APPENDIX A
CONSTRUCTION BY LESSEE

1. The Lessee agrees to construct on the site shown on Lessee’s Site Plan (the “Site”) the following facilities: (to be agreed after compliance with SEQRA and NEPA the provisions of this Agreement)

2. Prior to the commencement of construction of the facilities set forth in Section 1 above, or any part thereof, Lessee shall submit to Aviation Department and Town Planning Department complete plans and specifications. Such plans and specifications shall be signed and sealed by a registered architect or a professional engineer licensed to practice in the State of New York.

3. The Aviation Department and/or Town Planning Department may refuse to grant approval if, in its reasonable opinion, the proposed facilities as laid out and indicated by the Lessee on such plans or constructed according to such plans and specifications:

   3.1 will be structurally unsound or unsafe or hazardous for human occupancy or improper for the use and occupancy for which it is designed;

   3.2 will not comply with all the requirements of this Agreement;

   3.3 will be in violation of any State code, OSHA-70, the National Electric Code or any other law, ordinance of regulation of any governmental authority having jurisdiction over the Airport;

   3.4 will not be at locations or not be oriented in accordance with the approved existing and future Airport Layout plans for the Airport.

4. Upon approval of such plans and specifications by Aviation and Town Planning Departments the Lessee shall proceed expeditiously and with all reasonable diligence to construct, at its own cost and expense, the facilities in accordance with such approved plans and specifications and complete the facilities in accordance with the time limit set forth above.

   4.1 The Lessee or the Lessee's construction contractor shall furnish Aviation Department performance and payment bonds in a sum equal to the estimated cost of construction, in a form and with sureties satisfactory to the Aviation Department, for the faithful performance by the Lessee of its construction obligations contained in this Agreement and for the guarantee of payment of all claims of material men, workmen and subcontractors. The Lessee shall deliver such bonds to Aviation Department prior to commencement of construction or within (30) days after the award by Lessee of construction contract or contracts, which ever occurs first.

5. All construction work shall be done in accordance with the following terms and conditions:

   5.1 The Lessee hereby assumes the risk of loss or damage to all of the construction work prior to the completion thereof and the risk of loss or damage to all property of Aviation Department arising out of or in connection with the performance of the construction work. In the event of such loss or damage, the Lessee shall forthwith repair, replace and made good the construction work and the property of the Aviation Department without cost or expense to the Department.

   5.2 The Lessee shall itself and shall also require its contractors to indemnify and hold harmless
the Aviation Department, the Town of Islip and their officers, agents and employees from and against all claims and demands, just or unjust, of third persons (including employees, officers, and agents of the Town of Islip) arising or alleged to arise out of the performance of the construction work and for all expenses, (whether or not such claims, demands, causes of action, liabilities etc, are made or asserted before or after termination or expiration of this Agreement) incurred by it and by them in the defense, settlement or satisfaction thereof, including without limitation thereto, claims and demands for death, for personal injury or for property damage, direct or consequential, (to include reasonable attorneys and other professional fees) whether they arise out of or from the acts or omissions of the Lessee, of any contractors of the Lessee, of the Aviation Department or of third person, or from acts of God or of the public enemy, or otherwise excepting only claims and demands which result solely from negligent acts done by the Aviation Department, its subsidiaries, its officers, agents and employees subsequent to the commencement of the construction work.

5.3 The Lessee shall furnish a project manager during the construction period with whom Aviation Department may communicate at all times.

5.4 Aviation Department shall have the right, through its duly designated representatives, to inspect the construction work and the plans and specifications thereof, at any and all reasonable times during the progress thereof and from time to time, in its discretion, to take samples and perform testing on any part of the construction work. The taking of samples and testing shall be conducted so as to minimize interference with the construction work, if such minimization of impact can be accomplished without diminishing the effectiveness of accuracy of the samples and or tests.

5.5 The Lessee agrees that it shall deliver to the Aviation Department "as-built" drawings (capable of being reproduced) of the construction work and shall during the term of this Agreement keep said drawings current showing thereon any changes or modifications which may be made. (No changes or modifications to be made without the Aviation Department and/or Town Planning Departments consent not to be unreasonably withheld or delayed.)

5.6 The Lessee shall pay or cause to be paid all claims lawfully made against it by its contractors, subcontractors, material, men and workmen, and all claims lawfully made against it by other third persons arising out of or in connection with or because of the performance of the construction work, and shall cause its contractors and subcontractors to pay all such claims lawfully made against them, provided, however, that nothing herein contained shall be construed to limit the right of the Lessee to contest any claim of a contractor, subcontractor, material, men, workman and/or other person and no such claim shall be considered to be an obligation of the Lessee within the meaning of this Section unless and until the same shall have been finally adjudicated. The Lessee shall use its best efforts to resolve any such claims and shall keep the Aviation Department fully informed of its actions with respect thereto.

5.7 The Lessee shall procure and maintain comprehensive general liability insurance, including automotive, with a contractual liability endorsement covering the obligations assumed by the Lessee in Section 5.2 of this Appendix, which shall be in addition to all policies of insurance otherwise required under this Agreement or the Lessee may provide such insurance by requiring each contractor engaged by it for the construction work to procure and maintain such insurance including such contractual liability endorsement, said insurance not to contain any care, custody or
control exclusions, any exclusion for explosions, collapses or damage to bodily injury to or sickness, disease, or death of any employee of the Lessee or of any of its contractors which would conflict with or in any way impair coverage under the contractual liability endorsement. Said insurance shall name Town of Islip Aviation Department and the Town of Islip and their agents as an additional insured’s and be in not less than the following amounts:

(i) Bodily Injury Liability:
For injury to or wrongful death
to one person......................$1,000,000
For injury or wrongful death or more than one person for any one occurrence....................$5,000,000
Aggregate Products Completed Operations..........................$3,000,000

(ii) Property Damage Liability:
For all damages arising out of injury to or destruction of property in any one occurrence..................$3,000,000
Aggregate Products Completed Operations..........................$3,000,000
Aggregate Operations.................$3,000,000
Aggregate Productive.................$3,000,000
Aggregate Contractual.................$3,000,000

The insurance required hereunder shall be maintained in effect during the performance of the construction work. A certified copy of each of the policies or a certificate or certificates evidencing the existence thereof, or binders, acceptable to Town of Islip shall be delivered to the Aviation Department at least fifteen (15) days prior to the commencement of any work. In the event any binder is delivered, it shall be replaced within thirty (30) days by a certified copy of the policy or a certificate. Each such copy or certificate shall contain a valid provision or endorsement that the policy may not be canceled, terminated, changed or modified without giving fifteen (15) days' written advance notice thereof to Aviation Department.

5.8 The Lessee shall procure and maintain or cause to be procured and maintained Builder's Risk Completed Value Insurance covering the construction work during the performance thereof including material delivered to the construction site but not attached to the realty in an amount and form satisfactory to the Town of Islip. Such insurance shall name Aviation Department the Town of Islip, the Lessee and its contractors and subcontractors as additional assureds and such policy shall provide that the loss shall be adjusted with and payable to the Lessee. Such proceeds shall be used by the Lessee for the repair, replacement or rebuilding of the construction work. The policies or certificates representing this insurance shall be delivered by the Lessee to the Aviation Department prior to the commencement of construction and each policy or certificate delivered shall bear the endorsement of or be accompanied by evidence of payment of the premium thereon and, also, a valid provision obligating the insurance company to furnish Aviation Department fifteen (15) days' advance notice of the cancellation, termination, change or modification of the
insurance evidenced by said policy or certificate.

5.9 Nothing contained herein shall grant or be deemed to grant to any contractor, architect, supplier, subcontractor or any other person engaged by the Lessee of any of its contractors in the performance of any part of the construction work any right of action or claim against Aviation Department, Town of Islip, its officers, agents and employees with respect to any work any of them may do in connection with the construction work.

5.10 Nothing contained herein shall create or be deemed to create any relationship between the Aviation Department and any such contractor, architect, supplier, subcontractor or any other person engaged by the Lessee or any of its contractors in the performance of any part of the construction work and Aviation Department shall not be responsible to any of the foregoing for any payments due or alleged to be due thereto for any work performed or materials purchased on connection with the construction work.

5.11 When the construction work is substantially completed and is ready for use by the Lessee, the Lessee shall advise Aviation Department to such effect and shall deliver to Aviation Department a certificate of substantial completion signed by a registered architect or professional engineer licensed to practice in the State of New York certifying that such construction work has been constructed in accordance with the approved plans and specifications and the provisions of this Agreement and in compliance with all applicable laws, ordinances and governmental rules, regulations and orders. All risks thereafter with respect to the construction and installation of the same and any liability therefore for negligence or other reason shall be borne by the Lessee.

The Lessee shall not use or permit the use of the construction work for the purposes set forth in this Agreement until such certificate is received by Aviation Department. The date of delivery of the certificate to Aviation Department shall constitute the Completion Date for the purposes of this Agreement.

Upon completion or installation of the Project or any part thereof on the Leased Premises, from time to time, title thereto shall immediately pass to and vest in Town of Islip Aviation Department.