

Introduced by Presiding Officer, on request of the County Executive and Legislator  
Schneiderman

**RESOLUTION NO. 1096 -2010, AUTHORIZING THE  
PURCHASE OF A HANGAR LOCATED AT FRANCIS S.  
GABRESKI AIRPORT, FOR USE BY THE SUFFOLK COUNTY  
POLICE DEPARTMENT**

**WHEREAS**, the County and Sea Empty Equipment, Inc. entered into a ground lease for the lease of property located at Francis S. Gabreski Airport, for the purpose of providing property upon which Sea Empty Equipment could construct ten T-hangars and one large box hangar, with a term that shall expire on March 30, 2029; and

**WHEREAS**, Sea Empty Equipment, Inc. subsequently assigned the ground lease to Sea Empty Aviation LLC, whose operating agreement provides for fifty-seven percent of the membership interest to be held proportionately by the owners of the ten T-hangars while forty-three percent of the membership interest, represented by the large box hangar, is held by Sea Empty Equipment, Inc.; and

**WHEREAS**, by lease agreement dated May, 2001, the Suffolk County Police Department, Aviation Bureau leased a portion of the large box hangar, together with the use in common of the pilot's lounge, restroom, parking areas and taxiways from Sea Empty Equipment Inc., to house aircraft and offices utilized in connection with their East End Operations; and

**WHEREAS**, the Suffolk County Police Department, Aviation Bureau continues to occupy the large box hangar pursuant to various month-to-month leases since July 1, 2005; and

**WHEREAS**, the Aviation Bureau has been desirous of securing a long term solution for the space needs for their East End Operations; and

**WHEREAS**, early discussions between the County and Sea Empty Equipment, Inc. failed to result in a mutually acceptable agreement for the sale of the large box hangar to the County; and

**WHEREAS**, the County then pursued steps to construct its own hangar at Gabreski Airport, which construction would be partially funded through a grant from the New York State Department of Transportation, Aviation Bureau; and

**WHEREAS**, Resolution Nos. 603-2004 and 1365-2007 appropriated funds to the Capital Budget and Program in connection with the construction of a helicopter hangar for the East End Operations at Gabreski Airport; and

**WHEREAS**, during the interceding time, Sea Empty Equipment Inc. contacted the County to reopen negotiations regarding the sale of the large box hangar to the County; and

**WHEREAS**, a cost comparison of the proposed construction costs for a new hangar, initially estimated in the amount of \$1.7 million, against the appraised value of the existing hangar revealed that substantial savings could be realized by the County by proceeding with the purchase of the existing large box hangar; and

**WHEREAS**, the Sea Empty Equipment has agreed to accept a purchase price for the large box hangar in the amount of \$975,000; and

**WHEREAS**, there are sufficient funds in Capital Project No. 525-3167.310 to purchase the hangar; and

**WHEREAS**, the sale of the large box hangar would require an amendment to the underlying ground lease between the County, as landlord, and Sea Empty Aviation LLC, as tenant, to sever and release that portion of the property upon which the large box hangar is located, while continuing the duties and obligations under the ground lease as applied to the remainder of the leasehold; now, therefore be it

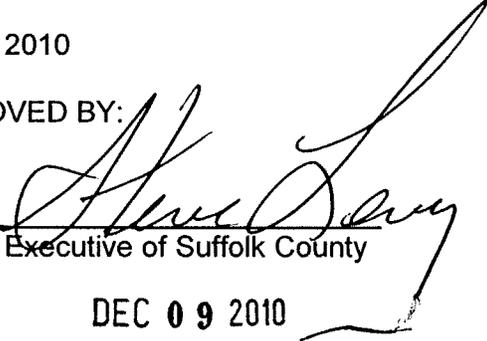
**1<sup>st</sup>** **RESOLVED**, that this Legislature, being the lead agency under the State Environmental Quality Review Act (SEQRA) and Chapter 279 of the Suffolk County Code, hereby finds and determines that this resolution constitutes a Type II action pursuant to Title 6 NYCRR Part 617.5(c)(20) and (27), in that this legislative decision involves continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment; and therefore this Legislature has no further responsibilities under SEQRA; and be it further

**2<sup>nd</sup>** **RESOLVED**, that the County Legislature hereby authorizes the County Executive, or his designee, to execute a purchase agreement with Sea Empty Equipment, Inc. and Sea Empty Aviation LLC, to acquire any and all right, title and interest in the large box hangar, adjacent office space and bathroom, and related improvements, additions and permanent installations comprising the Sea Empty Equipment Inc. interest in the Sea Empty Aviation LLC, free and clear of any membership obligation on the part of the County to Sea Empty Aviation LLC, in form and content similar to the agreement annexed hereto as Exhibit "A"; and be it further

**3<sup>rd</sup>** **RESOLVED**, that the County Legislature also authorizes the County Executive, or his designee, to execute an amendment and restatement of lease agreement between the County of Suffolk and Sea Empty Aviation LLC, to sever and release that portion of the ground comprising the Sea Empty Equipment Inc. membership and conforming the duties and responsibilities set forth thereunder accordingly, in a form and content similar to the agreement annexed hereto as Exhibit "B".

DATED: December 7, 2010

APPROVED BY:

  
County Executive of Suffolk County

Date: DEC 09 2010

**Additional back-up material regarding IR 2138 is filed with the Clerk's Office,  
Hauppauge, as well as on our website.**

2138

**MEMORANDUM**

**TO:** Ken Crannell, Deputy County Executive  
 Connie Corso, Budget Director

**FROM:** Carolyn E. Fahey, Intergovernmental Relations Coordinator  
 Department of Economic Development & Workforce Housing

**DATE:** November 9, 2010

**SUBJECT:** **RESOLUTION AUTHORIZING THE PURCHASE OF A  
 HANGAR LOCATED AT FRANCIS S. GABRESKI  
 AIRPORT, FOR USE BY THE SUFFOLK COUNTY POLICE  
 DEPARTMENT**

\*\*\*\*\*

The Department of Economic Development and Workforce Housing, requests the submittal of the attached resolution authorizing the signing of a Purchase Agreement and an amended and Restatement of a lease of a hanger at Gabreski Airport. The hanger will be used to permanently house the East End Medevac helicopter.

Attached please find the draft resolution, Purchase Agreement (Exhibit A), Restatement of Lease (Exhibit B) and the required SCIN 175a and 175b. Electronic copies have been filed as required.

Thank you.

CEF/kmb  
 Attachments

cc: Yves Michel, Commissioner  
 Brendan Chamberlain, Director Intergovernmental Relations  
 Basia Braddish, Assistant County  
 Anthony Ceglio, Francis S. Gabreski Airport Manager



Steve Levy

Suffolk County Executive

Yves R. Michel

Commissioner

**BETTER FOR BUSINESS... BETTER FOR LIFE**

EXHIBIT A

**THIS PURCHASE AGREEMENT (“Agreement”)**, made as of November \_\_\_\_, 2010, 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 **Sea Empty Aviation, LLC**, a limited liability company, organized and existing under the laws of the State of New York, with an address at \_\_\_\_\_, Westhampton, New York 11978;

*WITNESSETH, THAT:*

**Whereas**, pursuant to a ground lease between Sea Empty Equipment, Inc. and the COUNTY, last dated January 11, 1999, and as amended by the First Amendment of Lease Agreement last dated October 12, 2005, Sea Empty Equipment leased approximately 1.3± acres of land at Gabreski Airport, as shown on Exhibit “A” of the original Lease Agreement (the “Original Leased Property”), for the construction of ten “T” hangars and one box hangar, together with related improvements, additions, and permanent installations (hereinafter the “Original Lease”); and

**Whereas**, by an Assignment of Lease dated April 14, 2009, the Original Lease between the COUNTY and Sea Empty Equipment, Inc. was assigned to Sea Empty Aviation, LLC; and

**Whereas**, pursuant to the Operating Agreement of Sea Empty Aviation, LLC, dated January 28<sup>th</sup>, 2000 (the “Operating Agreement”), Sea Empty Equipment, Inc. holds a 43% interest in Sea Empty Aviation, LLC in the form of a membership interest allocable to one box hangar, and adjoining office space and bathroom which was constructed on the leased premises; and

**Whereas**, the COUNTY is interested in purchasing the present possessory interest in the box hangar, and adjoining office space and bathroom, and related improvements, additions and permanent installations comprising the membership interest of Sea Empty Equipment (the “Improvements”); and

**Whereas**, in an effort to facilitate the County’s purchase of said Improvements, Sea Empty Aviation, LLC agrees to consent to the County’s purchase of the Improvements, free and clear of any obligations under the Operating Agreement or related agreements, and Sea Empty Aviation, LLC furthers agrees to consent that the County shall under no circumstance be deemed a member of Sea Empty Aviation, LLC;

**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. Payment**

The County gives, and Sea Empty Equipment, Inc. accepts, **NINE HUNDRED SEVENTY\_FIVE THOUSAND DOLLARS (\$975,000.00)**, as payment for the purchase of all rights, title and interest to the Improvements comprising the membership interest of Sea Empty Equipment Inc. in Sea Empty Aviation, LLC.

**Section 2. No Membership Interest**

Sea Empty Aviation, LLC hereby irrevocably surrenders to the COUNTY any and all right, title and interest in the Improvements, and further acknowledges that the COUNTY shall have no present or future

## EXHIBIT A

obligation under the Operating Agreement or any member agreements executed in accordance therewith, and in no instance shall the COUNTY be deemed a member of Sea Empty Aviation, LLC.

### **Section 3. Release and Surrender of Ground Lease Interest**

The COUNTY agrees to enter into with Sea Empty Aviation LLC a restatement of the Original Lease, for the purpose of surrendering and releasing Sea Empty Aviation LLC from any obligations under the Original Lease for that portion of the Original Leased Property, as depicted on the diagram identified as Exhibit A.

### **Section 4. Managing Member**

Upon the sale of the Improvements, Sea Empty Equipment Inc. shall no longer be the managing member of Sea Empty Aviation LLC.

### **Section 5. No Claims**

Sea Empty Aviation LLC and Sea Empty Equipment Inc. warrant and represent that they have done nothing which would give anyone a claim against the Improvements or the underlying property.

### **Section 6. Broker Fee**

Sea Empty Equipment, Sea Empty Aviation LLC and the COUNTY each represent and warrant that no broker has been concerned on its behalf in the negotiation of this Lease and that there is no such broker who is or may be entitled to be paid a commission in connection therewith except for Newmark Knight Frank ("**Broker**"), who shall be paid a four percent (4%) commission by Sea Empty Equipment Inc. pursuant to a separate agreement between Sea Empty Equipment Inc. and the Broker. Each party shall indemnify and save harmless the other parties of and from any claim for commission or brokerage fee made by any and all persons, firms or corporations whatsoever (other than Broker) based upon a claim of services rendered to such party, whether or not such claims, demands, causes of action, liabilities, etc., in connection with the transfer of the Improvements (to include reasonable attorneys and other professional fees).

### **Section 7. Representations and Warranties of Sea Empty Equipment, Inc.**

Sea Empty Equipment, Inc. warrants that the execution this Agreement was duly authorized by all necessary action of Sea Empty Equipment, Inc., none of which action has been rescinded or otherwise modified. Sea Empty Equipment, Inc. has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement is a legal, valid, and binding obligation of the Sea Empty Equipment, Inc., enforceable against Sea Empty Equipment, Inc. in accordance with its terms.

### **Section 8. Representations and Warranties of Sea Empty Aviation LLC**

Sea Empty Aviation LLC warrants that the execution this Agreement was duly authorized by all necessary action of its members, none of which action has been rescinded or otherwise modified. Sea Empty Aviation LLC has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement is a legal, valid, and binding obligation of Sea Empty Aviation LLC, enforceable against Sea Empty Aviation LLC in accordance with its terms.

## EXHIBIT A

### **Section 9. Representations of COUNTY**

The 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 10. COUNTY Representatives**

It is expressly understood and agreed by and between the parties hereto that the officers, officials, employees, and age 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 Sea Empty Aviation LLC nor Sea Empty Equipment Inc. shall have any claim against them or any of them as individuals in any event whatsoever.

### **Section 11. No Intended Third Party Beneficiaries**

This Agreement is entered into solely for the benefit of the COUNTY and Sea Empty Aviation LLC and Sea Empty Equipment Inc. No third party shall be deemed a beneficiary of this Agreement and no third party shall have the right to make any claim or assert any right under the Agreement.

### **Section 12. Certification as to Relationships**

Sea Empty Aviation LLC and Sea Empty Equipment Inc. certify under penalties of perjury that, other than through the funds provided in the Agreement and other valid agreements with the COUNTY, there is no known spouse, life partner, business, commercial, economic, or financial relationship with the COUNTY or its elected officials. Sea Empty Aviation LLC and Sea Empty Equipment Inc. also certify that there is no relationship within the third degree of consanguinity, between them, any of their partners, members, directors, or shareholders owning five (5%) percent or more of the Agreement, and the COUNTY.

### **Section 13. Suffolk County Legislative Requirements**

The Parties agree to be bound by the terms of the "Suffolk County Legislative Requirements," annexed hereto as Exhibit B, 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 14. Governing Law**

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 15. E-mail Signature**

Sea Empty Equipment, Inc. and Sea Empty Aviation LLC represent and warrant that Charles Tutt is authorized to execute this Agreement, in his capacity as President of Sea Empty Equipment, Inc. via submission of a legally authorized e-mail signature.

EXHIBIT A

**Section 16. Entire Agreement**

This Agreement consists of the following: Sections 1 through 16 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 Parties. The Parties agree that no representations or warranties shall be binding upon the others unless expressed in writing.

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

**COUNTY OF SUFFOLK**

**SEA EMPTY EQUIPMENT, INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Christopher Kent

Name: Charles Tutt

Title: Chief Deputy County Executive

Title: President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**SEA EMPTY AVIAITION LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO LEGALITY**

**CHRISTINE MALAFI**

Suffolk County Attorney

By: \_\_\_\_\_

Basia Deren Braddish

Asst. County Attorney

EXHIBIT B

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FRANCIS S. GABRESKI

SECOND AMENDMENT AND RESTATEMENT OF LEASE AGREEMENT

between

COUNTY OF SUFFOLK

and

SEA EMPTY AVIATION LLC

Date: \_\_\_\_\_, 2010

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**SECOND AMENDMENT  
AND  
RESTATEMENT OF LEASE AGREEMENT**

**THIS SECOND AMENDMENT AND RESTATEMENT OF LEASE AGREEMENT (“Restatement”)**, made as of \_\_\_\_\_, 2010, 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 **Sea Empty Aviation, LLC**, a limited liability company, organized and existing under the laws of the State of New York, with an address at \_\_\_\_\_, Westhampton, New York 11978 (hereinafter called the “**TENANT**”);

*WITNESSETH, THAT:*

**Whereas**, pursuant to the lease between Sea Empty Equipment, Inc. and the COUNTY, last dated January 11, 1999, and as amended by the First Amendment of Lease Agreement last dated October 12, 2005, Sea Empty Equipment leased approximately 1.3± acres of land at Gabreski Airport, as shown on Exhibit “A” of the original Lease Agreement (the “Original Leased Property”), for the construction of ten “T” hangars and one box hangar, together with related improvements, additions, and permanent installations (hereinafter the “Original Lease”); and

**Whereas**, pursuant to an Assignment of Lease dated April 14, 2009, the Original Lease between the COUNTY and Sea Empty Equipment, Inc. was assigned to TENANT; and

**Whereas**, the COUNTY and TENANT voluntarily and jointly desire to sever and surrender from the Original Lease that portion of the ground lease upon which the box hangar and related improvements, additions and permanent installations are constructed and which are currently used by the Suffolk County Police Department;

**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. Surrender of Portion of Premises**

TENANT hereby surrenders to COUNTY a portion of the Original Leased Property, as depicted on the diagram identified as **Exhibit A**, and further highlighted on the aerial identified as **Exhibit B**, including the land, and any and all interest in the box hangar, adjacent office space and bathroom, and related improvements, additions and permanent installations (the “Surrendered Property”).

**Section 2. Description of Leased Premises**

TENANT hereby continues to lease from the COUNTY approximately 1.04 acres, or 80% percent of the Original Leased Property (hereinafter the “Remaining Property”), upon which the ten (10) T-hangars were constructed, together with the related improvements, additions and permanent installations (the “Improvements”). The Remaining Property and the Improvements, the appurtenances appertaining to the Remaining Property and the Improvements, and the rights, easements, and privileges granted hereunder

are collectively referred to as the "Premises" and which are also identified on the diagram and aerial set forth in Exhibits A and B.

*Section 2.02* There are no warranties, expressed or implied, as to any condition apparent or unknown as to the Premises, except as otherwise stated in this Restatement.

**Section 3. Term**

*Section 3.01* This Restatement shall expire on 12 o'clock noon of March 30, 2029 or on such earlier date as provided for herein.

*Section 3.02* TENANT, provided it is not in default of any of the terms or conditions of this Restatement, shall have two (2) options to extend the term for five (5) years, each. Successive terms shall only commence upon the expiration of the previous term. TENANT may exercise the first option by notifying the COUNTY in writing, by registered or certified mail, return receipt requested, no later than July 1, 2028 if it so desires to extend the term for the period of April 1, 2029 through March 30, 2034. TENANT may exercise its second option by notifying the COUNTY in writing by registered or certified mail, return receipt requested, no later than July 1, 2033 if it so desires to extend the lease term for the period of April 1, 2034 through March 30, 2039.

**Section 4. Purpose**

*Section 4.01* The parties hereto acknowledge that the COUNTY is a municipal corporation and is entering into and executing this Restatement by virtue of the authority of Resolution No. \_\_\_\_\_-2010 of the Suffolk County Legislature, dated the \_\_\_\_\_ day of \_\_\_\_\_, 2010 (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 4.02* In accordance with applicable federal, state and local laws, rules and regulations, TENANT shall use and occupy the Premises 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 Restatement;
- (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 Premises shall not be for long term storage and is subject to the prior written, and continuing approval of Airport Management. TENANT understands that as additional hangars are developed in the area, the parking of automobiles and other non-aviation vehicles operated by TENANT on the Premises may interfere with the safe operation of airplanes in the immediate area. In the event Airport Management determines that parking of automobiles and other non-aviation vehicles on the Premises threatens the safe operation of airplanes, Airport Management shall designate alternate parking area(s) for TENANT's use. Airport Management and TENANT shall enter into a separate agreement setting forth the COUNTY's and TENANT's obligations and duties relating to such parking areas and any parking fees or rental amounts which may be charged pursuant to such separate agreement.

*Section 4.03* In the use of the Premises, 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 Premises, 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 4.04* TENANT's use of the Premises 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 Premises 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 5. Rent**

*Section 5.01* "Annual Rent" for the Premises through March 31, 2014 shall be \$5,899 annually or \$491.58 monthly, payable by 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. All remittances shall be made payable to "Suffolk County Treasurer's Office." Partial months shall be prorated.

*Section 5.02* For each successive five (5) year period, annual rent shall be computed and compounded as follows: for the period April 1, 2014 to March 30, 2019, the annual rent shall be a sum which is the product of the multiplication of the annual rent for the immediately prior rental period, multiplied by a fraction, the numerator of which is the Consumer Price Index for all urban consumers in the New York Metropolitan Area (CPI-U) for March 1, 2014 and the denominator is the CPI-U for March 1999. For each successive five (5) year period, the annual rent shall be a sum which is the product of the multiplication of the compounded annual rent for the immediately prior period, using as the numerator, the CPI-U for March of the year in which said five (5) year period commences and the CPI-U for March 1999 as the denominator. Anything herein contained to the contrary, notwithstanding, in no event shall the rent paid hereunder during any period or extension be less than the rental for the previous period or term. In the event the U.S. Department of Labor shall discontinue the maintenance of the CPI-U, the rate shall be computed using reasonably similar statistical data maintained by a governmental agency.

*Section 5.03* Any sums, charges, fees, expenses, or amounts required 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 except as otherwise provided, 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 5.04* TENANT further understands and agrees that, in the event the Agreement is terminated, TENANT's obligation to pay the amounts due the COUNTY pursuant to this Agreement 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 31** hereof.

*Section 5.05* Should TENANT neglect to pay any charges for services supplied by the COUNTY 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 5.06* In the event that the rental payment is not made by the 10<sup>th</sup> day after the payment is deemed due under the provisions of this Restatement, TENANT agrees to pay an additional late fee equal to five percent (5%) of the monthly rental payment.

## **Section 6. Security Deposit**

*Section 6.01* TENANT and COUNTY acknowledge that TENANT previously deposited the sum of \$1,188.00 as security for the payment of rent and for the faithful performance and observation by TENANT of all the terms, provisions, covenants, and conditions of the prior agreement between the parties, and such security deposit shall continue to be held for such purpose hereunder, and any modification, extension, or renewal thereof (such security deposit shall hereafter be called the "Security").

*Section 6.02* 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 Premises upon the expiration or earlier termination of this Agreement.

*Section 6.03* The Security shall not be applied as an advance payment of the rent by the TENANT, nor used by the TENANT in lieu of rent at the conclusion of the lease.

*Section 6.04* 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 therefor by TENANT, the COUNTY will return the Security 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 Security. TENANT may collect or receive any interest paid on cash deposited in interest-bearing bank accounts, if any, 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 7. No Warranties By County**

*Section 7.01* TENANT acknowledges that TENANT is leasing the Premises "AS IS" and COUNTY shall not be required to perform any work or furnish any materials in connection with the Premises

*Section 7.02* Except as otherwise set forth in this Restatement, (i) COUNTY makes no warranty of any kind or nature, express, implied or otherwise, or any representations or covenants of any kind or nature in connection with the conditions of the Premises or any part thereof, and (ii) COUNTY shall not be liable for any latent or patent defects therein or be obliged in any way whatsoever to correct or repair any such latent or patent defects.

*Section 7.03* Except as may be otherwise expressly provided in the Restatement, COUNTY shall not be obligated to provide any services to TENANT.

## **Section 8. Care, Maintenance, And Repair Of Premises**

*Section 8.01* It shall be TENANT'S sole obligation to take good care of the Premises and make and be responsible for any and all repairs, maintenance, replacements or renovations required. TENANT shall perform any work required to accommodate the needs of TENANT. All work is to be conducted in a good and workmanlike manner, in accordance with Section 9 below, at TENANT's sole cost and expense. Such repairs and replacements, ordinary as well as extraordinary, shall be made promptly as and when necessary. All repairs and replacements shall be of good workmanship and of quality and class at least equal to the original work or equal to the subsequently renovated and improved work.

*Section 8.02* TENANT shall at its own expense at all times keep the Premises and all TENANT's Improvements, fixtures, equipment, landscaping, grass areas, and personal property, and any property of the TENANT which is located in any parts of the Premises which are open to or visible by the general public, in a clean and orderly condition and appearance. If TENANT fails to maintain the Premises in a clean and orderly condition, the COUNTY may do so and the cost thereof shall be charged to the TENANT, and will be Additional Rent.

*Section 8.03* TENANT agrees to perform maintenance and make repairs and replacements in any case where County, in its reasonable judgment, determines that it is necessary to do so in order to preserve the safety of the Premises, or to correct any condition which reasonably could cause injuries or damages to persons or property.

*Section 8.04* In the event any mechanics' or other liens are filed against any portion of the Premises 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 forty-five (45) 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 45-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.

*Section 8.05* TENANT shall perform all snow removal required for its use of the Premises, at TENANT's sole cost and expense.

*Section 8.06* TENANT shall promptly remove any of its aircrafts or the aircrafts of its officers, employees, members, 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 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 on the Premises, or install any fixtures (other than fixtures, removable without material damage to the Premises, 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 be liable to pay the cost thereof to the COUNTY.

**Section 10. Utilities and Services**

*Section 10.01* TENANT shall assume and be responsible to pay for all utilities and services, including the connections thereto, used by it with respect to its operations, granted by this Restatement, including water, electricity, sewers and fuel. TENANT agrees to install any water, electric and sewer meters at TENANT's expense. The COUNTY shall not be obligated to provide any services to TENANT.

*Section 10.02* Tenant acknowledges that certain utilities and/or services may not presently be available to the Premises. TENANT agrees that, within twelve months of electric, water, or sewer service being made available to the Premises, TENANT shall take all steps necessary to connect the Premises 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 10.02*, COUNTY may collect, as Additional Rent, the sum of \$100.00 per day for each day that the TENANT is in default.

*Section 10.03* In the event that the State of New York, Suffolk County, or any other municipal subdivision, or corporation now furnishing, with or without charge therefor, any services to TENANT in its use or occupancy of the Premises 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 Premises hereunder or TENANT's use or occupancy thereof.

**Section 11. Insurance**

*Section 11.01* TENANT shall procure and continuously maintain, without interruption, during the term of the Restatement, at TENANT's own expense, Comprehensive General Liability Insurance, with a limit of not less than \$2 Million Combined Single Limit per occurrence for bodily injury and property damage and Hangarkeepers Legal Liability Insurance coverage as follows:

1. Hangarkeepers Liability insurance in an amount not less than the total value of all aircraft stored within the hangars if TENANT owns, rents or otherwise provides hangar and/or tie down space for the purpose of safekeeping or servicing aircraft not owned by the TENANT. TENANT shall provide LANDLORD with certificates of insurance from owners of aircraft indicating All Risk Hull insurance for any aircraft, releasing COUNTY from any liability whatsoever for said aircraft. Such insurance certificate(s) shall be provided to County by Tenant before said aircraft is stored on Premises. 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 19**, below.

*Section 11.02* In addition to the obligations set forth in this **Section 11**, 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 11.03* 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 add the cost thereof to payments due COUNTY under this Agreement or any other agreement between the COUNTY and TENANT.

*Section 11.04* 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 11.05* Each policy of insurance required by this **Section 11** 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 11.06* 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 not also required to provide.

*Section 11.07* The aforesaid insurance coverages and renewals thereof under this **Section 11** and the insurance under **Section 12**, 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 11.08* In the event that any of the insurance required by this Restatement ceases to be in full force and effect, TENANT agrees to cease all operations permitted under the terms of this Agreement until such time as the requisite insurance is obtained.

**Section 12. Fire and Casualty Damage**

*Section 12.01* During the entire term of this Restatement, all risk of direct physical loss or damage to the Improvements shall be with TENANT. TENANT shall insure and keep insured the Improvements to the extent of 100% of the replacement cost thereof from all risks. 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 12.02* In the event the Premises or any part thereof shall be damaged by any casualty against which insurance is carried pursuant to this Section 12, 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 12.03* If the Premises or any other improvement made at any time to the Premises shall be damaged or destroyed by any cause whatsoever, during the term of this Restatement, 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 except as otherwise approved in writing by the COUNTY, 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, if permitted by the policy of insurance.

*Section 12.04* 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 Premises by any cause whatsoever; provided, however, that if the Premises 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 12.05* Any insurance policy obtained by TENANT covering real and/or personal property shall include a waiver of subrogation against COUNTY.

**Section 13. Indemnity Liability Insurance**

*Section 13.01* TENANT shall indemnify and hold harmless the COUNTY, its Departments 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 Premises, 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 Premises, or out of the acts or omissions of others on the Premises, or arising out of the acts or omissions of TENANT, its officers and employees elsewhere at the Airport.

*Section 13.02* 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 13.03* 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 same extent as TENANT's obligations under *Sections 13.01* and *13.02*.

*Section 13.04* 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 Restatement. 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 14. Ingress and Egress**

*Section 14.01* 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 Premises 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 14.02* TENANT shall have the full right of ingress and egress between the Premises 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 14.03* 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 Premises presently or hereafter used as such.

*Section 14.04* 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 Premises. 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 Premises or in any taxiways, runways, streets or roadways near the Premises.

*Section 14.05* TENANT hereby grants the COUNTY the full right of ingress and egress over the Premises to access the box hangar and other portions of the Airport.

**Section 15. Obligations of TENANT**

*Section 15.01* TENANT shall use the Premises 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,

- (1) to keep the sound level of its operations within acceptable limits as determined by the COUNTY.
- (2) to comply with voluntary noise abatement procedures in place and to take steps to notify and encourage its employees, affiliates, customers, contractors, invitee and agents to adhere to such procedures.

*Section 15.02* 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 cause its subtenants, 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 Premises, 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 Premises. In the event Airport Management reasonably determines that TENANT has not adequately controlled 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 15.03* TENANT at its sole cost and expense shall daily remove from the Premises 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 Premises. 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 15.04* TENANT shall transport, dispose of, and handle, in accordance with all State, Federal, and Local legal requirements, all chemicals, fuel, wastes, and residues generated at the Premises.

*Section 15.05* It is intended that the standards and obligations imposed by this **Section 15** 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 shall not affect the validity or enforceability of this Restatement and are not grounds for termination of this Agreement.

*Section 15.06* 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 4.02* of this Agreement; and
- (2) provide the necessary management and operate the Premises 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
- (3) operate the Premises 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 15.07* TENANT agrees to pay as additional rent within ten (10) days of receipt of notice from COUNTY, any taxes levied as a result of TENANT's occupancy or use of the Premises or any improvements placed thereon as a result of TENANT's occupancy or by reason of use of the Premises for other than public purposes. Any challenge to any assessment or tax shall be the obligation of TENANT and COUNTY's responsibility shall be limited to sending to TENANT copies of any notice of assessment or tax bill actually received by COUNTY. In the event any tax paid by TENANT shall be refunded to COUNTY, the same shall be credited against rent next due.

*Section 15.08* 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 Premises 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 Premises 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 Premises by TENANT and from the operations of TENANT under this Agreement.

*Section 15.09* TENANT shall be solely responsible for compliance with the provisions of this **Section 15** and no act or omission of the COUNTY shall relieve TENANT of such responsibility.

## **Section 16. Hazardous Substances and Waste**

*Section 16.01* TENANT shall not deposit, dump, store, or pour on any part of the soil of the Premises or permit the accumulation on the Premises of Hazardous Substances, or any other substance or material which, if left on the Premises, could cause injury to the health of or discomfort to persons in the vicinity or on the Premises, or adversely affect the environment of the Premises or the Airport, including the air and water above and the ground and water below and surrounding the Premises, 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 if permitted by applicable law encapsulate, all such material located at the Premises 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 Premises in comparable areas, or (B) the permitted uses of the Premises 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 even though the same may be Hazardous Substances as defined herein. Tenant shall handle such substances in accordance with the requirements of **Section 51** hereof.

*Section 16.02* 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 Premises, or arising from TENANT's use or occupancy of the Premises, 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 Premises, or the transportation to or from the Premises of any Hazardous Substance in violation of applicable laws.

*Section 16.03* 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 Premises;
- (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 Premises;
- (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 Premises, 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 16.04* If TENANT fails to fulfill any duty imposed under this **Section 16** 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 Premises 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 16.05* Where a Hazardous Substance is detected on the Premises 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 16.06* 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 Premises pursuant to this Agreement, at or from the Premises, 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 16.07* 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 Premises 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, subtenants, licensees, customers, guests and/or invitees.

#### **Section 17. Prohibited Acts**

*Section 17.01* TENANT shall not use, occupy, maintain, or operate the Premises, nor suffer or permit the Premises or any part thereof to be used, occupied, maintained, or operated, nor bring into or keep at the Premises, 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 Premises, (c) violate any legal requirements, (d) make void or voidable any insurance policy then in force with respect to the Premises or make any such insurance unobtainable or increase the rate of any insurance with respect to the Premises, (e) cause physical damage to the Premises or any part thereof, (f) permit the excess accumulation of waste or refuse matter, or (g) constitute a public or private nuisance.

*Section 17.02* 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 Premises.

*Section 17.03* TENANT shall not cause or permit to be caused or produced upon the Premises, 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 18. 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 Premises any

persons who are not employees and/or permitted subtenants of TENANT, for the purpose of:

- (1) doing maintenance work on aircraft not owned or operated solely by said persons, except for warranty work (See "Appendix A"); 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 on or from the premises.

**Section 19. Rules and Regulations, Minimum Standards and Development Guidelines**

*Section 19.01* TENANT shall observe and obey and shall compel others on the Premises and those doing business with it with respect to the Premises 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 Premises and for the safe and efficient operation and use of the Premises. 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.

*Section 19.02* 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 Premises and shall no longer use the facilities at the Airport for its business operations.

**Section 20. Signs**

*Section 20.01* 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 Premises, which approval shall not be unreasonably withheld.

*Section 20.02* 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 Premises, 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 Premises and the Airport, the COUNTY may perform the necessary work and TENANT shall pay the costs thereof to the COUNTY on demand.

**Section 21. Assignment of Lease or Sublease**

*Section 21.01* 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.

*Section 21.02* Notwithstanding the foregoing, TENANT shall not be required to obtain the COUNTY's prior written approval for any subleases involving t-hangar subleases, or other aircraft subleases, which subleases shall be deemed approved in advance by the COUNTY provided that:

- (1) All such sub lessee(s) 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 Restatement. Executed copies of all subleases shall be delivered to the COUNTY within ten (10) days of the sub-lease's execution.
- (2) 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 21.03* 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 (or other ownership interest) 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, the ownership of which is hereby deemed transferred in connection with such sale.

*Section 21.04* Copies of TENANT's standard sublease or operating agreement, any purchase agreement, and By-Laws shall be delivered to Airport Management at least Ten (10) days from the date of execution hereof.

## **Section 22. Title to Improvements**

*Section 22.01* Title to Improvements constructed on the Premises, and to all alterations, modifications, and enlargements to existing structures located on the Premises shall, during the term of this Restatement, vest in TENANT, except Tenant may not transfer title thereto, voluntarily or by operation of law, without the written consent of the COUNTY. Upon expiration or early termination of this Restatement, 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 lien or encumbrance filed against any portion of the Premises by reason of TENANT's acts or omissions or because of any claim against TENANT. TENANT agrees to execute all documents requested and deemed necessary by COUNTY in evidence of said transfer of title.

*Section 22.02* TENANT shall have no right to demolish or remove, in whole or in part, buildings, structures, or other improvements, except with the written consent of COUNTY, which consent shall be at the reasonable discretion of the COUNTY or conditioned on the obligation of TENANT to replace the same by a building, structure, or improvement approved by COUNTY.

*Section 22.03* Title to the box hanger and the appurtenances thereto located on the Surrendered Property shall vest in the County immediately upon execution of this Restatement.

## **Section 23. Condemnation**

*Section 23.01* 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 23.02* 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 23.03* 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 24. Non-Discrimination**

Without limiting the generality of any of the provisions of this Restatement, 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, 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 Premises; (2) that in the construction of any improvement on, over, or under the Premises and the furnishing of services thereon, no person on the grounds of sex, race, color, creed, age, disability, sexual preference, 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 Premises 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 25. Governmental Requirements**

*Section 25.01* TENANT shall procure all licenses, certificates, permits, or other authorization from all governmental authorities, if any, having jurisdiction over TENANT's operations at the Premises which may be necessary for TENANT's operations.

*Section 25.02* 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 Premises were owned by a private entity. 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 25.03* 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 Premises and the Airport or would so pertain or apply if the Premises were owned by a private entity and TENANT shall, in accordance with and subject to the provisions of Sections 8 and 9 hereof, make any and all structural and non-structural improvements, alterations or repairs of the Premises that may be required at any time hereafter by any such present or future law, rules, regulations, requirement, order or direction.

*Section 25.04* 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 Premises. 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 25.05* 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.,.

## **Section 26. Rights of Entry Reserved**

*Section 26.01* The COUNTY, by its officers, employees, agents, representatives, and contractors shall have the right upon reasonable notice to enter upon the Premises for the purpose of inspecting the same, for observing the performance by TENANT of its obligations under this Restatement and for the doing of any act or thing which the COUNTY may be obligated or have the right to do under this Restatement, or otherwise. In the event of a question of a contractor's authority, TENANT shall contact the COUNTY.

*Section 26.02* 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 or elsewhere, to maintain existing and future utilities systems or portions thereof on the Premises, including therein, without limitation, 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 Premises 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 Premises 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 Premises by TENANT.

*Section 26.03* Nothing in this Section 26 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 27. Additional Fees and Charges**

*Section 27.01* If the COUNTY shall pay any sum or sums, or incur any obligation or expense by reason of the failure, neglect or refusal of TENANT to perform or fulfill any one or more of the conditions or agreements contained in this Restatement, 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 fails to do so, 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 Section 5.

**Section 28. Removal of Personal Property**

*Section 28.01* TENANT shall have the right at any time during the term of this Restatement to remove its equipment, inventories, removable fixtures, and other personal property from the Premises, provided such removal shall not damage the Facilities or structures installed on the Premises.

*Section 28.02* If TENANT shall fail to remove its property on or before the termination or expiration of the term or any extension thereof, 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 28.03* 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 Section 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 this Restatement.

**Section 29. Surrender/Holdover**

*Section 29.01* Upon the expiration or earlier termination of this Restatement, 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 Premises 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 29.02* TENANT acknowledges that possession of the Premises must be surrendered to the COUNTY at the expiration or sooner termination of the term of this Restatement. The parties recognize and agree that the damage to the COUNTY resulting from any failure by the TENANT to timely surrender possession of the Premises 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 Premises is not surrendered to the COUNTY upon the expiration or sooner termination of the term of this Restatement, 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 Restatement 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 150% the total monthly installment of Annual Rent last payable by TENANT under the Restatement, and upon such other terms and conditions as provided in this Restatement, 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 29.03* TENANT's obligation under this Section shall survive the expiration or earlier termination of this Restatement.

**Section 30. Acceptance of Surrender**

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 30, 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 Premises or of this Restatement.

**Section 31. Termination/Default Remedies and Damages**

*Section 31.01* This Restatement 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 31.02* Upon the occurrence of any of the following events, or at any time thereafter during the continuance thereof, or during the term of this Restatement, 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 Restatement upon not less than thirty (30) days written notice ("Notice of Termination"), 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, if any:

- (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) Except as to the payment of annual rent, TENANT shall fail to keep, perform, and observe each and every promise and agreement set forth in this Restatement 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) The occurrence of any act which operates to deprive TENANT permanently of the rights, powers and privileges necessary for the proper conduct and operation of its business granted herein;
- (5) TENANT shall voluntarily abandon, desert or vacate the Premises 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
- (6) Any lien is filed against the Premises 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 bond and to challenge and expunge the lien within forty-five (45) days 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 31.03* 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 Restatement unless the COUNTY shall agree in writing with TENANT that the Event(s) of Default has been cured by TENANT in all respects.

*Section 31.04* 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 31.05* The rights of termination described above shall be in addition to any other rights of termination provided in this Restatement and in addition to any rights and remedies that the COUNTY would have at law or in equity consequent upon any breach of this Restatement 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 31.06* The COUNTY shall have the right to terminate this Restatement without cause, by Notice of Termination, 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 Premises 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 Restatement 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 without cause and 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 31.07* Following the date specified in the Notice of Termination provided above (as well as upon any other termination of this Restatement by expiration of the Term or otherwise) COUNTY immediately shall have the right to recover possession of the Premises; and to that end, the COUNTY may enter the Premises 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 Premises 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 Premises, and make disposition thereof in such manner as the COUNTY may deem to be commercially reasonable under the circumstances.

*Section 31.08* Unless and until the COUNTY shall have terminated this Restatement pursuant to *Section 31.06* above, TENANT shall remain fully liable and responsible to perform all of the covenants and to observe all the conditions of this Restatement 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 31.09* 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 Premises 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 Restatement. 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 31.10* 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 Restatement or following an Event of Default (regardless of any endorsement or notation on any check or any statement in any letter or other communication 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 Restatement and the recovery of the Premises because of TENANT's previous default.

*Section 31.11* Except for the monetary obligations of either party, COUNTY and TENANT shall not be in default of this Restatement 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 Restatement.

## **Section 32. Notices**

*Section 32.01* Any communication, notice or other submission necessary or required to be made by the parties regarding this Restatement except with respect to *Section 32.02* 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 32.02* 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) overnight 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 33.03* 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 overnight 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 33. Certification of Office of Foreign Assets Control (OFAC)**

*Section 33.01* 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 or other authorized government entity 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 or otherwise; 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 33.02* 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 34. Prevailing Wage**

*Section 34.01* For purposes of this Restatement, any construction performed by TENANT on the Premises shall be deemed to constitute a public works contract under Article 8 of the Labor Law. TENANT acknowledges and agrees to comply with the prevailing wage requirements for any construction on the Premises, including, but not limited to, the building, land, parking lot, and all other portions of the Premises.

*Section 34.02* No person performing, aiding in, or assisting in such construction 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 35. Lawful Hiring Of Employees in Connection with Contracts For Construction or Future Construction**

This Restatement 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 36. Broker**

Lessee and County each represent and warrant that no broker has been concerned on its behalf in the negotiation of this Restatement and that there is no such broker who is or may be entitled to be paid a commission in connection therewith except for Newmark Knight Frank ("Broker"), who shall be paid a commission pursuant to a separate agreement between Lessee and the Broker. 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 (other than Broker) based upon a claim of 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 Lease (to include reasonable attorneys and other professional fees).

**Section 37. Paragraph Headings**

The section and subsection headings, if any, in this Restatement, 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 38. Miscellaneous**

*Section 38.01* This Restatement 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 Premises under this Restatement or substantially destroy the commercial value of such improvements, COUNTY shall terminate this Restatement. Nothing hereunder shall impair the rights of TENANT to seek compensation pursuant to the provision of **Section 23** hereof, from the United States or the State of New York, in the event of a taking pursuant to the preceding sentence.

*Section 38.02* 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 38.03* 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 Restatement, and shall be at the sole discretion of COUNTY.

*Section 38.04* 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 if consistent with applicable rules and regulations pertaining thereto.

*Section 38.05* COUNTY reserves the right to further develop or improve other areas of the Airport as it sees fit, regardless of the desires or view of TENANT, and without interference or hindrance.

*Section 38.06* 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 39. Suspension of Lease**

*Section 39.01* During a time of war or national emergency, COUNTY shall have the right to lease the Premises 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 Restatement which is inconsistent with the provisions of a lease with the United States or the State of New York shall be suspended and this Restatement shall immediately terminate.

*Section 39.02* 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 Restatement in its entirety or in part, so that the Premises 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 Restatement may be terminated. In the event the Parties do not terminate the Restatement, the rent and fees due under **Section 5** shall be adjusted proportionately, based upon the percentage of the Premises affected by the temporary suspension, until the suspension is lifted.

#### **Section 40. 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 by-laws, (or in the case of a limited liability company, articles of organization and operating agreement) as amended, if not on file with the Department, any amendments thereto during the term of this Restatement, and a current list of its officers and directors, trustees or partners and any changes in such list when they occur.

#### **Section 41. Off-set of Arrears or Default**

The TENANT warrants that it is not, and shall not be during the Term of this Restatement, in arrears to the COUNTY for taxes or upon debt or contract and is not, and shall not be during the term of this Restatement, 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 Restatement.

**Section 42. Cooperation on Claims**

The TENANT agrees to render diligently to the COUNTY any and all cooperation, without any 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 Restatement.

**Section 43. Representations and Warranties of TENANT**

TENANT warrants that the execution and delivery of this Restatement 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 Restatement and to perform its obligations under this Restatement. 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 Restatement is a legal, valid, and binding obligation of the TENANT, enforceable against TENANT in accordance with its terms.

**Section 44. 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 Restatement and to execute all documents related thereto.

**Section 45. 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 46. 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 Premises 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 47. 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 Premises shall have any claim against them or any of them as individuals in any event whatsoever.

**Section 48. No Credit**

TENANT agrees that this Restatement 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 Restatement.

**Section 49. No Implied Waiver**

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

**Section 50. Certification**

The parties to this Restatement hereby certify that, other than the funds provided in this Restatement 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 Restatement, and any partners, members, directors, or shareholders of five percent (5%) (or more) of any party to this Restatement.

**Section 51. Chemicals, Fungicides, Herbicides and Pesticides**

*Section 51.01* All chemicals, fungicides, herbicides and pesticides (if any) applied to the Premises 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 51.02* TENANT shall comply with all Federal, State and local laws, rules, regulations, codes and ordinances in the performance of this Restatement 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 Restatement. 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 52. 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 53. Governing Law**

*Section 53.01* This Restatement 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 Restatement 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 53.02* 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 54. Severability**

It is expressly agreed that if any term or provision of this Restatement, or the application thereof to any person or circumstance, shall, to any extent, be held invalid or unenforceable, the remainder of this Restatement, 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 Restatement shall be valid and shall be enforced to the fullest extent permitted by law.

**Section 55. Entire Agreement**

*Section 55.01* This Restatement consists of the following: **Sections 1** through **55** 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 55.02* TENANT agrees that no representations or warranties shall be binding upon the COUNTY unless expressed in writing, in this Restatement.

*Section 55.03* References contained herein to Sections, Exhibits and Schedules shall be deemed to be references to the Sections, Exhibits, and Schedules of and to this Restatement unless specified to the contrary.

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

**COUNTY OF SUFFOLK**

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

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

**APPROVED BY:**  
DEPARTMENT OF ECONOMIC  
DEVELOPMENT AND WORKFORCE  
HOUSING

**RECOMMENDED BY:**  
DEPARTMENT OF ECONOMIC  
DEVELOPMENT AND WORKFORCE HOUSING  
AVIATION DIVISION

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

By: \_\_\_\_\_  
ANTHONY CEGLIO  
Airport Manager

**APPROVED AS TO LEGALITY**  
CHRISTINE MALAFI  
Suffolk County Attorney

By: \_\_\_\_\_  
Basia Deren Braddish  
Asst. County Attorney

ACKNOWLEDGEMENT

STATE OF NEW YORK}

SS:

COUNTY OF SUFFOLK}

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2010 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

STATE OF NEW YORK}

SS:

COUNTY OF SUFFOLK}

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2010 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

**EXHIBIT A**  
**MAP OF SURRENDERED ROPEYTY**

**EXHIBIT B**  
**MAP OF REMAINING PROPERTY**

**EXHIBIT C**  
**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 Restatement'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 Restatement, 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 Restatement.

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

**2. Living Wage Law**

This Restatement 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 Restatement 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 Restatement 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 Restatement 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 C**

**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

REQUEST FOR THE INTRODUCTION OF SUFFOLK COUNTY LEGISLATION  
OFFICE OF THE COUNTY EXECUTIVE  
County of Suffolk

- (1) Please limit this suggestion form to ONE proposal.
- (2) Describe in detail
- (3) Attach all pertinent backup material.

Submitting Department (Dept. Name & Location):	Department Contact Person (Name & Phone No.):
Department of Economic Development and Workforce Housing H. Lee Dennison Bldg. - 2 <sup>nd</sup> Floor Hauppauge	Carolyn Fahey 3-4833

Suggestion Involves:

Technical Amendment \_\_\_\_\_

Grant Award \_\_\_\_\_

New Program \_\_\_\_\_

Contract: New \_\_\_\_\_ Rev. \_\_\_\_\_

---

Summary of Problem: (Explanation of why this legislation is needed.)

**AUTHORIZING THE PURCHASE OF A HANGAR LOCATED AT FRANCIS S.  
GABRESKI AIRPORT, FOR USE BY THE SUFFOLK COUNTY POLICE  
DEPARTMENT**

---

Proposed Changes in Present Statute: (Please specify section when possible.)

None

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 .December 7,2010 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.*

*Tim Laube*

---

Clerk of the Legislature

Intro. Res. 2138

Res. No. 1096

December 7, 2010

**Motion:**  
 Romaine, Schneiderman, Browning, Muratore, Losquadro  
 Eddington, Montano, Cilmi, Lindsay, Viloría-Fisher, Barraga,  
 Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

**Co-Sponsors:**  
 Romaine, Schneiderman, Browning, Muratore, Losquadro  
 Eddington, Montano, Cilmi, Lindsay, Viloría-Fisher, Barraga,  
 Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

**Second:**  
 Romaine, Schneiderman, Browning, Muratore, Losquadro  
 Eddington, Montano, Cilmi, 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	Thomas MURATORE					
6	Daniel P. LOSQUADRO					
7	Jack EDDINGTON				/	
9	Ricardo MONTANO	/				
10	Thomas CILMI			/		
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	13	2	2	1	-

**MOTION**

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  FAILED \_\_\_\_\_  
 No Motion \_\_\_\_\_ No Second \_\_\_\_\_

**RESOLUTION DECLARED**

ADOPTED  
 NOT ADOPTED

Tim Laube

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