plan.

*Section 8.08* For the purposes of this Agreement, the term "Legal Requirements" means applicable laws, statutes, and ordinances, and the orders, rules, regulations, directives, and requirements of all federal, state, county departments, bureaus, boards, agencies, offices, commissions, and other subdivisions thereof, or of any official thereof, or of any other governmental, public or quasi-public authority, whether now or hereafter in force, and all requirements, obligations and conditions of all instruments of record which may be applicable to the Space or any part thereof or the sidewalks, curbs, or areas adjacent thereto.

*Section 8.09* In the event it is permissible for any mechanics' or other liens to be filed against any portion of the Space by reason of TENANT's acts or omissions or because of a claim against TENANT, upon expiration or early termination of this Agreement, TENANT shall cause the same to

be cancelled or discharged of record by bond or otherwise within thirty (30) days after notice from COUNTY of the filing thereof and TENANT shall indemnify and save the COUNTY harmless from and against all costs, liabilities, suits, penalties, claims and demands, including reasonable attorneys' fees, resulting there from. If TENANT shall fail to cancel or discharge said lien or liens within said 30-day period, COUNTY may cancel or discharge the same and upon COUNTY's demand, TENANT shall reimburse the COUNTY for the costs or expenses thereof, within thirty (30) days after receipt of an invoice therefore. Nothing contained in this Agreement shall be deemed or construed in any way as constituting the consent or request of the COUNTY, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to or repair of the Space or any part thereof, nor as giving TENANT any right, power or authority to contract for or permit the rendering of such services of the furnishing of any materials that would give rise to the filing of any lien against the Space or any part thereof and TENANT.

*Section 8.10* All the Construction Work shall be done in accordance with the following terms and conditions:

- (1) TENANT hereby assumes the risk of loss or damage to all of the Construction Work prior to the completion thereof and the risk of loss or damage to all property of the COUNTY arising out of or in connection with the performance of the Construction Work. In the event of such loss or damage, TENANT shall forthwith repair, replace and make good the Construction Work and the property of the COUNTY without cost or expense to the COUNTY. TENANT shall itself and shall also require its contractors to indemnify and hold harmless the COUNTY, its officers, agents and employees from and against all claims and demands, just or unjust, of third persons (including employees, officers, and agents of the COUNTY) arising or alleged to arise out of the performance of the Construction Work and for all expenses, (whether or not such claims, demands, causes of action, liabilities, etc., are made or asserted before or after termination or expiration of this Agreement) incurred by it and by them in the defense, settlement, or satisfaction thereof: including without limitation thereto, claims and demands for death, for personal injury or for property damage (to include reasonable attorneys. and other professional fees) direct or consequential, whether they arise out of or from the acts or omissions of TENANT, of any contractors of TENANT, of the COUNTY or of third persons, or from acts of God or of the public enemy, or otherwise excepting only claims and demands which result solely from willful acts done by the COUNTY, its officers, agents and employees subsequent to the commencement of the Construction Work.
- (2) All Construction Work shall be done substantially and materially in accordance with the Final Plans and Specifications to be submitted to and approved by the COUNTY prior to the commencement of the Construction Work, and until such approval has been obtained TENANT shall continue to resubmit plans and specifications as required. Upon approval of such plans and specifications TENANT shall proceed diligently at its sole cost and expense to perform the Construction Work. All the Construction Work, including workmanship and materials, shall be of first class quality. TENANT shall re-do, replace or reconstruct at its own cost and expense, any of the Construction Work not done in accordance with the Final Plans and Specifications, the provisions of this Section or any further requirements of the COUNTY made in accordance with this Agreement, so long as the COUNTY has advised TENANT that the work was not

done in accordance with the Final Plans and Specifications within sixty (60) days of TENANT's certification to the COUNTY of the substantial completion of such work or any phase thereof.

- (3) TENANT agrees to be solely responsible for any plans and specifications used by it and for any loss or damages resulting from the use thereof: notwithstanding the same having been approved by the COUNTY and notwithstanding the incorporation therein of COUNTY recommendations or requirements. Notwithstanding the requirements for approval by the COUNTY of the contracts to be entered into by TENANT or the incorporation therein of the COUNTY requirements or recommendations, and notwithstanding any rights the COUNTY may have reserved to itself hereunder, the COUNTY shall have no liabilities or obligations of any kind to any contractors engaged by TENANT or for any other matter in connection therewith and TENANT hereby releases and discharges the COUNTY, its officers, representatives, and employees of and from any and all liability, claims for damages or losses of any kind, whether legal or equitable, including reasonable attorney's fees and other professional fees, or from any action or cause of action arising or alleged to arise out of the performance of any of the Construction Work pursuant to the contracts between TENANT and its contractors. Any warranties contained in any construction contract entered into by TENANT for the performance of the construction work hereunder shall be for the benefit of the COUNTY as well as TENANT.
- (4) The COUNTY shall have the right, but no obligation, through its duly designated representatives, to inspect the Construction Work and the plans and specifications thereof, at any and all reasonable times during the progress thereof and from time to time, in its discretion, to take samples and perform testing on any part of the Construction Work, but the taking of samples and testing shall be conducted so as to minimize interference with the Construction Work, if such minimization of impact can be accomplished without diminishing the effectiveness or accuracy of the samples and or tests. To the extent such inspections and/or taking of samples and/or testing causes any delays to the Construction Work, same shall constitute an Excusable Delay as if set forth in *Section 8.05*. In the event that any such inspection, sample or test reveals a discrepancy, COUNTY shall inform TENANT in writing thereof within fifteen (15) day.
- (5) TENANT shall furnish the COUNTY with test reports and/or certifications which may be required to determine whether the Construction Work meets or exceeds the design standards.
- (6) TENANT agrees that it shall deliver to the COUNTY a complete set of final "hard-copy" as-built construction drawings (capable of being reproduced) of the Construction Work and shall during the term of this Agreement keep said drawings reasonably current showing thereon any changes or modifications which may be made. At TENANT's sole cost and expense, TENANT shall also provide CADD files, compatible with Airport Management computer systems, to reflect all new as-built information. No material or substantial changes or modifications shall be made to the Space without the COUNTY's prior written approval.
- (7) TENANT shall, if requested by the COUNTY, take all reasonable measures to prevent erosion of the soil and the blowing of sand and soil during the performance

of the Construction Work, including but not limited to, the fencing of the Space or portion thereof and the covering of open areas with asphaltic emulsion or similar materials as the COUNTY may direct.

- (8) TENANT shall pay or cause to be paid all claims lawfully made against it by its contractors, subcontractors, tradespersons and workers, and all claims lawfully made against it by other third persons arising out of or in connection with or because of the performance of the Construction Work, and shall cause its contractors and subcontractors to pay all such claims lawfully made against them; provided, however, that nothing herein contained shall be construed to limit the right of TENANT to contest any claim of a contractor, subcontractor, tradespersons, workman, or other person and no such claim shall be considered to be an obligation of TENANT within the meaning of this Section unless and until the same shall have been finally adjudicated. TENANT shall use its best efforts to resolve any such claims and shall keep the COUNTY fully informed of its actions with respect thereto.
- (9) In the event it is permissible for any mechanics' or other liens to be filed against any portion of the Space by reason of TENANT's acts or omissions or because of a claim against TENANT, TENANT shall cause the same to be cancelled or discharged of record by bond or otherwise within sixty (60) days after notice from COUNTY of the filing thereof and TENANT shall indemnify and save the COUNTY harmless from and against all costs, liabilities, suits, penalties, claims and demands, including reasonable attorneys' fees, resulting there from. If TENANT shall fail to cancel or discharge said lien or liens within said 90-day period, COUNTY may cancel or discharge the same and upon COUNTY's demand, TENANT shall reimburse the COUNTY for the costs or expenses thereof, within thirty (30) days after receipt of an invoice therefore.
- (10) Nothing contained herein shall grant or be deemed to grant to any contractor, architect, supplier, subcontractor, or any other person engaged by TENANT or any of its contractors in the performance of any part of the Construction Work, any right of action or claim against the COUNTY, its officers, agents and employees with respect to any work any of them may do in connection with the Construction Work.
- (11) Nothing contained herein shall create or be deemed to create any relationship between the COUNTY and any such contractor, architect, supplier, subcontractor, or any other person engaged by TENANT or any of its contractors in the performance of any part of the Construction Work and the COUNTY shall not be responsible to any of the foregoing for any payments due or alleged to be due thereto for any work performed or materials purchased in connection with the Construction Work.
- (12) When the Construction Work is substantially completed and is ready for use by TENANT, TENANT shall advise the COUNTY to such effect and shall deliver to the COUNTY a certificate executed by an authorized officer of TENANT certifying, to the best of their knowledge and belief, that the Construction Work has been constructed strictly in accordance with the approved plans and specifications and the provisions of this Agreement, and in compliance with all applicable laws, ordinances and governmental rules, regulations and orders. TENANT shall correct,

modify, or redo any item that has not been substantially or materially completed in accordance with the approved plans and specifications. Thereafter, the Construction Work will be inspected within forty-five (45) days by the County. If the same has been completed as specified by TENANT, a certificate to such effect shall be timely delivered to TENANT, by the County, subject to the condition that all risks thereafter with respect to the Construction Work and installation of the same and any liability therefore for negligence or other reason shall be borne by TENANT. TENANT shall not use or permit the use of the Construction Work for the purposes set forth in this Agreement until such certificate is received from the COUNTY.

- (13) The Construction Work shall be conducted in such a manner that there will be at all times a commercially reasonably defined minimum of air pollution, water pollution, or any other type of pollution and a minimum of noise emanating from or arising out of or resulting from the operations of TENANT under this Section. Accordingly, and in addition to all other obligations imposed on TENANT under this Agreement and without diminishing, limiting, modifying, or affecting any of the same, TENANT shall be obligated to construct as part of the Construction Work hereunder such necessary or appropriate systems to accomplish the foregoing and all of the foregoing shall be covered under the plans and specifications of TENANT and shall be part of the Construction Work hereunder.

- a. TENANT will be permitted to place a temporary trailer on the leased premises for the purposes of establishing a construction administrative office upon written approval of Airport Management. The trailer must be removed no later than thirty (30) days from the last date of construction, final inspection date by the COUNTY, or as required in writing by Airport Management.

- (14) TENANT hereby acknowledges that the COUNTY may/has construct(ed) security fencing to secure and prevent inadvertent entry onto the aeronautical areas of the Airport. TENANT hereby agrees, during all phases of Construction Work and at all times during the term of this Agreement, to design and construct, at its sole cost and expense, such further fencing as may be necessary to maintain said security fencing.

- (15) TENANT acknowledges and agrees to comply with the prevailing wage requirements for all of TENANT's Work in connection with the construction and preparation of the Improvements, including, but not limited to, the building, land, parking lot, and all other portions of the Premises. No person performing, aiding in, or assisting in TENANT's construction of the Improvements shall be paid less than the said prevailing rates as defined and utilized under Section 220 of the Labor Law. The wages to be paid shall not be less than the prevailing rate of wages and supplements as set forth by law.

- a. TENANT, its contractors, and subcontractors shall file transcripts of original payrolls for the construction of the Improvements under this Lease, in connection with the construction and preparation of the entire Premises, with the Department, within ten (10) days after its first payroll, and every thirty days thereafter, said payroll transcripts to be subscribed and affirmed as true under penalty of perjury. TENANT, its contractors and subcontractors, shall keep their books open for inspection by representatives of the Suffolk County Department

of Audit and Control and/or its representatives, including the Office of the District Attorney, on a monthly basis during the construction of the Improvements, to ensure that TENANT, its contractors and subcontractors are in compliance with these terms and conditions, provided that twenty-four (24) hour-notice is given to TENANT, its contractors and/or subcontractors prior to the inspection.

- b. TENANT agrees that it shall include clauses in all of its agreements with its contractors and subcontractors for the construction of the Improvements stating that: (i) said contractors and subcontractors shall pay prevailing wages, as agreed to in this Lease between County of Suffolk and the TENANT; (ii) said contractors and subcontractors shall file transcripts of original payrolls for all work performed in connection with the construction and preparation of the Improvements under this Lease with the Department within ten (10) days after its first payroll, and every thirty days thereafter, said transcripts to be subscribed and affirmed as true under penalty of perjury and (iii) TENANT, its contractors, and subcontractors shall keep their books open for inspection by representatives of the Suffolk County Department of Audit and Control and/or its representatives, including the Office of the District Attorney, on a monthly basis during the construction of the Improvements to ensure that TENANT, its contractors and subcontractors are in compliance with these terms and conditions, provided that twenty-four (24) hour-notice is given to TENANT, its contractors and/or subcontractors prior to the inspection.
- c. During the construction of the Improvements, TENANT shall maintain at the job site and with County Department of Labor, a copy of all payrolls or transcripts thereof as would be required to be maintained pursuant to Section 220 of the New York Labor Law. During the construction of the Improvements, TENANT shall provide to County employment attendance sheets for all employees, including employees of subcontractors, for each day on which work is performed on the site, upon a form reasonably acceptable to County, containing such information as the Commissioner of the Department of Labor reasonably deems appropriate, including job classification, hours of employment, wage rate and supplements payable, and employer.

*Section 8.11* For purposes of this Agreement, time is deemed of the essence. In the event any phase of development is not substantially completed in accordance with the Construction Schedule, as extended by *Section 8.05*, the COUNTY, at any time thereafter, may give TENANT a written notice: (i) as to any portion of the Space where improvements have not commenced that the COUNTY may elect to terminate this Agreement as to such unimproved portion of Space only, with a pro-rata reduction in annual rent for the Space remaining under this Agreement. Pro-rata reduction in annual rent also includes necessary easements for common purposes and use by a prospective TENANT of the unimproved Space and/or (ii) as to any portion of the Space where improvements have been commenced, but not substantially completed, that the COUNTY shall elect to continue the annual rent at the increased rate of fifty percent (50%) as to that portion of Space only until such improvements are substantially complete and/or (iii) as to that portion where improvements of the Leased Premises cannot, in the reasonable opinion of Lessee, be developed on a commercially economical basis by Lessee, a pro-rata reduction in the lease term will be renegotiated based on the amount of "total investment". Pursuant to the provisions in this section, the renegotiated Agreement shall include the following: a) only that portion of Space where improvements have commenced; b)

a pro-rata reduction in annual rent for the Space remaining to include necessary easements; and c) a pro-rata reduction in term.

#### **Section 9. Other Construction by TENANT**

*Section 9.01* Except as otherwise expressly provided herein, TENANT shall not erect any structures, make any improvements, do any Construction Work on the Space, or install any fixtures (other than fixtures, removable without material damage to the Space, any such damage to be immediately repaired by TENANT) without the prior written approval of the COUNTY through the medium of a construction or alteration application to Airport Management. In the event any construction, improvement, alteration, modification, addition, repair, or replacement is made without such approval, then upon reasonable notice to do so, TENANT shall remove the same or, at the option of the COUNTY, cause the same to be changed to the satisfaction of the COUNTY. In case of any failure on the part of TENANT to comply with such notice, the COUNTY may effect the removal or change and TENANT shall pay the cost thereof to the COUNTY.

#### **Section 10. Care, Maintenance and Repair**

*Section 10.01* The TENANT represents and warrants that it has examined the property described in Exhibits A and B as the site of the Space and has conducted such tests as it deems necessary or appropriate, at its cost and expense, and that it is fully familiar with the physical condition of said Space. COUNTY makes no representation or warranty with respect to the condition or state of the Space or its fitness or availability for any particular use or purpose, and COUNTY shall not be liable for any latent or patent defect thereon. TENANT may use the Space for the uses set forth in this Agreement. TENANT will not do, or permit to be done, any action or thing which is contrary to any legal or insurable requirement or which constitutes a public or private nuisance or waste. Notwithstanding the foregoing, in the event pre-existing waste or contamination on the Space is revealed during construction, which condition requires remediation, TENANT may cancel this Lease and obtain a refund of the Security Deposit.

*Section 10.02* TENANT shall at its own expense at all times keep the Space and all TENANT's fixtures, equipment, landscaping, grass areas, and personal property, and any property of the TENANT which is located in any parts of the Space which are open to or visible by the general public, in a clean and orderly condition and appearance. If TENANT fails to maintain the Space in a clean and orderly condition, the COUNTY may do so and the cost thereof shall be charged to the TENANT.

*Section 10.03* TENANT shall, at its own expense, repair, repaint, replace or rebuild all or any part of the Space or any COUNTY fixtures, equipment and personal property which are located in or on any part thereof which may be damaged or destroyed by the acts or omissions of TENANT or by those of its officers, agents, employees, customers, guests or invitees or of other persons doing business with TENANT. Tenant shall not be liable to COUNTY or to any third party for damage to buried infrastructure of any kind which was not adequately marked or otherwise identified by the COUNTY, or which TENANT should have reasonably discovered.

*Section 10.04* TENANT shall provide a snow removal plan for approval by the Airport Manager prior to the start of the snow season. Once approved by the Airport Manager, Tenant shall perform all snow removal from the Space in accordance with the approved plan. In the event TENANT fails to adhere to said snow removal plan and such failure impedes emergency services access to the Space or the usual operations on the airport, the COUNTY may, at its option, upon twenty-four (24) hours advance notice to TENANT and TENANT's failure to cure within such time period, commence

corrective action and charge the cost thereof to TENANT. The amount of any such charge shall constitute an item of Additional Rent.

*Section 10.05* Except for reasonable wear which does not adversely affect the weather-tight condition or structural integrity of the Space and its improvements or the proper and efficient utilization thereof, TENANT at its own expense shall take good care of the Space, including without limitation paved and unpaved areas, fences, skylights, steelwork, walls, partitions, floors, foundations, ceilings, columns, windows, doors, glass of every kind, plumbing, heating, lights, sewerage, drainage, water-supply and electrical systems, including all pipes, wires, lines, conduits, equipment and fixtures.

*Section 10.06* TENANT shall perform all structural and non-structural maintenance, repairs, replacements and painting at the Space, including walls, ceilings, windows, doors, floors, partitions, glass, electrical, plumbing and heater equipment and fixtures, air conditioning and ventilation equipment that service the Space, water lines, steam lines, gas service lines, electrical power and telephone conduits and lines and sanitary and storm lines and sewers located on the Space as well as connection pipes and mains therefore not otherwise maintained or repaired by the applicable utility company(ies), regardless of the cause of the condition requiring the same, except for reasonable wear which does not adversely affect the weather-tight condition or structural integrity of the Space and its improvements or the proper and efficient utilization thereof.

*Section 10.07* In the event TENANT fails to commence to so repair, replace, rebuild, or paint as required above within a period of thirty (30) days after notice from the COUNTY to do so, or fails diligently to continue to complete the repair, rebuilding, replacement, or painting of all the Space required to be repaired, replaced, rebuilt, or painted by TENANT under the terms of this Agreement, the COUNTY may, at its option, and in addition to any other remedies which may be available to it, repair, replace, rebuild or paint all or any part of the Space included in the said notice, and charge the cost thereof to TENANT, the amount of such charge to constitute an item of Additional Rent.

*Section 10.08* Provide and maintain all fire protection and safety equipment and all other equipment of every kind and nature required by law, rule, ordinance, resolution or regulation of the type and nature described in this Agreement. The TENANT shall take all reasonable measures requested by the COUNTY to insure that all fire alarm signals with respect to the Space shall be transmitted wirelessly or via existing telephone lines to a location as Airport Management reasonably directs. TENANT's obligations hereunder shall in no way create any additional obligation whatsoever on the part of the COUNTY not already existing under the law.

*Section 10.09* Repair any damage to the paving or other surface of the Space caused by TENANT, TENANT's officers, employees, contractors, subcontractors, invitees or agents, or otherwise resulting from TENANT's use of the Space, including oil, grease, lubricants, or other flammable liquids and substances having a corrosive or detrimental effect thereon, and removing all foreign substances on the surfaces traversed by operating aircraft.

*Section 10.10* TENANT shall promptly remove any of its aircrafts or the aircrafts of its officers, employees, contractors, subcontractors, invitees, or agents which has crashed, or becomes disabled on the runways or taxiways of the airport to the best of its ability. The costs of such removal shall be at the cost and expense of the owner or operator of said aircraft, but the failure of said owner or operator to pay or to offer payment to TENANT shall not relieve TENANT of his responsibility to clear the runways or taxiways. Removal shall be coordinated with Airport Management, the Federal Aviation Administration, and the Air Traffic Control Tower.

## **Section 11. Utilities and Services**

*Section 11.01* As part of the Construction Work, TENANT agrees that, except for utility services that are not presently available and that are to be installed in the future pursuant to *Section 11.02* below, the installation of all utilities for its use shall be at TENANT's sole cost and expense, and that TENANT shall be solely responsible for the connections to the Space and charges for the use of such utilities by TENANT in connection with its operations under this Agreement. At no time shall TENANT connect to the Airport electric grid without the prior written approval of Airport Management, subject to *Section 12.02* below.

*Section 11.02* TENANT acknowledges that certain utility services may not presently be available to the Space. TENANT agrees that, within twelve months of electric, water, or sewer service being made available to the Space, TENANT shall take all steps necessary to connect the Space to such service at TENANT's sole cost and expense. If Airport Management reasonably determines that TENANT has not connected to an available utility service within the requisite time period, and fails to cure such default within thirty (30) days of TENANT's receipt of written notice of failure to comply with this *Section 11.02*, the COUNTY may collect, as Additional Rent, the sum of \$100.00 per day for each day that the TENANT is in default. To the extent that the lack of service of certain utilities affects TENANT's ability to proceed with its Construction Work, same shall constitute an Excusable Delay as if set forth in *Section 8.05*.

*Section 11.03* In the event that the State of New York, Suffolk County, or any other municipal subdivision, or corporation now furnishing, with or without charge therefore, any services which are beneficial to TENANT in its use or occupancy of the Space shall hereafter impose charges or increase existing charges for such services, TENANT agrees to pay the COUNTY as an item of Additional Rent hereunder such of the charges or the increase in charges as may be imposed or assessed against the COUNTY in respect of the Space hereunder or TENANT's use or occupancy thereof.

*Section 11.04* Except as may be otherwise expressly provided in the Agreement, the COUNTY shall not be obligated to provide any services to TENANT.

## **Section 12. Insurance**

*Section 12.01* TENANT shall procure and continuously maintain, without interruption, during the Term, Commercial General Liability Insurance, including, but not limited to, premises-operations, completed operations, a Broad Form Property Damage Endorsement, worker's compensation, independent contractors' coverage, and coverage for explosion, collapse and underground property damage, with a contractual liability endorsement covering the obligations assumed by TENANT herein, and Commercial Automobile Liability Insurance covering owned, non-owned, and hired vehicles, which shall be in addition to all policies of insurance otherwise required under this Agreement. With respect to insurance requirements during Construction Work, TENANT may provide such insurance by requiring each contractor engaged by it for the Construction Work to procure and maintain such insurance including such contractual liability endorsement, said insurance not to contain any care, custody or control exclusions, any exclusions for explosions, collapses, or damage to, bodily injury to, or sickness, disease, or death of any employee of TENANT or of any of its contractors which would conflict with or in any way impair coverage under the contractual liability endorsement. There shall be no self insurance retention aspects to such insurance unless agreed to in writing by the COUNTY. Moreover, unless otherwise specified by the COUNTY and agreed to by the TENANT, in writing, the insurance required hereunder shall be in accordance with the Airport Minimum Standards, referenced in *Section 22*.

*Section 12.02* In addition to the obligations set forth in this Section 12, and all other insurance required under this Agreement, the policy or policies of insurance shall also provide or contain an endorsement providing that the protections afforded TENANT thereunder with respect to any claim or action against TENANT by a third person shall pertain and apply with like effect with respect to any claim or action against TENANT by the COUNTY, but such endorsement shall not limit, vary, change, or affect the protections afforded the COUNTY thereunder as an additional insured. In addition, all the aforesaid policy or policies of insurance shall also provide or contain an endorsement providing that the protections afforded the COUNTY thereunder with respect to any claim or action against the COUNTY by TENANT shall be the same as the protections afforded TENANT thereunder with respect to any claim or action against TENANT by a third person as if the COUNTY were the named insured thereunder.

*Section 12.03* In the event TENANT shall fail to provide the Declaration Pages or certificates of insurance or to maintain any insurance required by this Agreement, the COUNTY may, but shall not be required to, obtain such policies and deduct the cost thereof from payments due COUNTY under this Agreement or any other agreement between the COUNTY and TENANT.

*Section 12.04* Notwithstanding the foregoing, it is specifically understood and agreed that the COUNTY shall have the right upon notice to TENANT given from time to time and at any time to require TENANT to increase any or all of the foregoing limits in amounts that the COUNTY may reasonably require, and TENANT shall promptly comply therewith and shall promptly submit a certificate or certificates evidencing the same to the COUNTY.

*Section 12.05* Each policy of insurance required by this Section 12 shall contain a provision that the insurer shall not, without obtaining express advance permission from the Suffolk County Attorney, raise any defense involving in any way the jurisdiction of the court over the person of the COUNTY, the immunity of the COUNTY, its officers, agents or employees, the governmental nature of the COUNTY or the provisions of any statutes respecting suits against the COUNTY.

*Section 12.06* If at any time any of the insurance policies shall become reasonably unsatisfactory to the COUNTY as to form or substance or if any of the carriers issuing such policies shall be or become unsatisfactory to the COUNTY, TENANT shall promptly obtain a new and satisfactory policy in replacement, the COUNTY agreeing not to act unreasonably hereunder. Failure to maintain insurance in the amounts reasonably required and commercially available from insurers licensed to do business in the State of New York, and in accordance with industry standards shall constitute grounds to immediately terminate this Agreement. Anything to the contrary notwithstanding, TENANT shall not be required to provide any insurance which other, similarly situated tenants at the Airport are required to provide.

*Section 12.07* The aforesaid insurance coverages and renewals thereof and insurance under Section 13, below, shall insure the COUNTY as its interests may appear and shall provide that the loss, if any, shall be adjusted with the COUNTY and shall be payable to the COUNTY as its interests may appear.

### **Section 13. Fire and Casualty Damage**

*Section 13.01* During the entire term of this Agreement, TENANT shall insure and keep insured to the extent of 100% of the replacement cost thereof, covering all risk of physical loss of or damage to all buildings, structures, improvements, installations, facilities, and fixtures now or in the future located on the Space against such hazards and risks as may now or in the future be included under the standard form of fire insurance policy of the State of New York and also against damage or loss by flood, earthquake, windstorm, cyclone, tornado, hail, explosion, riot, civil commotion, aircraft,

vehicles, and smoke, under the standard form of fire insurance policy of New York and the form of extended coverage endorsement prescribed as of the effective date of the said insurance by the rating organization having jurisdiction, and also covering boiler and machinery hazards and risks and also, subject to the reasonable commercial availability thereof, covering nuclear property losses and contamination hazards and risks in a separate insurance policy or policies or as an additional coverage endorsement to the aforesaid policies in the form as may now or in the future be prescribed as of the effective date of said insurance by the rating organization having jurisdiction. The COUNTY shall be included as an additional insured and the policy or policies shall be endorsed to include losses adjusted with and payable to the COUNTY.

*Section 13.02* In the event the Space or any part thereof shall be damaged by any casualty against which insurance is carried pursuant to this Section 13, TENANT shall promptly notify the COUNTY of such casualty and shall thereafter furnish to the COUNTY such information and data as shall enable the parties to adjust the loss.

*Section 13.03* If the Space or any other improvement made at any time to the Space shall be damaged or destroyed by any cause whatsoever, during the term of this Agreement, TENANT shall, with reasonable promptness, repair and replace the same at its own expense, to at least the condition existing immediately prior to the damage or destruction, and shall do so, even though the proceeds of any insurance policies covering the loss shall be insufficient to reimburse TENANT therefore; provided, however, that if the proceeds of insurance are more than sufficient to pay the cost of the rebuilding, TENANT shall be entitled to retain that surplus.

*Section 13.04* TENANT shall not be entitled to any abatement of Rent, nor shall its obligations under this Agreement be terminated during the term, notwithstanding any destruction or damage to the Space by any cause whatsoever; provided, however, that if the Space is substantially destroyed by fire or other casualty at any time during the last five (5) years of this Agreement, then TENANT may terminate this Agreement by written notice given to COUNTY within sixty (60) days after the date of such destruction, and the Rent, Additional Rent and other charges under this Agreement will be apportioned as of the date of destruction and TENANT will be discharged from responsibility to repair the damage, but all proceeds of insurance covering the loss shall in that circumstance belong to COUNTY free of any claim thereto by TENANT.

#### **Section 14. Indemnity Liability Insurance**

*Section 14.01* TENANT shall indemnify and hold harmless the COUNTY, its Commissioners, officers, employees, and representatives, from and against all claims and demands of third persons, including, but not limited to, claims and demands for death or personal injuries, or for property damages, arising out of the construction, use or occupancy, condition, or lack of repair of the Space, either directly or indirectly, or arising out of any other acts or omissions on the part of the TENANT, its officers, employees, guests, invitees or business visitors on the Space, or out of the acts or omissions of others on the Space, or arising out of the acts or omissions of TENANT, its officers and employees elsewhere at the Airport.

*Section 14.02* For any claim for which TENANT shall be required to indemnify the COUNTY, TENANT shall, at its own expense, defend any suit with counsel of TENANT's selection (approved by the COUNTY) based upon any such claim or demand (even if such suit, claim or demand is groundless, false or fraudulent), and in handling such it shall not, without obtaining express advance permission from the Suffolk County Attorney, make any material decisions related to the defense of the claim on the COUNTY's behalf. TENANT shall reimburse the COUNTY for any costs or expenses, including legal expenses, incurred by the COUNTY.

*Section 14.03* TENANT shall include in all agreements with permitted subtenants that subtenant shall hold the COUNTY, its officers, agents and employees harmless, and shall indemnify the COUNTY, its officers, agents and employees, to the extent of TENANT's obligations under *Sections 14.01* and *14.02*.

*Section 14.04* TENANT hereby represents and warrants the TENANT will not infringe upon any copyrighted work or material in accordance with the Federal Copyright Act during the term of this Agreement. Furthermore, TENANT agrees that it shall protect, indemnify, and hold harmless the COUNTY and its officers, officials, employees, contractors, agents, and other persons from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions and reasonable attorney's fees arising out of the acts or omissions or the negligence of TENANT in connection with the operations described or referred to in this Agreement. TENANT shall defend the COUNTY and its officers, officials, employees, contractors, agents and other persons in any suit, including appeals, or, at the COUNTY's option, pay reasonable attorney's fees for defense of any such suit arising out of the acts or omissions or negligence of TENANT, its officers, officials, employees, subcontractors, lessees, licensees, invitees or agents, if any, in connection with the services described or referred to in this Agreement.

#### **Section 15. Ingress and Egress**

*Section 15.01* TENANT, its agents, officers, employees, affiliates, customers, contractors, invitees, agents, suppliers of material and furnishers of services shall have the full right of ingress and egress between the Space and the public streets or public ways within the Airport by means of such pedestrian or vehicular roadways to be used in common with others having rights of passage within the Airport as may from time to time be designated by the COUNTY for the use of the public.

*Section 15.02* TENANT shall have the full right of ingress and egress between the Space and the public landing areas at the Airport by means of connecting taxiways, to be used in common with others having rights of passage thereon.

*Section 15.03* The use of any such roadway or taxiway shall be subject to the Rules and Regulations of the Airport which are now in effect or which may hereafter be promulgated for the safe and efficient operation of the Airport. The COUNTY may, at any time, temporarily or permanently, close or consent to or request the closing of, any such roadway or taxiway and any other way at, in or near the Space presently or hereafter used as such, so long as a reasonable means of ingress and egress for vehicles as well as aircraft as provided above remains available to TENANT.

*Section 15.04* TENANT hereby releases and discharges the COUNTY, its officers, employees and agents and all municipalities and other governmental authorities and their respective successors and assigns, of and from any and all claims, demands, or causes of action which TENANT may now or at any time hereafter have against any of the foregoing, arising or alleged to arise out of the closing of any street, roadway or other area, whether within or outside the Space. TENANT shall not do or permit anything to be done that will interfere with the free access and passage of others to space adjacent to the Space or in any streets or roadways near the Space.

#### **Section 16. Obligations of TENANT**

*Section 16.01* TENANT shall use the Space in an orderly and proper manner and so as not to annoy, disturb, or be offensive to others at Airport. TENANT shall take all commercially reasonable measures to the extent same can be reasonably controlled by TENANT, which the parties

acknowledge is primarily under the control of the independent pilots of such aircrafts:

- (1) to eliminate vibrations, and/or prop and jet-blast interference tending to damage any equipment, structure, building or portion of a building which is on the Space, or is a part thereof, or is located elsewhere on the Airport; and
- (2) to keep the sound level of its operations within acceptable limits as determined by the COUNTY.
- (3) TENANT acknowledges that there are voluntary noise abatement procedures in place and will take steps to notify and encourage its employees, affiliates, customers, contractors, invitee and agents to adhere to such procedures.

*Section 16.02* It is the intent of the parties hereto that noise caused by aircraft engine operation shall be held to a commercially reasonable minimum. To this end TENANT shall conduct its operations, and request of its officers, employees, contractors, subcontractors, agents and invitees to operate, in such a manner as to keep the noise produced by aircraft engines and component parts thereof to a minimum by such methods as are commercially practicable, considering the extent and type of the operations of TENANT. In its use of the Space, TENANT shall take all possible care, caution and precaution and shall use its best efforts to minimize prop or jet blast interference to aircraft operating on or to buildings, structures and roadways, now located on or which in the future may be located on areas adjacent to the Space. In the event Airport Management reasonably determines that TENANT has not curbed the prop or jet blast interference, as set forth above, TENANT hereby covenants and agrees to erect and maintain at its own expense such structure or structures as may be necessary to prevent prop or jet blast interference, subject, however, to the prior written approval of the COUNTY as to type, manner and method of construction.

*Section 16.03* TENANT shall daily remove from the Space by means of facilities provided by TENANT all garbage, debris and other waste materials arising out of or in connection with its operations hereunder, and any such not immediately removed shall be temporarily stored in a clean and sanitary condition in suitable garbage and waste receptacles, the same to be made of metal and equipped with tight-fitting covers, and to be of a design safely and properly to contain whatever material may be placed therein, said receptacles being provided and maintained by TENANT. The receptacles shall be kept covered except when filling or emptying the same. TENANT shall exercise extreme care in removing such garbage, debris and other waste materials from the Space. The manner of such storage and removal shall be subject in all respects to the continual approval of Airport Management. No facilities of the Airport shall be used for such removal unless with Airport Management's prior consent in writing.

*Section 16.04* TENANT shall transport and handle, in accordance with all State, Federal, and Local legal requirements, all chemicals, fuel, wastes, and residues generated at the Space.

*Section 16.05* It is intended that the standards and obligations imposed by this Section 16 shall be maintained or complied with by TENANT in addition to its compliance with all applicable Federal, State and local laws, ordinances and regulations, and in the event that any of said laws, ordinances and regulations shall be more stringent than such standards and obligations, TENANT agrees that it will comply with such laws, ordinances and regulations in its operations hereunder. Changes in such laws or regulations are not grounds for termination of this Agreement.

*Section 16.06* TENANT agrees to collect all Landing Fees and any other fees that the COUNTY may charge incident to the use of the Airport on all aircraft using the Space and shall remit said fees

to Airport Management on a monthly basis.

*Section 16.07* In connection with the conduct of TENANT's business TENANT shall:

- (1) use its best efforts in every proper manner to maintain and develop the business authorized in *Section 3* of this agreement; and
- (2) maintain in accordance with accepted accounting practice during the term hereof TENANT's records and books of account recording all transactions at, through, or in any way connected with the Airport which records and books of account shall be kept and made available to the County within twenty-four (24) hours of the County's request to review the records; and
- (3) provide the necessary management and operate the space in the manner and quality represented and offered at other similar airports and such operation must, in addition, be of a standard and quality reasonably acceptable to the COUNTY; and
- (4) operate the Facility at TENANT's sole cost and expense and be subject to general monitoring by the COUNTY, to insure a continuing quality of service commensurate with prevailing industry standards.

*Section 16.08* In addition to compliance by TENANT with all laws, ordinances, governmental rules, regulations and orders now or at any time in effect during the term of the use hereunder which as a matter of law are applicable to the operation, use or maintenance by TENANT of the Space or the operations of TENANT under this Agreement (the foregoing not to be construed as a submission by the COUNTY to the application to itself of such requirements or any of them), TENANT agrees that it shall conduct all its operations under this Agreement and shall operate, use and maintain the Space in accordance with a high standard and in such manner that there will be at all times a commercially reasonable minimum of air pollution, water pollution or any other type of pollution and a minimum of noise emanating from, arising out of or resulting from the operation, use or maintenance of the Space by TENANT and from the operations of TENANT under this Agreement.

*Section 16.09* The COUNTY hereby reserves the right from time to time and at any time during the term of this Agreement to require TENANT, and TENANT agrees to design and construct at its sole cost and expense such commercially reasonable structures, fences, equipment, devices and other facilities as may be necessary or appropriate to accomplish the objectives as set forth in the first sentence of this *Section 16*. All locations, the manner, type, and method of construction and the size of any of the foregoing shall be determined by the COUNTY. TENANT shall submit for the COUNTY's approval a Construction Application together with its plans and specifications covering the required work and upon receiving such approval shall proceed diligently to construct the same.

*Section 16.10* The obligations assumed by TENANT under the above *Section 16.09* shall continue throughout the term of this Agreement and shall not be limited, affected, impaired, or in any manner modified by the fact that the COUNTY shall have approved any Construction Application and supporting plans, specifications and contracts covering Construction Work and notwithstanding the incorporation therein of the COUNTY's recommendations or requirements and notwithstanding that the COUNTY may have at any time during the term of the Agreement consented to or approved any particular procedure or method of operation which TENANT may have proposed, or the COUNTY may have itself prescribed the use of any procedure or method. The agreement of TENANT to assume the obligations under the above paragraph is a special inducement and consideration to the COUNTY in entering into this Agreement with TENANT.

*Section 16.11* TENANT shall be solely responsible for compliance with the provisions of this Section 16 and no act or omission of the COUNTY shall relieve TENANT of such responsibility.

**Section 17. Hazardous Substances and Waste**

*Section 17.01* TENANT shall not deposit, dump, store, or pour on any part of the soil of the Space or permit the accumulation on the Space of Hazardous Substances, or any other substance or material which, if left on the Space, could cause injury to the health of or discomfort to persons in the neighborhood or on the Space, or adversely affect the environment of the Space or the Airport, including the air and water above and the ground and water below and surrounding the Space, nor shall TENANT permit its subtenants, guests, contactors or any other person to do any of the foregoing. TENANT, at its expense, shall promptly remove or cause the removal of, or of permitted by applicable law encapsulate, all such material located at the Space in compliance with this Agreement and all applicable laws, only if caused by act of the TENANT or its agents, employees, contractors, subcontractors, invitees, or guests.

The term "Hazardous Substances," as used in this Agreement shall include, without limitation, medical waste, flammables, explosives, radioactive materials, asbestos, chlorofluorocarbons (CFCs), polychlorinatedbiphenyls (PCBs), chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, petroleum and petroleum products and substances declared to be dangerous, hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any governmental authority. Notwithstanding anything to the contrary set forth in this Article, cleaning fluids, detergents, petroleum products and other supplies customarily used in connection with (A) the maintenance and repair of real property similar to the Space in comparable areas, or (B) the permitted uses of the Space shall be permitted to be stored and used for such purposes in compliance with all Laws, and all substances consistent with all permitted uses under this Agreement so long as used, stored and disposed of in accordance with all applicable statutes, regulations and/or government ordinances.

*Section 17.02* Without limiting the generality of any other provision of this Agreement, TENANT shall not cause or permit to occur:

- (1) Any violation of any federal, state, or local law, now or hereafter enacted, related to environmental conditions on, over, under or about the Space, or arising from TENANT's use or occupancy of the Space, including ozone, soil, and ground water conditions; or
- (2) The use, generation, release, manufacture, refining, production, processing, storage, or disposal of any Hazardous Substance on, over, under, or about the Space, or the transportation to or from the Space of any Hazardous Substance in violation of applicable laws.

*Section 17.03* TENANT shall, at TENANT's own expense:

- (1) Comply with all laws regulating the use, generation, storage, removal, transportation, disposal, encapsulation, or remediation of Hazardous Substances, to the extent relating to Hazardous Substances located at the Space;

- (2) Make all submissions to, provide all information required by, and comply with all requirements of all governmental authorities required under the laws to the extent relating to Hazardous Substances located at the Space;
- (3) Prepare and submit the required plans and all related bonds and other financial assurances and carry out all such cleanup plans should any governmental authority asserting appropriate jurisdiction demand that a cleanup plan be prepared and that a cleanup be undertaken because of any deposit, spill, discharge, or other release of Hazardous Substances at or from the Space, only if caused by act of TENANT or its agents or employees; and
- (4) Promptly provide all information regarding the use, generation, storage, transportation, or disposal of Hazardous Substances that is requested by COUNTY.

*Section 17.04* If TENANT fails to fulfill any duty imposed under this Section 17 within a reasonable time, COUNTY may, after reasonable prior written notice to TENANT, do so, and in such case, TENANT shall cooperate with COUNTY in order to prepare all documents COUNTY reasonably deems necessary or appropriate to determine the applicability of the laws to the Space and TENANT's use thereof, and to comply therewith and TENANT shall execute all reasonable documents promptly upon COUNTY's request. No such action by COUNTY and no attempt made by COUNTY to mitigate damages under any law shall constitute a waiver of any of TENANT's obligations under this Section.

*Section 17.05* Where a Hazardous Substance is detected on the Space for which TENANT is liable under this Agreement, TENANT shall, in addition to all other requirements of law or this Agreement, pay to COUNTY the reasonable fees incurred by COUNTY for the services of attorneys, consultants, contractors, experts, laboratories, and all other reasonable costs incurred in connection with the investigation, required cleanup or remediation, including the preparation of any feasibility studies or reports and the performance of any required cleanup, remediation, removal, abatement, containment, closure, restoration, or monitoring work.

*Section 17.06* TENANT shall indemnify, defend, and hold harmless COUNTY, its officers, agents, and employees from all fines, suits, procedures, claims and action of every kind, and all costs associated therewith (including attorney's and consultants' fees) arising out of or in any way connected with, directly or indirectly, any deposit, spill, discharge, leakage or other release of Hazardous Substances, flammable explosives, or contamination caused solely by TENANT, or as proximately caused by TENANT's use of the Space pursuant to this Agreement, at or from the Space, including underground tanks or other equipment, or from TENANT's failure to provide all information, make all submissions and take all steps required by all governmental authorities under applicable laws and all environmental laws required of TENANT as provided herein. TENANT's obligations and liabilities under the Section shall survive the expiration or earlier termination of this Agreement.

*Section 17.07* TENANT shall not be responsible for any claims, demands, losses, liabilities, penalties and damages arising out of, or in any way connected with the installation, placement, storage, maintenance, or release of Hazardous Substances on, over, under or about the Space resulting from the acts or omissions ("Environmental Claim") of the COUNTY, Federal Government or federal agency, and any third party other than TENANT's officers, agents, employees, contractors, subcontractors, lessees, licensees, customers, guests and/or invitees.

## **Section 18. Prohibited Acts**

*Section 18.01* TENANT shall not use, occupy, maintain, or operate the Space, nor suffer or permit the Space or any part thereof to be used, occupied, maintained, or operated, nor bring into or keep at the Space, nor suffer or permit anything to be brought into or kept therein, which would in any way (a) violate any term, covenant, or condition of this Agreement, (b) violate any restrictive covenant, operating covenant, encumbrance, or easement affecting the Space, (c) violate any Legal Requirements, (d) make void or voidable any insurance policy then in force with respect to the Space or make any such insurance unobtainable or increase the rate of any insurance with respect to the Space, (e) cause physical damage to the Space or any part thereof, (f) permit the excess accumulation of waste or refuse matter, or (g) constitute a public or private nuisance.

*Section 18.02* TENANT shall not do or permit to be done anything which may interfere with the effectiveness or accessibility of the utility, mechanical, electrical, drainage and sewer systems, fire-protection system, and other systems installed or located on or in the Space.

*Section 18.03* TENANT shall not cause or permit to be caused or produced upon the Space, to permeate the same or to emanate there from, any unusual, noxious or objectionable smokes, gases, vapor or odors except as would be reasonably expected at a well run first class general aviation facility.

## **Section 19. Obstruction Lights**

*Section 19.01* TENANT shall furnish such obstruction lights as the COUNTY shall direct, of the type and design approved by the COUNTY, and shall install said lights in the locations on the Space designated by the COUNTY and shall maintain them in good operating condition at all times.

*Section 19.02* TENANT shall furnish and install the bulbs and furnish the electricity necessary for the operation of said lights, and shall operate the same in accordance with the directions of Airport Management. The COUNTY hereby directs that all said obstruction lights shall, until further notice, be operated daily for a period commencing thirty (30) minutes before sunset and ending thirty (30) minutes after sunrise and for such other periods as may be directed by the Control Tower of the Airport or Airport Management.

## **Section 20. Unauthorized Use**

Except persons who have been granted a valid Commercial Operating Permit, issued by Gabreski Airport, or permission from the COUNTY, TENANT shall not permit, foster, or allow on the Space any persons for the purpose of:

- (1) doing maintenance work on aircraft not owned or operated solely by said persons, except for warranty work; or
- (2) giving flight instruction of any sort, or
- (3) conducting air taxi, aircraft charter, or aircraft leasing of any sort; or
- (4) conducting any commercial business without approval from the COUNTY.

**Section 21. Rules and Regulations, Minimum Standards and Development Guidelines**

*Section 21.01* TENANT shall observe and obey and shall compel others on the Space and those doing business with it with respect to the Space to observe and obey the "Airport Rules and Regulations," and the "Airport's Minimum Standards and Requirements for the Conduct of Commercial and Non-Commercial Aeronautical Services and Activities" ("Minimum Standards"), and Airport Development Guidelines as are now in effect or as may be promulgated from time to time for the government and conduct of operations of the Airport for reasons of safety, health or preservation of property, for the good and orderly appearance of the Space and for the safe and efficient operation and use of the Space. Additional copies of the Rules and Regulations, Minimum Standards and/or Airport development Guidelines are available to TENANT at the Office of the Airport Manager and via the Internet. Notwithstanding the forgoing, it is understood that satisfaction of the Minimum Standards, as relating to hangar space, shall not be strictly construed until that phase of the Construction Work is completed.

*Section 21.02* TENANT hereby acknowledges receipt of the Airport Rules and Regulations, the Minimum Standards and Airport Development Guidelines as may be from time to time amended. By executing this Agreement, TENANT agrees that failure to comply with any of the terms or provisions contained therein shall immediately give rise to a right by COUNTY to terminate this Agreement in the event TENANT fails to substantially and materially comply with same within thirty (30) days after written notice to TENANT. Upon such termination, TENANT shall forthwith remove itself from the Space and shall no longer use the facilities at the Airport for its business operations.

**Section 22. Signs**

*Section 22.01* Except with the prior written approval of the COUNTY, TENANT shall not erect, maintain, or display any advertising, signs, or similar devices at, or on the Space, which approval shall not be unreasonably withheld.

*Section 22.02* Upon demand by the COUNTY, TENANT shall remove, obliterate, or paint out any and all advertising, signs, and similar devices placed by TENANT on the Space, or elsewhere on the Airport without the prior approval of the COUNTY. In the event of a failure on the part of TENANT so to remove, obliterate, or paint out each and every sign or piece of advertising and so to restore the Space and the Airport, the COUNTY may perform the necessary work and TENANT shall pay the costs thereof to the COUNTY on demand.

**Section 23. Transfers**

*Section 23.01* TENANT shall not, without the prior written consent of the Suffolk County Executive, or his duly authorized representative, and except as specifically set forth herein, sell, assign, mortgage, pledge, hypothecate, encumber, or permit any lien to attach to, or otherwise transfer, this Agreement or any interest hereunder; shall not permit any assignment or other such foregoing transfer of this Agreement or any interest hereunder by operation of law; shall not sublet the Space or any part thereof; and shall not permit the use of the Space by any persons other than TENANT (all the foregoing are hereinafter referred to collectively as "Transfers" and any person to whom any Transfer is made or sought to be made is hereinafter referred to as a "Transferee"). If TENANT shall desire COUNTY's consent to any Transfer, TENANT shall notify COUNTY in writing, which notice (the "Transfer Notice") shall include: (i) the proposed effective date of the Transfer, which shall not be less than ninety (90) days nor more than one hundred eighty (180) days after the date of delivery of the Transfer Notice; (ii) a description of the portion of the Space to be transferred (the "Subject Space"); (iii) all the material terms of the proposed Transfer and the consideration therefore, the name

and address of the proposed Transferee, and a copy of all existing and/or proposed documentation pertaining to the proposed Transfer, including all existing operative documents to be executed to evidence such Transfer or the agreements incidental or related to such Transfer; (iv) current financial statements of the proposed Transferee certified by an officer, partner or owner thereof related to any proposed assignments of the Agreement only, and any other information reasonably required by COUNTY, which will enable COUNTY to determine the financial responsibility, character, and reputation of the proposed Transferee, nature of such Transferee's business and proposed use of the Subject Space; (v) an executed estoppel certificate from TENANT; and (vi) such other information as the COUNTY may reasonably require. Any Transfer made without the COUNTY's prior written consent shall, at the COUNTY's option, constitute a default by TENANT under Section 36 of this Agreement. The COUNTY shall respond to the Transfer Notice within three (3) business days of submittal of same by TENANT.

*Section 23.02* Notwithstanding the foregoing, TENANT shall not be required to obtain the COUNTY's prior written approval for any subleases involving tie-down, t-hangar subleases, bulk hangar, or other aircraft subleases, which subleases shall be deemed approved in advance by the COUNTY.

1. All such approved sublessee(s) shall execute a sub-lease document containing language which provides for: (i) an "Agreement to Abide by the Terms of the Prime Lease Agreement," and (ii) the proposed sublease does not release TENANT from its obligations under this Agreement. Executed copies of all subleases shall be delivered to the COUNTY within ten (10) days of the sub-lease's execution.
2. Section TENANT shall promptly notify Airport Management of the change of any right to occupy a hangar, and give to Airport Management the name and address of such occupant and the identification and description of the occupant's aircraft.

*Section 23.03* COUNTY shall not unreasonably withhold its consent to any proposed Transfer of the Subject Space to the Transferee on the terms specified in the Transfer Notice. The parties hereby agree that it shall be deemed to be reasonable under this Agreement and under any applicable law for COUNTY to withhold consent to any proposed Transfer where one or more of the following apply, without limitation, as to other reasonable grounds for withholding consent:

- (1) The Transferee is of a character or reputation not reasonably acceptable to the COUNTY, or is engaged in a business which is not consistent with the intended use of the space or the Permitted Use thereof; or
- (2) The Transferee's is not a party of reasonable financial worth and/or financial stability in light of the responsibilities involved under the Agreement on the date consent is requested; or
- (3) Either the proposed Transferee, or any person or entity which directly or indirectly, controls, is controlled by, or is under common control with, the proposed Transferee, (i) is negotiating with the COUNTY to lease space at the Airport, or (ii) has negotiated with the COUNTY during the twenty-four (24)-month period immediately preceding the Transfer Notice.

*Section 23.04* If COUNTY consents to a Transfer, (i) the terms and conditions of this Agreement shall in no way be deemed to have been waived or modified, (ii) such consent shall not be deemed consent to any further Transfer by either TENANT or a Transferee, (iii) TENANT shall deliver to

COUNTY, promptly after execution, an original executed copy of all documentation pertaining to the Transfer in form reasonably acceptable to COUNTY, (iv) no Transfer relating to this Agreement, or any other agreement entered into with respect thereto, whether with or without COUNTY's consent, shall relieve TENANT or any guarantor of the Agreement from liability under this Agreement. COUNTY or its authorized representatives shall have the right at all reasonable times to audit the books, records and papers of TENANT relating to any Transfer, and shall have the right to make copies thereof.

*Section 23.05* For purposes of this Agreement, the term "Transfer" shall also include (i) if TENANT is a partnership, the withdrawal or change, voluntary, involuntary or by operation of law, of the partners, or transfer of partnership interests (other than the purchase of partnership interests by existing partners, by the partnership itself or the immediate family members by reason of gift or death), or the dissolution of the partnership without immediate reconstitution thereof, and (ii) if TENANT is a closely held corporation (i.e. whose stock is not publicly held and not traded through an exchange or over the counter), (A) the dissolution, merger, consolidation or other reorganization of TENANT, (B) the sale or other transfer of any shares of TENANT (other than to existing shareholders, the corporation itself or the immediate family members by reason of gift or death), or (C) the sale, mortgage, hypothecation or pledge of the unencumbered assets of TENANT.

*Section 23.06* In addition to Annual Rent, as hereinabove provided, TENANT shall also pay to the COUNTY each time a sale or transfer of capital stock of TENANT, or the sale or transfer of the unencumbered assets of TENANT, or the sale or transfer of partnership interests occurs, a fee in a sum equal to One Percent (1%) of the gross sales amount or fair cash market value of the hangar unit.

*Section 23.07* Copies of TENANT's standard sublease, any purchase agreement, and By-Laws shall be delivered to Airport Management at least Ten (10) days from the date of execution hereof.

- (1) COUNTY shall, during the term of this Agreement or any extension thereof, have the right to name one (1) member to TENANT's Board of Directors and TENANT's Articles of Incorporation or By-laws shall provide such right.
- (2) COUNTY shall have during the term of this Agreement the right to review TENANT's By-laws which shall include TENANT's proprietary lease and any amendments thereto and to approve such By-laws and proprietary lease and amendments thereto. Approval may only be denied on the basis that such By-laws, proprietary lease or amendments thereto are inconsistent with TENANT's obligation under this Agreement or are inconsistent with COUNTY being able to obtain and protect compliance and fulfillment of TENANT's obligations and covenants herein. Failure to obtain COUNTY's approval of TENANT's charter, By-laws, proprietary leases and other similar organizational documents shall constitute a Default under Section 34 of this Agreement.

*Section 23.08* (A) TENANT may from time to time during the term of this Lease, mortgage, hypothecate or encumber, in whole or in part, its interest in this Lease, the Space, from time to time, and assign this Lease, as collateral security for any such Leasehold Mortgage so long as the total amount borrowed does not exceed Seventy-five percent (75%) of TENANT's total investment in the new facility. For purposes hereof "Leasehold Mortgage" means each mortgage constituting a lien on TENANT's right, title and interest under this Lease, including, without limitation, TENANT's interest in the Space or any portion(s) thereof.

(B) The Leasehold Mortgage shall encumber only TENANT's interest as TENANT in the Space and its interest as owner of the New Facility. In no event shall COUNTY be required to encumber or subordinate its fee title to the real property or any part thereof or interest therein for any reason..

*Section 23.09* If TENANT assigns, mortgages, pledges, hypothecates, encumbers, or permits any lien to attach to, or otherwise transfers, this Agreement or any interest hereunder, in violation of the foregoing provisions of this Section 23, or if the Space is occupied by anyone other than TENANT or a permissible assignee or sub-tenant, COUNTY may collect from any assignee, sub-tenant or anyone who claims a right to this Agreement, or who occupies the Space any rents, charges or fees payable by said assignee, sub-tenant, or other and no such payment shall be deemed a waiver by the COUNTY of the covenants or agreements contained in this Section 23, nor of acceptance by the COUNTY of any assignee, claimant, or occupant, nor as a release of TENANT by the COUNTY from the further performance by TENANT of the agreements contained herein, including but not limited to the payment of rent.

#### **Section 24. Title to Improvements**

*Section 24.01* Title to structures newly constructed by TENANT and to all alterations, modifications, and enlargements to existing structures located on the Space shall during the term of this Agreement vest in TENANT. Upon expiration or early termination of this Agreement, title thereto shall immediately and without execution of any further instrument vest in the COUNTY free and clear of any liens or encumbrances, and such work shall thereupon become and thereafter be a part of the Airport and property of the COUNTY. TENANT shall, at its expense, defend any such lien or encumbrance filed against any portion of the Space by reason of TENANT's acts or omissions or because of any claim against TENANT.

#### **Section 25. Condemnation**

*Section 25.01* TENANT, in any action or proceeding instituted by any governmental agency or agencies for the taking for a public use of any interest in all or any part of the Space, shall be entitled to assert all claims provided for under New York law to any compensation or award or part thereof made or to be made therein or therefore and to institute any action or proceeding or to assert any claim against such agency or agencies or against the COUNTY on account of any such taking.

*Section 25.02* Rent for that portion of the Space condemned shall be abated from the date the TENANT is dispossessed there from; provided, however, in the event of a total condemnation, or a partial condemnation exceeding twenty five (25%) percent of the Space which unreasonably interferes with the TENANT's operations authorized hereunder the TENANT may terminate this Agreement and all of its rights and unaccrued obligations hereunder effective as of the date it is dispossessed of the condemned portion (or effective as of the date thereafter and within ninety (90) days of the date of such dispossession) by giving the COUNTY thirty (30) days written notice of such termination.

*Section 25.03* In the event of a temporary taking of possession of all or a part of the Space for any period of time by the COUNTY, COUNTY shall provide notice reasonably in advance of same, excepting only such temporary takings materially related to Airport security or other declared emergency in which event notice shall only be required if possible for COUNTY to provide same. The TENANT shall be entitled to an abatement of rent for such temporary taking of possession of all or a part of the Space for a period of time in excess of thirty (30) days within the Term of this Agreement, such award shall be full compensation to the TENANT for such temporary taking and no claims for damages arising out of the temporary taking shall be made against the COUNTY in the

event the condemnation shall have occurred where the Space or portion thereof are taken for security reasons not exceeding 30 days; provided, however, TENANT shall not be deemed to have waived any of its rights for compensation for governmental takings by reason of this Section.

#### **Section 26. Non-Discrimination**

*Section 26.01* Without limiting the generality of any of the provisions of this Agreement, TENANT, for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land: (1) that no person on the grounds of sex, race, color, creed, age, disability, sexual preference, Vietnam veteran status, marital status, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Space; (2) that in the construction of any improvement on, over, or under the Space and the furnishing of services thereon, no person on the grounds of sex, race, color, creed, age, disability, sexual preference, Vietnam veteran status, marital status, or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination; (3) that TENANT shall use the Space in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended, Article 15 of the New York State Executive Law (also known as the Human Rights Law), and any other present or future laws, rules, regulations, orders or directions of the United States of America with respect thereto which from time to time may be applicable to TENANT's operations thereat, whether by reason of agreement between the COUNTY and the United States Government or otherwise.

#### **Section 27. Governmental Requirements**

*Section 27.01* TENANT shall procure all licenses, certificates, permits, or other authorization from all governmental authorities, if any, having jurisdiction over TENANT's operations at the Space which may be necessary for TENANT's construction and/or operations.

*Section 27.02* TENANT shall comply with applicable enactments, ordinances, resolutions, and regulations of local and Federal governmental authorities and of their various departments, boards, and bureaus in regard to construction and maintenance of buildings and structures and in regard to health and fire protection which would be applicable if the COUNTY were a private corporation to the extent that the COUNTY finds it practicable to do so. TENANT shall, for the COUNTY's information, deliver to the COUNTY promptly after receipt of any notice, warning, summons or other legal process for the enforcement of any of the foregoing, a true copy of the same.

*Section 27.03* TENANT shall promptly observe, comply with and execute the provisions of any and all present and future governmental laws, rules, regulations, requirements, orders and directions which may pertain or apply to TENANT's operations at the Space and the Airport and TENANT shall, in accordance with and subject to the provisions of Section 9 hereof, make any and all structural and non-structural improvements, alterations or repairs of the Space that may be required at any time hereafter by any such present or future law, rules, regulations, requirement, order or direction.

*Section 27.04* TENANT's obligations to comply with governmental requirements are provided herein for the purpose of assuring proper safeguards for the protection of persons and property at the Space. Such provision is not to be construed as a submission by the COUNTY to the application to itself of such requirements or any of them.

*Section 27.05* TENANT further agrees to be bound by any and all future policies, local laws, resolutions and requirements as demanded, passed, and promulgated by the County Legislature or any municipal or Federal authorities which provide for the growth of the Airport, and which in general advance the progress of the County and Airport and would reasonably better the interests of the County of Suffolk, provided that if such actions shall materially interfere for a period of more than thirty (30) days with the operation of the TENANT, an appropriate adjustment in Annual Rent shall be made.

**Section 28. Rights of Entry Reserved**

*Section 28.01* The COUNTY shall, as an additional remedy upon the giving of a Notice of Termination as provided in the Section 33 hereof, have the right to re-enter the Space and every part thereof upon the effective date of termination without further notice of any kind, and may regain and resume possession either with or without the institution of summary or any other legal proceedings or otherwise. Such re-entry or regaining or resumption of possession, however, shall not in any manner affect, alter or diminish any of the obligations of TENANT under this Agreement, and shall in no event constitute an acceptance of surrender.

*Section 28.02* The COUNTY, by its officers, employees, agents, representatives, and contractors shall have the right upon reasonable notice to enter upon the Space for the purpose of inspecting the same, for observing the performance by TENANT of its obligations under this Agreement and for the doing of any act or thing which the COUNTY may be obligated or have the right to do under this Agreement, or otherwise. In the event of a question of a contractor's authority, TENANT shall contact the COUNTY.

*Section 28.03* Without limiting the generality of the foregoing, the COUNTY by its officers, employees, agents, representatives, and contractors and by the employees, agents, representatives and contractors of any furnisher of utility services in the vicinity, shall have the right, for its own benefit, for the benefit of TENANT, or for the benefit of others than TENANT at the Airport, to maintain existing and future utilities systems or portions thereof on the Space, including therein, without limitation thereto, systems for the supply of heat, water, gas, fuel, and electricity and for the furnishing of fire-alarm, fire-protection, sprinkler, sewerage, drainage, telegraph, and telephone services, including all lines, pipes, mains, wires, conduits and equipment connected with or appurtenant to such systems, and to enter upon the Space at all reasonable times to make such repairs, replacements or alterations as may, in the opinion of the COUNTY, be deemed necessary or advisable and, from time to time, to construct or install over, in or under the Space new systems or parts thereof, including lines, pipes, mains, wires, conduits and equipment; provided, however, that in the exercise of such rights of repair, alteration or new construction the COUNTY shall not unreasonably interfere with the use and occupancy of the Space by TENANT.

*Section 28.04* The exercise of any or all of the foregoing rights by the COUNTY or others shall not be or be construed to be an eviction of TENANT nor be made the grounds for any abatement of rent, nor any claim or demand for damages, consequential or otherwise unless the same substantially interferes with TENANT's use of the Space for a period exceeding thirty (30) days.

*Section 28.05* Nothing in this Section 28 shall impose or shall be construed to impose upon the COUNTY any obligation so to construct or maintain or to make repairs, replacements, alterations or additions, or shall create any liability for any failure so to do.

**Section 29. Additional Fees and Charges**

*Section 29.01* If the COUNTY is required or elects to pay any sum or sums, or incurs any obligations or expense by reason of the failure, neglect or refusal of TENANT to perform or fulfill anyone or more of the conditions or agreements contained in this Agreement, or as a result of an act or omission of TENANT contrary to the said conditions and agreements, TENANT agrees to pay the sum or sums so paid or the expense so incurred, including all interest, costs, damages and penalties, and the same may be added to any installment of rent thereafter due hereunder, and each and every part of the same shall be and become Additional Rent, recoverable by the COUNTY in the same manner and with like remedies as if they were originally a part of the rent set forth in the Section 4.

**Section 30. Removal of Personal Property**

*Section 30.01* TENANT shall have the right at any time during the term of this Agreement to remove its equipment, inventories, removable fixtures, and other personal property from the Space.

*Section 30.02* If TENANT shall fail to remove its property on or before the termination or expiration of the term the same shall be deemed abandoned by TENANT and may be disposed of in any manner deemed appropriate by the COUNTY. The COUNTY may remove such property to a public warehouse for deposit or retain the same in its own possession, all without insurance, and sell the same at public auction, the proceeds of which shall be applied first, to the expense of removal, storage and sale; second, to any sums owed by TENANT to the COUNTY; any balance remaining shall be the property of the COUNTY. If the expenses of such removal, storage and sale shall exceed the proceeds of sale, TENANT shall pay such excess to the COUNTY upon demand.

*Section 30.03* TENANT expressly waives for itself and for any person claiming through or under TENANT any rights which TENANT or any such person may have under the provisions of Section 221 of the Real Property Actions and Proceedings Law and of any successor law of like import then in force in connection with any holdover or summary proceedings which COUNTY may institute to enforce the foregoing provisions of this Article at the end of the term as expressed herein. TENANT's obligation to observe or perform this covenant shall survive the expiration or other termination of the term of this Agreement.

**Section 31. Surrender/Holdover**

*Section 31.01* Upon the expiration or earlier termination of this Agreement, or upon any re-entry by COUNTY, TENANT shall, at its sole expense, remove all of TENANT's personal property and any personal property of persons claiming by, through or under TENANT and all non-COUNTY approved alterations to the Space and shall quit, surrender, vacate and deliver the Facilities and any alterations thereto broom clean, in good order, condition and repair, ordinary wear, tear and damage by the elements, fire or other casualty beyond TENANT's reasonable control excepted, together with all improvements and fixtures therein.

*Section 31.02* TENANT acknowledges that possession of the Space must be surrendered to the COUNTY at the expiration or sooner termination of the term of this Agreement. The parties recognize and agree that the damage to the COUNTY resulting from any failure by the TENANT to timely surrender possession of the Space as aforesaid will be substantial, will exceed the amount of fixed minimum rent and additional rent theretofore payable hereunder, and will be impossible to accurately measure. TENANT therefore agrees that if possession of the Space is not surrendered to the COUNTY upon the expiration or sooner termination of the term of this Agreement, then TENANT shall indemnify COUNTY against loss or liability resulting from the delay by TENANT in

so surrendering the Facilities, including, without limitation, any claims made by any succeeding occupant founded on such delay. Any holding over with the consent of COUNTY after the expiration of this Agreement shall be construed to be a tenancy at will and in no event from month-to-month or from year-to-year, at a monthly rental equal to 110% the total monthly installment of Annual Rent last payable by TENANT under the Agreement, and upon such other terms and conditions as provided in this Agreement, to the extent applicable, without waiving TENANT's default or preventing COUNTY from pursuing its other remedies. TENANT hereby expressly waives any and all predicate notices to holdover and the COUNTY may immediately proceed with a holdover Notice of Petition and Petition.

*Section 31.03* TENANT's obligation under this Section shall survive the expiration or earlier termination of this Agreement.

### **Section 32. Acceptance of Surrender**

*Section 32.01* No agreement of surrender or to accept a surrender shall be valid unless and until the same shall have been reduced to writing and signed by the duly authorized representatives of the COUNTY and of TENANT. Except as expressly provided in this Section 32, neither the doing of, nor any omission to do, any act or thing, by any of the officers, agents or employees of the COUNTY, shall be deemed an acceptance of a surrender of the use and occupancy of the Space or of this Agreement.

### **Section 33. Termination/Default Remedies and Damages**

*Section 33.01* This Agreement shall terminate at the end of the full term hereof and TENANT shall have no further right or interest in any of the ground or improvements hereby dismissed.

*Section 33.02* Upon the occurrence of any of the following events, or at any time thereafter during the continuance thereof, or during the term of this Agreement, in addition to any other remedy available to the COUNTY at law or in equity, the COUNTY may terminate the rights of TENANT under this Agreement upon thirty (30) days written notice ("Notice of Termination") (in addition to the initial written notice of default as described below), such termination to be effective upon the date specified in such notice in the event TENANT has not cured the default within the notice time set forth below:

- (1) TENANT shall fail duly and punctually to pay any installment of annual rent or to make any other payment required hereunder when due to the COUNTY and such default shall persist in its failure for a period of ten (10) days following the receipt of written notice of such default ("Notice of Default") from the COUNTY; or
- (2) TENANT shall fail to keep, perform, and observe each and every promise and agreement set forth in this Agreement on its part to be kept, performed, or observed, within thirty (30) days after receipt of Notice of Default from the COUNTY (except where fulfillment of its obligation requires activity over a period of time and TENANT shall have commenced substantially to perform whatever may be required for fulfillment within thirty (30) days after receipt of notice and continues diligently such substantial performance without interruption except for causes beyond its control); or
- (3) TENANT shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement or its

reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof; or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or

- (4) By order of decree of a court TENANT shall be adjudged bankrupt or an order shall be made approving a petition filed by any of the creditors or, if TENANT is a corporation, by any of the stockholders of TENANT, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof; or
- (5) A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against TENANT and shall not be dismissed within sixty (60) days after the filing thereof; or
- (6) The interest of TENANT under this Agreement shall be transferred to, pass to or devolve upon, by operation of law or otherwise, any other person, firm or corporation without the advance consent of the COUNTY; or
- (7) TENANT shall, without the prior written approval of the COUNTY, become a successor or merged corporation in a merger, a constituent corporation in a consolidation, a corporation in dissolution, or any other change in ownership structure; or
- (8) By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the Space of TENANT and such possession or control shall continue in effect for a period of twenty (20) working days; or
- (9) TENANT shall voluntarily abandon, desert or vacate the Space or discontinue its operations at the Airport for a period of at least thirty (30) continuous days, or, after exhausting or abandoning any right of further appeal, TENANT shall be prevented for a period of sixty (60) days by action of any governmental agency having jurisdiction thereof, from conducting its operations at the Airport, regardless of the fault of TENANT; or
- (10) Any lien is filed against the Space because of any act or omission of TENANT and is not removed within forty-five (45) days after notice to TENANT thereof, or if TENANT disputes the lien and takes timely action to commence appropriate legal proceedings to challenge and expunge the lien within ninety (90) after notice to TENANT, or if removal of the lien cannot be accomplished within 45-day period, TENANT fails to take steps to challenge said lien within such 45-day period.

*Section 33.03* No acceptance by the COUNTY of rents, charges, or other payments in whole or in part for any period or periods after a default of any of the terms, agreements and conditions hereof to be performed, kept or observed by TENANT shall be deemed a waiver of any right on the part of the COUNTY to terminate this Agreement unless the COUNTY shall agree in writing with TENANT that the Event(s) of Default has been cured by TENANT in all respects.

*Section 33.04* No waiver by the COUNTY of any default on the part of TENANT in performance of any of the terms, covenants, or conditions hereof to be performed, kept, or observed by TENANT shall be or be construed to be a waiver by the COUNTY of any other or subsequent default in performance of any of the valid terms, agreements and conditions.

*Section 33.05* The rights of termination described above shall be in addition to any other rights of termination provided in this Agreement and in addition to any rights and remedies that the COUNTY would have at law or in equity consequent upon any breach of this Agreement by TENANT, and the exercise by the COUNTY of any right of termination shall be without prejudice to any other such rights and remedies.

*Section 33.06* By Notice of Termination to TENANT, the COUNTY shall have the right to terminate this Agreement as of a date specified in the Notice of Termination, which date shall not be less than thirty (30) days thereafter and, in such case, TENANT's rights, including any based on any option to renew, to the possession and use of the Space shall end absolutely as of the Termination Date as fully and completely and with the same force and effect as if the day so specified were the Expiration Date; and this Agreement shall also terminate in all respects except for TENANT's liabilities arising prior to, out of, or following the Event(s) of Default and the ensuing termination. Upon any termination for the convenience of COUNTY and not as a consequence of the normal expiration of the lease or termination for default, TENANT shall be entitled to recover compensation from the COUNTY the amortized value of the improvements

*Section 33.07* Following the date specified in the Notice of Termination provided above (as well as upon any other termination of this Agreement by expiration of the Term or otherwise) COUNTY immediately shall have the right to recover possession of the Space; and to that end, the COUNTY may enter the Space and take possession, without the necessity of giving TENANT any notice to quit or any other further notice, with or without legal process or proceedings, and in so doing the COUNTY may remove TENANT's property (including any improvements or additions to the Space which TENANT made, unless made with the COUNTY's consent which expressly permitted TENANT to not remove the same upon expiration of the Term), as well as the property of others as may be in the Space, and make disposition thereof in such manner as the COUNTY may deem to be commercially reasonable under the circumstances.

*Section 33.08* Unless and until the COUNTY shall have terminated this Agreement pursuant to *Section 33.06* above, TENANT shall remain fully liable and responsible to perform all of the covenants and to observe all the conditions of this Agreement throughout the remainder of the Term to the early termination date; and, in addition, TENANT shall pay to COUNTY, upon demand and as additional rent, the total sum of all costs, losses, damages and expenses, including reasonable fees, as COUNTY incurs, directly or indirectly, because of any Event of Default having occurred.

*Section 33.09* The parties may each enforce and protect their respective rights hereunder by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein, and for the recovery of the Space and for the enforcement of any other appropriate legal or equitable remedy, including, without limitation, injunctive relief, and for recovery of consequential damages and all money due or to become due from TENANT under any of the provisions of this Agreement. No rights or remedy herein conferred upon or reserved to COUNTY or TENANT shall be exclusive of any other right or remedy, but shall be cumulative and in addition to all other rights and remedies given hereunder or now or hereafter existing at law.

*Section 33.10* No delay or forbearance by either party in exercising any right or remedy hereunder, or either party's undertaking or performing any act or matter which is not expressly required to be undertaken by that party shall be construed, respectively, to be a waiver of that party's rights or to represent any agreement by that party to undertake or perform such act or matter thereafter. Waiver by either party of any breach by the other party of any covenant or condition herein contained (which waiver shall be effective only if so expressed in writing) or failure by either party to exercise any

right or remedy in respect of any such breach shall not constitute a waiver or relinquishment for the future of that party's right to have any such covenant or condition duly performed or observed by the other party, or of either party's rights arising because of any subsequent breach of any such covenant or condition nor bar any right or remedy of that party in respect of such breach or any subsequent breach. COUNTY's receipt and acceptance of any payment from TENANT which is tendered not in conformity with the provisions of this Agreement or following an Event of Default (regardless of any endorsement or notation on any check or any statement in any letter accompanying any payment) shall not operate as an accord and satisfaction or a waiver of the right of COUNTY to recover any payments then owing by TENANT which are not paid in full, or act as a bar to the termination of this Agreement and the recovery of the Space because of TENANT's previous default.

*Section 33.11* Except for the monetary obligations of either party, COUNTY and TENANT shall not be in default of this Agreement because of such party's inability to perform the covenants and obligations set forth herein during the continuance of any period of Force Majeure, except as may otherwise be expressly specified in this Agreement.

*Section 33.12* In the event COUNTY shall fail to keep, perform, and observe each and every promise and agreement set forth in this Agreement on its part to be kept, performed, or observed, within thirty (30) days after receipt of notice of default thereunder from the TENANT (except where fulfillment of its obligation requires activity over a period of time, and COUNTY shall have commenced substantially to perform whatever may be required for fulfillment within thirty (30) days after receipt of notice and continues diligently such substantial performance without interruption except for causes beyond its control), the same shall constitute a default on the part of the COUNTY for which TENANT shall have all rights available under law.

#### **Section 34. Waiver of Redemption**

TENANT hereby waives any and all rights to recover or regain possession of the Space 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 COUNTY obtains possession of the Space in any lawful manner.

#### **Section 35. Notices**

*Section 35.01* Any communication, notice or other submission necessary or required to be made by the parties regarding this Agreement except with respect to *Section 35.02* shall be deemed to have been duly made upon receipt by: (a) if to TENANT, at TENANT's address first set forth above, and (b) if to COUNTY, Suffolk County Department of Economic Development and Workforce Housing, Aviation Division, Attention: Airport Manager, Francis S. Gabreski Airport, Westhampton Beach, NY 11978 or, (c) at such other address as TENANT or COUNTY, respectively, may designate in writing.

*Section 35.02* Any communication or notice regarding indemnification, termination, or litigation by either party to the other shall be in writing and shall be deemed to be duly given only if delivered: (i) personally (personal service on COUNTY must be pursuant to New York Civil Practice Law and Rules Section 311); (ii) by nationally recognized overnight courier; or (iii) mailed by registered or certified mail in a postpaid envelope addressed: (a) if to COUNTY, to Clerk of the Legislature, COUNTY Center, Riverhead, New York 11901, with a copy to the Suffolk County Department of Law, Attention: Suffolk County Attorney, 100 Veterans Memorial Highway, P.O. Box 6100, Hauppauge, New York 11788-0099, and a copy to Suffolk County Department of Economic Development and Workforce Housing, Aviation Division, Attention Airport Business Manager, Francis S. Gabreski Airport, Westhampton Beach, NY 11978; and (b) if to TENANT, at TENANT's

address first above set forth, or at such other address as TENANT or COUNTY, respectively, may designate in writing.

*Section 35.03* Notice shall be deemed to have been duly given (1) if delivered personally, upon delivery thereof on a Business Day or if not a Business Day, then the next succeeding Business Day, (2) if by nationally recognized overnight courier, the first Business Day subsequent to transmittal and (3) if mailed by registered or certified mail, upon the seventh Business Day after the mailing thereof. Any notice by either party to the other with respect to the commencement of any law suit or legal proceeding shall be effected pursuant to and governed by the New York Civil Practice Law and Rules or the Federal Rules of Civil Procedure, as applicable.

#### **Section 36. Certification of Office of Foreign Assets Control (OFAC)**

*Section 36.01* TENANT certifies that:

- (1) It is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and
- (2) It is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation.

*Section 36.02* TENANT hereby agrees to defend, indemnify, and hold harmless COUNTY from and against any and all claims, damages, losses, risks, liabilities, and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing certification.

#### **Section 37. Remedies to be Non-Exclusive**

Except where otherwise specifically provided, all remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of or exclusive of each other or of any other remedy available to either party at law or in equity.

#### **Section 38. Limitation of Rights and Privileges Granted**

No exclusive rights at the Airport are granted by this Agreement and no greater rights or privileges with respect to the use of the Space or any part thereof are granted or intended to be granted to TENANT by this Agreement, or by any provision thereof, than the rights and privileges expressly and specifically granted hereby.

#### **Section 39. Broker**

TENANT and the COUNTY each represents and warrants that no broker has been concerned on its behalf in the negotiation of this Agreement and that there is no such broker who is or may be entitled to be paid a commission in connection therewith. Each party shall indemnify and save harmless the other party of and from any claim for commission or brokerage made by any and all persons, firms or corporations whatsoever for services rendered to such party, whether or not such claims, demands, causes of action, liabilities, etc., are made or asserted before or after termination or expiration of this Agreement (to include reasonable attorneys and other professional fees).

**Section 40. Paragraph Headings**

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

**Section 41. Force Majeure**

*Section 41.01* Neither the COUNTY nor TENANT shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of material, acts of God, acts of the public enemy or terrorism, acts of superior governmental authority, weather conditions, tides, riots, rebellion, sabotage or any other circumstances for which it is not responsible and which are nor within its control; provided, however, that this provision shall not apply to failures by TENANT to pay the rent, fees or other charges specified hereunder, and shall not apply to any other charges or money payments; and, provided further, that this provision shall not prevent the COUNTY from exercising its rights of termination hereunder.

*Section 41.02* No abatement, diminution or reduction of the fees or other charges payable by TENANT shall be claimed or allowed to TENANT for any inconvenience, interruption, cessation or loss of business or other loss caused, directly or indirectly, by any present or future laws, rules, requirements, orders, directions, ordinances or regulations of the United States of America, or of the state, COUNTY or of any other municipal, governmental, or lawful authority other than the COUNTY whatsoever, or by priorities, rationing or curtailment of labor or materials, or by war, or any matter or thing resulting there from or by any other cause or causes beyond the control of the COUNTY, nor shall this Agreement be affected by any such causes, except as otherwise herein specifically provided.

**Section 42. Miscellaneous**

*Section 42.01* At COUNTY's option, this Agreement or a memorandum of this Agreement in accordance with and pursuant to Real Property Law Section 291 may be recorded in the public land records. TENANT shall cooperate with COUNTY in effecting any such recordation, including, without limitation, the execution, acknowledgement and delivery of a memorandum of this Agreement in accordance with and pursuant to the Real Property Law Section 291. TENANT may not record this Agreement, any portion thereof, any memorandum thereof or make reference thereto in any other recorded document or instrument without COUNTY's prior written consent.

*Section 42.02* This Agreement is subject to the approval of the Suffolk County Legislature and shall not become effective until fully executed.

*Section 42.03* Time shall be of the essence with respect to this Agreement and all its provisions.

*Section 42.04* This Agreement shall be subordinate to the provisions of any existing or future agreement between COUNTY and the United States or the State of New York relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal or state funds for the development of the Airport. Should the effect of any such agreement be to take so much of the Space under this Agreement or substantially destroy the commercial value of such improvements, COUNTY shall terminate this Agreement. Nothing hereunder shall impair the rights of TENANT to seek compensation from the

United States or the State of New York, in the event of a taking pursuant to the preceding sentence.

*Section 42.05* TENANT shall have the right, in common with others authorized so to do, subject to and in accordance with the laws of the United States of America, the State of New York, and the County of Suffolk, and airport regulations, to use the common areas of the Airport, including roadways, floodlights, signals and other conveniences of COUNTY.

*Section 42.06* COUNTY reserves the right to hold or to approve the holding of special events at the Airport by the COUNTY or by other entities. The holding or the approval to hold such events shall not be deemed to be adverse to the rights of TENANT under this Agreement, and shall be at the sole discretion of COUNTY.

*Section 42.07* It is clearly understood by TENANT that no right or privilege has been granted which would operate to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own regular employees that it may choose to perform.

*Section 42.09* COUNTY reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or view of TENANT, and without interference or hindrance.

*Section 42.10* COUNTY reserves the right, but shall not be obligated to TENANT, to maintain and keep in repair the landing area of the airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of TENANT in this regard.

#### **Section 43. Waiver of Jury Trial**

*Section 43.01* To the extent permitted by law, TENANT waives: any notice of re-entry or of the institution of legal proceedings to that end; any right of redemption, re-entry or repossession; any right to trial by jury in any action or proceeding or in any matter in any way connected with this Agreement or the Space; and the benefit of any laws now or hereafter in force exempting property for rent or for debt.

*Section 43.02* COUNTY and TENANT, to the extent allowed by law, hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Agreement, the relationship of COUNTY and TENANT, TENANT's use or occupancy of the Facilities, any claim of injury or damage, or any emergency statutory or any other statutory remedy.

#### **Section 44. Suspension of Agreement**

*Section 44.01* During a time of war or national emergency, the COUNTY shall have the right to lease the Space or any part thereof to the United States or the State of New York for military or other public purposes. If any such lease is executed, any provision of this instrument, which is inconsistent with the provisions of a lease with the United States or the State of New York, shall be suspended and this Agreement shall immediately terminate.

*Section 44.02* During a time of emergency declared by the County Executive pursuant to Executive Law Article II, the County shall have the right to temporarily suspend this Agreement in its entirety or in part, so that the Space may be used by the COUNTY in connection with local emergency

response efforts, or other, related governmental purposes. If any such suspension is exercised, upon the mutual consent of the Parties, this Agreement may be terminated. In the event the Parties do not terminate the Agreement, the fees due under Section 4 shall be adjusted proportionately until the suspension is lifted.

#### **Section 45. Prevailing Wage**

*Section 45.01* For purposes of this Lease Lessee's construction of the Improvements constitutes a public works contract under Article 8 of the Labor Law. Lessee acknowledges and agrees to comply with the prevailing wage requirements for all of Lessee's Work in connection with the construction and preparation of the Improvements, including, but not limited to, the building, land, parking lot, and all other portions of the Premises.

*Section 45.02* No person performing, aiding in, or assisting in Lessee's construction of the Improvements shall be paid less than the said prevailing rates as defined and utilized under Section 220 of the Labor Law. The wages to be paid shall not be less than the prevailing rate of wages and supplements as set forth by law.

*Section 45.03* Lessee, its contractors, and subcontractors shall file transcripts of original payrolls for the construction of the Improvements under this Lease, in connection with the construction and preparation of the entire Premises, with the Department, within ten (10) days after its first payroll, and every thirty days thereafter, said payroll transcripts to be subscribed and affirmed as true under penalty of perjury. Lessee, its contractors and subcontractors, shall keep their books open for inspection by representatives of the Suffolk County Department of Audit and Control and/or its representatives, including the Office of the District Attorney, on a monthly basis during the construction of the Improvements, to ensure that Lessee, its contractors and subcontractors are in compliance with these terms and conditions, provided that twenty-four (24) hour-notice is given to Lessee, its contractors and/or subcontractors prior to the inspection.

*Section 45.04* Lessee agrees that it shall include clauses in all of its agreements with its contractors and subcontractors for the construction of the Improvements stating that: (i) said contractors and subcontractors shall pay prevailing wages, as agreed to in this Lease between County of Suffolk and the Lessee; (ii) said contractors and subcontractors shall file transcripts of original payrolls for all work performed in connection with the construction and preparation of the Improvements under this Lease with the Department within ten (10) days after its first payroll, and every thirty days thereafter, said transcripts to be subscribed and affirmed as true under penalty of perjury and (iii) Lessee, its contractors, and subcontractors shall keep their books open for inspection by representatives of the Suffolk County Department of Audit and Control and/or its representatives, including the Office of the District Attorney, on a monthly basis during the construction of the Improvements to ensure that Lessee, its contractors and subcontractors are in compliance with these terms and conditions, provided that twenty-four (24) hour-notice is given to Lessee, its contractors and/or subcontractors prior to the inspection.

*Section 45.05* During the construction of the Improvements, in Lessee shall maintain at the job site, and with County Department of Labor, a copy of all payrolls or transcripts thereof as would be required to be maintained pursuant to Section 220 of the New York Labor Law.

*Section 45.06* During the construction of the Improvements, Lessee shall provide to County employment attendance sheets for all employees, including employees of subcontractors, for each day on which work is performed on the site, upon a form reasonably acceptable to County, containing such information as the Commissioner of the Department of Labor reasonably deems appropriate,

including job classification, hours of employment, wage rate and supplements payable, and employer.

**Section 46. Copies of Certificate of Incorporation/By-Laws**

The TENANT agrees to submit to the Department a copy of the TENANT's certificate of incorporation and/or by-laws, as amended, if not on file with the Department, any amendments thereto during the term of this Agreement, and a current list of its officers and directors, trustees or partners and any changes in such list when they occur.

**Section 47. Off-set of Arrears or Default**

The TENANT warrants that it is not, and shall not be during the Term of this Agreement, in arrears to the COUNTY for taxes or upon debt or contract and is not, and shall not be during the term of this Agreement, in default as surety, contractor or otherwise on any obligation to the COUNTY, and the TENANT agrees that the COUNTY may withhold the amount of any such arrearage or default from amounts payable to the TENANT under this Agreement.

**Section 48. Cooperation on Claims**

The TENANT agrees to render diligently to the COUNTY any and all cooperation, without additional compensation, that may be required to defend the COUNTY against any claims, demand, or action that may be brought against the COUNTY in connection with this Agreement.

**Section 49. Representations and Warranties of TENANT**

TENANT warrants that the execution and delivery of this Agreement was duly authorized by all necessary action of the TENANT, none of which action has been rescinded or otherwise modified. TENANT has full power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement. Except for any consent from the FAA which is the responsibility of TENANT to secure, no consents, approvals or permits are required for the performance of the terms and provisions herein, or, if any such consents, approvals or permits are required, they have been or will be obtained in a timely fashion. This Agreement is a legal, valid, and binding obligation of the TENANT, enforceable against TENANT in accordance with its terms.

**Section 50. Representations of COUNTY**

COUNTY is a municipal corporation duly organized and existing under the laws of the State of New York and is duly authorized and empowered to enter into and perform this Agreement and to execute all documents related thereto.

**Section 51. Not a Co-Partnership or Joint Venture**

Nothing herein contained shall create or be construed as creating a co-partnership or Joint Venture between the COUNTY and TENANT or to constitute TENANT or the TENANT'S employees as agents or employees of the COUNTY.

**Section 52. Independent Contractor**

It is expressly agreed that TENANT'S status hereunder is that of an independent contractor. Neither TENANT nor any person authorized by TENANT to use the Space shall be considered employees of the COUNTY for any purpose. The relationship of the COUNTY to TENANT is that of landlord-

tenant and TENANT, in accordance with its status as such, covenants and agrees that it shall conduct itself consistent with such status; that it will neither hold itself out as nor claim to be an officer or employee of the COUNTY by reason hereof, and that TENANT, its owners and employees, shall not, by reason hereof, make any claims, demands or application to or for any right of privilege including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage or retirement membership of credit as officers, employees or agents of the COUNTY.

**Section 53. COUNTY Representatives**

It is expressly understood and agreed by and between the parties hereto that the officers, officials, employees, and agents of the COUNTY, and the Commissioners of the Department of Public Works and the Department of Economic Development and Workforce Housing and their officers and agents are acting in a representative capacity for the County of Suffolk and not for their own benefit, and that neither TENANT nor any occupant of the Space shall have any claim against them or any of them as individuals in any event whatsoever.

**Section 54. No Credit**

TENANT agrees that this Agreement shall not be pledged, hypothecated, or put up as security for a loan, credit or for any reason whatsoever, except as may otherwise be permitted in this Agreement.

**Section 55. No Implied Waiver**

No waiver shall be inferred from any failure or forbearance of either party to enforce any provision of this Agreement in any particular instance or instances, but the same shall otherwise remain in full force and effect notwithstanding any such failure or forbearance.

**Section 56. Certification**

The parties to this Agreement hereby certify that, other than the funds provided in this Agreement and other valid Agreements with the COUNTY, there is no known relationship within the third degree of consanguinity, life partner or business, commercial, economic, or financial relationship between the parties, the signatories to this Agreement, and any partners, members, directors, or shareholders of five percent (5%) (or more) of any party to this Agreement.

**Section 57. Set-Off Rights**

The COUNTY shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the COUNTY's option to withhold, for the purposes of set-off, any moneys due to the TENANT under this contract up to any amounts due and owing to the COUNTY with regard to this contract and/or any other contract with any COUNTY department or agency, including any contract for a term commencing prior to the Term of this contract, plus any amounts due and owing to the COUNTY for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The COUNTY shall exercise its set-off rights in accordance with normal COUNTY practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the County agency, its representatives, or the County Comptroller, and only after legal consultation with the County Attorney.

**Section 58. Non Responsible Party**

TENANT certifies that he, she, it, or they have not been convicted of a criminal offense within the last ten (10) years. The term "conviction" shall mean a finding of guilty after a trial or a plea of guilty to an offense covered under the provision of Section 143-5 of the Suffolk County Code under "NONRESPONSIBLE BIDDER."

**Section 59. Conflicts of Interest**

*Section 59.01* TENANT agrees that it will not, during the term of this Agreement, engage in any activity that is contrary to and/or in conflict with the goals and purposes of the COUNTY.

*Section 59.02* TENANT is charged with the duty to disclose to the COUNTY the existence of any such adverse interests, whether existing or potential. This duty shall continue during the term of this Agreement. The determination as to whether or when a conflict exists or may potentially exist shall ultimately be made by the County Attorney after full disclosure is obtained.

**Section 60. Lawful Hiring of Employees Law in Connection with Contracts for Construction or Future Construction**

This Agreement is subject to the Lawful Hiring of Employees Law of the County of Suffolk, Suffolk County Code Chapter 234, as more fully set forth in the Exhibit E entitled "Suffolk County Legislative Requirements." In accordance with this law, Contractor or employer, as the case may be, and any subcontractor or owner, as the case may be, agree to maintain the documentation mandated to be kept by this law on the Construction Site at all times. Contractor or employer, as the case may be, and any subcontractor or owner, as the case may be, further agree that employee sign-in sheets and register/log books shall be kept on the Construction Site at all times during working hours and all covered employees, as defined in the law, shall be required to sign such sign-in sheets/register/log books to indicate their presence on the Construction Site during such working hours.

**Section 61. Chemicals, Fungicides, Herbicides and Pesticides**

*Section 61.01* All chemicals, fungicides, herbicides and pesticides (if any) applied to the Space shall be approved by the Commissioner of prior to use. TENANT shall comply with Suffolk County Code Chapter 380 (Pest Control) and any other applicable federal, state, and local laws. TENANT shall apply for any necessary exemptions from Suffolk County Code Chapter 380. All notice and reporting requirements shall be adhered to.

*Section 61.02* TENANT shall comply with all Federal, State and local laws, rules, regulations, codes and ordinances in the performance of this Agreement and shall obtain, pay for, and comply with any conditions contained in any permits, approvals and renewals thereof which are required to be obtained in the legal performance of this Agreement. Such laws and regulations include, but are not limited to: Suffolk County Code Chapter 380 (Pest Control) and any other County policies relating to pesticides.

**Section 62. Suffolk County Legislative Requirements**

The Parties agree to be bound by the terms of the "Suffolk County Legislative Requirements," annexed hereto as Exhibit E, and made a part hereof. Suffolk County Local Laws, Rules and Regulations can be found on the Suffolk County web site at [www.co.suffolk](http://www.co.suffolk.ny.us)<<http://www.co.suffolk.ny.us>>. Click on "Laws of Suffolk County" under "Suffolk County Links."

**Section 63. Governing Law**

*Section 63.01* This Agreement shall be governed by the laws of the State of New York. In the event of any dispute or litigation, the venue of any proceeding to determine the rights and liabilities of the respective parties arising under this Agreement shall be in New York Supreme Court, Suffolk County; or in the event of a proceeding in the federal courts, in the District Court for the Eastern District of New York.

*Section 63.02* Notwithstanding anything herein contained to the contrary, any summary proceedings against TENANT may be instituted in accordance with Article 7 of the New York Real Property Actions and Proceedings Law.

**Section 64. Severability**

It is expressly agreed that if any term or provision of this Agreement, or the application thereof to any person or circumstance, shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and every other term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

**Section 65. Entire Agreement**

*Section 65.01* This Agreement consists of the following: Sections 1 through 65 inclusive. The foregoing constitutes the entire agreement of the parties on the subject matter hereof. It may not be changed, modified, discharged or extended except by written instrument duly executed by the COUNTY and TENANT.

*Section 65.02* TENANT agrees that no representations or warranties shall be binding upon the COUNTY unless expressed in writing, in this Agreement.

*Section 65.03* References contained herein to Sections, Exhibits and Schedules shall be deemed to be references to the Sections, Exhibits, and Schedules of and to this Agreement unless specified to the contrary.

*Balance of page intentionally left blank*

## Appendix A

### 14CFR43- Federal Aviation Regulations Part 43 (excerpt) Permitted Maintenance for Aircraft Owners

§ 43.3 Persons authorized to perform maintenance, preventive maintenance, rebuilding, and alterations.

(g) Except for holders of a sport pilot certificate, the holder of a pilot certificate issued under part 61 may perform preventive maintenance on any aircraft owned or operated by that pilot which is not used under part 121, 129, or 135 of this chapter. The holder of a sport pilot certificate may perform preventive maintenance on an aircraft owned or operated by that pilot and issued a special airworthiness certificate in the light-sport category.

#### Appendix A to Part 43—Major Alterations, Major Repairs, and Preventive Maintenance

(c) *Preventive maintenance.* Preventive maintenance is limited to the following work, provided it does not involve complex assembly operations:

- (1) Removal, installation, and repair of landing gear tires.
- (2) Replacing elastic shock absorber cords on landing gear.
- (3) Servicing landing gear shock struts by adding oil, air, or both.
- (4) Servicing landing gear wheel bearings, such as cleaning and greasing.
- (5) Replacing defective safety wiring or cotter keys.
- (6) Lubrication not requiring disassembly other than removal of nonstructural items such as cover plates, cowlings, and fairings.
- (7) Making simple fabric patches not requiring rib stitching or the removal of structural parts or control surfaces. In the case of balloons, the making of small fabric repairs to envelopes (as defined in, and in accordance with, the balloon manufacturers' instructions) not requiring load tape repair or replacement.
- (8) Replenishing hydraulic fluid in the hydraulic reservoir.
- (9) Refinishing decorative coating of fuselage, balloon baskets, wings tail group surfaces (excluding balanced control surfaces), fairings, cowlings, landing gear, cabin, or cockpit interior when removal or disassembly of any primary structure or operating system is not required.

- (10) Applying preservative or protective material to components where no disassembly of any primary structure or operating system is involved and where such coating is not prohibited or is not contrary to good practices.
- (11) Repairing upholstery and decorative furnishings of the cabin, cockpit, or balloon basket interior when the repairing does not require disassembly of any primary structure or operating system or interfere with an operating system or affect the primary structure of the aircraft.
- (12) Making small simple repairs to fairings, nonstructural cover plates, cowlings, and small patches and reinforcements not changing the contour so as to interfere with proper air flow.
- (13) Replacing side windows where that work does not interfere with the structure or any operating system such as controls, electrical equipment, etc.
- (14) Replacing safety belts.
- (15) Replacing seats or seat parts with replacement parts approved for the aircraft, not involving disassembly of any primary structure or operating system.
- (16) Trouble shooting and repairing broken circuits in landing light wiring circuits.
- (17) Replacing bulbs, reflectors, and lenses of position and landing lights.
- (18) Replacing wheels and skis where no weight and balance computation is involved.
- (19) Replacing any cowling not requiring removal of the propeller or disconnection of flight controls.
- (20) Replacing or cleaning spark plugs and setting of spark plug gap clearance.
- (21) Replacing any hose connection except hydraulic connections.
- (22) Replacing prefabricated fuel lines.
- (23) Cleaning or replacing fuel and oil strainers or filter elements.
- (24) Replacing and servicing batteries.
- (25) Cleaning of balloon burner pilot and main nozzles in accordance with the balloon manufacturer's instructions.
- (26) Replacement or adjustment of nonstructural standard fasteners incidental to operations.
- (27) The interchange of balloon baskets and burners on envelopes when the basket or burner is designated as interchangeable in the balloon type certificate data and the baskets and burners are specifically designed for quick removal and installation.

(28) The installations of anti-misfueling devices to reduce the diameter of fuel tank filler openings provided the specific device has been made a part of the aircraft type certificate data by the aircraft manufacturer, the aircraft manufacturer has provided FAA-approved instructions for installation of the specific device, and installation does not involve the disassembly of the existing tank filler opening.

(29) Removing, checking, and replacing magnetic chip detectors.

(30) The inspection and maintenance tasks prescribed and specifically identified as preventive maintenance in a primary category aircraft type certificate or supplemental type certificate holder's approved special inspection and preventive maintenance program when accomplished on a primary category aircraft provided:

(i) They are performed by the holder of at least a private pilot certificate issued under part 61 who is the registered owner (including co-owners) of the affected aircraft and who holds a certificate of competency for the affected aircraft (1) issued by a school approved under §147.21(e) of this chapter; (2) issued by the holder of the production certificate for that primary category aircraft that has a special training program approved under §21.24 of this subchapter; or (3) issued by another entity that has a course approved by the Administrator; and

(ii) The inspections and maintenance tasks are performed in accordance with instructions contained by the special inspection and preventive maintenance program approved as part of the aircraft's type design or supplemental type design.

(31) Removing and replacing self-contained, front instrument panel-mounted navigation and communication devices that employ tray-mounted connectors that connect the unit when the unit is installed into the instrument panel, (excluding automatic flight control systems, transponders, and microwave frequency distance measuring equipment (DME)). The approved unit must be designed to be readily and repeatedly removed and replaced, and pertinent instructions must be provided. Prior to the unit's intended use, and operational check must be performed in accordance with the applicable sections of part 91 of this chapter.

(32) Updating self-contained, front instrument panel-mounted Air Traffic Control (ATC) navigational software data bases (excluding those of automatic flight control systems, transponders, and microwave frequency distance measuring equipment (DME)) provided no disassembly of the unit is required and pertinent instructions are provided. Prior to the unit's intended use, an operational check must be performed in accordance with applicable sections of part 91 of this chapter.

END OF TEXT FOR APPENDIX A

**EXHIBIT A**  
**LEGAL DESCRIPTION**

**SUFFOLK COUNTY DEPARTMENT OF ECONOMIC DEVELOPMENT**

August 10, 2005

Description of property

To be leased to Northside Hangars by the County of Suffolk

Tax Map Index Number: 0900-312.00-01.00- P/O 004.002

All that piece or parcel of land situate in the Town of Southampton, County of Suffolk, State of New York, designated as Lots 5 & 6 on a map prepared by L.K. McLean Associates, P.C. dated May 11, 2005, entitled "Map of Francis S. Gabreski Airport Phase I Lease Parcels", said lease parcel being more particularly bounded and described as follows:

**Beginning** at a point on the southerly boundary of a marginal road within and along the northerly boundary of property of Francis S. Gabreski Airport at the northwest corner of the herein described lease parcel, said point of beginning also being the following seven (7) courses and distances from the intersection of the division line between the lands of Francis S. Gabreski Airport on the south and the lands of others on the north, with the easterly boundary of West Hampton-Riverhead Road CR 31;

- 1) North 86° 57' 25" East, along said division line a distance of 53.75 feet to a point; thence
- 2) continuing along said division line, South 35° 02' 33" East, a distance of 1146.37 feet to a point; thence
- 3) continuing along said division line, South 39° 16' 47" East, a distance of 1157.05 feet to a point; thence
- 4) continuing along said division line, South 55° 08' 15" East, a distance of 819.16 feet to a point; thence
- 5) continuing along said division line, South 63° 54' 42" East, a distance of 539.54 feet to a point; thence
- 6) South 30° 29' 59" East, through the lands of Francis S. Gabreski Airport, a distance of 96.57 feet to a point; thence
- 7) North 86° 39' 30" East, along the aforementioned southerly boundary of said marginal road a distance of 271.84 feet to a point at the intersection of said southerly boundary with the division line between Lots 3 & 6 on the aforementioned map and the point of beginning;

**Thence**, from said point of beginning, North 86° 39' 30" East, along said southerly boundary a distance of 0.96 feet to a point of curvature;

Thence, continuing along said southerly boundary on a curve to the right, having a radius of 2,300.00 feet, an arc length of 212.36 feet to a point at the intersection of said southerly boundary with the division line between Lots 6 & 7 on the aforementioned map:

Thence, South 03° 29' 44" East, along said division line and along the division line between Lots 5 & 7 a distance of 515.65 feet to a point at the intersection of said division line with the division line between Lots 4 & 5;

Thence, South 86° 36' 16" West, along said division line between Lots 4 & 5, a distance of 213.00 feet to a point on the division line between Lots 3 & 5;

CLM  
5/17/05

45013

Thence, North 03° 29' 44" West, along said division line between Lots 3 & 5 and along the division line between Lots 3 & 6 a distance of 525.65 feet to the point or place of beginning.

Said parcel of land containing 112,824± Sq. Ft. or 2.590 Acres, more or less.

Described By: FPF  
Checked By: RRF

Date: August 8, 2005  
Date: August 10, 2005

**EXHIBIT B**  
**SURVEY**

272.80'  
55.85' 72.15'

74.02' 57.48'  
131.50'

0.96'

212.36'

825.95'  
287.29'

217.29'  
815.95'

⑥

1.095 ACRE

**Northside**

N86°36'16"E

213.00'

②

1.000 ACRE

③

1.365 ACRE

⑦

1.371 ACRE

⑧

1.000 ACRE

**Hangars  
Inc.**

N86°26'16"E

213.00'

S03°29'44"E  
826.02'

S03°29'44"E  
807.88'

298.36'

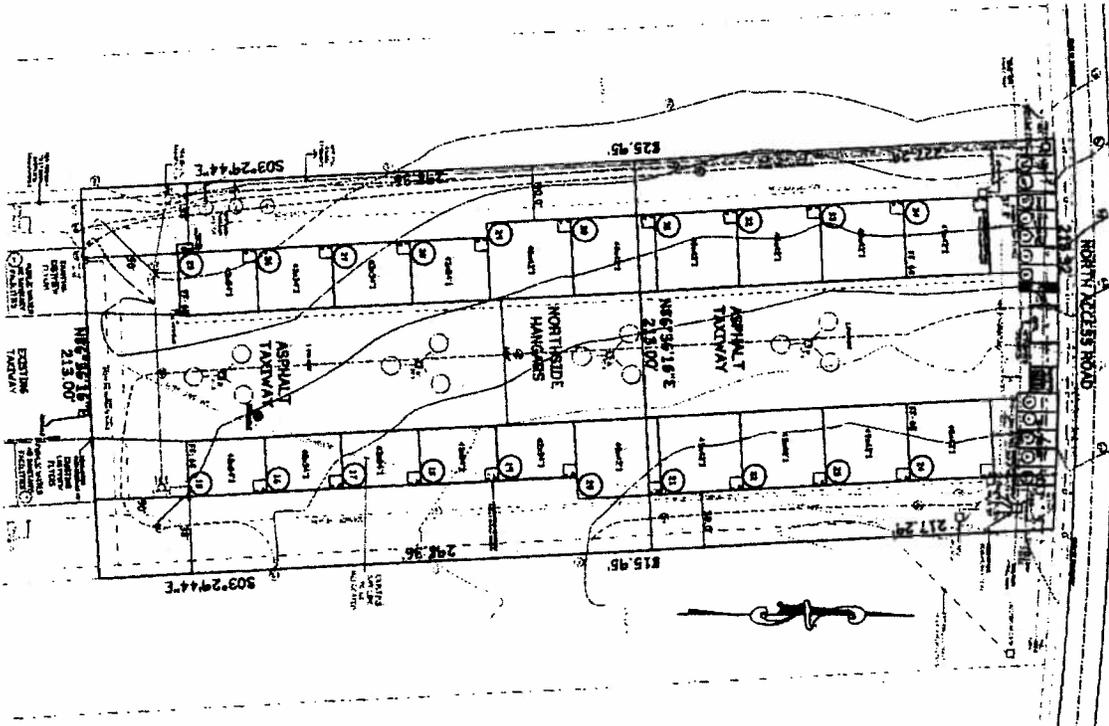
298.36'

⑤

1.495 ACRE

**EXHIBIT C**  
**SITE PLAN**

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**DRAINAGE CALCULATIONS:**

BUILDINGS:  
 (1) 131,497 SQ. FT. = 3,000 SF  
 (7) 42' X 57' = 2,394 SF  
 = 5,394 SF

ASPHALT:  
 70' X 185' = 12,950 SF

TOTAL IMPERVIOUS: 18,344 SF

$Q = 88,822 \text{ SF} \times 2.3 \text{ INCH RAINFALL} \times 1 \text{ (CONSTANT)} = 11,487 \text{ CUBIC FEET TO RETAIN}$

10' DIAMETER LEACHING POOL = 161.4 SF / FOOT = 161.4 FEET REQUIRED

(12) 10 FOOT DIAMETER 14 FOOT DEEP LEACHING POOLS PROVIDED

**PARKING CALCULATIONS:**

1 SPACE FOR EACH 1 HANGAR  
 20 HANGARS / 1 = 20 SPACES REQUIRED

1 HANGAR REQUIRED FOR EACH 25 SPACES  
 1 HANGAR REQUIRED FOR EACH 25 SPACES  
 1 HANGAR PROVIDED

**NORTHSIDE HANGARS SITE DATA:**

**SITE:** 2.575 ACRES OF LEASE AREA

**DEVELOPED:**

**EAST BUILDING:** (9) 45'X62' HANGARS - (5) 47'X33' HANGARS = 16,880 SQUARE FEET

**WEST BUILDING:** (8) 45'X62' HANGARS - (2) 47'X33' HANGARS = 17,782 SQUARE FEET

**TOTAL BUILDING AREA:** 34,662 SQUARE FEET

**TOTAL ASPHALT TAXIWAY:** 12,950 SQUARE FEET

**SITE PLAN**  
 SCALE: 1" = 50'-0"

**PRELIMINARY SITE PLAN**  
 GABRESKI AIRPORT  
 WESTHAMPTON BEACH, NY

*Joseph Fischella, P. E.*  
 PROFESSIONAL ENGINEER  
 P.O. BOX 616  
 SOUTHOLD, NY  
 (831) 765-2954

DRAWN BY: JYH  
 August 09, 2009  
 SCALE: 1" = 50'

SHEET NO:

**EXHIBIT D**  
**CONSTRUCTION SCHEDULE**

Northside Hangars Construction Schedule

Start Site work	30 days after building permit
Site grading and drainage	3-12 months
Foundation	3 - 6 months
Erection of buildings	2 - 6 months
Site utilities	2 - 6 months
Finish work and final connections	2 - 6 months
Completion of both Buildings	36 months after Building Permit

**EXHIBIT E**  
**LEGISLATIVE REQUIREMENTS**

**1. Contractor's/Vendor's Public Disclosure Statement**

The Contractor represents and warrants that it has filed with the Comptroller of Suffolk County the verified public disclosure statement required by Suffolk County Administrative Code Article V, Section A5-7 and shall file an update of such statement with the said Comptroller on or before the 31st day of January in each year of this Agreement's duration. The Contractor acknowledges that such filing is a material, contractual and statutory duty and that the failure to file such statement shall constitute a material breach of this Agreement, for which the County shall be entitled, upon a determination that such breach has occurred, to damages, in addition to all other legal remedies, of fifteen percent (15%) of the amount of the Agreement.

**Required Form:** Suffolk County Form SCEX 22; entitled "Contractor's/Vendor's Public Disclosure Statement"

**2. Living Wage Law**

This Agreement is subject to the Living Wage Law of the County of Suffolk. The law requires that, unless specific exemptions apply all employers (as defined) under service contracts and recipients of County financial assistance, (as defined) shall provide payment of a minimum wage to employees as set forth in the Living Wage Law. Such rate shall be adjusted annually pursuant to the terms of the Suffolk County Living Wage Law of the County of Suffolk. Under the provisions of the Living Wage Law, the County shall have the authority, under appropriate circumstances, to terminate this Agreement and to seek other remedies as set forth therein, for violations of this Law.

The Contractor represents and warrants that it has read and shall comply with the requirements of Suffolk County Code Chapter 347, Suffolk County Local Law No. 12-2001, the Living Wage Law.

**Required Forms:** Suffolk County Living Wage Form LW-1; entitled "Suffolk County Department of Labor – Living Wage Unit Notice of Application for County Compensation (Contract)"

Suffolk County Living Wage Form LW-38; entitled "Suffolk County Department of Labor – Living Wage Unit Living Wage Certification/Declaration – Subject To Audit"

**3. Use of County Resources to Interfere with Collective Bargaining Activities  
Local Law No. 26-2003**

The Contractor represents and warrants that it has read and is familiar with the requirements of Chapter 466, Article 1 of the Suffolk County Local Laws, "Use of County Resources to Interfere with Collective Bargaining Activities". County Contractors (as defined) shall comply with all requirements of Local Law No. 26-2003 including the following prohibitions:

- a. The Contractor shall not use County funds to assist, promote, or deter union organizing.

- b. No County funds shall be used to reimburse the Contractor for any costs incurred to assist, promote, or deter union organizing.
- c. The County of Suffolk shall not use County funds to assist, promote, or deter union organizing.
- d. No employer shall use County property to hold a meeting with employees or supervisors if the purpose of such meeting is to assist, promote, or deter union organizing.

If Contractor services are performed on County property the Contractor must adopt a reasonable access agreement, a neutrality agreement, fair communication agreement, nonintimidation agreement and a majority authorization card agreement.

If Contractor services are for the provision of human services and such services are not to be performed on County property, the Contractor must adopt, at the least, a neutrality agreement.

Under the provisions of Local Law No. 26-2003, the County shall have the authority, under appropriate circumstances, to terminate this Agreement and to seek other remedies as set forth therein, for violations of this Law.

**Required Form:** Suffolk County Labor Law Form DOL-LO1; entitled "Suffolk County Department of Labor – Labor Mediation Unit Union Organizing Certification/Declaration – Subject to Audit"

**4. Lawful Hiring of Employees Law**

This Agreement is subject to the Lawful Hiring of Employees Law of the County of Suffolk (Local Law 52-2006). It provides that all covered employers, (as defined), and the owners thereof, as the case may be, that are recipients of compensation from the County through any grant, loan, subsidy, funding, appropriation, payment, tax incentive, contract, subcontract, license agreement, lease or other financial compensation agreement issued by the County or an awarding agency, where such compensation is one hundred percent (100%) funded by the County, shall submit a completed sworn affidavit (under penalty of perjury), the form of which is attached, certifying that they have complied, in good faith, with the requirements of Title 8 of the United States Code Section 1324a with respect to the hiring of covered employees (as defined) and with respect to the alien and nationality status of the owners thereof. The affidavit shall be executed by an authorized representative of the covered employer or owner, as the case may be; shall be part of any executed contract, subcontract, license agreement, lease or other financial compensation agreement with the County; and shall be made available to the public upon request.

All contractors and subcontractors (as defined) of covered employers, and the owners thereof, as the case may be, that are assigned to perform work in connection with a County contract, subcontract, license agreement, lease or other financial compensation agreement issued by the County or awarding agency, where such compensation is one hundred percent (100%) funded by the County, shall submit to the covered employer a completed sworn affidavit (under penalty of perjury), the form of which is attached, certifying that they have complied, in good faith, with the requirements of Title 8 of the United States Code Section 1324a with respect to the hiring of

covered employees and with respect to the alien and nationality status of the owners thereof, as the case may be. The affidavit shall be executed by an authorized representative of the contractor, subcontractor, or owner, as the case may be; shall be part of any executed contract, subcontract, license agreement, lease or other financial compensation agreement between the covered employer and the County; and shall be made available to the public upon request.

An updated affidavit shall be submitted by each such employer, owner, contractor and subcontractor no later than January 1 of each year for the duration of any contract and upon the renewal or amendment of the contract, and whenever a new contractor or subcontractor is hired under the terms of the contract.

The Contractor acknowledges that such filings are a material, contractual and statutory duty and that the failure to file any such statement shall constitute a material breach of this agreement.

Under the provisions of the Lawful Hiring of Employees Law, the County shall have the authority to terminate this Agreement for violations of this Law and to seek other remedies available under the law.

The Contractor represents and warrants that it has read, is in compliance with, and shall comply with the requirements of Suffolk County Code Chapter 234, Suffolk County Local Law No. 52-2006, the Lawful Hiring of Employees Law.

**Required Forms:** Suffolk County Lawful Hiring of Employees Law Form LHE-1; entitled "Suffolk County Department of Labor --Notice Of Application To Certify Compliance With Federal Law (8 U.S.C. SECTION 1324a) With Respect To Lawful Hiring of Employees"

"Affidavit Of Compliance With The Requirements Of 8 U.S.C. Section 1324a With Respect To Lawful Hiring Of Employees" Form LHE-2.

**5. Gratuities**

The Contractor represents and warrants that it has not offered or given any gratuity to any official, employee or agent of Suffolk County or New York State or of any political party, with the purpose or intent of securing an agreement or securing favorable treatment with respect to the awarding or amending of an agreement or the making of any determinations with respect to the performance of an agreement, and that the signer of this Agreement has read and is familiar with the provisions of Local Law No. 32-1980 of Suffolk County (Chapter 386 of the Suffolk County Code).

**6. Prohibition Against Contracting with Corporations that Reincorporate Overseas**

The Contractor represents that it is in compliance with Suffolk County Administrative Code Article IV, §§A4-13 and A4-14, found in Suffolk County Local Law No. 20-2004, entitled "A Local Law To Amend Local Law No. 5-1993, To Prohibit The County of Suffolk From Contracting With Corporations That Reincorporate Overseas." Such law provides that no contract for consulting services or goods and services shall be awarded by the County to a business previously incorporated within the U.S.A. that has reincorporated outside the U.S.A.

**7. Child Sexual Abuse Reporting Policy**

The Contractor agrees to comply with Chapter 577, Article IV, of the Suffolk County Code, entitled "Child Sexual Abuse Reporting Policy", as now in effect or amended hereafter or of any other Suffolk County Local Law that may become applicable during the term of this Agreement with regard to child sexual abuse reporting policy.

**8. Non Responsible Bidder**

The Contractor represents and warrants that it has read and is familiar with the provisions of Suffolk County Code Chapter 143, Article II, §§143-5 through 143-9. Upon signing this Agreement the Contractor certifies that he, she, it, or they have not been convicted of a criminal offense within the last ten (10) years. The term "conviction" shall mean a finding of guilty after a trial or a plea of guilty to an offense covered under the provision of Section 143-5 of the Suffolk County Code under "Nonresponsible Bidder."

**9. Use of Funds in Prosecution of Civil Actions Prohibited**

Pursuant to the Suffolk County Code Section §590-3, the Contractor represents that it shall not use any of the moneys received under this Agreement, either directly or indirectly, in connection with the prosecution of any civil action against the County of Suffolk or any of its programs, funded by the County, in part or in whole, in any jurisdiction or any judicial or administrative forum.

**10. Suffolk County Local Laws**

Suffolk County Local Laws, Rules and Regulations can be found on the Suffolk County web site at [www.co.suffolk](http://www.co.suffolk.ny.us)<<http://www.co.suffolk.ny.us>>. Click on "Laws of Suffolk County" under "Suffolk County Links."

**End of Text for Exhibit E**

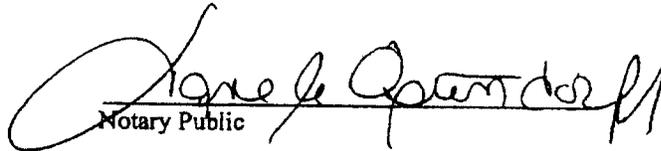
ACKNOWLEDGEMENT

STATE OF NEW YORK}

SS:

COUNTY OF SUFFOLK}

On the 17<sup>th</sup> day of August in the year 2009 before me, the undersigned, personally appeared Jonathan Ross (name), President (Title) personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

*Jane A. Ostendorff*  
Notary Public, State of New York  
No. 01056040305  
Qualified In Suffolk County  
Commission Expires April 17, 20 10

STATE OF NEW YORK}

SS:

COUNTY OF SUFFOLK}

On the \_\_\_ day of \_\_\_\_\_ in the year 2009 before me, the undersigned, personally appeared \_\_\_\_\_ (Name), \_\_\_\_\_ (Title), personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first set forth above.

@

By: [Signature]  
Name: JONATHAN ROGS  
Title: PRESIDENT  
Date: 8/2/09

COUNTY OF SUFFOLK

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Deputy County Executive  
Date: \_\_\_\_\_

APPROVED BY:

DEPARTMENT OF ECONOMIC  
DEVELOPMENT AND WORKFORCE  
HOUSING

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

RECOMMENDED BY:

DEPARTMENT OF ECONOMIC  
DEVELOPMENT AND WORKFORCE HOUSING  
AVIATION DIVISION

By: [Signature]  
Name: ANTHONY CEGLIO  
Title: Airport Manager  
Date: 8/2/09

APPROVED AS TO LEGALITY

CHRISTINE MALAFI  
Suffolk County Attorney

By: \_\_\_\_\_  
Name: Basia Deren Braddish  
Title: Asst. County Attorney  
Date: \_\_\_\_\_

SUFFOLK COUNTY  
County Legislature  
RIVERHEAD, NY



*This is to Certify That I,* TIM LAUBE, Clerk of the County Legislature of the County of Suffolk, have compared the foregoing copy of resolution with the original resolution now on file in this office, and which was duly adopted by the County Legislature of said County on September 17, 2009 and that the same is a true and correct transcript of said resolution and of the whole thereof.

*In Witness Whereof, I* have hereunto set my hand and the official seal of the County Legislature of the County of Suffolk.

A handwritten signature in cursive script that reads "Tim Laube".

---

Clerk of the Legislature

Intro. Res. 1766 Res. No. 803

September 17, 2009

**Motion:**

Romaine, Schneiderman, Browning, Beedenbender, Losquadro  
 Eddington, Montano, Alden, Lindsay, Viloría-Fisher, Barraga,  
 Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

**Co-Sponsors:**

Romaine, Schneiderman, Browning, Beedenbender, Losquadro  
 Eddington, Montano, Alden, Lindsay, Viloría-Fisher, Barraga,  
 Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

**Second:**

Romaine, Schneiderman, Browning, Beedenbender, Losquadro  
 Eddington, Montano, Alden, Lindsay, Viloría-Fisher, Barraga,  
 Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

LD	Legislator	Yes	No	Abs	NP	R	
1	Edward P. ROMAINE						
2	Jay H. SCHNEIDERMAN						
3	Kate M. BROWNING						
4	Brian BEEDENBENDER						
6	Daniel P. LOSQUADRO						
7	Jack EDDINGTON						
9	Ricardo MONTANO						
10	Cameron ALDEN						
11	Thomas F. BARRAGA						
12	John M. KENNEDY, JR.						
13	Lynne C. NOWICK						
14	Wayne R. HORSLEY						
15	DuWayne GREGORY						
16	Steven H. STERN						
17	Lou D'AMARO						
18	Jon COOPER						
5	Vivian VILORIA-FISHER, D.P.O.						
8	William J. LINDSAY, P.O.						
	Totals	18					

MOTION
<input checked="" type="checkbox"/> Approve
Table: _____
Send To Committee
Table Subject To Call
Lay On The Table
Discharge
Take Out of Order
Reconsider
Waive Rule _____
Override Veto
Close
Recess
APPROVED <input checked="" type="checkbox"/> FAILED _____
No Motion _____ No Second _____

RESOLUTION DECLARED
<input checked="" type="checkbox"/> ADOPTED
NOT ADOPTED

Renee J. Ortiz  
 Tim Laube, Clerk of the Legislature

Roll Call \_\_\_\_\_ Voice Vote