



Post Office Box 9010 Addison, Texas 75001-9010 5300 Belt Line Road
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AGENDA

WORK SESSION OF THE CITY COUNCIL

6:00 P.M.

AND

REGULAR MEETING OF THE CITY COUNCIL

7:30 P.M.

JULY 14, 2009

TOWN HALL

5300 BELT LINE ROAD

WORK SESSION

Item #WS1 - Presentation and discussion regarding the proposed assignment by Victory Jet, Inc. to PlaneSmart! Properties, LLC of Victory Jet, Inc.'s interests in the building improvements and leasehold under Ground Lease #013A-14 and Hangar Lease #0120-03 relating to and concerning the real property located at or about 15841 Addison Road on the Addison Airport.

Item #WS2 - Discussion regarding the Town's Visitor Services operations and related uses.

REGULAR SESSION

Pledge of Allegiance

Item #R1 - Consideration of Old Business.

Introduction of Employees

Discussion of Upcoming Events

Item #R2 - Consent Agenda.

#2a - Approval of the Minutes for:

June 23, 2009, Regular City Council Meeting and Work Session

Item #R3 - Presentation of a check for \$2,817.18 to Metrocrest Social Services for the *School's Out for Summer Food Drive*.

Item #R4 - Presentation by Ken Nolan with the Dallas Central Appraisal District (DCAD) regarding DCAD's responsibilities, methods for valuing property, trends in property values, and any significant changes that came out of the 81st (2009) session of the Texas Legislature, and discussion regarding the same.

Item #R5 - Presentation of the Distinguished Budget Presentation Award for Fiscal Year 2008.

Attachment:

1. Council Agenda Item Overview
-

Item #R6 - Presentation, discussion and consideration of approval of an agreement between the Town and MuniServices, LLC for hotel occupancy tax consulting services.

Attachments:

1. Council Agenda Item Overview
2. Agreement for Consultant Services
3. Agreement Hotel Occupancy Tax (HOT)

Administrative Recommendation:

Administration recommends approval.

Item#R7 - Presentation, discussion and consideration of approval of an agreement between the Town and MuniServices, LLC for sales tax audit services.

Attachments:

1. Council Agenda Item Overview
2. Agreement STARS

Administrative Recommendation:

Administration recommends approval.

Item#R8 - Presentation, discussion and consideration of approval of an agreement between the Town and MuniServices, LLC for consulting services related to the execution of an expanded sales tax compliance review and sales tax capture leakage analysis.

Attachments:

1. Council Agenda Item Overview
2. Agreement Tax Capture Leakage Analysis (STCL)
3. Agreement Expanded Sales Tax Compliance Review

Administrative Recommendation:

Administration recommends approval.

Item#R9 - Presentation, discussion and consideration of approval of the award of a contract to Allegra Company for printing services.

Attachment:

1. Council Agenda Item Overview

Administrative Recommendation:

Administration recommends approval.

Item#R10 - Presentation, discussion and consideration of approval of the purchase of three Lifepak 15, Heart Monitor/Defibrillators.

Attachments:

1. Council Agenda Item Overview
2. Cardiac Monitor Justification

Administrative Recommendation:

Administration recommends approval.

Item#R11 - Presentation, discussion and consideration of approval of the award of a contract to Noofangle Media in the amount of \$28,000.00 for professional services to design and host an Addison Green/Sustainability community portal, subject to the City Attorney's final approval.

Attachments:

1. Council Agenda Item Overview
2. Contract

Administrative Recommendation:

Administration recommends approval.

Item #R12 - Presentation and discussion of contracts regarding the Management and Operation of Addison Airport.

Attachment:

1. Council Agenda Item Overview

Item#R13 - Presentation, discussion and consideration of approval of consent to and certain documents regarding the proposed sale and assignment by Victory Jet, Inc. to PlaneSmart! Properties, LLC, a Texas limited liability company, of Victory Jet's interests in the building improvements and leasehold under Ground Lease #013A-14 and Hangar Lease #0120-03 relating to and concerning the real property located at or about 15841 Addison Road on the Addison Airport.

Attachments:

1. Council Agenda Item Overview
2. Memorandum from Bill Dyer
3. Proposed Sale and Assignment Documents

Administrative Recommendation:

Administration recommends approval.

Item#R14 - REPLAT/Lot 2R, Block A, Excel Plaza. Presentation, discussion and consideration of approval of a replat for one lot of 7.725 acres, located at the southeast corner of the intersection of Westgrove Drive and Excel Parkway, on application from NNN Addison.Com Center, represented by Mr. Kelli Burchett of Grubb-Ellis.

Attachments:

1. Docket Map
2. Staff report
3. Plat

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on June 25, 2009, voted to recommend approval of the request for replat of Lot 2R, Block A, Excel Plaza, subject to the following conditions:

1. Label P.O.B.
2. Identify the limits of the detention area easement.
3. Add a 20' right-of-way corner clip at Westgrove Drive and Excel Parkway.
4. Add a signature block for the mayor and city secretary.
5. Provide a closure sheet.

Voting Aye: DeFrancisco, Doherty, Gaines, Hewitt, Resnik, Wheeler
Voting Nay: none
Absent: Wood

Administrative Recommendation:

Administration recommends approval, subject to conditions.

Item #R15 - Presentation, discussion and consideration of approval of a contract between the Town and BTA Services Ltd, d/b/a Action Services for Pavement Markings, Bid #09-17.

Attachments:

1. Council Agenda Item Overview
2. Bid Tab

Administrative Recommendation:

Administration recommends approval.

Item #R16 - **PUBLIC HEARING**, presentation and discussion regarding the status of the Storm Water Management Program.

Attachment:

1. Council Agenda Item Overview
-

Item #R17 - Presentation and discussion regarding findings of the Water Quality Action Plan Study prepared by Freese & Nichols Engineers, Inc.

Attachment:

1. Council Agenda Item Overview
-

Item #R18 - Presentation, discussion and consideration of approval of a supplemental agreement to the Engineering Services Agreement between the Town and Freese & Nichols, Inc., in an amount not to exceed \$129,300.00 for additional design services on the proposed 1.5 Million Gallon Elevated Storage Tank.

Attachment:

1. Council Agenda Item Overview

Administrative Recommendation:

Administration recommends approval.

Item #R19 - Presentation, discussion and consideration of approval of a contract with SWG Energy to purchase and install a 3.5 KW Cleanfield Wind Turbine for \$41,620.00 on the future Elevated Storage Tank site at Surveyor Boulevard and Arapaho Road.

Attachments:

1. Council Agenda Item Overview
2. Wind Turbine Cost - Final

Administrative Recommendation:

Administration recommends approval.

EXECUTIVE SESSION

Item #ES1 - Closed (executive) session of the Addison City Council, pursuant to Section 551.072, Texas Government Code, to deliberate the lease or value of certain real property located within the Town.

Item #R20 - Discussion and consideration of action regarding the lease by the Town of certain real property located within the Town.

Adjourn Meeting

Posted:

July 10, 2009 at 5:00 P.M.

Lea Dunn - City Secretary

**THE TOWN OF ADDISON IS ACCESSIBLE TO PERSONS
WITH DISABILITIES. PLEASE CALL (972) 450-2819 AT LEAST
48 HOURS IN ADVANCE IF YOU NEED ASSISTANCE.**

Council Agenda Item **#WS1**

Please refer to Attachments for Item #R13.

Council Agenda Item **#WS2**

There are no attachments for this Item.

**OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL
WORK SESSION**

June 23, 2009
6:00 P.M. – Town Hall
5300 Belt Line Road
Upstairs Conference Room

Council Members Present:

Mayor Chow, Councilmembers Braun, Clemens, Daseke, Lay, Mellow and Noble

Absent: None

Work Session

Item #WS1 - Presentation, discussion, review and update regarding branding for the Town.

Lea Dunn introduced Jim Krause and Bob Shallcross who made the presentation, gave the review and led the discussion regarding branding for the Town.

There was no action taken.

Mayor-Joe Chow

Attest:

City Secretary-Lea Dunn

**OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL
REGULAR SESSION**

June 23, 2009
7:30 P.M. – Town Hall
5300 Belt Line Road
Council Chambers

Present: Mayor Chow, Councilmembers Braun, Clemens, Daseke, Lay, Mellow and Noble

Absent: None

Regular Session

Item #R1 - Consideration of Old Business.

The following employees were introduced to the Council: Brad Jones with the Police Department, and Betsy Sterns with the Recreation Department.

Item #R2 - Consent Agenda.

#2a - Approval of the Minutes for:

June 2, 2009, Special Meeting and Work Session
June 4, 2009, Special Meeting, Work Session and Site Tour
June 9, 2009, Regular City Council Meeting and Work Session

Councilmember Mellow moved to approve the Minutes for:

June 2, 2009, Special Meeting and Work Session
June 4, 2009, Special Meeting, Work Session and Site Tour
June 9, 2009, Regular City Council Meeting and Work Session

Councilmember Braun seconded the motion. Motion carried.

Voting Aye: Chow, Braun, Clemens, Daseke, Lay, Mellow and Noble
Voting Nay: None
Absent: None

Item #R3 - Presentation, discussion and consideration of approval of an ordinance amending the Code of Ordinances of Town by adding a new Article XIII regarding and regulating Solar Energy Systems to Chapter 18, Buildings and Building Regulations.

Councilmember Daseke moved to approve Ordinance 009-021 amending the Code of Ordinances of Town by adding a new Article XIII regarding and regulating Solar Energy Systems to Chapter 18, Buildings and Building Regulations.

Councilmember Clemens seconded the motion. Motion carried.

Voting Aye: Chow, Braun, Clemens, Daseke, Lay, Mellow and Noble
Voting Nay: None
Absent: None

Councilmember Braun recused himself for Item #R4 and left Council Chambers. He did not participate in the discussion or vote.

Item #R4 - Presentation, discussion and consideration of approval of the First Amendment to the Master Facilities Agreement (regarding the construction of public improvements within that area generally described as Vitruvian Park) between the Town of Addison, UDR, Inc., and various property owners in order to provide for a revision to the location of the Phase II construction area modifying it from the northern side of Brookhaven Club Drive and Ponte Avenue to the southeast side of Brookhaven Club Drive and Bella Lane including certain public streets, a bridge and streetscaping improvements, and to provide for modifications to the Brookhaven Development Phasing Plan, subject to Final Approval by the City Attorney.

Councilmember Lay moved to approve the First Amendment to the Master Facilities Agreement (regarding the construction of public improvements within that area generally described as Vitruvian Park) between the Town of Addison, UDR, Inc., and various property owners in order to provide for a revision to the location of the Phase II construction area modifying it from the northern side of Brookhaven Club Drive and Ponte Avenue to the southeast side of Brookhaven Club Drive and Bella Lane including certain public streets, a bridge and streetscaping improvements, and to provide for modifications to the Brookhaven Development Phasing Plan, subject to Final Approval by the City Attorney.

Councilmember Daseke seconded the motion. Motion carried.

Voting Aye: Chow, Clemens, Daseke, Lay, Mellow and Noble
Voting Nay: None
Absent: Braun

Councilmember Braun returned to Council Chambers.

Item #R5 - Presentation, discussion and consideration of approval of a resolution approving the removal and separation of the City from oversight and control of the Addison Arbor Foundation and authorizing the City Manager to execute an agreement with the Addison Arbor Foundation reflecting such removal and separation.

Councilmember Mellow moved to approve Resolution R09-014 approving the removal and separation of the City from oversight and control of the Addison Arbor Foundation and authorizing the City Manager to execute an agreement with the Addison Arbor Foundation reflecting such removal and separation, subject to final review by the City Manager and City Attorney.

Councilmember Daseke seconded. Motion carried.

Voting Aye: Chow, Braun, Clemens, Daseke, Lay, Mellow and Noble
Voting Nay: None
Absent: None

Item #R6 - Presentation, discussion and consideration of award of a contract to Jim Bowman Construction LP in the amount of \$41,990.00 for Sidewalk, Ramp, Curb & Gutter, Bid 09-14.

Councilmember Daseke moved to approve award of a contract to Jim Bowman Construction LP in the amount of \$41,990.00 for Sidewalk, Ramp, Curb & Gutter, Bid 09-14.

Councilmember Clemens seconded. Motion carried.

Voting Aye: Chow, Braun, Clemens, Daseke, Lay, Mellow and Noble
Voting Nay: None
Absent: None

Item #R7 - Presentation, discussion and consideration of approval to authorize the City Manager to execute a water easement agreement with King Aerospace regarding property generally located within the Town at or about 16400 – 16500 Midway Road.

Councilmember Braun moved to approve authorizing the City Manager to execute a water easement agreement with King Aerospace regarding property generally located within the Town at or about 16400 – 16500 Midway Road.

Councilmember Lay seconded. Motion carried.

Voting Aye: Chow, Braun, Clemens, Daseke, Lay, Mellow and Noble
Voting Nay: None
Absent: None

Item #R8 - Presentation, discussion and consideration of approval of a resolution to enter into a Fiscal Agency Agreement with the City of Dallas to serve as the fiscal agent for the Town's grant award from the Justice Assistance Grant (JAG) Program in the amount of \$12,901.00, transfer 7% (\$632.15) to the City of Dallas for the administration of the grant, and allocate 30% (\$3,870.30) to Dallas County.

Councilmember Clemens moved to approve Resolution R09-015 to enter into a Fiscal Agency Agreement with the City of Dallas to serve as the fiscal agent for the Town's grant award from the Justice Assistance Grant (JAG) Program in the amount of \$12,901.00, transfer 7% (\$632.15) to the City of Dallas for the administration of the grant, and allocate 30% (\$3,870.30) to Dallas County.

Councilmember Daseke seconded. Motion carried.

Voting Aye: Chow, Braun, Clemens, Daseke, Lay, Mellow and Noble
Voting Nay: None
Absent: None

Item #R9 - Presentation, discussion and consideration of approval of the final payment to American Landscape Systems, Inc., totaling \$4,899.80, for landscape renovation and tree replacement planting in various parts of the Town.

Councilmember Lay moved to approve the final payment to American Landscape Systems, Inc., totaling \$4,899.80, for landscape renovation and tree replacement planting in various parts of the Town.

Councilmember Daseke seconded. Motion carried.

Voting Aye: Chow, Braun, Clemens, Daseke, Lay, Mellow and Noble
Voting Nay: None
Absent: None

Item#R10 - Presentation, discussion and consideration of approval of the final payment to Schwartz Construction Company, Inc., totaling \$3,937.00, for painting and repairs to various park structures within the Town.

Councilmember Mellow moved to approve the final payment to Schwartz Construction Company, Inc., totaling \$3,937.00, for painting and repairs to various park structures within the Town.

Councilmember Lay seconded. Motion carried.

Voting Aye: Chow, Braun, Clemens, Daseke, Lay, Mellow and Noble
Voting Nay: None
Absent: None

Item#R11 - Discussion and update of the Vitruvian Development Design.

Clay Barnett presented the update and led the discussion regarding the Vitruvian Development Design.

There was no action taken.

At 8:56 P.M., Mayor Chow announced that Council would convene into Executive Session to discuss the following Items:

#ES1 - Closed (Executive) session of the Addison City Council pursuant to Section 551.071, Texas Government Code, to conduct a private consultation with its attorney(s) to seek the advice of its attorney(s) about pending litigation, to wit:

- A. *Thielsch Engineering, Inc. v. Town of Addison, Texas, et al*, Cause No. 08-00463, 95th District Court, Dallas County, Texas.
- B. *City of San Antonio, Texas, Town of Addison, et al. v. Hotels.com, L.P., et al.*, Case No. SA06CA0381 OG, United States District Court, Western District of Texas, San Antonio Division.

The Council came out of Executive Session at 9:35 P.M.

Item #R12 - Consideration of approval of any item or matter in connection with certain pending litigation, to wit: *Thielsch Engineering, Inc. v. Town of Addison, Texas, et al*, Cause No. 08-00463, 95th District Court, Dallas County, Texas.

There was no action taken.

There being no further business before the Council, the meeting was adjourned.

Mayor-Joe Chow

Attest:

City Secretary-Lea Dunn

Council Agenda Item **#R3**

There are no attachments for this Item.

**TOWN OF ADDISON
CITY COUNCIL**

**Presentation
by
Dallas Central Appraisal District
Ken Nolan
Chief Appraiser/Executive Director
July 14, 2009**

YOUR HOUSE AS SEEN BY

 <p>YOURSELF</p>	 <p>YOUR REALTOR</p>
 <p>YOUR LENDER</p>	 <p>YOUR APPRAISAL DISTRICT</p>

TEXAS PROPERTY TAX HISTORY

**Centralized Appraisal District Concept
formulated by
66TH Texas Legislature in 1979, Senate Bill
No. 621 ("Peveto Bill")**

- Funding began in January 1981
- First appraisal roll due in July 1982

WHY APPRAISAL DISTRICTS EXIST

- Avoid additional school finance litigation
 - School funds were distributed according to property wealth, but school districts had widely differing levels of appraisal and appraisal practices. It was impossible to determine what the true property wealth of a district was.

WHY APPRAISAL DISTRICTS EXIST

- Correct inequity and poor performance in tax offices
 - Each taxing unit was responsible for its own appraisals. Many units hadn't reappraised in years. Appraisers were poorly trained and inadequately funded. There were often great differences in appraisal level between homeowners and business property.

WHY APPRAISAL DISTRICTS EXIST

- Restrict political influence
 - Under the old system, the governing bodies of the taxing units, which determined spending, directly controlled the frequency and quality of reappraisals.

**TEXAS CONSTITUTION
PRINCIPLES TO PROPERTY TAX SYSTEM**

- Taxation must be equal and uniform
- Property must be valued at full market value
- All property is taxable unless exempt by federal law or state constitution
- Property may not be valued above its market value
- All property in county must receive single appraisal
- Single ARB for each Appraisal District

PROPERTY TAX

**Tax measured
According To Value
“Ad Valorem”**

Duties and Responsibilities

- **APPRAISAL DISTRICT**
 - Discovers, Lists and Values Property
 - Performs periodic Appraisals
 - Administers Exemptions
 - Delivers Certified Appraisal Roll to Taxing Units by July 25th
- **APPRAISAL REVIEW BOARD**
 - Settles Disputes Between the Appraisal District and the Property Owner
- **TAXING UNITS**
 - Decide Amount and Use of Revenue
 - Adopt Tax Rates
 - Calculate Taxes
 - Generate Tax Bills
 - Collect Taxes

**OVERVIEW OF THE
DALLAS CENTRAL
APPRAISAL DISTRICT
(DCAD)**

- DALLAS CENTRAL APPRAISAL DISTRICT
BOARD OF DIRECTORS**
- ▶ JERRY JONES - CHAIRPERSON
(SUBURBAN SCHOOLS)
 - ▶ DOROTHY BURTON- VICE CHAIRPERSON
(DALLAS COUNTY)
 - ▶ JEROME GARZA-SECRETARY
(DALLAS I S D)
 - ▶ CHRIS WELLS -DIRECTOR
(CITY OF DALLAS)
 - ▶ MICHAEL HURTT-DIRECTOR
(SUBURBAN CITIES)
 - ▶ JOHN R. AMES- EX OFFICIO MEMBER
(COUNTY OF DALLAS)

- RESPONSIBILITIES OF THE BOARD
OF DIRECTORS**
- ▶ Establish an Appraisal Office
 - ▶ Appoint a Chief Appraiser
 - ▶ Appoint an Appraisal Review Board
 - ▶ Appoint a Taxpayer Liaison Officer
 - ▶ Make general policy for the district
 - ▶ Provide for necessary services
 - ▶ Adopt a budget

MASS APPRAISAL

The process of valuing a universe (a large number of properties), as of a given date, using standardized procedures in a manner which allows for statistical testing.

CHARACTERISTICS OF MASS APPRAISAL

▶ UNIVERSE	815,689 PROPERTIES
▶ GIVEN DATE	JANUARY 1, 2009
▶ STANDARDIZED PROCEDURES	ACCEPTED PROFESSIONAL APPRAISAL TECHNIQUES USED TO APPRAISE ALL PROPERTY AT 100% OF MARKET VALUE.
▶ STATISTICAL TESTING	RATIO STUDIES

UNIVERSE OF THE DALLAS CENTRAL APPRAISAL DISTRICT

RESIDENTIAL	643,958
COMMERCIAL	72,977
BPP	84,633
LEASED EQUIPMENT / AIRCRAFT/UTILITIES	14,121
TOTAL	815,689

DATE OF APPRAISAL

Section 21.01 Real Property
Real Property is taxable by a taxing unit if located in the unit on January 1.

Section 21.02 Tangible Personal Property generally except as provided by Section 21.021 and 21.024 of the Code, tangible personal property is taxable by a taxing unit if:

- 1) It is located in the unit on January 1 for more than a temporary period.
- 2) It normally is located in the unit, even though it is outside the unit on January 1, if it is outside the unit only temporarily.
- 3) It normally is returned to the unit between use elsewhere and is not located in any one place for more than a temporary period; or
- 4) The owner resides (for property not used for business purposes) or maintains his principle place of business in this state (for property used for business purposes) in the unit and the property is taxable in this state but does not have a taxable situs pursuant to Subsection 1-3.

MARKET VALUE DEFINED (AS OF JANUARY 1ST)

The price at which a property would transfer for cash or its equivalent under prevailing conditions if:

- a) Exposed for sale in the open market within a reasonable time for the seller to find a purchaser;
- b) Both the seller and the purchaser know of all the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions on its use; and
- c) Both the seller and purchaser seek to maximize their gains and neither is in a position to take advantage of the exigencies of the other.

Limitation on Appraised Value of Residence Homestead

Section 23.23(a), Property Tax Code

- Other than to include new improvements, the appraised value of a residential homestead may not be increased by more than 10% from its appraised value in the prior tax year, regardless of when it was last reappraised.

THREE APPROACHES TO VALUE

COST APPROACH

DIRECT SALES APPROACH

INCOME APPROACH

DCAD APPRAISAL TECHNIQUES

Residential

- 1) Direct sales approach
- 2) Cost approach

Commercial

- 1) Direct sales approach
- 2) Cost approach
- 3) Income approach
 - a. direct capitalization
 - b. discounted cash flow

Business Personal Property

- 1) Cost approach
- 2) Direct sales approach
- 3) Income approach

Agricultural and Open-Space Land

- 1) Full market value
 - a. direct sales approach
- 2) Productivity value
 - a. income approach

AUDITS

1. SELF AUDIT OF ALL APPRAISAL DIVISIONS by SPECIAL AUDIT DIVISION

- 1. HIRE UNIVERSITY OF TEXAS AT DALLAS TO PERFORM RATIO STUDY ON RESIDENTIAL VALUES**
- 2. TEXAS STATE COMPTROLLER OF PUBLIC ACCOUNTS PERFORMS ANNUAL RATIO STUDY**

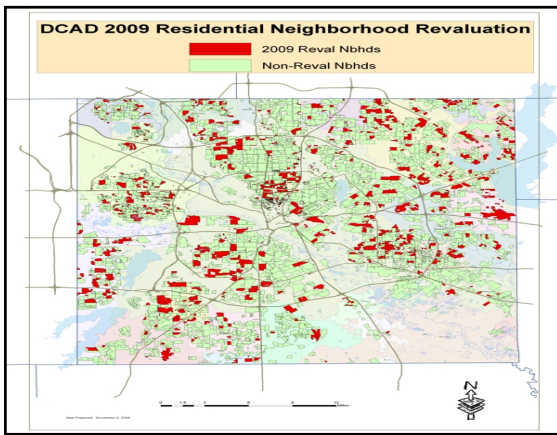
RATIO STUDY

APPRAISED VALUE divided by SALES PRICE

THE CLOSER TO 100% THE MORE ACCURATE THE VALUES

RATIO STUDIES

2001	UTD	93.0%
	PTD	98.0%
2002	UTD	97.0%
	PTD	98.0%
2003	UTD	97.3%
	PTD	99.0%
2004	UTD	99.4%
	PTD	100.0%
2005	UTD	100.0%
	PTD	100.0%
2006	UTD	99.5%
	PTD	100.0%
2007	UTD	99.3%
	PTD	99.0%
2008	UTD	100.0%
	PTAD	99.0%



- ### 2009 RESIDENTIAL REAPPRAISAL
- **Neighborhood Reappraisal** (Ratio Analysis conducted October, January, March)
 - 278,166 Accounts
 - 1,786 Neighborhoods
 - **Mobile Home Reappraisal**
 - 11,376 Mobile Home Accounts
 - **Building Permits**
 - 5,670 New Construction Permits
 - 24,641 Miscellaneous Permits

**2009
RESIDENTIAL MARKET TRENDS**

- New Construction Starts Significantly Down
- Values Flat In Northern Sector
- Values Down In Southern Sector
- Foreclosures Rates Up in Southern Sector
- Days On Market Longer
- Fewer Sales Transactions



**2009
COMMERCIAL REAPPRAISAL**

- 1/2 Land Market Areas
- 1/3 Improved Markets
- Major Property Types
 - Office
 - Retail
 - Industrial
 - Apartment
- Building Permits
 - 910 New Construction Permits
 - 8,057 Miscellaneous Permits

2009
COMMERCIAL MARKET TRENDS

- ▶ Extreme Uncertainty In Today's Market
- ▶ Limited Commercial Financing
- ▶ Decline In New Construction
- ▶ Rents & Occupancy Flat To Down
- ▶ Retail Property May See Significant Decline
- ▶ Office Market May See Decline
- ▶ Industrial & Apartment May See Decline
- ▶ **Capitalization Rates Up**
- ▶ Commercial Appraisal Roll Will Likely Decline

2009
BUSINESS PERSONAL PROPERTY REAPPRAISAL

- Field Accounts 70,332
- Tenant Accounts 7,486
- Leased Equipment 13,725
- Aircraft 587
- Special Inventory 1,660
- Utilities/Pipelines 408
- Telecom 3,358

2009
BUSINESS PERSONAL PROPERTY REAPPRAISAL

- Renditions 65,000
April 15/May 15
- Exemptions
 - Freeport 1,500 (Process Thru July)
 - Pollution Control 150

**2009
BUSINESS PERSONAL PROPERTY
MARKET TRENDS**

- **Market Value Flat**
 - Less inventory in bad economic times
 - Less reinvestment in new assets

- **Taxable Value May Decrease**
 - Possible new Freeport exemptions

2009 Notification Projections

Residential	374,084
Commercial	40,359
Business Personal Property	97,556
Exemption/Agricultural	2,500
2009 Estimated Total	514,499
2008 Total Mailed	537,722
Variance	-23,223

Significant Dates

- **First Notice Mailing: Real Estate, May 1, 2009**
 - Protest Deadline of June 1, 2009
- **Second Mailing: BPP, May 19, 2009**
 - Protest Deadline of June 18, 2009
- **Third Mailing: Utilities, Special Use, Leased Equipment, May 26, 2009**
 - Protest Deadline of June 25, 2009
- **First Preliminary Value Estimates: May 22, 2009**
 - Estimates Available Online to Entities with Staff Logon
- **Second Preliminary Value Estimates: May 28, 2009**
 - Includes Preliminary Appraisal Roll
 - Includes Preliminary Certified Estimates as required by Section 26.01(e)
- **2009 Appraisal Roll Certified: July 27, 2009**

OVERVIEW OF THE APPRAISAL REVIEW BOARD (ARB)

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ACTIVITIES	2002	2003	2004	2005	2006	2007	2008
Telephone Calls	102,596	76,100	65,539	74,683	72,026	64,320	52,864
Walk-Ins	21,004	16,176	15,108	18,295	19,258	18,519	18,669
Small Hearings	38,347	32,973	29,642	36,524	40,380	36,250	39,733
Protests Received	105,431	83,024	83,745	90,913	100,435	97,528	108,329
Protests Scheduled	105,309	82,417	83,485	90,451	99,107	103,820	114,538
Hearings Held	53,589	37,612	30,994	34,064	37,720	39,378	46,710
Hearing Days	62	39	40	42	45	43	42
ARB Panels Utilized	1120	686	630	526	748	1189	1465
ARB Packets (accounts)	82,701	62,570	66,178	72,448	65,982	44,611	71,637
Schedules	NA	NA	NA	NA	NA	NA	8983
Appeals	863	800	1,302	651	802	614	562
Appeal Letters	705	632	767	854	628	579	387
Total Appraisal Notices Mailed	645,496	542,372	560,404	597,327	613,092	602,670	547,671

THE ARB's ROLE

- A quasi-judicial body; separate from the Appraisal Office
- Equalization phase of the property tax system; serves as jurors to arbitrate issues before them
- Impartial citizenry board who hears and resolves disputes (protests) over appraisal matters; has authorization only on matters submitted to it; not an advocate for the local taxing units, Appraisal District, nor the property owner
- Has no authority to change values except where deciding a protest
- Has no role in the day-to-day operations of the appraisal office nor in the appraisal of property.

ARB TERM and SIZE

- Board of Directors appoint ARB members to two year terms (limited to three 2-year terms)
- DCAD has 75 ARB members

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TAXPAYER PROTESTS WHO MAY FILE A PROTEST?

- Property owner
- Tax Agent appointed by the property owner
- A lessee of the property (if a person is required to pay the property taxes by the lease)

NOTICE OF PROTEST HOW TO FILE A PROTEST?

Protest Must be Written and Must Include:

- property owner's identification
- property's identification
- indication of the owner's dissatisfaction with some determination of the appraisal district

PROTEST DEADLINE
WHEN TO FILE A PROTEST?

MAY 31st is the Protest Deadline
(or 30 days from the date the notice is mailed)
Unless it falls on a weekend or holiday.

FOR 2009 THE DEADLINE IS
JUNE 1st

REASONS FOR PROTEST
WHAT CAN BE PROTESTED?

Any Appraisal District Action that
Adversely affects a Property Owner's Tax
Liability

REASONS FOR PROTEST
WHAT CAN BE PROTESTED? (cont'd)

- Appraisal that exceeds market productivity value of the property
- Appraisal that exceeds median level of appraisal of properties in the district
- Inclusion of property on the appraisal records
- Denial in whole or part of a total or partial exemption
- Determination that property does not qualify for special appraisal

REASONS FOR PROTEST
WHAT CAN BE PROTESTED? (cont'd)

- Identification of taxing units in which property is taxable
- Determination of the property's ownership
- Determination that use of agricultural land or timber land has changed
- Failure of the ARB or the Chief Appraiser to send required notices
- Any other action of the Appraisal District / Chief Appraiser, or ARB that adversely affects the property owner

ARB
PROCEDURES AND RULES

HEARINGS SHOULD BE:

- Fair
- Consistent
- Prompt
- Concise

DECISIONS SHOULD BE:

- Prompt
- Precise
- Consistent with ARB Rules, ARB Standards of Documentation and Current Laws

JUDICIAL REVIEW
PROPERTY OWNER APPEAL

- Protesters must file a petition for review with the District Court within 45 days after receiving the notice of ARB's order.

**ARBITRATION
PROPERTY OWNER APPEAL**

- Protesters must file an application for arbitration with the Appraiser District within 45 days after receiving the notice of ARB's order.

**SIGNIFICANT PROPERTY
TAX LEGISLATION**

PROPERTY TAX BILLS

- Tracked 376 property tax related bills
 - 124 appraisal bills
 - 120 collection bills
 - 112 exemption bills
 - 11 special-use
 - 3 education bills
 - 1 other tax
 - 13 miscellaneous

SOME BILLS COVERED MORE THAN ONE CATEGORY

WHAT PASSED?

- 61 Property Tax Bills Sent to Governor*
 - 23 appraisal bills
 - 28 tax collection bills
 - 7 tax exemption bills
 - 1 special use valuation bills
 - 4 miscellaneous bills
- *some bills covered more than one subject

BILLS OF IMPORTANCE

- HB 8 by Otto
 - 10% margin of error on PTAD Market Value Study
 - Market Value Study to be conducted biennially
 - Creates Comptrollers Property Value Study Advisory Committee
 - Replaces the Technical Advisory Committee
 - Consists one house member, one senate member, two members representing appraisal districts, three members appointed by the comptroller
 - Creates a Biennial Audit and Standards Review

BILLS OF IMPORTANCE

- HB 1038 by Paxton
 - Notwithstanding Section 1.04(7)(C), in determining the market value of a residence homestead, the chief appraiser may not exclude from consideration the value of other residential property that is in the same neighborhood as the residence homestead being appraised and would otherwise be considered in appraising the residence homestead because the other residential property: (1) was sold at a foreclosure sale conducted in any of the three years preceding the tax year in which the residence homestead is being appraised and was comparable at the time of sale based on relevant characteristics with the residence homestead; or (2) has a market value that has declined because of a declining economy.

BILLS OF IMPORTANCE

- HB 1203 by Elkins
 - Provides that Agent Authorizations must be signed by a the owner or a person with the authority but cannot be signed by the person who is being designated as the agent.
 - The designation does not take effect with respect to an appraisal district or a taxing unit participating in the appraisal district until a copy of the designation is filed with the appraisal district.
 - If a protest is filed, but unauthorized at the time of filing the protest is scheduled for a hearing and will be determined as long as the written authorization is received on or before the date of the hearing.

BILLS OF IMPORTANCE

- HB 2591 by Thompson
- Provides for Tax Consultant regulations
 - Now have two exams to be a consultant (one for regular consultant and one for senior consultant)
 - No more than 10 regular consultants under one senior unless consultants have been practicing for at least 6 months prior or have previously been working as a consultant for a private company or as a fee appraiser
 - Can't file protest without property owner approval
 - Can't falsify documentation (no penalty)
 - A of A for consultant "a" applies to consultant "b" if consultant "a" employees "b" as a sub-contractor
 - Can't solicit business with the promise of a specific outcome
 - Can't create and use "fake" websites that mimic a CADs website
 - Agent's company name must be listed on the homepage of their website
 - Must have permission from owner to file litigation

BILLS OF IMPORTANCE

- HB 3613 by Otto
- New Veteran's Exemption
 - Separate from current Veteran's Exemption
 - Can receive both exemptions
 - Different form from comptroller to be created
 - Can now receive 100% exemption if V.A. determines they are 100% disabled and unemployable
- This portion of the bill is effective now
- Changes the definition of market value and highest and best use. A homestead can now only be valued as a homestead regardless of highest and best use of the property. (HJR 36 must pass popular vote in November or this portion of the bill fails.)

BILLS OF IMPORTANCE

- SB 771 by Williams
- CADs cannot raise the value of a property that has had an ARB decision, Arbitration Decision, or district court ruling in the following year without substantial evidence
- Sales cannot be considered when valuing a property unless the sale took place within 24 months of the assessment date, unless no sales exist in that time frame
- BPP cannot be separately assessed on an income producing property (apartments, hotels, etc.)
- Ag exemptions do not cease because of drought conditions causing the normal use of the property to cease (drought must be declared by the governor)
- Changes to Arbitration:
 - Arbitration now applies to Real and BPP accounts less than \$1M and all homesteads
 - Property owner can now choose an "expedited" arbitration which cuts their fee from \$500 to \$250 and limits argument to one hour per side.
 - Property owner must request the expedited hearing
 - Comptroller will have to change form
 - Increases Arbitrator Qualifications
 - Arbitrators must be an attorney or have had 30 hours of training in dispute resolution and 5 years experience as a real estate broker or salesperson, a real estate appraiser or be a CPA

QUESTIONS and ANSWERS

THANK YOU

Council Agenda Item: #R5

SUMMARY:

Presentation of the Government Finance Officers Association (GFOA) "Distinguished Budget Presentation Award" for the fiscal year beginning October 1, 2008.

FINANCIAL IMPACT:

There is no financial impact associated with this recognition.

BACKGROUND:

The Government Finance Officers Association (GFOA) created a Distinguished Budget Presentation Award in 1984 to encourage governments to prepare budget documents of the highest quality to meet the needs of decision-makers and citizens.

In order to receive this award, a governmental unit must publish a budget document that meets program criteria as a policy document, as an operations guide, as a financial plan and as a communications device.

The Town of Addison has received the Distinguished Budget Presentation Award every year since 1987 and has received notice that the annual budget for the Fiscal Year beginning October 1, 2008 has also received this distinction.

There were several comments made by the GFOA reviewer that highlight the quality of the 2008 Budget document. They include:

- "This document, however, is as close to being flawless that such detailed comments are unnecessary
- "Addison with this document has taken budget presentation to the next level."
- "They symmetry and creativity, combined with sound financial practice, make this a compelling compendium."

Council Agenda Item: #R6

SUMMARY:

Council authorization is requested for the Town of Addison to enter into agreement with MuniServices, LLC (MuniServices) for consulting services related to receipt of local hotel occupancy taxes.

FINANCIAL IMPACT:

For the 2009 fiscal year, the Hotel Fund anticipates receiving over 4 million in hotel occupancy tax. The amount quoted for review of the tax received from the Town's 22 hotels and motels is \$11,000 per year.

BACKGROUND:

Muniservices currently conducts hotel occupancy tax consulting services for Addison and over 14 Texas cities. Finance staff checked the references of two cities, Mesquite and Mansfield, and both cities responded with very favorable comments regarding their experience with the company.

- Review the Town's hotel occupancy tax ordinance
- Analyze the compliance and reporting of Addison hotels, and
- Perform field audits of hotels as deemed necessary by analysis.

RECOMMENDATION:

It is recommended Council authorize the city manager, with consent of the city attorney, to enter into an agreement with MuniServices Company for hotel occupancy tax consulting services.

CONSULTANT SERVICES AGREEMENT

This Consultant Services Agreement (hereinafter "Agreement") is made as of _____, 2009, between MuniServices, LLC a Delaware limited liability company with an office at 7335 N. Palm Bluffs Avenue, Fresno, CA 93711, and its affiliates (hereinafter "MuniServices"), and the Town of Addison, a Texas Municipal Corporation (hereinafter "Municipal Corporation").

1. SERVICES

Subject to the terms and conditions set forth herein, MuniServices shall provide to Municipal Corporation the services set forth in the Exhibits attached hereto in exchange for the fees set forth therein. MuniServices shall not be required to perform, nor Municipal Corporation be required to pay for, services not contained in an Exhibit.

2. INDEPENDENT CONTRACTOR STATUS

MuniServices is an independent contractor, and not an employee of Municipal Corporation, who will be engaged in providing consulting services for Municipal Corporation. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between Municipal Corporation and MuniServices or between Municipal Corporation and any employee or agent of MuniServices. Both parties acknowledge that MuniServices is not an employee for state or federal tax purposes. MuniServices shall retain the right to perform services for others during the term of this Agreement. Nothing in this Agreement shall be construed as creating a partnership, joint venture. Nothing in this Agreement shall be construed as designating MuniServices as an agent of Municipal Corporation except as specifically provided in an Exhibit. MuniServices shall have no authority to bind, contract, or obligate Municipal Corporation, financially or otherwise. Municipal Corporation shall not have any right to control the means by which MuniServices performs the Services including the facilities used, the employees, contractors, or agents assigned by MuniServices. MuniServices shall be responsible for any subcontracts entered into in the course of performance of the Services for Municipal Corporation and MuniServices shall be solely responsible for payment to the subcontractors.

3. COMPENSATION

- 3.1 In consideration for the Services to be performed by MuniServices, Municipal Corporation agrees to pay MuniServices the rates set forth in the Exhibits.
- 3.2 MuniServices shall submit timely invoices for all services rendered in accordance with each Exhibit. Payment will be made to MuniServices within thirty (30) days of receipt of MuniServices's invoice therefore. Any amounts which remain unpaid after thirty (30) days shall accrue interest at the rate of one and one-half percent (1.5%) per month, or the maximum amount permitted by law.
- 3.3 MuniServices shall be responsible for all costs and expenses incident to the performance of Services for Municipal Corporation, including but not limited to, all

costs of equipment provided by MuniServices, all fees, fines, licenses, bonds or taxes required of or imposed against MuniServices and all other of MuniServices's costs of doing business. Municipal Corporation shall not be responsible for expenses incurred by MuniServices in performing Services for Municipal Corporation, except as noted in an Exhibit, or such expenses that receive prior written approval from Municipal Corporation.

4. CONFIDENTIALITY

- 4.1 During the term of this Agreement, each party may have access to certain confidential information of the other including such party's products, services, technical data, trade secrets, inventions, processes, and constituent information. All such information shall be deemed "Confidential Information" whether or not identified as such. Each party shall use the Confidential Information of the other solely for performance of this Agreement, and all Confidential Information shall remain the sole property of the respective parties. With regard to Confidential Information, each party shall use the same care as it uses to maintain the confidentiality of its own confidential information, which shall be no less than reasonable care, and shall not make disclosure of the Confidential Information to any third party without the written consent of the Disclosing Party, except to employees, consultants or agents to whom disclosure is necessary to the performance of this Agreement and who are bound by a duty of confidentiality. Information shall not be deemed confidential if it (i) is rightfully known to the receiving party prior to receipt from the disclosing party as reasonably evidenced by such party; (ii) becomes known to the receiving party from a source other than one who is under an obligation of confidentiality to the disclosing party; or (iii) becomes publicly known or otherwise ceases to be confidential other than by an unauthorized act. At all times, in accordance with Graham-Leach Bliley and other applicable State and Federal regulations, taxpayer information containing Personally Identifiable Information, as defined in applicable regulations, shall be held in the strictest confidence by MuniServices.
- 4.2 If a subpoena or other legal process in any way concerning Confidential Information is served upon a party to which Confidential Information has been disclosed ("Recipient"), the Recipient shall promptly notify the Disclosing Party and shall cooperate with the Disclosing Party, at the latter's expense, in any lawful effort to contest the validity of such subpoena or other legal process.
- 4.3 The parties agree that a breach of the terms of Section 4.1 or 4.2 would result in irreparable injury to the non-breaching party for which a remedy in damages would be inadequate. The parties agree that in the event of such breach or threatened breach, the non-breaching party shall be entitled to, in addition to any other remedies available at law or in equity, seek an injunction to prevent the breach or threatened breach.
- 4.4 The obligation of confidentiality as set forth in Section 4.1 shall continue for a period of three (3) years from the date of disclosure of the information, provided, however, that

for any information which constitutes a Trade Secret (as defined by applicable law), the obligation of confidentiality shall continue during the entire term of this Agreement and shall survive the termination of this Agreement indefinitely. MuniServices's obligation of confidentiality with respect to any confidential taxpayer data shall continue in accordance with applicable federal, state and local regulations. Notwithstanding the foregoing, all documents and information provided hereunder shall be subject to the applicable provisions of the Texas Public Information Act and may be disclosed by the Municipal Corporation as required thereunder.

5. TERM AND TERMINATION

- 5.1 Term. This Agreement shall be effective as of the date of the last signature hereto and shall continue in full force and effect for a period of one year (1) "initial term." After the "initial term" and thereafter, this Agreement shall automatically renew for successive one-year (1) periods, subject however, to Municipal Corporations availability of funding which lawfully may be applied. If funding will not be available, the Municipal Corporation must provide at least 30-days advance written notice of the lack of funding. Notwithstanding this section (5.1), if the term set forth in any Addendum attached to this Agreement differs from the term of this Agreement, the term of the Addendum is governed by the language in the Addendum. If any Addendum attached to this Agreement is silent about the term of the Addendum then the provisions of this section (5.1) govern the term of the Addendum.
- 5.2 Termination of Agreement. Unless terminated as per section 5.4 below, this Agreement may only be terminated upon the expiration of a one-year term. If either party desires to terminate this Agreement upon the expiration of a one-year term, the terminating party shall provide notice to the other party of its intent not to renew no less than sixty-days (60) prior to the renewal date.
- 5.3 Termination of Addenda. Any Addendum attached to this Agreement may be terminated as follows:
- a. If the Addendum sets forth a method for terminating the Addendum, that Addendum may only be terminated according to that method; or
 - b. If the Addendum is silent about the method for terminating the Addendum, that Addendum may be terminated by either party at any time and for any reason or no reason effective on no less than sixty-days (60) days notice; or
 - c. As per section 5.4 below.
- 5.4 Event of Default. Any of the following shall constitute an event of default ("Event of Default") under this Agreement or any applicable Addendum: (a) Municipal Corporation fails to pay any amount when due hereunder (after ten-days (10) prior written notice of such failure to pay), or (b) a material breach by either party of this Agreement or applicable Addendum. If an Event of Default occurs, the non-breaching party shall notify the breaching party of the Event of Default and provide the breaching party thirty-days (30) to cure (except in the case of non-payment for which the cure period

shall be ten (10) days) or such amount of time as is reasonable given the circumstances. If the breaching party fails to effect cure within the time allowed, then the non-breaching party may, at its option, terminate this Agreement or applicable Addendum effective immediately upon notice.

- 5.5 Effect of Termination. Notwithstanding non-renewal or termination of this Agreement or any attached Addendum pursuant to Sections 5.1, 5.2, 5.3 or 5.4 above, Municipal Corporation shall be obligated to pay MuniServices for services performed through the effective date of termination for which MuniServices has not been previously paid. In addition, because the services performed by MuniServices prior to termination or non-renewal of this Agreement or attached Addendum may result in Municipal Corporation's receipt of revenue after termination which are subject to MuniServices' fee in accordance with each applicable Addendum, Municipal Corporation shall remain obligated after termination or non-renewal to provide to MuniServices such information as is necessary for MuniServices to calculate the compensation due as a result of this receipt of revenue by Municipal Corporation and Municipal Corporation shall remain obligated to pay MuniServices' invoices therefore in accordance with the terms of this Agreement.

6. EQUAL EMPLOYMENT OPPORTUNITY

During performance of this Agreement, MuniServices, for itself, its assignees and successors in interest, agrees as follows:

- 6.1 Compliance with Regulations: MuniServices shall comply with Executive Order 11246, "Equal Employment Opportunity" and labor regulations (41 C.F.R. Part 60), hereinafter referred to as the "Regulations."
- 6.2 Nondiscrimination: MuniServices, with regard to any work performed pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, or veteran status in the selection and retention of employees, subcontractors, the procurements of materials or leases of equipment.
- 6.3 Solicitation for Subcontractor, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by MuniServices for work to be performed under any subcontract, including procurements of materials or equipment, such potential subcontractor or supplier shall be notified by MuniServices of MuniServices's obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, or veteran status.
- 6.4 Information and Reports: MuniServices shall provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by Municipal Corporation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of MuniServices is in the exclusive possession of another who fails or refuses to

furnish this information, MuniServices shall so certify to Municipal Corporation and shall set forth what efforts it has made to obtain the information.

6.5 Incorporation of Provisions: MuniServices shall include the provisions of paragraphs 6.1 through 6.4 in every subcontract issued pursuant to this Agreement. MuniServices shall take such action with respect to any Regulations, order or instructions issued pursuant thereto. MuniServices shall take such action with respect to any subcontract or procurement as Municipal Corporation may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event MuniServices becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, MuniServices may request Municipal Corporation to enter such litigation to protect the interests of Municipal Corporation.

7. WARRANTIES, REPRESENTATIONS AND INDEMNIFICATION

7.1 By MuniServices. MuniServices represents that all Services shall be performed by persons with the skills and abilities necessary and consistent with the standards of professionalism prevalent in the industry. The Services and deliverables shall be provided free and clear of the proprietary claims of third parties. All Services shall be provided in accordance with applicable state and federal regulations, including, without limitation, the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, and applicable state regulations.

Subsection 7.1 is the full and complete warranty statement of MuniServices under this Agreement.

7.2 By Municipal Corporation. Municipal Corporation represents that the information provided to MuniServices in the performance of Services by MuniServices hereunder shall be provided free and clear of the claims of third parties. Municipal Corporation represents that Municipal Corporation has the right to provide said information to MuniServices and that said information shall not be obscene, defamatory, or otherwise expose MuniServices to liability to third parties. Municipal Corporation represents that it shall use reasonable and diligent efforts in the collection of moneys identified by MuniServices. Municipal Corporation represents that in the event Municipal Corporation elects not to proceed with diligent efforts in collection, that Municipal Corporation shall remain liable to MuniServices in accordance with applicable Exhibits as if Municipal Corporation had proceeded with diligent efforts in collection.

7.3 Indemnification. MuniServices hereto agrees to defend, indemnify, and hold harmless Municipal Corporation, its directors, officers, employees and affiliates, from any and all claims, suits, demands, losses, damages, liabilities, costs and expenses, including reasonable attorney's fees (collectively "Losses") arising from or related to a claim of injury to person or property or death arising from or caused by the negligent acts or negligent omissions of employees, agents, or representatives of MuniServices. MuniServices shall defend, indemnify, and hold Municipal Corporation harmless from any claim that MuniServices negligently or intentionally falsified any information provided to Municipal Corporation pursuant to this Agreement.

7.4 LIMITATION OF LIABILITY. To the maximum extent permitted by law, in no event shall MuniServices, its employees, contractors or agents be liable for any indirect, incidental, special, punitive or consequential damages, lost data or cost of procurement of substitute goods or services arising from or related to the services whether for, among other things, breach of warranty or any obligation arising therefrom, and whether liability is asserted in contract or tort (including but not limited to negligence and strict product liability) whether or not MuniServices has been advised of the possibility of any such loss or damage. MuniServices's liability hereunder shall in no event exceed an amount equal to the fees paid by Municipal Corporation for the affected service to which the claim pertains. The foregoing sets forth Municipal Corporation's exclusive remedy for claims arising from or out of this Agreement. The provisions of this section allocate the risks between MuniServices and Municipal Corporation and MuniServices's pricing reflects the allocation of risk and limitation of liability specified herein.

8. GENERAL PROVISIONS

- 8.1 Personnel. At any time, Municipal Corporation may request removal or replacement of personnel assigned by MuniServices and MuniServices shall promptly replace such personnel. The time for any deliverables required or any increase in costs shall be adjusted to reflect any adverse impact resulting from the change in personnel.
- 8.2 Gratuities, Gifts, Conflict of Interest. MuniServices shall, at all times, comply with any Municipal Corporation policies regarding gifts, gratuities, or conflicts of interest. At no time shall MuniServices, an employee, agent, director, or contractor offer or accept any gift or gratuity from a third party who may be subject to findings resulting from Services, to or from any Municipal Corporation official, employee, contractor, or agent, or from any other party where such gift or gratuity could be construed as a conflict of interest. MuniServices, its officers, directors, employees, agents, and contractors shall avoid all conflicts of interest, financial or otherwise, or the appearance thereof, in the performance of this Agreement or the applicable Services.

- 8.3 Dispute Resolution. Any dispute relating to this Agreement shall be resolved by good faith negotiations between the parties. Nothing in this section 8.3 shall preclude or restrict either party from seeking judicial determination of any dispute or seeking other forms of resolution such as arbitration or mediation. The prevailing party to any dispute shall be entitled to recover costs and expenses, including reasonable attorney's fees.
- 8.4 Ownership of Work Product. MuniServices shall retain all right, title, and interest in and to the processes, procedures, models, inventions, software, ideas, know-how, and any and all other patentable or copyrightable material used, developed, or reduced to practice in the performance of this Agreement. Upon payment therefore, Municipal Corporation shall be granted all right, title, and interest in and to the reports, charts, graphs, and other deliverables produced by MuniServices in the performance of this Agreement.
- 8.5 Assignment. Neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any assignment without such prior written consent shall be void. Notwithstanding the foregoing, MuniServices may assign monies due under this Agreement (whether classified as accounts receivable or otherwise) without consent from the Municipal Corporation. Notwithstanding the foregoing, the Parties hereto may assign all or part of this Agreement immediately, without the prior written consent of the non-assigning Party (a) to any successor in interest to the assigning Party who expressly assumes responsibility for the assigning Party's obligations hereunder; or (b) if necessary to satisfy the rules, regulations and/or orders of any federal or state governmental agency or body. Any violation of the provisions of this Section shall render this Agreement voidable at the option of the non-assigning Party.
- 8.6 Insurance.
- a. Public Liability. During the term of this Agreement, MuniServices shall maintain in full force and effect a policy of public liability insurance with minimum coverages in accordance with the requirements provided by Municipal Corporation to MuniServices. MuniServices shall cause Municipal Corporation, its officials and employees to be named on all liability policies described above as insured as respects activities undertaken pursuant to the parties' respective obligations pursuant to this Agreement.
 - b. Worker's Compensation. During the term of this Agreement, MuniServices shall fully comply with the terms of the law of Texas concerning worker's compensation. Said compliance shall include, but not be limited to, maintaining in full force and effect one or more policies of insurance insuring against any liability MuniServices may have for worker's compensation.
- 8.7 Severability. In the event that any portion of this Agreement is held to be unenforceable, the unenforceable portion shall be construed as nearly as possible to

reflect the original intent of the parties and the remainder of the provisions shall remain in full force and effect.

- 8.8 **Waiver.** Either Party's failure to insist upon strict performance of any provision of this Agreement shall not be construed as a waiver of that or any other of its rights hereunder at any later date or time.
- 8.9 **Force Majeure.** Neither party shall be liable for failing to perform its obligations hereunder (other than payment obligations) where delayed or hindered by war, riots, embargoes, strikes or acts of its vendors or suppliers, accidents, acts of God, or any other event beyond its reasonable control.
- 8.10 **Notices.** All notices, including notices of address changes, provided hereunder shall be deemed received on the third day after mailing if sent by mail, or immediately if sent by facsimile. Notices shall be sent to the following:

If to MuniServices:

MuniServices, LLC
7335 N. Palm Bluffs Avenue
Fresno, CA 93711
Attn: Legal Department
Email to: legal@muniservices.com

If to Municipal Corporation:

Town of Addison
5350 Belt Line Road (POB 9010)
Addison, TX 75001-9010
Attn: Randy Moravec, Director of Finance
Email to: rmoravec@addisontx.gov

- 8.11 **Copies.** This Agreement may be executed in separate counterparts including facsimile copies, each of which shall be deemed an original, and all of which shall be deemed one and the same instrument and legally binding upon the parties.
- 8.12 **Entire Agreement.** This Agreement, including the Exhibits attached hereto and made part hereof, constitutes the entire agreement between MuniServices and Municipal Corporation with respect to the Services provided. This Agreement supersedes and replaces any and all prior agreements, of whatever kind or nature, with respect to the Services provided hereunder. Any prior agreements, discussions, or representations not expressly set forth herein are of no force or effect.
- 8.13 **No Oral Modification.** No modification of this Agreement shall be effective unless set forth in writing and executed with the same formality as this Agreement. No waiver of the requirements of this Section shall be effective unless in writing and signed by the CEO for MuniServices.
- 8.14 **Construction and Venue.** This Agreement shall be construed in accordance with the laws of the State of Texas without regard to its conflict of laws principals. The venue for any disagreement is Dallas County, Texas.
- 8.15 **Headings.** The section headings herein are for convenience and reference purposes only and shall not serve as a basis for construction or interpretation.
- 8.16 **Order of Precedence.** In the event of any conflict between the terms of this Agreement and the terms of any Exhibit, the terms of this Agreement shall prevail. No additional terms, purchase order terms and conditions, or oral or written representations of any

kind shall be of any force and effect unless in writing and executed with the same formality as this Agreement.

8.17 Partial Payment. No receipt by MuniServices of an amount less than Municipal Corporation's full amount due will be deemed to be other than payment "on account", nor will any endorsement or statement on any check or any accompanying letter effect or evidence an accord and satisfaction. MuniServices may accept such check or partial payment without prejudice to MuniServices's right to recover the balance or pursue any right of MuniServices.

The Parties are signing this Agreement as stated in the introductory clause.

MuniServices, LLC

Town of Addison
A Texas Municipal Corporation

By: (See e-signature below.)

By: _____

Marc Herman

Title: President

Title: _____

ATTEST:

By: (see e-signature below)

Kevin Cerutti

City Clerk

Title: Vice President Finance

TX-CSA1-041409v1

9

Kevin Cerutti (KCC)

e-Signed 2009-04-23 10:41AM PDT

kevin.cerutti@muniservices.com

MuniServices, LLC

V.P. Finance

Marc Herman (MH)

e-Signed 2009-04-23 10:55AM PDT

marc.herman@muniservices.com

President

LOCAL HOTEL OCCUPANCY TAX AND HOSPITALITY CONSULTING PROGRAM ADDENDUM

OBJECTIVES AND METHODS

MuniServices, LLC's ("MuniServices") Local Hotel Occupancy Tax and Hospitality Consulting Program is intended to assist the Municipal Corporation in realizing all of the lodging tax revenue to which it is entitled through conducting annual analyses of returns and, when warranted, on-site examinations of records of lodging providers; providing annual reports reflecting and projecting revenue trends; identifying any providers who should be subjected to field auditing or other scrutiny; offering ordinance and administrative enhancements as needed; and educating lodging providers to ensure appropriate collection and remittance of the lodging tax. The term of this Agreement shall be (1) year, automatically renewing until canceled. Performance shall be either annual or as otherwise stated herein

LOCAL HOTEL OCCUPANCY TAX AND HOSPITALITY CONSULTING (HOT) PROGRAM:

ORDINANCE, RETURN AND ADMINISTRATION REVIEW SERVICES (INCEPTION OF CONTRACT):

- Review Municipal Corporation's lodging tax ordinance, return form and administrative procedures;
- Recommend potential enhancements to better acquaint the lodging providers with their responsibilities in collecting and paying-over the tax, and to improve revenue generation and administration by the Municipal Corporation;
- Provide a written report to Municipal Corporation, including suggestions for new ordinance language, form design and process development, as applicable; and
- Meet with Municipal Corporation to discuss findings, and to identify any recommendations for further review.

ANALYSIS & COMPLIANCE REVIEW SERVICES (ANNUALLY):

- Obtain and analyze lodging provider return information in the possession of the Municipal Corporation initially for the prior four year period, thereafter annually for the prior year;
- Conduct unobtrusive collection of information on each property, including number of rooms, occupancy rate, physical condition, business dynamics, etc.;
- Provide a report to the Municipal Corporation on trend analysis to include projections for gross rent revenue and occupancy rates, and other information conducive to assessment of visitation;
- Perform discovery services designed to identify and locate lodging providers not properly registered with the Municipal Corporation and not appearing on the Municipal Corporation rolls as lodging tax remitters;
- Analyze lodging provider return information from the past four years in order to identify unusual or suspicious reporting and/or activities that warrant further review; and

- Provide a detailed report to the Municipal Corporation identifying lodging providers who require additional investigation or examination to determine their compliance with the Municipal Corporation's lodging tax ordinance;

FIELD AUDIT SERVICES (AS DEEMED NEEDED BY ANALYSIS):

- Perform on-site examinations of the records of those providers identified through analysis to warrant further investigation, but only as authorized by Municipal Corporation and not to involve more than one-third (1/3rd) of the properties in any one (1) year;
- Provide Municipal Corporation staff with a detailed list of all records required to be made available by lodging providers for the further reviews, together with a draft engagement announcement letter to be sent to each lodging provider requiring examination;
- In coordination with Municipal Corporation staff, schedule and conduct reviews at the property locations of those providers identified and authorized for examination;
- Verify accuracy of filed lodging tax returns with daily and monthly activity summaries;
- Review a random sample of the daily and monthly summaries to determine if the daily summaries reconcile to the monthly summaries;
- Review bank statements to verify that deposits reconcile with the reported revenue on the lodging tax returns';
- Review exempted revenue for proper qualifying documentation;
- Review a random sample of exempted guest revenue and trace registration and/or other source documents to verify compliance with the Municipal Corporation ordinance;
- Where possible, compare the State and federal tax filings with the lodging tax returns;
- For each error/omission identified and confirmed, submit substantiating documentation to designated Municipal Corporation staff in order to facilitate collection of revenue due from lodging providers for prior periods;
- Coordinate with designated Municipal Corporation official(s) as necessary to review findings and recommendations;
- Provide assistance to Municipal Corporation in reviewing any matters submitted in extenuation and mitigation by lodging providers in contesting a deficiency determination; and
- Prepare and document any changes to the review findings and provide revised tax, interest or penalty amounts due the Municipal Corporation.

SEMINAR SERVICES (ONCE EVERY THIRD YEAR AS SCHEDULED BY MUNICIPAL CORPORATION):

- Conduct a seminar session with Municipal Corporation staff to present and discuss issues pertaining to lodging tax administration. Key topics for normal Municipal Corporation staff

sessions include applicable state and federal law, return analysis, deficiency determination techniques and collections. Municipal Corporation may add select topics of Municipal Corporation concern to be reviewed at this session; and

- Conduct a seminar session for local lodging providers to disseminate information intended to further the providers' understanding of their duties and responsibilities under the Municipal Corporation's lodging tax ordinance, their responsibilities for collections and record keeping, and to address any points requiring clarification in the lodging providers' understanding of the Municipal Corporation's lodging tax ordinance.

Municipal Corporation staff shall be encouraged to attend both seminar sessions so as to become familiar with the issues and concerns facing local lodging providers and to interact directly with the lodging providers.

COMPENSATION

HOT PROGRAM

MuniServices shall provide the Local Hotel Occupancy Tax and Hospitality Consulting Services for a one year period. Thereafter the service will automatically renew for successive one-year periods, subject however to Municipal Corporations availability of funding which lawfully may be applied. Such Services shall be provided at an annual Fixed Fee per lodging property located in the Municipal Corporation as per the following classification of lodging properties: six hundred dollars (\$600) per standard lodging property, six hundred dollars (\$600) per timeshare property, and three hundred dollars (\$300) per bed and breakfast facility. The Fixed Fee shall be invoiced upon execution of this Agreement, and at the beginning of each renewal term. Additionally, MuniServices shall be entitled to Reimbursement of reasonable travel and other out-of-pocket expenses associated with the conduct of field audits and seminars not-to-exceed \$500 per contract year without prior written approval of the Municipal Corporation. Such Reimbursement shall be billed incrementally.

ADDITIONAL CONSULTING

Municipal Corporation may request that MuniServices provide additional consulting services at any time during the term of the Agreement to which this Addendum is attached. If MuniServices and Municipal Corporation agree on the scope of additional consulting services requested, then MuniServices shall provide the additional consulting services on a Time and Materials basis. Depending on the personnel assigned to perform the work, MuniServices standard hourly rates range from \$75 per hour to \$300 per hour.

These additional consulting services will be invoiced no less frequently than monthly based on actual time and expenses incurred.

Each party is signing this Addendum on the date below that party's signature.

MuniServices, LLC

Town of Addison
A Texas Municipal Corporation

By: (See e-signature below.)

By: _____

Marc Herman

Title: _____

Title: President

Date: _____

ATTEST:

By: (See e-signature below.)
Kevin Cerutti
Title: Vice President Finance

City Clerk

TX-HOT1-042209v1

4

Kevin Cerutti (KCC)
e-Signed 2009-04-23 10:38AM PDT
kevin.cerutti@muniservices.com
MuniServices, LLC
V.P. Finance

Marc Herman (Mh)
e-Signed 2009-04-23 10:42AM PDT
marc.herman@muniservices.com
President

Council Agenda Item: #R7

SUMMARY:

This item is to award a contract to MuniServices, LLC (MuniServices) for the analysis of the Town of Addison's sales tax composition, changes and performance.

FINANCIAL IMPACT:

Budgeted Amount: N/A

Cost: \$10,700.00

The Financial and Strategic Services department will save an estimated \$101,000 by not filling the vacant Director of Finance position, reassigning workload among staff, and contracting out sales tax audit and reporting functions.

BACKGROUND:

The Financial and Strategic Services department is seeking to contract with MuniServices for the production of MuniServices' STARS Digest. The STARS Digest provides a detail analysis of municipal sale tax performance, composition and changes. The STARS Digest graphically illustrates specialized reports that provide in-depth analysis of the Town of Addison's sales tax economic base and performance.

The STARS Digest contains the following reports:

- Historical Collections Analysis
- Top 100 Historical
- Top 100 Detail
- Economic Category Performance
- Business Classification
- Historical Economic Composition
- Cross-Reference Reports
- Geo-Area Reports

RECOMMENDATION:

Staff recommends awarding the contract for the analysis of the Town of Addison's sales tax composition, changes and performance to MuniServices LLC.

ADDENDUM

SALES/USE TAX ANALYSIS & REPORTING SERVICE (STARS)

This addendum is dated _____, 2009 and is between the Town of Addison ("Municipal Corporation"), a Texas Municipal Corporation, and MuniServices, LLC ("Consultant"), a Delaware limited liability company, and its affiliates.

Background

Consultant's STARS Digest provides a specific analysis of the Municipal Corporation's sales tax composition, changes and performance. The STARS Digest graphically illustrates the Municipal Corporation sales tax analysis. The Consultant's STARS Digest also includes specialized reports that provide analysis of the Municipal Corporation's sales tax economic base and performance for the latest complete quarter and benchmark year. The STARS Digest also includes sales tax revenue projection for the balance of the current fiscal year and the following fiscal year.

Terms

- 1. Quarterly Stars Digest.** Consultant shall provide the Municipal Corporation with quarterly updated STARS Digests. Consultant will provide one paper, bound copy of the quarterly STARS Digest and one electronic copy of the quarterly STARS Digest on CD. Municipal Corporation may request additional paper, bound copies of the STARS Digests in accordance with the terms in Section 4.3.

1.1 Contents. The quarterly STARS Digest contains the following reports, subject to the availability of Data:

- **Historical Collections Analysis** - Components of allocation payments by payment activity.
- **Top 100 Historical** - Historical performance of the top 100 accounts comparing current benchmark year ranking and sales tax produced with that of prior years.
- **Top 100 Detail** – Sales tax performance of the Municipal Corporation's top 100 sales tax accounts is shown in order of sales tax produced with the results for the most recent five quarters prominently displayed. The proportion of Municipal Corporation sales tax produced is also shown by each account.
- **Economic Category Performance** – An analysis of the changes that occurred by economic category and segment with the specific businesses responsible for the significant changes delineated.
- **Business Classification Code**- This report shows the business classification codes assigned by Consultant based on the NAICS codes provided by the State Comptroller and the accounts assigned those codes in order of sales tax produced. Five quarters of sales tax data are shown for each significant account.
- **Historical Economic Composition** - Data are summarized by economic category and segment by quarters and benchmark years. Percentage of total sales tax generated by each category and segment is also shown to indicate trends in sales tax composition as well as performance.



- **Cross-Reference Reports** - These reports allow the user to look up any of the significant accounts shown in the STARS Digest by name or address.
- **Geo-Area Reports (optional)** – This report tracks sales tax performance within designated geo-areas of the Municipal Corporation (e.g., key shopping centers, business parks, and downtown /business districts, etc.). Charts and printed reports are included for each geo-area. The Municipal Corporation may designate geo-areas and include the Geo-Area Reports in the STARS report for the fee set forth in the compensation section. This report is contingent upon the Municipal Corporation providing Consultant with the geo area address ranges in electronic format that meets the following requirements:
 - XLS, DBF, or Comma Delimited Formats per Consultant requirements;
 - and the components of the address range per Consultant requirements.
(Please contact Consultant for the details of the above requirements.)

To provide the optional Geo-Area reports, Consultant will standardize the street names in the permit file by:

- Parsing the addresses to the United States Postal Service (USPS) standard.
- Comparing the parsed addresses to the Texas' USPS file for standardization and manually verifying it.

Consultant is not responsible for verifying the accuracy of the addresses in the permit file.

All of the reports in this paragraph (1.1) provide data that are based on the date on which the transaction took place and not on the date on which the payment was transferred to the Municipal Corporation.

- 1.2 Excluded businesses.** The STARS Digest does not include any information on taxpayers that is not provided by the State Comptroller to the Municipal Corporation.
- 1.3 Accuracy.** The STARS Digest relies on information provided by the State of Texas Comptroller's Office ("State Comptroller"). Consultant has no obligation to verify the data provided by the State Comptroller. Only if Municipal Corporation elects to receive the Geo area reports will Consultant clean or standardize the data received from the State Comptroller. Consultant may also rely on information provided by third parties. Municipal Corporation acknowledges that Consultant has no obligation to verify, remove redundancies, or otherwise clean or standardize the information provided by third parties.
- 1.4 Timing.** Consultant's obligation to provide the STARS Digest is conditioned on City's delivery of required signed documentation to the Consultant to access the proper data from the State of Texas Comptrollers Office.
- 1.5 License of Electronic Version.** Consultant hereby grants Municipal Corporation a non-exclusive license to print unlimited copies of the STARS Digest from the electronic copy of the STARS digest, if:
 - the copies are for internal Municipal Corporation use only; and
 - the copies do not remove the confidentiality statements contained in the reports.



2. **Business Classifications and Business Names Standardization (optional)** – If Municipal Corporation elects in writing to receive this service, and if the parties mutually agree in writing on the price, Consultant will standardize the business classification codes and business names in the permit file for major accounts through the computer matching process, augmented with verification by calling taxpayers directly. After this standardization process, all the basic reports should display the standardized names and classifications.
3. **Support Service.** Included with the STARS Digest, Consultant will provide the Municipal Corporation with a maximum of 2 hours per quarter of telephonic STARS Digest support. Telephonic STARS Digest support consists of teleconferences with a Consultant representative who will explain the STARS Digest and answer questions about the STARS Digest.
4. **Compensation.**
 - 4.1 **Annual fee.** For the STARS Digest, Municipal Corporation shall pay Consultant an annual fixed fee of \$4,500 per year (“annual fee”). Municipal Corporation shall pay the annual fee in four equal quarterly payments of \$1,125.

Consultant will invoice the quarterly payments on the first month of each calendar quarter. The Municipal Corporation shall pay the quarterly payment even if Consultant does not provide a STARS Digest for a quarter because of State of Texas Comptroller’s Office’s failure to provide data. If this addendum (or the Agreement) is terminated for any reason, then the Municipal Corporation remains obligated to pay Consultant the quarterly payments of the annual fee for the quarters before the effective date of termination and for one quarter after the effective date of termination.
 - 4.2 **Geo Area reports.** Upon Municipal Corporation’s request, Consultant will provide Geo Area reports for a one-time set-up fee of \$500 per geo area and \$500 annual fee per Geo Area. At any time, the Municipal Corporation may request changes in the geo areas for an additional one-time fee of \$500 per Geo Area. If the addresses in the permit file have not been standardized thru Consultant’s expanded SUTA service, Municipal Corporation shall pay an additional one-time setup fee of \$750 for address standardization.
 - 4.3 **Additional Copies.** Consultant shall provide Municipal Corporation additional paper, bound copies of the STARS Digest upon Municipal Corporation’s request at the rate of \$200 annually per additional copy, payable by Municipal Corporation in quarterly installments of \$50 per additional copy.
 - 4.4 **Adjustments.** The Annual Fee and the fee for Additional Copies shall each be adjusted at the beginning of each calendar year by the percentage change in the Consumer Price Index – South Urban (CPI-SU) as reported by the Bureau of Labor Statistics. The initial Consumer Price Index used for the first CPI adjustment will be the CPI-SU for the month in which the agreement is fully signed with the first adjustment to occur at the beginning of the Calendar year following the first full calendar year of service. The adjustments thereafter will be based on the CPI-SU from December of the prior calendar year. Each Annual Fee adjustment shall not be less than two percent (2%) or greater than ten percent (10%).



4.5 **One-time fees.** MuniServices will invoice the Municipal Corporation any applicable set-up fees along with the next invoice for the quarterly installment of the annual fee. Those set-up fees are due and payable within 30-days of the receipt of the invoice.

5. **Change in Legislation.** If there is a change in Texas law that increases the scope of information available from State Comptroller compared to the scope of information available from State Comptroller on the date this agreement is signed by Consultant, parties will meet and negotiate an amendment to this agreement. If data becomes unavailable, Consultant may terminate this agreement with 10-business days written notice to the Municipal Corporation.

6. **Additional Consulting.** Municipal Corporation may request that Consultant provide additional consulting services at any time during the term of the Agreement to which this Addendum is attached. If Consultant and Municipal Corporation agree on the scope of additional consulting services requested, then Consultant shall provide the additional consulting services on a Time and Materials basis. Depending on the personnel assigned to perform the work, Consultant's standard hourly rates range from \$75 per hour to \$300 per hour. These additional consulting services will be invoiced no less frequently than monthly based on actual time and expenses incurred.

7. **Confidentiality.** The information provided to the Municipal Corporation in the STARS Digest is confidential. It is not open to public inspection. A Municipal Corporation may use the information only for the purpose of economic forecasting (Tex. Tax Code §321.3022(c)). Unauthorized distribution of confidential information by an officer or employee of a government agency is punishable by 6 months in jail and a \$1,000 fine (Tex. Govt. Code § 552.352). Municipal Corporation shall not use the STARS Digest for any purpose other than economic forecasting and shall not distribute the STARS Digest to any person to unless that person is legally entitled to access to the information in the STARS Digest, or except as may otherwise be required by law or court order.

The parties are signing this addendum on the date stated in the introductory clause.

MuniServices, LLC

Town of Addison
A Texas Municipal Corporation

By: (see e-signature below.)
Marc Herman
Title: President

By: _____
Title: _____

By: (see e-signature below.)
Kevin Cerutti
Title: Vice President Finance

ATTEST:

City Secretary

TX-STARS1-081308v1

4



Kevin Cerutti (KCC)
Signed 2009-04-24 02:20PM PDT
kevin.cerutti@muniservices.com
MuniServices, LLC
V.P. Finance

Marc Herman (MH)
e-Signed 2009-04-24 03:45PM PDT
marc.herman@muniservices.com
President

Council Agenda Item: #R8

SUMMARY:

Council authorization is requested for the Town of Addison to enter into agreement with MuniServices, LLC (MuniServices) for consulting services related to the execution of an expanded sales tax compliance review and sales tax capture leakage analysis (STCL).

FINANCIAL IMPACT:

The fee for the expanded sales tax compliance review is 32.5% contingency fee based on the revenue received by the Addison as a result of the MuniServices detecting and documenting taxpayer reporting errors which are subsequently corrected. There is no minimum fee required for this service.

The fee for the sales tax capture leakage analysis is \$500.00 for 2009.

BACKGROUND:

The expanded sales tax compliance review is designed to assist Addison with economic forecasting and in preserving and enhancing its sales and use tax revenues by detecting, documenting, and correcting sales tax misallocations thereby producing previously unrealized revenue for Addison while giving the Town a more accurate sales tax base upon which to forecast its revenue.

The STCL analysis shows how much potential sales tax revenue is being lost by residents shopping outside the Town of Addison. The analysis provides:

- An analysis of sales tax revenue;
- Economic strengths and weaknesses in the local economic base; and
- Priority rankings by targeted industry clusters

The STCL analysis can help the Town of Addison focus on what business to attract and retain. It also includes reports on sales tax trends, sales tax capture rates and sales tax gap rates.

RECOMMENDATION:

It is recommended Council authorize the city manager, with consent of the city attorney, to enter into an agreement with MuniServices Company for expanded sales tax compliance review and sales tax capture leakage analysis.

ADDENDUM

SALES TAX CAPTURE LEAKAGE ANALYSIS SERVICE (STCL)

This addendum is dated _____, 2009 and is between the Town of Addison ("you", "your", "yours", or similar words), a Texas Municipal Corporation, and MuniServices, LLC ("we", "us", "our" or similar words), a Delaware limited liability company, and its affiliates.

Background

Our STCL analysis shows how much potential sales tax revenue is being lost by residents shopping outside the City or Town. The analysis provides:

- An analysis of sales tax revenue;
- Economic strengths and weaknesses in the local economic base; and
- Priority rankings by targeted industry clusters.

The STCL analysis can help cities focus on what businesses to attract and retain. It also includes reports on your sales tax trends, sales tax capture rates, and sales tax gap rates.

The parties agree as follows.

Terms

1. Quarterly STCL Analysis. Each calendar quarter we will provide you with an updated STCL Analysis. We will provide you with one paper, bound copy of the quarterly STCL Analysis and one electronic copy on CD.

1.1 Contents. The quarterly STCL Analysis shows the capture/leakage by economic segment for the current year-ended quarter. Subject to data availability, the quarterly STCL Analysis contains the following information:

- *Actual Sales Tax* - Provides sales tax by economic category, economic segment and business code.
- *Potential Sales Tax* - Provides actual sales tax multiplied by its effective buying income divided by the region's effective buying income. In other words, the potential sales tax from your residents' income when following the region's buying patterns.
- *Sales Tax Capture & Gap Analysis* - Provides an overview of how well the you are capturing potential sales tax based on its residents' effective buying income (disposable income) compared to purchasing habits in the region.
- *Sales Tax Capture Leakage Analysis* - Provides a comparison of the actual sales tax with the expected sales tax, negative variance indicating amount of leakage, and positive variance indicating amount of capture.

1.2 Accuracy and limits. The STCL Analysis relies on information provided by the State of Texas Comptroller's Office ("State Comptroller"). Consequently, if the

State Comptroller does not provide you with information about a taxpayer, that taxpayer's information will not be included in the analysis. Consultant may also rely on information provided by third parties. You acknowledge that we have no obligation to verify, remove redundancies, or otherwise clean or standardize the information provided by third parties or the State Comptroller. If the State Comptroller doesn't provide to you or you do not provide to us the data we need for the STCL analysis in the timeframe we specify, we have no obligation to provide you an STCL analysis for that quarter.

1.3 Timing. We will provide the STCL Analysis only after you deliver to us the signed documents required to access the proper data from the State Comptroller.

1.4 License of Electronic Version. We hereby grants you a non-exclusive license to print unlimited copies of the STCL Analysis from the electronic copy of the STCL Analysis, if:

- the copies are for your internal use only; and
- the copies do not remove the confidentiality statements contained in the Analysis.

2. Compensation.

2.1 Quarterly fee. You shall pay us \$250 per quarter for each quarter we provide you with a STCL Analysis. We will invoice the quarterly payments in the first month of each calendar quarter. For the calendar quarters from now thru December 31, 2009, you shall pay an introductory price of \$125 per quarter.

2.2 Adjustments. The quarterly fee increases at the beginning of each calendar year by the percentage change in the Consumer Price Index – South Urban (CPI-SU) as reported by the Bureau of Labor Statistics. The initial Consumer Price Index used for the first CPI adjustment will be the CPI-SU for the month in which the agreement is fully signed with the first adjustment to occur on January 1, 2010. The adjustments thereafter will be based on the CPI-SU from December of the prior calendar year. Each Annual Fee adjustment will not be less than two percent (2%) or greater than ten percent (10%).

2.3 Payment even if you cancel. If you terminate this Agreement for any reason, then you remain obligated to pay us the quarterly fee for the quarters before the effective date of termination and the quarter in which the termination is effective.

3. Change in Legislation. If there is a change in Texas law that increases the scope of information available from State Comptroller compared to the scope of information available from State Comptroller on the date we sign this agreement, both parties will negotiate an amendment to this agreement. If data becomes unavailable, we may terminate this agreement with 10 business-days written notice to you.

4. **Additional Consulting.** You may ask us to provide additional consulting services at any time during the term of the Agreement to which this Addendum is attached. If both parties agree on the scope of additional consulting services requested, then we shall provide the additional consulting services on a Time and Materials basis. Depending on the personnel assigned to perform the work, our hourly rates range from \$75 per hour to \$300 per hour. We will invoice these additional consulting services at least monthly based on actual time and expenses incurred.

The parties are signing this addendum on the date stated in the introductory clause.

MuniServices, LLC

Town of Addison
A Texas Municipal Corporation

By: (see e-signature below.)

Marc Herman

Title: President

By: _____

Title: _____

By: (see e-signature below.)

Kevin Cerutti

Title: Vice President Finance

ATTEST:

City Secretary

TX-STCL-031909v1

3

Kevin Cerutti (KCC)

e-Signed 2009-04-23 10:37AM PDT

kevin.cerutti@muniservices.com

MuniServices, LLC

V.P. Finance

Marc Herman (MH)

e-Signed 2009-04-23 10:40AM PDT

marc.herman@muniservices.com

President

ADDENDUM
EXPANDED SALES TAX COMPLIANCE REVIEW

This addendum is dated _____, 2009 and is between the Town of Addison ("Municipal Corporation"), a Texas Municipal Corporation, and MuniServices, LLC, ("MuniServices") a Delaware limited liability company, and its affiliates.

1. OBJECTIVES

MuniServices' Expanded Sales Tax Compliance Review is designed to assist Municipal Corporation with economic forecasting and in preserving and enhancing its sales and use tax revenues by detecting, documenting, and correcting sales tax misallocations thereby producing previously unrealized revenue for Municipal Corporation while giving the Municipal Corporation a more accurate sales tax base upon which to forecast its revenue.

2. PROCEDURES

In providing the Expanded Sales Tax Compliance Review MuniServices shall:

- Meet with Municipal Corporation's designated staff to review service objectives, scope, procedures, coordination of effort, work plan schedule, public relations, and logistical matters;
- Establish an appropriate liaison with the Municipal Corporation's coordinator and define logical checkpoints for reviewing progress;
- Review the Municipal Corporation's sales and use tax ordinances for included provisions, coverage, and classification definitions;
- Provide and maintain compliance with the Municipal Corporation's sales and use taxes by:
 - Detecting and validating qualifying business activities within the Municipal Corporation from which the Municipal Corporation is not receiving revenue.
 - Determining whether the business is remitting the sales and use tax due the Municipal Corporation to the state correctly.
 - Providing documentation to businesses mistakenly reporting the tax to another jurisdiction to facilitate a correction of the registration information. Assist the business, as necessary, in filing of returns and making payments for all open tax periods. Provide documentation to the state to secure the transfer of funds to the Municipal Corporation that was reported in error to another jurisdiction.

3. PROGRESS REPORTS

MuniServices will provide periodic progress reports to Municipal Corporation in the form of status updates. These progress reports will also indicate areas in which Municipal Corporation staff may further assist and improve the economic forecasting activities provided hereunder. MuniServices'

progress reports will identify errors/omissions detected, documented and corrected and report on other services of benefit to Municipal Corporation for the time period covered.

4. MUNICIPAL CORPORATION RESPONSIBILITIES

Municipal Corporation shall assist MuniServices by providing necessary information and assistance to include, but not be limited to, the following:

- Providing MuniServices, on a timely basis, information necessary to conduct its compliance review activities including but not limited to, monthly tax payment histories;
- Providing a letter of authorization identifying MuniServices as an authorized agent of Municipal Corporation to perform sales and use tax reviews and to receive and examine taxpayer records (hard copy and electronic) necessary to assure sales and use tax compliance and revenue forecasts;
- Pursuing in good faith corrective action on errors and omissions detected by MuniServices.
- Issuing necessary documentation to the state to correct errors validated by MuniServices; and
- Notifying MuniServices within 10 days following receipt by the Municipal Corporation of payments (cash payments, installment payments, or other compensation directly benefiting the Municipal Corporation).

The parties agree that Municipal Corporation and/or the State Comptroller retain exclusive authority and responsibility to administer, interpret and enforce the Municipal Corporation's sales and use tax, recognizing that MuniServices' role is limited to employing its unique expertise and proprietary tools for: i) detecting and documenting errors/omissions by taxpayers in the application, calculation, collection, and/or remittance of sales and use taxes and, ii) providing Municipal Corporation with technical assistance, without assuming or being delegated the authority or responsibility of Municipal Corporation to administer, interpret, and enforce its sales and use taxes.

5. COMPENSATION

MuniServices fee for providing this service is a 32.5% contingency fee based on the revenue received by the Municipal Corporation as a result of MuniServices detecting and documenting taxpayer reporting errors which are subsequently corrected. The 32.5% applies to all revenues corrected for the Municipal Corporation for any periods prior to the date of the corrected allocation. The 32.5% fee also applies to revenues received for the first eight consecutive reporting quarters following correction of the errors and confirmation of receipt of revenue by the Municipal Corporation.

Municipal Corporation agrees to notify MuniServices within 10 days following receipt by the Municipal Corporation of payments (cash payments, installment payments, or other compensation directly benefiting the Municipal Corporation) resulting from MuniServices' service. Upon being notified of receipt of payment(s), MuniServices will then invoice the Municipal Corporation. Invoices are due and payable upon receipt.

All expenses incurred by MuniServices in providing the Sales Tax Compliance Review are the sole and exclusive responsibility of MuniServices, except those expenses that receive prior written approval of Municipal Corporation.

6. ADDITIONAL CONSULTING

Municipal Corporation may request that MuniServices provide additional consulting services at any time during the term of the Agreement to which this Addendum is attached. If MuniServices and Municipal Corporation agree on the scope of additional consulting services requested, then MuniServices shall provide the additional consulting services on a Time and Materials basis. Depending on the personnel assigned to perform the work, MuniServices standard hourly rates range from \$75 per hour to \$300 per hour. These additional consulting services will be invoiced no less frequently than monthly based on actual time and expenses incurred.

The parties are signing this agreement on the date stated in the introductory paragraph above.

MuniServices, LLC

Town of Addison
A Texas Municipal Corporation

By: (see electronic signature below.)

Marc Herman

Title: President

By: _____

Title: _____

ATTEST:

By: (see electronic signature below.)

Kevin Cerutti

Title: Vice President Finance

City Clerk

Kevin Cerutti (KCC)

e-Signed 2009-04-23 10:40AM PDT

kevin.cerutti@muniservices.com

MuniServices, LLC

V.P. Finance

Marc Herman (MH)

e-Signed 2009-04-23 10:54AM PDT

marc.herman@muniservices.com

President

Council Agenda Item: #R9

SUMMARY:

This item is to consider an award to Allegra Print and Imaging for the Town's printing services annual contract.

FINANCIAL IMPACT:

Budgeted Amount: Funds are available in each department's operating budget for printing services, normally out of the Office Supplies line item.

Cost: Cost will be variable depending on orders from each department. Town-wide, approximately \$23,000 was spent on miscellaneous printing services during Fiscal Year 2008.

BACKGROUND:

The Town utilizes an annual contract for printing services on an as-needed basis for the purchase of various printed materials for use by Town departments including letterhead, envelopes, and business cards. Total bid price of printing services provided was used to evaluate the bids.

Three bids were submitted, and the lowest weighted bidder was Signature Commercial Printing. However, since Signature did not submit a bid bond as required by the specifications, they were disqualified. The next low bidder was Allegra, which has been providing printing services to the Town for the past three years. Allegra is located in Addison, and has a proven track record of quality services with the Town.

The contract term is from award date through April 1, 2010. After the initial one year term, there are options to extend the contract for two one-year terms.

For this bid, all of the Town's standard advertising protocols were followed. The bid was released on Demandstar, which notified 80 vendors resulting in 12 planholders, and Bidsync, which notified 1,075 vendors resulting in 97 planholders. It was also published in the classified section of the Dallas Morning News and the specs were uploaded to the Town's website and remained there until the bid opening.

RECOMMENDATION:

Staff recommends approval of this bid.

Printing Services

BID NO 09-12

DUE: April 24, 2009

10:30 AM

BIDDER	Signed	Bid Bond	Bid Total
Sir Speedy	Y	Y	\$ 79.74
Signature Commercial Printing	Y	N	\$ 40.69
Allegra	Y	Y	\$ 45.25

Matthew E. McCombs

Matt McCombs, Management Analyst

Jason Cooley

Witness

Council Agenda Item:#R10

SUMMARY:

The Addison Fire Department utilizes seven cardiac monitor/defibrillators which allows for standardization on each piece of apparatus and the ability to offer the same level of care from every responding unit. Three cardiac monitor/defibrillators were scheduled to be replaced in the 2007-2008 budget year, however we requested the replacement be delayed in order to wait on the release of a new model with improved function and capability. All seven of our monitors are manufactured by Physio Control Incorporated/Medtronic. The three cardiac monitors being replaced are now nine years old. After the current maintenance agreement expires for these three monitors, they will not be eligible for another maintenance contract. Maintenance contracts are only available for eight years. We are also purchasing related equipment such as extra batteries, replacement cases, cables, etc.

FINANCIAL IMPACT:

Cost: \$105,884.77

BACKGROUND:

In the late 1990's, a competitive selection process was conducted to standardize cardiac monitors within the Addison Fire Department. Physio Control Corporation cardiac monitors were selected (a division of Medtronic Emergency Response System). Since that time, all cardiac monitors, AED's and associated equipment have been purchased from Medtronic on a sole source basis. All these monitors are also compatible with our existing software documentation and billing systems.

Funding for this equipment has been budgeted within the Town's Capital Replacement Fund.

RECOMMENDATION:

The Addison Fire Department recommends the approval of a contract for the purchase of three replacement cardiac monitor/defibrillators and related equipment in an amount not to exceed \$105,884.77 from Physio-Control-Medtronic Emergency Response Systems.



MEMORANDUM

TO: Mayor and Town Council

FROM: Chris W. Kellen
Deputy Chief

DATE: June 25, 2009

SUBJECT: Replacement Cardiac Monitors

The Addison Fire Department currently utilizes seven cardiac monitors. They are assigned as follows:

- Medic 101
- Medic 102
- Engine 101
- Engine 102
- Truck 101
- Special Events
- Spare

These cardiac monitors are designed to monitor and document electric activity of a patient's heart, discharge an electric shock to a heart to convert life threatening arrhythmias, monitor both oxygen and carbon dioxide levels in the blood, pace a patient's heart, monitor a patient's blood pressure. The new Lifepak 15 monitor's are also capable of monitoring carbon monoxide levels in the blood which is essential in evaluating personnel exposed to products of combustion after a fire. Furthermore, all information gathered in the device is able to be downloaded to the patient care report, reducing time spent entering data and the possibility of errors. These life saving functions are critical to diagnosing and treating a patient in the pre hospital emergency setting. These cardiac monitors are literally used on all patients.

These monitors are utilized in and around very challenging work environments such as auto accidents, structure fires, rain, heat, etc. As a result, these

monitors take a real beating. The maintenance contracts that are offered for up to eight years are a critical component of these devices to assure that they are working properly. Due to this work environment, you will also see replacement cases, extra batteries, cables, blood pressure cuffs, etc. as part of these bids.

The Addison Fire Department recommends the City Manager enter into a contract with Physio-Control Inc. for the purchase of three replacement cardiac monitor/defibrillators and related equipment at a cost not to exceed \$105,884.77.



Q-Addison FD
062209.pdf



Addison D.doc



Council Agenda Item: #R11

SUMMARY:

This item is to request the Council's approval of a contract with the Noofangle Media to design and host an AddisonGreen/Sustainability Community Portal for residents & businesses. A copy of the contract is attached.

FINANCIAL IMPACT:

Budgeted Amount: **Not budgeted**

Cost: Total cost - \$28,000 over 6 months

- One Time Costs - \$10,000
 - Site design/development
 - Addison branding
 - Integration of City Content
 - Promotional Materials
- Monthly costs - \$3,000 / mo.
 - 6 month pilot (\$18,000)
 - Daily programming
 - Addison specific content
 - Fully hosted
 - Noofangle syndicated green content
 - Event participation
 - City reference person/contacts

BACKGROUND:

Noofangle Media content solutions are full featured websites, updated continuously with original content, that focus on the most popular and relevant topics of the day. They integrate these solutions quickly and seamlessly into the websites of their local publishing and broadcast partners. With their solutions, Addison will be able to quickly grow its online audiences with quality content upon which they can rely.

In addition, Noofangle Media works with leading journalists and photographers to develop their syndication opportunities and create content packages that are needed in the rapidly expanding online marketplace. They're journalists, too, so they understand the challenges and opportunities presented by this fast-evolving environment.

In recent years, Noofangle Media has been successfully helping different organizations like ABC and Disney to produce, promote and maintain a strong Green/Sustainability portal presence. Their proposal for Addison is to create a portal that will:

- Be a place for communicating with residents, businesses and employees the city’s green initiatives, projects, news and accomplishments
- Educate citizens, businesses and city employees on best green practices
- Support citizens, businesses and city employees as they try to become greener in their own lives
- Offer access to local green resources and events
- Provide tools to track progress in greening the workplace and home life
- Facilitate workshops and guest speakers
- Participate in local events to build awareness

The proposed Town of Addison Green Portal will include the following elements:

- Environment dashboard module: Displays current air quality and any current restrictions (watering, burn bans, etc.)
- Addison section: Environmental news, events calendar, city initiatives, progress reports, information on municipal buildings and operations, air quality issues, energy, city vehicles, recycling, etc.
- What You Need To Know track for residents; What You Need To Know track for businesses; (optional What You Need To Know track for city employees)
- Subject categories with threading to relevant city information . Database of articles
- Photo slideshows
- Video features
- Downloads (reports, forms, etc.)
- Social network components TBD (Facebook, Twitter, etc.)

The proposed Green Portal content categories are:

- PEOPLE/PROJECTS
 - Profiles of residents, business leaders and developments or other projects that exhibit green characteristics
- HOME/GARDEN
 - Urban gardening and how to green your residence; recycling how-to guide
- ENERGY
 - Sources for renewable energy, plus energy-saving tips and projects
- TRANSPORTATION
 - Getting around town in greener fashion; biking, mass transit and other options
- BUSINESS
 - Stories that showcase green practices of local businesses; separate portal door for businesses to understand Addison’s environmental policies and requirements
- FAMILY/KIDS/FUN

- Activities you can participate in; what schools are doing to green their students
- COMMUNITY
 - Tracking organizations' and civic groups' environmental activities
- FOOD/HEALTH
 - Finding organic food sources; information on environment's impact on health
- EARTH/NATURE
 - A guide to urban wildlife and plant life; Protecting and using city parks and natural resources
- SHOP
 - Green products to help residents and businesses cut their carbon footprint and reduce costs

The following are samples of their Green portals:

- ['Farm in a Barrel': raise fish and grow your own organic vegetables](#)
- [Some kinder, gentler ways to deal with pesky bugs](#)
- [Solar attic fans, an energy improvement with a quick payback](#)
- [Get green for under \\$100](#)
- [Waste Management wants you to not waste juice and milk cartons](#)
- [Spring cleaning advice from Seventh Generation, Webbed and Healthy Child Healthy Home](#)
- [Get green in your apartment, condo or townhome](#)
- [Fruit and veggies grow on cinder-block walls](#)
- [Community gardens: A plot for growing and eating locally](#)
- [Wind turbines are ready when homeowners are](#)
- [Green Spas: Healthier practices serve clients and the environment](#)
- [How the House stimulus bill would help green your house](#)
- [Garbage to gasoline, Texas plant gears up to make fuel from waste](#)
- [Out of excuses: You — yes, you — can ride your bike to work](#)
- [Texas paying cash toward cleaner cars](#)
- [Green is the new white in weddings](#)
- [Gas Mowers Undercut Air Quality](#)

The deliverables under this contract are:

- Addison Branded Green Community Portal
- 8 -10 Addison specific pieces per month
- Site and content updated daily
- Point contact for all residents, businesses and employees
- Event support
- Public relations support

RECOMMENDATION:

We do believe that high quality, professional content is the best long term vehicle for creating value online and staff recommends that the Council authorize the

City Manager to enter into a contract with Noofangle Media for professional services in the amount of \$28,000 subject to the City Attorney's final approval.



Addison Green Portal Agreement

For the Development, Management and Hosting of a Green Web Portal for the Town of Addison

Addison:

Town of Addison, Texas ("Addison")
5300 Belt Line Road
Dallas, TX 75254-7606
972-450-7001

Date:

7/20/2009

Order ID:

GRN-AD001

Scope:

Development, management, and hosting of a green web portal

Description of Services:

Noofangle Media will work jointly with the Town of Addison to design a web portal for its citizens, businesses and employees. Noofangle will then develop the website, host the website and regularly publish new articles on a variety of environment topics. The scope of this contract will be for the initial development of the site and ongoing support for 6 months.

Recurring Services Monthly

Line	Code	Description	Qty	Unit Price	Extended
1	DVLP	Design and Development of the Addison Green Website	1	\$10,000	\$10,000
2	PUBLISH	Monthly management, editorial, publishing and hosting	6	\$3,000	\$18,000
				Subtotal	\$28,000
				Total	\$28,000

Terms & Conditions

Term: 9/1/2009 – 3/1/2010
Effective Date: 9/1/2009
Billing Period: Monthly
Payment Terms: \$10,000 on acceptance of contract, \$3,000 per month on the 1st of each month

This Order for the development of the Addison Green Portal is entered into between Noofangle Media, Inc. ("Noofangle") and the Town of Addison ("Addison"). By signature of this document, Addison is authorizing Noofangle to build and establish the services specified and ordered in this Order and Addison agrees to pay the associated fees as detailed in a Purchase Agreement. This document in association with the Agreement (following this page) constitutes a contract.

Signatures

Noofangle Media, Inc.

The Town of Addison

Signature

Mitch Rosenbleeth
Name Printed

Name Printed

Co-Founder and CEO
Title

Title

12/19/2007
Date

Date

This Website Development and Publishing Services Agreement (this "Agreement") is made and entered into by and between Noofangle Media, a Texas corporation with offices at 5005 Addison Circle, Addison, Texas 75001 (the "Noofangle"), and Addison (each being referred to individually as a "Party" and collectively as the "Parties").

1. RECITALS

1.1. Noofangle is in the business of offering Internet services relating to, among other things, the publishing of sites on the World Wide Web portion of the Internet, and Noofangle is willing to provide services to Addison on the terms and subject to the conditions set forth below; and

1.2. Addison desires to engage Noofangle, and Noofangle desires to be engaged by Addison, to provide Internet services on the terms and subject to the conditions set forth below.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Noofangle and Addison hereby agree as follows:

2. TERMS

This Agreement shall be effective when signed by both Parties (the "Effective Date") and thereafter shall remain in effect for six (6) months, unless earlier terminated as otherwise provided in this Agreement (the "Initial Term").

3. SERVICES

3.1. Development and Publishing Services

Noofangle agrees to work with Addison to jointly design a Green Living Website specifically for Addison (the "Website") targeted to the residents, businesses and employees of Addison. Noofangle will provide the creative design resources and web development capabilities needed to provide all development and production capabilities needed to build the website. Addison will provide design input into the process and will maintain the rights to approval on the design of the website.

Once the website is operational, Noofangle will work with its network of writers and editors to update the site with relevant and topical environmental content each week. The website content will be a combination of green living articles currently in the inventory of Noofangle as well as original stories on topics relevant to Addison. Addison will maintain the right to approve all content on the website and any content deemed unacceptable by Addison will be removed immediately by Noofangle upon notification from Addison.

Noofangle will be responsible for all technical and infrastructure services required to host and manage the Addison Green Portal.

Except as expressly provided in this Agreement, Addison agrees that Noofangle is responsible only for developing and publishing the Website, and Noofangle is not responsible for providing any other services or tasks not specifically set forth in DESCRIPTION OF SERVICES.

To the extent that Addison wishes to receive from Noofangle, and Noofangle wishes to provide to Addison, services other than the Development and Publishing Services (collectively the "Additional Services"), such Additional Services and the arrangements for their provision shall be set forth in a separate addendum to this Agreement which is duly executed by the Parties (the "Services Addendum"), and the Services Addendum shall be incorporated into, and become a part of this Agreement. (The Development and Publishing Services and the Additional Services will hereinafter be referred to collectively as the "Services").

3.2. Availability of Website

Unless otherwise expressly indicated on DESCRIPTION OF SERVICES hereto, the Website shall be accessible to third Parties via the World Wide Web portion of the Internet twenty-four (24) hours a day, seven

(7) days a week, except for scheduled maintenance and required repairs, and except for any loss or interruption due to causes beyond the control of Noofangle or which are not reasonably foreseeable by Noofangle, including, but not limited to, interruption or failure of telecommunication or digital transmission links and Internet slow-downs or failures.

3.3. Development and Publishing Services Fees

Addison shall pay Noofangle all fees for the Development and Publishing Services in accordance with the applicable fee and payment schedule set forth in DESCRIPTION OF SERVICES. Noofangle expressly reserves the right to change its rates charged hereunder for the Services during any renewal term.

3.4. Additional Services Fees

Unless otherwise agreed in writing, Addison shall pay to Noofangle all fees for Additional Services on a time and materials basis as invoiced by Noofangle.

4. Warranties

4.1. Noofangle Warranties

Noofangle represents and warrants that:

1. Noofangle has the power and authority to enter into and perform its obligations under this Agreement; and
2. Noofangle's services under this Agreement shall be performed in a workmanlike manner.

4.2. Addison Warranties

Addison represents and warrants that it has the power and authority to enter into and perform its obligations under this Agreement;

5. Indemnification

5.1. Addison - Addison agrees to indemnify, defend, and hold harmless Noofangle, its directors, officers, employees and agents, and defend any action brought against same with respect to any claim, demand, cause of action, debt or liability, including reasonable attorneys' fees, at trial and on appeal, to the extent that such action is based upon a claim that:

1. If true, would constitute a breach of any of Addison's representations, warranties, or agreements hereunder;
2. Arises out of the negligence or willful misconduct of Addison.

5.2. Noofangle - Noofangle agrees to indemnify, defend, and hold harmless Addison, its directors, officers, employees and agents, and defend any action brought against same with respect to any claim, demand, cause of action, debt or liability, including reasonable attorneys' fees, at trial and on appeal, to the extent that such action is based upon a claim that:

1. If true, would constitute a breach of any of Noofangle's representations, warranties, or agreements hereunder;
2. Arises out of the negligence or willful misconduct of Noofangle; or,
3. Any of the Content to be provided by Noofangle hereunder or other material on the Website infringes or violates any rights of third Parties; including, without limitation, rights of publicity, rights of privacy, patents, copyrights, trademarks, trade secrets, and/or licenses.

6. Notice

In claiming any indemnification hereunder, the indemnified Party shall promptly provide the indemnifying Party with written notice of any claim which the indemnified Party believes falls within the scope of the foregoing paragraphs. The indemnified Party may, at its own expense, assist in the defense if it so chooses, provided that the indemnifying Party shall control such defense and all negotiations relative to the settlement of any such claim and further provided that any settlement intended to bind the indemnified Party shall not be final without the

indemnified Party's written consent, which shall not be unreasonably withheld.

7. Limitation of Liability

NOOFANGLE SHALL HAVE NO LIABILITY FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF, THE WEBSITE OR ADDISON'S DATA FILES, PROGRAMS OR INFORMATION THROUGH ACCIDENT, FRAUDULENT OR UNAUTHORIZED MEANS OR DEVICES. NOOFANGLE SHALL HAVE NO LIABILITY WITH RESPECT TO NOOFANGLE'S OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES EVEN IF NOOFANGLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE LIABILITY OF NOOFANGLE TO ADDISON FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID TO NOOFANGLE BY ADDISON UNDER THIS AGREEMENT. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, TO BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS.

8. Amendment

No amendment, waiver, or modification of this Agreement or any provision of this Agreement shall be valid unless in writing, stating with specificity the particular amendment or modification to be made, and duly executed by the Noofangle and Addison.

9. Enforceability

If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, administrative agency or as a result of future legislative action, such holding or action shall be strictly construed and the unenforceable provision shall be deemed severable from the remainder of the Agreement to the extent permitted by law, and the validity or effect of any other provision of this Agreement shall remain binding with the same effect as though the void parts were deleted.

Council Agenda Item: #R12

SUMMARY:

Presentation and discussion of two potential contracts regarding the future Management and Operation of Addison Airport.

BACKGROUND:

Per the Council's direction at their Special City Council Meeting on May 29, 2009, staff led by Mr. Jimmy Niemann, met with both parties of the joint venture (URS and SAMI) to determine if resuming negotiations was an agreeable option to all parties. Mr. Niemann will report back to the City Council the result of those meetings and the prospects for moving forward again with negotiations.

There are no Attachments for the item.

Council Agenda Item: #R13

SUMMARY:

Consideration and consent to Victory Jet, Inc., for the proposed sale and assignment of their building improvements together with their leasehold interests in Ground Lease #013A-14 and Hangar Lease #0120-03 relating to the real property located at 15841 Addison Road to PlaneSmart! Properties, LLC, a Texas limited liability company.

BACKGROUND:

The proposed transaction is comprised of an integrated and concurrent set of transactions and agreements between one and more of the Town, Victory Jet, PlaneSmart and J.P. Morgan Chase (collectively the "Transaction Documents") which includes:

1. Assignment of Ground Lease between Victory Jet and PlaneSmart to be consented to by the Town (see "Exhibit A").
2. Assignment of Hangar Lease between Victory Jet and PlaneSmart; consented to by the Town (see "Exhibit D").
3. Amendment to Ground Lease between PlaneSmart and the Town including a supplemental agreement entitled Agreement Regarding Hangar Property between Landlord and Tenant (see "Exhibit B").
4. Second Amendment to Hangar Lease between Victory Jet and the Town (see "Exhibit C").
5. Reciprocal Easement between Victory Jet and the Town (see "Exhibit E").
6. Estoppel Agreement between the Town and J.P. Morgan Chase (the "Bank") (see "Exhibit F").
7. Memorandum of Assignment and Amendment of Ground Lease and Hangar Lease between Victory Jet, PlaneSmart and the Town (see "Exhibit G").

The concurrent execution and recording of the above Transaction Documents (as applicable) at closing is a condition for the full consummation of the proposed transaction.

PlaneSmart Properties, LLC, the proposed tenant, is wholly owned by PlaneSmart Aviation, LLC, a highly regarded operator at Addison Airport and within the industry, which appears to be a well-run and organized operation, with substantial financial backing. PlaneSmart proposes to invest over \$700,000 for the acquisition and completion of significant capital improvements to the real property, turning it into a high-end aeronautical facility along Addison Road. Should PlaneSmart exercise the proposed expansion option within the next five (5) years, they will build an additional 6,000 square foot conventional hangar further enhancing the Airport's real estate portfolio with new state-of-the-art facilities.

RECOMMENDATION:

Staff and Airport Management is recommending the City Council give its consent to the proposed transaction and authorize the City Manager to execute the required documents on behalf of the Town in order to facilitate the above transaction, subject to the City Attorney's ongoing review and oversight. The City Attorney has reviewed the aforementioned agreements and regards them as acceptable for the Town's use.

Attachments: Memorandum – Bill Dyer
Attachments 1-6 listed above



William M. Dyer
Real Estate Manager
16051 Addison Road
Suite 220
Addison, Texas 75001

Main: 972-392-4850
Direct: 972-392-4856
Fax: 972-788-9334
bill.dyer@addisonairport.net

To: Mark Acevedo, Director of General Services

From: Bill Dyer, Real Estate Manager

Cc: Joel Jenkinson, Airport Director

Re: Request for the Town's Consideration and Consent to the Proposed Sale and Assignment of Property Located at 15841 Addison Road, Subject to a Certain Ground Lease and Hangar Lease between Victory Jet, Inc. and PlaneSmart! Properties, LLC

Victory Jet, Inc. ("Victory Jet" or "Assignor") is requesting the Town's consideration and consent to the proposed sale and assignment of their building improvements together with their leasehold interests in Ground Lease #013A-14 and Hangar Lease #0120-03 relating to the real property located at 15841 Addison Road to PlaneSmart! Properties, LLC ("PlaneSmart"), a Texas limited liability company. The proposed transaction is comprised of an integrated and concurrent set of transactions and agreements between one and more of the Town, Victory Jet, PlaneSmart and J.P. Morgan Chase (collectively the "Transaction Documents") including:

1. Assignment of Ground Lease between Victory Jet and PlaneSmart to be consented to by the Town (to be substantially in the form of "Exhibit A")
2. Amendment to Ground Lease between PlaneSmart and the Town including a supplemental agreement entitled Agreement Regarding Hangar Property between Landlord and Tenant (to be substantially in the form of "Exhibit B").
3. Second Amendment to Hangar Lease between Victory Jet and the Town (to be substantially in the form of "Exhibit C").
4. Assignment of Hangar Lease between Victory Jet and PlaneSmart consented to by the Town (to be substantially in the form of "Exhibit D").
5. Reciprocal Easement between Victory Jet and the Town (to be substantially in the form of "Exhibit E").

6. Estoppel Agreement between the Town and J.P. Morgan Chase (the "Bank") (to be substantially in the form of "Exhibit F").
7. Memorandum of Assignment and Amendment of Ground Lease and Hangar Lease between Victory Jet, PlaneSmart and the Town (to be substantially in the form of "Exhibit G").

The concurrent execution and recording of the above Transaction Documents at closing by the parties (as applicable) is a condition for the full completion of the proposed transaction. Airport Management is recommending the City Council give its consent to the proposed transaction and authorize the City Manager to execute the required documents on behalf of the Town to facilitate the above transaction subject to the City Attorney's ongoing review and oversight. The City Attorney has reviewed the aforementioned agreements and finds them acceptable for the Town's use.

Background Information:

Description of the Ground Lease: The original Ground Lease was entered into on April 1, 1978 between the Town and AATI as the landlord and Charles E. Wagley as tenant. The property is located at 15841 Addison Road and is comprised of 12,000 square feet of conventional aircraft hangar, office and shop space on 1.31 acres (57,010 SF) of land. The improvements were constructed in 1979.

Charles Wagley assigned the Ground Lease to Henley's Aviation Investments, Inc. (Henley) on March 1, 1996. Simultaneously, with the assignment to Henley, Henley entered into an Amendment to the Ground Lease of the same date which, among other things, incorporated: (i) should the Ground Lease remain in full force and effect as of its scheduled expiration date of August 31, 2018, the Ground Lease is to be automatically extended an additional eighteen (18) years or until December 31, 2036; (ii) made reference to the Hangar Lease described below; and (iii) should the T-hangars subject to the Hangar Lease ever be demolished or removed by Landlord, the 11,125 square of land that now serves as aircraft apron for the T-hangars is to be annexed into and made a part of the ground-leased premises – adjusting the ground rental accordingly.

Presently, the annual ground rent is \$32,199 per year (or \$2,683 per month), which equates to 56.5¢ per square foot and is subject to bi-annual adjustments based upon the Consumer Price Index. The next scheduled CPI adjustment is January 1, 2011.

Description of the Hangar Lease: the Hangar Lease is a long-term arrangement affecting seven of 14 city-owned T-hangar units located at 4768 Airport Parkway (Building R-5). The term, which commenced March 1, 1996 (simultaneously with the assignment of the Ground Lease, shall continue until (i) either the Ground Lease expires or is otherwise terminated or (ii) the T-hangars are demolished by the Landlord at which time the land under the T-hangars are to be re-apportioned and annexed into the ground-leased premises pursuant to the 1996 Amendment to Ground Lease and Hangar Lease Agreements. According to the Hangar Lease, the stipulated rent for six of the seven hangars is \$35 less than the prevailing published rental rate for comparable hangars. There is no rent for the seventh unit (Unit #03). Currently, the total annual rental is \$28,080 or \$2,340 per month.



Aerial View of the Victory Jet Ground Lease (shaded Green) and Hangar Lease Premises (shaded Yellow) and adjacent Flite Electronics Ground Lease (shaded Blue) with Addison Road at the bottom.



If the T-hangars are demolished, the land under the T-hangars is to be re-apportioned and annexed to the respective ground leases; the remainder becomes airport common area.

Henley's Aviation Investment, Inc. Bankruptcy and the Settlement Agreement: On October 2, 2007, Henley Aviation filed a voluntary petition under Chapter 11 of Title 11, 11 U.S.C. §§101, et. seq., in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division entitled *In re Henley's Aviation Investments, Inc.* As a result, Henley, the Town and a certain lien holder entered into a settlement agreement whereby Henley conveyed all of its rights, title and interests in both the Ground Lease and Hangar lease to the lien holder who in turn sold and assigned their leasehold interests to Victory Jet. For the Town to give its consent to this assignment, Victory Jet, by way of amendment, agreed to cure and remedy deferred maintenance identified affecting the aircraft apron, parking lot, building, hangars, and related building systems to be completed by March 2010. These repairs are to be made at the sole cost and expense of Victory Jet estimated to be \$300,000.

The Town consented to the assignment and Victory Jet took possession of the leased premises effective August 21, 2008.

Current Property Status:

The property has remained generally vacant ever since Victory Jet took possession in August 2008 due to a variety of reasons. Effective April 2008, upon the change of occupancy or ownership of any Airport property, the Town requires all office and, in most instances, aircraft hangar space to be retrofitted with some form of automated fire suppression system acceptable to the Town. It was determined after Victory Jet took possession of the property that the Airport's infrastructure was insufficient to serve the Victory Jet site for this purpose. This deficiency potentially added \$50,000 to Victory Jet's cost of building repairs necessary to obtain a certificate of occupancy. Airport management is now addressing this deficiency; however, this lead to other unforeseen delays and added costs. In mid-February, airside access to the property became inaccessible during the Taxiway Romeo reconstruction. Concurrently, the economy took a sudden and dramatic turn for the worse, which significantly altered Victory Jet's plans and justification for investing in the property. For these and other reasons, Victory Jet decided to sell the property and its leasehold interests to PlaneSmart!

Summary of Amendment to Ground Lease (the "2008 Amendment"):

- o The 2008 Amendment to the Ground Lease specifies certain repairs (the "Scheduled Repairs") required by the Tenant to be made to the Demised Premises within the first full eighteen (18) calendar months after the effective date of the Amendment (being the end of February 2010).
- o Work is to commence immediately upon the effective date and prosecuted diligently until completed in accordance to City building codes and standards.
- o Tenant's failure to complete the required repairs is a default under the Ground Lease.
- o Section 2.G of the Amendment reiterates and underscores Tenant's duty and obligation to continue to maintain the Demised Premises, including the Scheduled Repairs, in good condition throughout the remaining lease term.
- o Section 2.H. adds a provision that serves as a cross defaulting of the Leases. If Tenant defaults under one lease, Tenant has defaulted under both leases and Landlord may pursue all rights and remedies under both Leases as provided for by law and by contract.

Summary of Amendment to Hangar Lease:

This Agreement contains similar terms and conditions as the Amendment to Ground Lease described above.

About the Proposed Assignee, PlaneSmart! Properties, LLC

The proposed tenant is PlaneSmart! Properties, LLC, a Texas limited liability company that is wholly owned by the operating entity, PlaneSmart! Aviation, LLC, a Texas limited liability company. PlaneSmart! Aviation's equity partner, Neo Ventures, LLC, is a Texas limited liability company wholly owned by Adam Wagner, an individual financier from Houston, Texas. Funding for the property acquisition and proposed capital improvements will be funded through Neo Ventures and a revolving line of credit obtained by PlaneSmart! Properties through JP Morgan Chase secured by a leasehold mortgage and deed of trust, subject to the to the Town's consent.

PlaneSmart! Aviation, the operating entity, has been providing professionally managed fractional shares of late-model aircraft at Addison Airport since 2005. It is one of the premier, professionally managed, shared ownership programs in the country. In addition to their fleet of late model Cirrus SR-22 single-engine aircraft based in Addison, Austin, and Houston, PlaneSmart! is adding other aircraft types into their program such as the Pilatus PC12 turbo-prop Citation Mustang, Cirrus Vision and Eclipse 500 light jets. PlaneSmart! acquires and sells their own aircraft in shares from its inventory and more recently has offered a "sell-down" service that incorporates other owners' aircraft into their program.

PlaneSmart! currently maintains their executive offices at 4400 Glenn Curtiss (Atlantic FBO) and subleases hangar/office facilities at 4700 Airport Parkway. They have outgrown their existing facilities and now desire to relocate so they may consolidate their operations and continue to grow in the larger, higher profile facilities at 15841 Addison Road.

About The Proposed Transaction(s):

The following is a brief summary of the proposed transaction:

1. Regarding the Ground Leased Property:
 - a) Victory Jet is to sell and assign their leasehold interests in the Ground Lease to PlaneSmart! after which PlaneSmart! assumes all of Victory Jet's duties and obligations under the Ground Lease.
 - b) Subsequent to the assignment, PlaneSmart! and the Town will enter into the proposed Amendment further modifying the terms of the Ground Lease and the August 2008 Amendment including:
 - 1) in addition to the required repairs, PlaneSmart! will make significant capital improvements and upgrades to the building exterior and interior (the "Additional Improvements") necessary to create the desired showcase needed to support PlaneSmart's marketing initiatives;
 - 2) increase the ground rental rate from its current rate of \$2,683.28/mo to \$2,755.48/mo (\$.565/SF to \$.58/SF) to better reflect current market rates; however, rent is to be abated the first ninety (90) days after the Effective Date while the Required Repairs are being made;

- 3) provide for the adjustment of ground rent every other year (bi-annually) but no such adjustment shall exceed 8% over the immediately preceding rental rate;
- 4) should PlaneSmart! complete the Required Repairs and the Additional Improvements pursuant to the proposed Amendment, the Term shall be extended to December 31, 2036. This includes the 18 year extension already provided for in the Ground Lease plus eight more years given in consideration of the Additional Improvements, increased rental and enhanced value;
- 5) PlaneSmart! is given a 5-year option to expand the ground-leased premises by building an additional 6,000 square foot hangar where the existing T-hangars are (approx. .57 acres). If PlaneSmart! exercises this option and completes the construction of the additional hangar, the term of the Ground Lease is to be extended an additional fourteen (14) years to December 31, 2049;
- 6) incorporate by reference a supplemental agreement entitled Agreement Regarding Hangar Property between Landlord and Tenant (Exhibit C to proposed Amendment to Ground Lease) which generally allocates the T-Hangar Repairs required of the Tenant to the Town (e.g. roof, siding and door replacements), while PlaneSmart! reconstructs and repairs approximately 11,500 square feet of apron area serving the T-hangars. These repairs are to be completed by both parties no later than February 28, 2010.
- 7) the modification of various general terms and conditions of the Ground Lease necessary to bring the 31-year lease into the Town's current standards, including but not limited to:
 - (a) insurance requirements
 - (b) governmental approvals and compliance with law, noise abatement
 - (c) property taxes and assessments
 - (d) indemnification, exculpations and release
 - (e) provision for a one-time tap-in fee of \$7,500.00 for the mandatory fire-suppression water main connection
 - (f) add a provision for landlord's rules and regulations and Airport minimum standards
 - (g) environmental compliance
 - (h) provision for mutual force majeure
 - (i) provision for mandatory non-binding mediation requested by PlaneSmart!



The above aerial shows the Option Land available for annexation to the Ground Lease and provides for hangar expansion

2. Regarding the Hangar Lease

- a) PlaneSmart! does not require nor does it desire to take possession of any of the T-hangars except for Unit #3. Unit #3 is physically a part of the large hangar and has little other use other than additional storage. Therefore, prior to the assignment to PlaneSmart! it is proposed that the Town and Victory Jet enter into a Second Amendment to Hangar Lease modifying it to include only Unit #3;
- b) After the execution of this Second Amendment to the Hangar Lease, Victory Jet assigns the Hangar Lease, as amended, to PlaneSmart! and PlaneSmart! assumes all of Victory Jet's duties and obligations under the Hangar Lease, including those obligations set forth in the supplemental Agreement Regarding Hangar Property between Landlord and Tenant described above;

3. Regarding the Reciprocal Easement

Provided the above assignments and amendments take effect, the Town requires a Reciprocal Easement agreement between the Town and PlaneSmart! (and its assigns and successors) to facilitate the safe ingress and egress of aircraft, vehicular and pedestrian traffic to and from the property..

4. Regarding the Estoppel Agreement

Section 9 of the Ground Lease requires the Town to give its consent to the creation of any leasehold mortgage. Addison Road Finance, LLC intends to arrange a revolving line of credit with JP Morgan Chase to provide funding for the construction of the building improvements and repairs to be secured by the leasehold improvements held

by PlaneSmart Properties, LLC. The Estoppel Agreement generally outlines the terms and conditions which the Town recognizes the bank's security in the leasehold improvements, any notice requirements and under what conditions the Town will recognize the Bank as the tenant should the Bank obtain possession of the leasehold interests through foreclosure or deed-in-lieu.

5. Regarding the Memorandum of Assignment and Amendment of Ground Lease and Hangar Lease between Victory Jet, PlaneSmart! and the Town

The purpose of this Memorandum is to give public notice of the transaction by way of recording in the Official Public Records of Dallas County.

Economic Impact of the Proposed Transaction:

The value and benefit of transactions of this nature are always difficult to quantify with any degree of certainty because there must be extensive reliance upon variables well into the future. A comparison of the net present value (NPV) of the projected cash flow streams under different scenarios provides a useful analysis. For the purpose of this transaction, three scenarios were considered (1) a continuation of the existing conditions, (2) the proposed transaction as described above, and (3) PlaneSmart! exercises its option to annex the T-hangar land and build another 6,000 square foot conventional hangar. While comparing these different scenarios, certain assumptions were taken into account including but not limited to:

- a revenue/expense analysis through the year 2036, (the most likely lease term),
- current and proposed rent rates for the ground lease and T-hangars while assuming a 2% annual CPI escalation over the analysis period.
- the T-hangars have a maximum remaining useful life of 10 years
- estimated value of the existing building improvements
- estimated value of the future hangar, if the expansion option is exercised
- cost of annual maintenance and eventual demolition of the T-hangars

Summary of Analysis

There was little if any difference in the projected economic rent to be derived from the proposed transaction with PlaneSmart! as compared to the current scenario, prior to their exercising the hangar expansion option. However, because PlaneSmart! intends to make substantial improvements (the Additional Improvements) to the interior and exterior of the ground-lease hangar over and above the Required Improvements, the proposed transaction will likely enhance the overall property value and the Airport's overall real estate portfolio. Should PlaneSmart! exercise the proposed expansion option, the direct economic impact of the proposed transaction becomes even more favorable with an increased NPV estimated in excess of \$240,000 in value enhancement in today's dollars.

This analysis does not take into consideration other direct and indirect benefits derived from the proposed transaction including the turnaround of troubled property back into a producing and well maintained property, keeping a successful aviation business at

Addison Airport with long-terms goals of further expansion, expected increase in business tax base (increased based aircraft) and fuel flow revenue, all of which are also very difficult to quantify.

Alternative(s) To Consider:

The existing Ground Lease and Hangar Lease provide for the automatic extension of their lease term until the Year 2036. Neighboring Flite Electronics has a very similar provision in its lease, which precludes the likelihood of a significant land use change until that time. With the development of the new Executive Hangars to the south and the Town's Fire Department to the north and Addison Road to the east, it is unlikely adjacent land uses will change for many years to come as well.

If the Town of Addison elects not to consent to the proposed transaction with PlaneSmart!, it is uncertain whether Victory Jet, the current tenant, has the resources to fulfill its obligations under the Ground Lease and Hangar Lease. Therefore, it is likely Victory Jet will continue to market its leasehold interests in its as-is condition. Alternatively, the Town may be required to take adverse possession of the leased premises and either market the property in its as-is condition or expend considerable capital resources to bring the property to a marketable condition.

It does not appear that any of the above alternatives is as good as or better than the proposed transaction with PlaneSmart!

Conclusion and Recommendation:

PlaneSmart Properties, LLC, the proposed tenant is wholly owned by PlaneSmart Aviation, LLC, is a highly regarded operator at Addison Airport and appears to have substantial financial backing. It proposes to invest an estimated \$700,000 in the acquisition of and capital improvements to the real property, turning it into high-end aeronautical facility along highly visible Addison Road. Should PlaneSmart! exercise its expansion option, they will build a new 6,000 square-foot conventional hangar further enhancing the Airport's real estate portfolio.

Airport Management is recommending the City Council give its consent to the proposed transaction and authorize the City Manager to execute the required documents on behalf of the Town to facilitate the above transaction subject to the City Attorney's ongoing review and oversight. The City Attorney has reviewed the aforementioned agreements and regards them acceptable for the Town's use.

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

ASSIGNMENT OF GROUND LEASE

This Assignment of Ground Lease (the "Assignment") is entered into as of _____, 2009 (the "Effective Date"), at Addison, Texas, by and between **VICTORY JET, INC.**, a Texas Corporation, (herein referred to as "Assignor") and **PLANESMART! PROPERTIES, LLC**, a Texas limited liability company (herein referred to as "Assignee").

WHEREAS, a Ground Lease was first entered into by and between the City of Addison, Texas (the same being the Town of Addison, Texas) ("Landlord") and Addison Airport of Texas, Inc., as landlord, and Charles E. Wagley, as tenant, by the terms of which certain real property owned by Landlord and located generally at 15841 Addison Road within the Addison Airport, Town of Addison, Texas was leased to the tenant; and

WHEREAS, by that Memorandum of Lease dated June 5, 1978 and filed for public record in Volume 78112, Page 0855 of the Official Public Records of Dallas County, Texas, the description of the Demised Premises subject to the Ground Lease was modified so that the Demised Premises, as a result of the said Memorandum of Lease, comprised 1.239 acres (and as more fully set forth in the said Memorandum of Lease); and

WHEREAS, by that Amendment Agreement dated February 8, 1979, the description of the Demised Premises was again modified so that the Demised Premises subject to the Ground Lease, as a result of the said Amendment Agreement, comprised 1.247 acres (and as more fully set forth in the said Amendment Agreement); and

WHEREAS, by that Addendum effective May 1, 1994, the description of the Demised Premises was further modified as set forth in the said Addendum, which Addendum also affirmed the Rental pursuant to the Ground Lease; and

WHEREAS, by that Assignment of Ground Lease entered into and effective March 1, 1996 and filed as a matter of public record as Instrument #200101646487 in Volume 2001248, Page 04893 of the Official Public Records of Dallas County (the "Wagley to Henley's Aviation Assignment"), the tenant's interest in the Ground Lease was assigned from Charles E. Wagley, to Henley's Aviation Investments, Inc., a Texas corporation ("Henley's Aviation"); and

WHEREAS, on or about March 1, 1996 and in connection with the Wagley to Henley's Aviation Assignment, Henley's Aviation entered into a loan agreement with Charles E. Wagley and the C. E. Wagley Children's Trust (the "Trust"), which loan agreement was evidenced by a promissory note (the "Note") secured by a security interest in and assignment of the Ground Lease; and

WHEREAS, the Ground Lease was then amended by that Amendment To Ground Lease entered into and made effective March 1, 1996 and filed as a matter of public record as Instrument #20080173519 of the Official Public Records of Dallas County; and

WHEREAS, at or about the same time as the Wagley to Henley's Aviation Assignment, Landlord leased to Henley's Aviation, as tenant, certain hangars located on the Addison Airport

pursuant to that "Hangar Lease" (as amended, the "Hangar Lease"), and the site of the leased hangars abut the Demised Premises; and

WHEREAS, on October 2, 2007, Henley's Aviation filed a voluntary petition under chapter 11 of title 11, 11 U.S.C. §§101, *et seq.*, in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division entitled *In re Henley's Aviation Investments, Inc.*, Case No. 07-34905 (the "Case"); and

WHEREAS, in connection with the Case, Henley's Aviation, the Trust (successor in interest to Charles E. Wagley) (the Note remaining unpaid), and Landlord entered into an agreement dated February 28, 2008 (the "Settlement Agreement") which addressed certain matters pertaining to the Ground Lease and the Hangar Lease; and

WHEREAS, pursuant to the Settlement Agreement the Ground Lease and the Hangar Lease was assigned by Henley's Aviation Investments, Inc. to Dee Dee Planas, Trustee of the Trust by that Deed in Lieu Agreement made effective June 4, 2008 and recorded as Instrument #20080211049 of the Official Public Records of Dallas County; and

WHEREAS, by that Assignment of Ground Lease entered into and made effective August 21, 2008 (the "August 2008 Assignment") the Trust's leasehold interest in the Ground Lease was assigned by the Trust to Victory Jet, Inc. a Texas corporation ("Victory Jet"), and by that Assignment of Hangar Lease entered into and made effective August 21, 2008 the Trust's leasehold interest in the Hangar Lease was assigned by the Trust to Victory Jet, such assignments being reflected in that certain Memorandum of Ground Lease and Hangar Lease dated August 21, 2008 and filed as Instrument #20080273996 of the Official Public Records of Dallas County; and.

WHEREAS, subsequent to the August 2008 Assignment, the Ground Lease was amended by that Amendment to Ground Lease entered into and made effective August 21, 2008 (the "August, 2008 Amendment"), wherein Victory Jet agreed, among other things, to make or cause to complete certain improvements and repairs to the Demised Premises set forth in the August 2008 Amendment (the "Repairs"); and

WHEREAS, the Ground Lease provides that, upon the expiration or termination of that certain agreement referred to and defined in the Ground Lease as the "Base Lease" (and being an Agreement for Operation of the Addison Airport between Landlord and Addison Airport of Texas, Inc.), Landlord is entitled to all of the rights, benefits and remedies, and will perform the duties, covenants and obligations, of the Landlord under the Ground Lease; and

WHEREAS, the said Base Lease has expired and is no longer in effect, and Landlord is the Landlord under the Ground Lease; and

WHEREAS, by virtue of all such assignments or other conveyances Assignor is the Tenant under the Ground Lease, and (i) a true and correct copy of the Ground Lease, as amended or modified, is attached hereto as Exhibit "A" and incorporated herein by this reference (the Ground Lease, as amended and modified, being the "Ground Lease"), and (ii) the Demised Premises subject to the Ground Lease, as modified, are described in that survey prepared by

Shields & Lee Surveyors on July 28, 2008, a copy of which survey is attached hereto as Exhibit "B" and incorporated herein by this reference; and

WHEREAS, Assignor desires to assign the Ground Lease to Assignee pursuant to this Assignment, this Assignment being a part of a transaction between Assignor and Assignee involving (i) the assignment of Assignor's interest in the Ground Lease to Assignee pursuant to this Assignment, (ii) an amendment to the Ground Lease (the "2009 Ground Lease Amendment"), (iii) an amendment to the Hangar Lease (the "July 2009 Victory Jet – City Amendment to Hangar Lease"), (iv) the assignment of Assignor's interest in the Hangar Lease to Assignee (the "July 2009 Victory Jet-PlaneSmart! Assignment of Hangar Lease"), and other matters in connection therewith and related thereto; and

WHEREAS, Assignor and Assignee acknowledge and agree that (i) a material factor in inducing Landlord to give its consent to this Assignment is the Assignee's representation as a part of the said transaction that it will execute the 2009 Ground Lease Amendment and will timely perform and make (a) the Repairs and (b) certain repairs to an area formerly subject to the Hangar Lease as set forth and described in the 2009 Ground Lease Amendment (the said certain repairs and the Repairs being, collectively, the "Ground Lease Repairs"), and (ii) a material factor in inducing Assignee to agree to make the Ground Lease Repairs was Landlord's agreement as set forth in the 2009 Ground Lease Amendment to make certain repairs to the said area formerly subject to the Hangar Lease; and

WHEREAS, the Ground Lease provides in Section 9 thereof that, without the prior written consent of the Landlord, the Tenant may not assign the Ground Lease or any rights of Tenant under the Ground Lease (except as provided therein), and that any assignment must be expressly subject to all the terms and provisions of the Ground Lease, and that any assignment must include a written agreement from the Assignee whereby the Assignee agrees to be bound by the terms and provisions of the Ground Lease; and

WHEREAS, Assignor desires to assign the Ground Lease to Assignee, and Assignee desires to accept the Assignment thereof in accordance with the terms and conditions of this Assignment and.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and conditions contained herein, the sufficiency of which are hereby acknowledged, the parties hereto, each intending to be legally bound agree as follows:

AGREEMENT

1. Assignor hereby assigns, bargains, sells, and conveys to Assignee as of the Effective Date, all of Assignor's right, title, duties, responsibilities, and interest in and to the Ground Lease, as amended or modified, attached hereto as Exhibit A and incorporated herein by this reference, **TO HAVE AND TO HOLD** the same, for the remaining term thereof, and Assignor does hereby bind itself and its successors and assigns to warrant and forever defend the same unto Assignee against every person or persons lawfully claiming any part thereof through Assignor.

2. Prior to the effective date of this Assignment, Assignee agrees to pay an Assignment Fee in the amount of Four Hundred Fifty Dollars and no/100 (\$450.00) to Landlord.

3. Assignee hereby agrees to and shall be bound by and comply with all of the terms, provisions, duties, conditions, and obligations of tenant under the Ground Lease. For purposes of notice under the Ground Lease, the address, telephone number, facsimile telephone number, and electronic mail address of Assignee is:

PlaneSmart! Properties, LLC
15841 Addison Road
Addison, Texas 75001
972-380-8004 (office)
972-380-8012 (fax)
mbrosler@planesmart.com

4. Nothing in this Agreement shall be construed or be deemed to modify, alter, amend or change any term or condition of the Ground Lease, except as set forth herein.

5. Assignor acknowledges that in addition to any other rights or remedies provided in the Ground Lease or by law, in equity, or otherwise, Landlord may at its own option, collect directly from the Assignee all rents becoming due under such assignment and apply such rent against any sums due to Landlord. No such collection by Landlord from Assignee, any future or other assignee of the tenant's leasehold interest in the Hangar Lease, or any subtenant shall release Assignor from the payment or performance of Assignor's obligations under the Ground Lease.

6. The above and foregoing premises and recitals to this Assignment and all other statements made herein are true and correct and are incorporated herein and made a part hereof, and Assignor and Assignee both warrant and represent that such premises, recitals and statements are true and correct, and that in giving its consent, Landlord (as defined in the Consent of Landlord attached hereto) is entitled to rely upon such representations and statements.

7. The undersigned officers and/or agents of the parties hereto are the properly authorized persons and have the necessary authority to execute this Assignment on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

8. As set forth in the recitals to this Assignment, this Assignment is a component of an integrated and concurrent set of transactions and agreements between one or more of , Assignor, Assignee, and Landlord, including, without limitation, (i) this Assignment, (ii) the 2009 Ground Lease Amendment, (iii) the July 2009 Victory Jet – City Amendment to Hangar Lease, (iv) the July 2009 Victory Jet-PlaneSmart! Assignment of Hangar Lease, and (v) related documents and instruments (collectively with this Assignment, the "Transaction Documents"). The concurrent execution and recording (as applicable) as of the Effective Date by all applicable parties of each of the Transaction Documents is a condition precedent to the validity and effectiveness of this Agreement.

IN WITNESS WHEREOF, Assignor and Assignee have executed and delivered this Assignment on the day and the year first set forth above.

ASSIGNOR:

ASSIGNEE:

VICTORY JET, INC.

PLANESMART PROPERTIES, LLC

By: Mr. Ray Kinney, President

By: Michael Brosler
Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS §

COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 2009 by Ray Kinney, President of Victory Jet, Inc., a Texas corporation on behalf of said corporation.

Notary Public, State of Texas

Print Name: _____

My commission expires: _____

STATE OF TEXAS §

COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 2009 by Michael Brosler, _____ of PlaneSmart! Properties, LLC, a Texas limited liability company, on behalf of said company

Notary Public, State of Texas

Print Name: _____

My commission expires: _____

CONSENT OF LANDLORD

The Town of Addison, Texas ("Landlord") is the Landlord in the Ground Lease described in the foregoing Assignment of Ground Lease (the "Assignment") entered into and effective as of _____ 2009, at Addison, Texas, by and between Victory Jet, Inc., a Texas corporation (herein referred to as "Assignor") and PlaneSmart! Properties, LLC, a Texas limited liability company (herein referred to as "Assignee"). In executing this Consent of Landlord (the "Consent"), Landlord is relying upon the warranties and representations made in the foregoing Assignment by both Assignor and Assignee, and in relying upon the same Landlord hereby consents to the foregoing Assignment from Assignor to Assignee. Further, Landlord, as a material inducement to giving its consent to the Assignment, is relying upon the Assignee's representation and promise that it will timely perform and make all of the Repairs.

Notwithstanding this Consent, Landlord does not waive any of its rights under the Ground Lease as to the Assignor or the Assignee, and does not release Assignor from its covenants, obligations, duties, or responsibilities under or in connection with the Ground Lease, and Assignor shall be and remain liable and responsible for all such covenants, obligations, duties, or responsibilities. In addition, notwithstanding any provisions of this Consent of Landlord or the above and foregoing Assignment to the contrary, this Consent shall not operate as a waiver of any prohibition against further assignment, transfer, conveyance, pledge, change of control, or subletting of the Ground Lease or the premises described therein without Landlord's prior written consent.

This Consent shall be and remain valid only if and provided that, by no later than 6:00 o'clock p.m. on _____, _____, 2009:

- (i) the Assignment has been executed by both Assignor and Assignee,
- (ii) all matters in connection with the transfer, sale, and/or conveyance by Assignor to Assignee of the Assignor's interest in the Ground Lease and in the Hangar Lease (as the term "Hangar Lease" is described in the Assignment) have been fully consummated and completed and the transaction closed as reasonably determined by Landlord (such matters including, without limitation, the full execution and finalization of each of this Assignment, the 2009 Ground Lease Amendment, the July 2009 Victory Jet – City Amendment to Hangar Lease, the July 2009 Victory Jet-PlaneSmart! Assignment of Hangar Lease, and other documents related thereto and in connection therewith), and
- (iii) all of the Transaction Documents referenced in the foregoing Assignment have been executed by all of the parties thereto, and
- (iv) a
 - (a) fully executed and notarized original of the Assignment,
 - (b) fully executed and notarized original of each of all other documents (including, without limitation, those documents and instruments described in paragraph (ii), above, of this Consent) in connection with the closing of the sale,

transfer, and conveyance by Assignor to Assignee of the Assignor's interest in the Ground Lease and in the Hangar Lease required by Landlord and

(c) fully executed and notarized original of the "Memorandum of Ground Lease and Hangar Lease Assignment and Amendment and Reciprocal, Easement" substantially in the form attached hereto as Exhibit "C"),

have all been delivered to Landlord (including, without limitation, for the purpose of the public recording of the same) for the purpose of public recording of the same and have been executed and notarized by Assignor and Assignee, and (d) all funds or moneys due and payable to the Town of Addison pursuant to this Assignment and all matters related thereto, and any other funds or moneys due and payable to the Town of Addison in connection with or related to this matter, have all been delivered to the Landlord c/o Mr. Bill Dyer, Addison Airport Real Estate Manager, at 16051 Addison Road, Suite 220, Addison, Texas 75001.

Otherwise, and failing compliance with and satisfaction of each and all of paragraphs (i),(ii), (iii), and (iv), above, of this Consent, this Consent shall be null and void *ab initio* as if it had never been given and executed.

Signed this ____ day of _____, 2009.

LANDLORD:

TOWN OF ADDISON, TEXAS

By: _____
Ron Whitehead, City Manager

EXHIBIT A

In the interests of conserving resources, a true and correct copy of the Ground Lease as amended and modified as of the Effective Date of this Assignment is available upon request

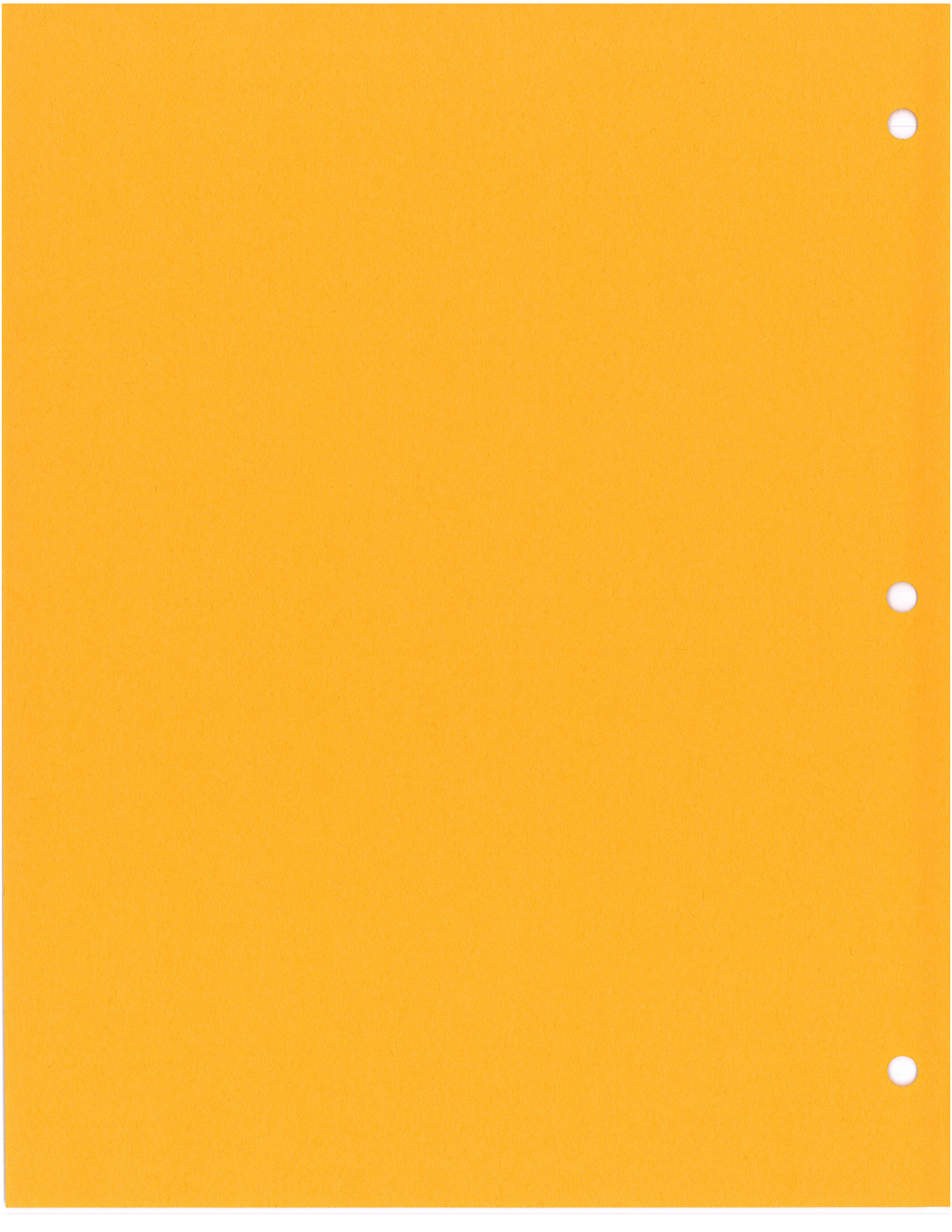
EXHIBIT B

LEGAL DESCRIPTION OF DEMISED PREMISES

EXHIBIT C

Please see Exhibit G to the Council Packet





STATE OF TEXAS §
 § **AMENDMENT TO GROUND LEASE**
COUNTY OF DALLAS §

This Amendment to Ground Lease (the "Amendment" or the "July 2009 Amendment") is entered into and made effective as of _____, 2009 (the "Effective Date"), at Addison, Texas, by and between PlaneSmart! Properties, LLC, a Texas limited liability company (herein referred to as "PlaneSmart!" or "Tenant") and the Town of Addison, Texas (herein referred to as the "City" or "Landlord").

WHEREAS, a Ground Lease was executed on April 1, 1978 between the City of Addison, Texas (the same being the Town of Addison, Texas (the "City")) and Addison Airport of Texas, Inc., as landlord, and Charles E. Wagley ("Wagley"), as tenant (the said Ground Lease executed on April 1, 1978, together with all amendments and modifications thereto (including this Amendment), is referred to in this Amendment as the "Ground Lease"; a true and correct copy of the April 1, 1978 Ground Lease, together with all assignments or transfers thereof and all amendments or modifications thereto, is attached hereto as Exhibit A and incorporated herein by this reference), by the terms of which certain real property owned by the City and located generally at 15841 Addison Road (as further described in Exhibit B attached hereto and incorporated herein by this reference) and within the Addison Airport (the "Airport"), Town of Addison, Texas, and as more fully described in the Ground Lease as the "Demised Premises" (and so called herein), was leased to the tenant; and

WHEREAS, the Ground Lease provides that, upon the expiration or termination of that certain agreement referred to and defined in the Ground Lease as the "Base Lease" (and being an Agreement for Operation of the Addison Airport between the City and Addison Airport of Texas, Inc.), the City is entitled to all of the rights, benefits and remedies, and will perform the duties, covenants and obligations of the Landlord under the Ground Lease; and

WHEREAS, the said Base Lease has expired and is no longer in effect and the City is the Landlord under the Ground Lease; and

WHEREAS, by that Memorandum of Lease dated June 5, 1978 and filed of record in Volume 78112, Page 0855 of the Official Public Records of Dallas County, Texas (the "OPR"), the Ground Lease was amended by, among other things, modifying the description of the Demised Premises so that the Demised Premises comprised 1.239 acres of land (and as more fully set forth in the said Memorandum of Lease); and

WHEREAS, by that Amendment Agreement dated February 8, 1979, the description of the Demised Premises was again modified so that they comprised 1.247 acres of land; and

WHEREAS, by that Addendum effective May 1, 1994, the description of the Demised Premises was further modified and the Rental under the Ground Lease affirmed; and

WHEREAS, on or about March 1, 1996:

- Wagley conveyed the tenant's leasehold interest in the Ground Lease to Henley's Aviation Investments, Inc., a Texas corporation ("Henley's Aviation") by that "Assignment of Ground Lease" filed of record as Instrument #200101646487 of the OPR, and
- the Ground Lease was amended by that "Amendment To Ground Lease" filed of record as Instrument #20080173519 of the OPR (the "1996 Ground Lease Amendment"), and
- the City, by that "Hangar Lease" (and so called herein, a true and correct copy of which, as amended and assigned, is attached hereto as Exhibit C), leased to Henley's Aviation certain hangars on the Airport located on land abutting the Demised Premises; and

WHEREAS, the terms and provisions of the Ground Lease, by virtue of the 1996 Ground Lease Amendment and the terms and provisions of the Hangar Lease, were made to interrelate, so that:

- upon the removal of any of the hangars subject to the Hangar Lease prior to the expiration or termination of the Ground Lease, the Ground Lease would be amended to include a portion of the land upon which the hangars leased by the Hangar Lease are situated, and
- the Hangar Lease would terminate upon the first to occur of the removal of the leased hangars or the termination or expiration of the ground lease; and

WHEREAS, in connection with a voluntary petition in bankruptcy filed by Henley's Aviation, on or about June 4, 2008 Henley's Aviation assigned and conveyed its leasehold interest as tenant in the Ground Lease and in the Hangar Lease to its creditor, the C.E. Wagley Children's Trust, Dee Dee Planas, Trustee (the "Trust"), pursuant to that Deed in Lieu Agreement filed of record as Instrument #20080211049 in the OPR; and

WHEREAS, on or about August 21, 2008, the Trust assigned and conveyed its leasehold interest as tenant in the Ground Lease to Victory Jet, Inc., a Texas corporation ("Victory Jet") pursuant to that instrument entitled "Assignment of Ground Lease" (the "August 2008 Ground Lease Assignment"), and on or about the same date the Trust assigned and conveyed its leasehold interest as tenant in the Hangar Lease to Victory Jet pursuant to that instrument entitled "Assignment of Hangar Lease" (the "August 2008 Hangar Lease Assignment"), each of which assignment and conveyance is reflected in that Memorandum of Ground Lease and Hangar Lease dated August 21, 2008 and filed of record as Instrument #20080273996 of the OPR; and

WHEREAS, (i) in connection with the August 2008 Ground Lease Assignment, Victory Jet and the City entered into that "Amendment to Ground Lease" effective August 21, 2008 (the "August 2008 Amendment") which, among other things, requires Victory Jet to make certain improvements and repairs to the Demised Premises (which improvements and repairs are referred to in the August 2008 Amendment as the "Scheduled Repairs" and herein as the "Ground Lease Repairs"), and (ii) in connection with the August 2008 Hangar Lease Assignment, Victory Jet and the City entered into that "Amendment to Hangar Lease" made effective as of August 21, 2008 (the "2008 Hangar Lease Amendment," a true and correct copy

of which is attached hereto as Exhibit ____ and incorporated herein) which, among other things, requires Victory Jet to make certain improvements and repairs to the property and improvements subject to the Hangar Lease (the "Hangar Lease Repairs"); and

WHEREAS, Victory Jet desired to assign and convey its leasehold interest as tenant in the Ground Lease and in the Hangar Lease, and to accomplish the same entered into negotiations with PlaneSmart! as the proposed assignee; and

WHEREAS, the arrangement and proposal arising out of the said negotiations required the input of the City, and discussions by and between the City, Victory Jet and PlaneSmart! resulted in a proposed process (the "Victory Jet / PlaneSmart! Process") regarding Victory Jet's assignment of its leasehold interest in the Ground Lease and the Hangar Lease to PlaneSmart!, as follows:

- Victory Jet, subject to the City's consent, would assign to PlaneSmart! its leasehold interest in the Ground Lease (the "Victory Jet/PlaneSmart Ground Lease Assignment"),
- Following and in connection with said assignment, PlaneSmart! and the City would enter into an agreement amending the Ground Lease, including making certain modifications to the August 2008 Amendment (the "2009 Ground Lease Amendment"),
- Victory Jet and the City would amend the Hangar Lease in order to, among other things, amend the description of the hangars being leased and the scope of the Hangar Lease Repairs (the "July 2009 Victory Jet – City Amendment to Hangar Lease"), and
- Victory Jet, following such amendment to the Hangar Lease and subject to the City's consent, would assign to PlaneSmart! its leasehold interest as tenant in the Hangar Lease (the "July 2009 Victory Jet-PlaneSmart! Assignment of Hangar Lease"); and

WHEREAS, Victory Jet and PlaneSmart! have entered into an agreement which, among other things, provides for the Victory Jet / PlaneSmart! Process to be finalized, consummated and fully completed on or before 5:00 p.m. (Central Daylight Time) on _____, 2009 (such date and time being the "Process Closing Date"); and

WHEREAS, pursuant to the said agreement between Victory Jet and PlaneSmart! and in accordance with the Victory Jet / PlaneSmart! process, Victory Jet assigned its leasehold interest in the Ground Lease to Tenant by that Assignment of Ground Lease entered into and made effective _____, 2009 (a true and correct copy of which is included as a part of Exhibit A attached hereto), so that Tenant is the current tenant under the Ground Lease; and

WHEREAS, a material condition to the Landlord's consent to the assignment of the Ground Lease by Victory Jet, Inc. to Tenant, and a material condition to Tenant's acceptance of

the assignment of Victory Jet's leasehold interest in the Ground Lease, is that Landlord and Tenant enter into this Amendment.

NOW, THEREFORE, for and in consideration of the above and foregoing premises, the mutual promises, covenants, and conditions contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Landlord and Tenant do hereby agree as follows:

AGREEMENT

Section 1. Incorporation of Premises. The above and foregoing premises and recitals are true and correct and are incorporated herein and made a part of this Amendment for all purposes.

Section 2. Amendments and Modifications to Ground Lease. The Ground Lease is hereby amended and modified by making certain modifications to the August 2008 Amendment (being that instrument entitled "Amendment to Ground Lease" by and between the City and Victory Jet, entered into and made effective as of August 21, 2008) and otherwise to the Ground Lease as follows:

A. Generally. The August 2008 Amendment to the Ground Lease provides for, among other things, Tenant's completion of the Ground Lease Repairs to the Demised Premises (which Ground Lease Repairs are referred to in the August 2008 Amendment as the "Scheduled Repairs" and are identified in Section 2.A. of the August 2008 Amendment). By this July 2009 Amendment and among other matters set forth in this Amendment, Landlord and Tenant desire to establish provisions for (i) Tenant's commencement and completion of the Ground Lease Repairs, (ii) Tenant's commencement and completion of certain of the Hangar Lease Repairs (referred to herein as the "Tenant Hangar Lease Repairs"), and (iii) the making by Tenant of certain significant additional improvements to the Demised Premises to include, without limitation, refurbishing the entire office/administrative portion of the main hangar building located upon the Demised Premises, completely finishing out and insulating the hangar interior upon the Demised Premises, and renovating the building exterior (referred to herein as the "Additional Improvements"). The Ground Lease Repairs and the Tenant Hangar Lease Repairs may be referred to herein as the "Ground Lease and Tenant Hangar Lease Repairs".

It is expected that the aggregate dollar amount to be expended by Tenant to design and construct (that is, design (e.g., architecture, engineering) and construction costs only, and excluding, without limitation, costs of acquisition) the Ground Lease Repairs, the Tenant Hangar Lease Repairs, and the Additional Improvements, will be in excess of Five Hundred Thousand and No/100 Dollars (\$500,000.00).

B. Amendments to August 2008 Amendment – The August 2008 Amendment to the Ground Lease, providing for, among other things, Tenant's completion of the Ground Lease Repairs to the Demised Premises, is amended as follows (except as amended below, the terms, conditions and provisions of the August 2008 Amendment are not amended by this Amendment, shall remain in full force and effect, and shall be complied with by Tenant):

1. *Generally.*

(a) *Ground Lease Repairs.* The Ground Lease Repairs required of Tenant are stated on Exhibit D attached hereto and incorporated by reference herein (the said Ground Lease Repairs are the same as and are referred to in the August 2008 Amendment as the “Scheduled Repairs”).

(b) *Repairs to Property Formerly Included in Hangar Lease.* The 2008 Hangar Lease Amendment (attached hereto as Exhibit ___) requires, among other things, that Victory Jet make certain improvements and repairs to the property and improvements subject to the Hangar Lease at the time of the 2008 Hangar Lease Amendment (the “Hangar Lease Repairs”). A material part of the Victory Jet / PlaneSmart! Process requires that:

- prior to the assignment of the Hangar Lease by Victory Jet to PlaneSmart!, the City and Victory Jet enter into an amendment to the July 2009 Victory Jet – City Amendment of Hangar Lease providing for a modification of the description of the hangars subject to the Hangar Lease and the deletion from the 2008 Hangar Lease Amendment of the Hangar Lease Repairs and the tenant’s obligation to make the same, and that
- this Amendment include provisions for the making of the Hangar Lease Repairs.

In accordance therewith, the City and PlaneSmart! agree that the Hangar Lease Repairs to be made on and to that property formerly (that is, prior to the execution of the July 2009 Victory Jet – City Amendment of Hangar Lease) included in the Hangar Lease (the “Old Hangar Lease Property”) shall be made as follows:

(i) The Hangar Lease Repairs required of and to be made by Tenant are stated on Exhibit D attached hereto, together with the terms, conditions, and provisions for the making of the same (the “Tenant Hangar Lease Repairs”).

(ii) The Hangar Lease Repairs required of and to be made by Landlord are also stated on Exhibit D attached hereto, together with the terms, conditions, and provisions for the making of the same (the “Landlord Hangar Lease Repairs”).

2. *Amendments to Specific Provisions* (additions are underlined; deletions are ~~struck through~~).

(a) Section 2.B of the August 2008 Amendment is amended in its entirety to read as follows:

B. Commencement and Prosecution of Ground Lease and Tenant Hangar Lease Repairs. Tenant agrees to and shall commence making the Ground Lease and Tenant Hangar Lease Repairs (as defined in this July 2009 Amendment) within ninety (90) days following the Effective Date of this July 2009 Amendment. For purposes hereof, “commence” means that, at a minimum, (i) Tenant has retained an architect, engineer, or other design professional as may be appropriate or necessary to review and prepare plans for those portions of the Ground Lease and Tenant Hangar Lease Repairs that require such professional review or services; and (ii) for those portions of the Ground Lease and Tenant Hangar Lease Repairs that do not require or necessitate the services of an architect, engineer, or other design professional, Tenant has initiated the process

to obtain any and all permits or approvals as may be necessary or required for the making of such Ground Lease and Tenant Hangar Lease Repairs (provided, however, that notwithstanding the foregoing provisions of subpart (ii) of this subsection B., Tenant's initiation of the process to obtain some of such permits and approvals may, with the consent of the City Manager of the Town of Addison, Texas (which will not be unreasonably withheld), be extended beyond such ninety (90) day period (but not more than an additional thirty (30) days) if Tenant's activities to make the Ground Lease and Hangar Lease Repairs and to construct the Additional Improvements reasonably necessitates the same). All Ground Lease and Hangar Lease Repairs (and Additional Improvements) shall be diligently prosecuted to completion.

(b) Section 2.D of the August 2008 Amendment is amended to read as follows:

D. Completion of Ground Lease and Tenant Hangar Lease Repairs. All Ground Lease and Tenant Hangar Lease Repairs shall be completed to Landlord's reasonable satisfaction. Tenant shall proceed with commercially reasonable diligence in completing the Ground Lease and Tenant Hangar Lease Repairs after commencement of the same, provided that (i) completion of the Ground Lease Repairs shall occur no later than one (1) year following the Effective Date of this July 2009 Amendment, and (ii) completion of the Tenant Hangar Lease Repairs shall occur no later than the end of February 2010. For purposes hereof, the Ground Lease and Tenant Hangar Lease Repairs shall be deemed completed solely upon the issuance by the Town of Addison, Texas of (a) a certificate of occupancy, if a certificate of occupancy is required by the City for the use and/or occupancy of any building or other improvement to which a Ground Lease and Tenant Hangar Lease Repair is made, (b) such other certification as may be required by the Town of Addison, Texas, and (c) a letter by Landlord stating that Landlord is satisfied that all Ground Lease and Tenant Hangar Lease Repairs have been completed to Landlord's reasonable satisfaction.

(c) Section 2.F of the August 2008 Amendment is amended to read as follows:

F. Failure to Complete Ground Lease and Tenant Hangar Lease Repairs; Landlord's Rights and Remedies.

1. If (i) Tenant fails to complete all Ground Lease Repairs listed on Exhibit D to this July 2009 Amendment within the one (1) year period following the Effective Date of this July 2009 Amendment, and/or (ii) Tenant fails to complete all Tenant Hangar Lease Repairs listed on Exhibit E to this July 2009 Amendment by the end of February 2010, each such failure shall be deemed a default pursuant to Section 22 of the Ground Lease, for which Landlord may pursue or seek any of its rights or remedies set forth in the Ground Lease, including those rights and remedies set forth in Section 23 of the Ground Lease.

2. Landlord and Tenant acknowledge and agree that a material factor in inducing Landlord to give consent to the assignment of the Ground Lease from

Victory Jet, Inc. to Tenant was Tenant's agreement that it would perform and make all of the Ground Lease and Tenant Hangar Lease Repairs. The parties therefore agree that, in the event (i) Tenant fails to complete all Ground Lease Repairs within the one (1) year period following the Effective Date of this July 2009 Amendment, and/or (ii) Tenant fails to complete all Tenant Hangar Lease Repairs by the end of February 2010, Landlord may, in addition to any rights and/or remedies Landlord has or may have under the Ground Lease for a default of Tenant, seek specific performance by Tenant to perform all of Tenant's Ground Lease Repairs and Tenant Hangar Lease Repairs obligations.

(d) Section 2.G of the August 2008 Amendment is amended to read as follows:

G. Continued Maintenance of Demised Premises. Tenant hereby agrees to and acknowledges its continued and continuing obligation and duty to maintain the Demised Premises and all improvements, fixtures, equipment and personal property on the Demised Premises, including, without limitation, the Ground Lease and Tenant Hangar Lease Repairs, in good and working condition pursuant to the Ground Lease over the full Term. Tenant's failure to maintain the Demised Premises and all improvements, fixtures, equipment and personal property thereon in good and working condition pursuant to the Ground Lease and this July 2009 Amendment, and including without limitation Tenant's failure to timely and fully perform and complete the Ground Lease and Tenant Hangar Lease Repairs in accordance with the Ground Lease and this July 2009 Amendment, is and shall be deemed and constitute a default under the Ground Lease, for which Landlord may pursue or seek any rights or remedies, including, without limitation, those rights and remedies set forth in Section 23 of the Ground Lease.

C. Additional Improvements.

1. As set forth above, in addition to and concurrently with, Tenant's completion of the Ground Lease Repairs and the Tenant Hangar Lease Repairs, Tenant intends to construct significant other improvements (the "Additional Improvements") to the Demised Premises and the improvements located thereon. The Additional Improvements will include, but are not limited to, refurbishing the entire office/administrative portion of the main hangar building located upon the Demised Premises, completely finishing out and insulating the hangar interior, and renovating the building exterior.

2. *Commencement and Prosecution of Additional Improvements.* If Tenant initiates and commences the design and construction of the Additional Improvements, Tenant shall do so simultaneously with the commencement of the design and construction of the Ground Lease and Tenant Hangar Lease Repairs. The Additional Improvements shall be made in combination with the Ground Lease and Tenant Hangar Lease Repairs after commencement of the same. In connection with the Additional Improvements, Tenant shall retain an architect, engineer, or other design professional as may be appropriate or necessary to review and prepare plans and specifications for the construction of the Additional Improvements.

(a) *Plans and Specifications.* Tenant shall, prior to the making or constructing any of the Additional Improvements, present to Landlord for Landlord's review and consideration of approval, the plans and specifications prepared by Tenant's design professional for the Additional Improvements. All Additional Improvements shall be made and constructed strictly in accordance with the approved plans and specifications, and the making and construction of the same shall be in a first class, workmanlike manner. Tenant shall promptly pay and discharge all costs, expenses, claims for damages, liens and any and all other liabilities and obligations that arise in connection with the same.

(b) *Completion of Additional Improvements.* All Additional Improvements shall be diligently prosecuted to completion to Landlord's satisfaction no later than _____ following the Effective Date of this July 2009 Amendment. For purposes hereof, the Additional Improvement shall be deemed completed solely upon the issuance by the Town of Addison, Texas of (a) a certificate of occupancy, if a certificate of occupancy is required by the City for the use and/or occupancy of any building or other improvement to which any Additional Improvements are made, (b) such other certification as may be required by the Town of Addison, Texas, and (c) a letter by Landlord stating that Landlord is satisfied that all the Additional Improvements Repairs have been completed to Landlord's reasonable satisfaction.

(c) *Additional Improvements Made In Accordance with Ground Lease and Law.* Notwithstanding any other provision of this Amendment, all Additional Improvements shall be made and constructed in accordance with and subject to the terms, conditions, and provisions of the Ground Lease and this Amendment, and in accordance with and subject to all applicable federal, state, and local laws, ordinances, directives, codes, standards, rules, and regulations (and including, without limitation, all laws, ordinances, directives, codes, standards, rules, and regulations of the Federal Aviation Administration, the Texas Department of Transportation, and the Town of Addison, Texas and the Addison Airport).

D. Amendment to Section 4 of the Ground Lease – Section 4 of the Ground Lease is amended in its entirety to read as follows:

4. Rental: Subject to adjustment as hereinbelow provided, Tenant agrees to pay to Landlord, without offset or deduction, monthly rent for the Demised Premises at the rate of TWO THOUSAND SEVEN HUNDRED FIFTY-FIVE and 48/100 Dollars (\$2,755.48) (the "Base Rental") (such monthly rent amount being one-twelfth of the product of (i) \$0.58 times (ii) 57,010 (the number of square feet of gross land area included within the Demised Premises)). The first of such monthly installments shall be due and payable on or before the earlier of (a) the first day of the first calendar month immediately following the issuance by the Town of Addison, Texas (the "City") of a Certificate of Occupancy (permanent or temporary) for the Demised Premises to Tenant, or (b) the first day of the first calendar month next following the ninetieth (90th) day after the Effective Date of this July 2009 Amendment (such earlier date being the "Base Rental Date"); a like installment shall be due and payable on or before the first day of each calendar month thereafter during the term hereof, subject to adjustment as provided for in this Ground Lease, including, without limitation, Section 5 of this Ground Lease. In connection with this July 2009 Amendment, all rent, including the Base Rental, shall be

suspended and abated from the Effective Date of this Amendment until the Base Rental Date, at which time the Base Rental shall be due and payable as provided herein.

E. Amendment to Section 5 of the Ground Lease – Section 5 of the Ground Lease is amended in its entirety to read as follows:

Section 5. Adjustment of Rental: Except as provided in Section 5.D below., beginning January 1, 2012 and on every second anniversary thereafter (hereinafter referred to as the “Adjustment Date”), the Rental due under Section 4 shall be adjusted as follows:

A. Monthly Base Rental shall be adjusted to reflect changes in the Consumers’ Price Index - All Items for Dallas, Texas Metropolitan Area (hereinafter referred to as the “Consumer Price Index”), as quoted in the publication *Consumer Price Index for All Urban Consumers (CPI-U)* for the Dallas-Fort Worth, Texas area which is issued by the U.S. Department of Labor, Bureau of Labor Statistics. The basic index (“Basic Index”) is the Consumer Price Index existing on the Effective Date of this Amendment. The current index (“Current Index”) is the Consumer Price Index on the first day of the calendar month preceding the then applicable Adjustment Date.

B. Beginning with the first full month following the then-applicable Adjustment Date, the monthly rent shall be adjusted so that it equals the product of the Base Rental multiplied by a fraction, the numerator of which is the Current Index and the denominator of which is the Basic Index, but in no event shall such monthly rent ever be increased greater than eight percent (8%) over the immediately preceding adjustment of rental, nor be decreased below the Base Rental set forth in Section 4.

C. In the event that the Consumer Price Index is unavailable for whatever reason for the computations set forth hereinabove, another index approximating the Consumer Price Index as closely as feasible (as reasonably determined by Landlord) shall be substituted therefor.

F. Amendment to Section 7 of the Ground Lease – Section 7 of the Ground Lease is amended in its entirety to read as follows:

Section 7. Acceptance of the Demised Premises: Tenant acknowledges that Tenant has fully inspected the Demised Premises and all improvements located thereon and therein (for purposes of this Section 7, the “Improvements”) and accepts the Demised Premises and all Improvements as suitable for the purpose for which the same are leased in their present condition “**AS IS, WHERE IS**” and with all faults and defects, whether known or unknown to either Landlord or Tenant and without representation or warranty of any kind from Landlord as to the status or condition thereof, and further the Ground Lease is subject to any and all currently existing title exceptions or other matters of record or visible or apparent from an inspection affecting the Demised Premises and any or all Improvements. Without limiting the foregoing, THERE IS NO WARRANTY, EXPRESS OR IMPLIED, OF SUITABILITY, MERCHANTABILITY, HABITABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE GIVEN IN CONNECTION WITH THIS GROUND LEASE (and including as this Ground Lease is amended by this July 2009 Amendment).

TENANT ACKNOWLEDGES THAT TENANT HAS FULLY INSPECTED THE DEMISED PREMISES AND ACCEPTS THE DEMISED PREMISES AND THAT THE DEMISED PREMISES ARE LEASED TO TENANT "AS IS, WHERE IS, AND WITH ALL FAULTS AND PATENT AND LATENT DEFECTS", AND LANDLORD HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS, ANY REPRESENTATION, PROMISE, COVENANT, AGREEMENT, GUARANTY OR WARRANTY OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, AS TO THE QUANTITY, QUALITY, CONDITION, SUITABILITY, HABITABILITY, OR FITNESS OF THE PROPERTY FOR ANY PURPOSE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION REGARDING SOIL CONDITIONS, AVAILABILITY OR EFFICACY OF UTILITIES, DRAINAGE, ZONING LAWS, ENVIRONMENTAL LAWS, OR ANY OTHER FEDERAL, STATE OR LOCAL STATUTES, CODES, REGULATIONS OR ORDINANCES. TENANT ALSO ACKNOWLEDGES AND AGREES THAT TENANT'S INSPECTION AND INVESTIGATION OF THE DEMISED PREMISES HAVE BEEN ADEQUATE TO ENABLE TENANT TO MAKE TENANT'S OWN DETERMINATION WITH RESPECT TO THE SUITABILITY OR FITNESS OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO SOIL CONDITIONS, AVAILABILITY OR EFFICACY OF UTILITIES, DRAINAGE, ZONING LAWS, ENVIRONMENTAL LAWS, AND ANY OTHER FEDERAL, STATE OR LOCAL STATUTES, CODES, REGULATIONS OR ORDINANCES. TENANT ACKNOWLEDGES THAT THE DISCLAIMERS, AGREEMENTS AND OTHER STATEMENTS SET FORTH IN THIS PARAGRAPH ARE AN INTEGRAL PORTION OF THIS LEASE AND THAT LANDLORD WOULD NOT AGREE TO LEASE THE DEMISED PREMISES TO TENANT AS SET FORTH HEREIN WITHOUT THE DISCLAIMERS, AGREEMENTS AND OTHER STATEMENTS SET FORTH IN THIS PARAGRAPH. TENANT FURTHER ACKNOWLEDGES THAT TENANT IS NOT IN A DISPARATE BARGAINING POSITION WITH RESPECT TO LANDLORD. TENANT ACKNOWLEDGES AND AGREES FURTHER THAT THIS LEASE IS SUBJECT TO ANY AND ALL CURRENTLY EXISTING TITLE EXCEPTIONS OR OTHER MATTERS OF RECORD OR VISIBLE OR APPARENT FROM AN INSPECTION AFFECTING THE DEMISED PREMISES. TENANT WAIVES ANY IMPLIED WARRANTIES OF SUITABILITY, HABITABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, AND FURTHER WAIVES ALL CLAIMS BASED ON ANY DEFECT IN THE DEMISED PREMISES THAT COULD HAVE BEEN DISCOVERED BY TENANT'S REASONABLE INSPECTION.

G. Amendment to Section 8 of the Ground Lease – Section 8 of the Ground is amended in its entirety to read as follows:

Section 8. Securing Governmental Approvals and Compliance with Law; Noise Abatement.

A. Tenant at Tenant's sole cost and expense shall obtain any and all governmental licenses, permits and approvals necessary for the construction of improvements and for the use and occupancy of the Demised Premises. Such use, occupancy and construction of improvements on the Demised Premises and this Lease are subject to, and Tenant shall comply at all times with, all federal, state, and local laws, ordinances, rules, regulations, directives, orders, permits, statutes, codes (including, without limitation, building codes and standards), zoning requirements, court orders, opinions and decisions, grant assurances, grant agreements, or published standards, all restrictive covenants of any governmental authority, entity, or agency (including, without limitation, the City, any person or entity authorized by Landlord to manage and/or operate the Airport (the "Airport Manager"), Dallas County, the State of Texas, the Federal Aviation Administration, the Texas Department of Transportation, the United States Environmental Protection Agency, the Texas Commission on Environmental Quality) (collectively, "Laws" (and "Law" means any of the foregoing)). Tenant shall promptly comply with all Laws relating to the correction, prevention and abatement of nuisances in or upon, or connected with, the Demised Premises, all at Tenant's sole cost and expense, and shall comply with and be subject to (and this Lease is made and entered into subject to) all Laws relating to grant agreements or grant assurances.

Tenant recognizes that Laws may be modified or amended from time to time and that compliance will be measured by such standards in effect at the time of a particular construction or modification of improvements. Tenant will properly and timely submit to the Federal Aviation Administration, the Texas Department of Transportation, and any other governmental entity or agency having jurisdiction regarding or related to Addison Airport, a Notice of Proposed Construction, when and as required. Tenant further agrees that the Landlord shall be authorized at all times during any project of construction to enter upon the Demised Premises, and all parts thereof, upon reasonable prior notice except in case of emergency, in order to observe the performance of such construction, and Tenant agrees to provide the Landlord a construction schedule setting out the time of commencement, final completion and completion of significant elements of the construction, which schedule shall be delivered to Landlord prior to the start of any construction project on the Demised Premises. Failure of Tenant to observe and comply with this Section 8 shall be an Event of Default.

B. Tenant shall comply with noise abatement standards at the Airport at all times and shall notify any aircraft operator using any portion of the Demised Premises of such standards.

H. Amendments to Section 9. Section 9, subsections A., B. and E. of the Ground Lease are hereby amended in their entirety so that they shall hereafter read as follows:

A. Without the prior written consent of Landlord, Tenant shall have no power to and shall not, either voluntarily or involuntarily or by operation of law or otherwise, assign, sublet, sell, pledge, encumber, mortgage, license, transfer, or otherwise convey (together, "assign" or "assignment," and any person or entity to whom an assignment is made being an "assignee") this Lease, or any interest, rights, duties, liabilities, or obligations of Tenant hereunder, or, any part of the Demised Premises (except to a leasehold mortgagee as

hereinbelow provided and in accordance with and subject to all of the terms and conditions of this Lease), or sublet the whole or any part of the Demised Premises, and any such assignment and any subletting shall be null and void and a cause for immediate termination of this Lease by Landlord.

For purposes hereof, an assignment will be deemed to occur if the person or persons who own or have control of Tenant (e.g., own more than 50% of the voting shares) on the date of the July 2009 Amendment cease to own or have control of Tenant. Tenant shall provide to Landlord from time to time, as requested by Landlord and in a form acceptable to Landlord, a written certification as to the ownership and/or control of Tenant. For purposes hereof, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and/or policies of an entity or person, whether through ownership of voting securities or partnership interests, by contract, or otherwise. For purposes of this Ground Lease, "person" means any individual, corporation, partnership, limited liability company, sole proprietorship, or any other business entity.

Any assignment or any subletting shall be expressly subject to all the terms and provisions of this Lease, including the provisions of Paragraph 6 pertaining to the use of the Demised Premises. In the event of any assignment or any subletting, Tenant shall not assign Tenant's rights hereunder or sublet the Demised Premises without first obtaining a written agreement from each such assignee or sublessee whereby each such assignee or sublessee agrees to be bound by the terms and provisions of this Lease (and Tenant shall provide a copy of such written agreement to Landlord). No such assignment or subletting shall constitute a novation. In the event of the occurrence of an event of default while the Demised Premises are assigned or sublet, Landlord, in addition to any other remedies provided herein or by law, in equity, or otherwise, may at Landlord's option, collect directly from such assignee or subtenant all rents becoming due under such assignment or subletting and apply such rent against any sums due to Landlord hereunder. No direct collection by Landlord from any such assignee, transferee, pledgee, or person or entity to whom this Lease is otherwise conveyed or to such subtenant shall release Tenant from the payment or performance of Tenant's obligations hereunder.

Tenant shall provide to Landlord the names and addresses of any subtenants and the make, model, aircraft type and "N" number of any aircraft stored or located on or in the Demised Premises.

Subject to the provisions of the Ground Lease, and including but not limited to the subparagraphs (a) through (f) below, Landlord consents to the subletting as of the Effective Date of the entire Demised Premises by Tenant to PlaneSmart! Aviation, LLC, a _____ limited liability company ("subtenant"), a wholly owned subsidiary of Tenant (and while the sublease is in effect, the said subtenant shall at all time be and remain a wholly owned subsidiary of Tenant, and upon Landlord's request, Tenant shall provide to Landlord a certified written statement in form and content acceptable to Landlord as to the status of such ownership). PlaneSmart! Aviation, LLC shall provide Tenant an executed agreement, acceptable to Landlord, agreeing to be bound by the terms and provisions of this Ground Lease, and Tenant shall provide a copy of such written agreement to Landlord as of the Effective Date. In connection with the said sublease from Tenant to the said PlaneSmart! Aviation, LLC:

- (a) Notwithstanding the said sublease, Tenant shall be and remain fully liable for the performance of each and every term, provision, covenant, duty and obligation of the Tenant under the Ground Lease including, without limitation, the duty to make any and all payments of rent, and this consent shall in no way release Tenant from any of its covenants, agreements, liabilities and duties under the Ground Lease;
- (b) Upon written request by Landlord, Tenant shall deliver to Landlord a true and correct copy of the said sublease, as the same may be amended or modified from time to time;
- (c) This consent to sublease does not constitute approval by Landlord of the terms of the said sublease;
- (d) Nothing herein contained shall be deemed a waiver or release of any of the Landlord's rights under this Ground Lease;
- (e) No further subletting of this Ground Lease or of any portion of the Demised Premises shall be made without the prior written consent of the Landlord;
- (f) Subtenant shall be obligated to obtain Landlord's consent to any action as to which Tenant is obligated to obtain such consent under the Ground Lease;
- (g) Subtenant's use and occupancy of the Demised Premises shall be subject to all of the terms and conditions of the Ground Lease, and subtenant agrees to and shall be bound by the terms and provisions of the Ground Lease, it being the intent that subtenant shall have no greater rights or privileges than Tenant has under the Ground Lease. In the event of any conflict between the terms of this Ground Lease and the terms of the sublease, the terms of the Ground Lease shall control (and, without limiting the foregoing, the Demised Premises shall never be used for any purpose other than as permitted by the Ground Lease, and this consent does not constitute and is not consent to any use on or within the Demised Premises which is not permitted by the Ground Lease);
- (h) The sublease shall automatically terminate upon the expiration or termination of the Ground Lease, notwithstanding any other provision of the sublease to the contrary and Landlord has no obligation to communicate such expiration or termination to subtenant; and
- (i) Tenant has or will prior to commencement of the sublease provide to Subtenant, and Tenant hereby warrants and represents to Landlord that Tenant has delivered or will deliver to Subtenant prior to such commencement, a complete copy of the *Addison Airport Minimum Standards and Requirements for Commercial Aeronautical Service Providers* and the *Addison Airport Rules and Regulations*.

B. Tenant shall have the right to mortgage the leasehold estate of Tenant created hereby in order to secure a mortgage loan (i) for the purpose of obtaining funds for the construction of the improvements described in paragraph 6 or in this July 2009 Amendment, or (ii) for

acquisition of the Tenant's leasehold estate and improvements, or (iii) for the purpose of refinancing the Tenant loan(s) obtained under subsections (i) and (ii) above, with the same lender(s) or different lender(s), provided that such refinancing lender(s) shall have, with respect to Landlord and this Ground Lease, only such rights as the prior lender(s) had, or (iv) for the purpose of obtaining funds for other construction upon the Demised Premises approved from time to time by Landlord in writing, or (v) for other purposes which may be approved from time to time by Landlord in writing. In the event that Tenant, pursuant to mortgages or deeds of trust, mortgages the leasehold estate of Tenant created hereby, the leasehold mortgagee shall in no event become personally liable to perform the obligations of Tenant under this Lease unless and until said mortgagee becomes the owner of the leasehold estate pursuant to foreclosure, transfer in lieu of foreclosure, or otherwise, and thereafter said leasehold mortgagee shall remain liable for such obligations only so long as such mortgagee remains the owner of the leasehold estate. Notwithstanding the foregoing, it is specifically understood and agreed that no such mortgaging by Tenant and/or any actions taken pursuant to the terms of such mortgage shall ever relieve Tenant of Tenant's obligation to pay the rental due hereunder and otherwise fully perform the terms and conditions of this Lease.

E. Landlord further agrees to execute and deliver to any proposed leasehold mortgagee of Tenant a "Non-Disturbance Agreement" wherein Landlord agrees that Landlord will (i) recognize such mortgagee after foreclosure, or transfer in lieu of foreclosure, as Tenant hereunder, and (ii) continue to perform all of Landlord's obligations hereunder so long as such mortgagee performs all of the obligations of Tenant hereunder; provided, however, that notwithstanding the foregoing or any other provision of this Lease, such mortgagee shall and does not have the right and shall and does not have the power, either voluntarily or involuntarily or by operation of law or otherwise, to assign, sell, transfer, encumber, mortgage, pledge or otherwise convey this Lease, or any interest, rights, duties, liabilities, or obligations hereunder, or any part of the Demised Premises, or sublet the whole or any part of the Demised Premises, without the prior written approval of the Landlord, and any such assignment, sale, transfer, encumbrance, mortgage, pledge or other conveyance and any such subletting shall be null and void and a cause for immediate termination of this Lease by Landlord, it being the intent of this provision that such mortgagee shall have no greater right to assign, pledge, transfer, encumber, mortgage, or otherwise convey this Lease, or to sublet the Demised Premises (or any portion thereof), or to use the Demised Premises, than the Tenant has. Landlord also agrees to consider the execution and delivery to such proposed leasehold mortgagee of any other documents which such proposed leasehold mortgagee may reasonably request concerning the mortgaging by Tenant of the leasehold estate created hereby; provided, however, that Landlord shall never be required to subordinate Landlord's interest in the Demised Premises, including, without limitation, to subordinate the Landlord's interest to the mortgage of such proposed leasehold mortgagee.

I. Amendment to Section 10 of the Ground Lease - Section 10 of the Ground Lease is amended in its entirety to read as follows:

Section 10. Property Taxes and Assessments: Tenant shall pay, before they become delinquent, any and all property taxes or assessments, and any other governmental charges, fees or expenses (collectively, the "Taxes"), levied or assessed on any improvements on the Demised Premises, the personal property and fixtures on the Demised Premises, and, if

applicable, upon the leasehold estate of Tenant created hereby. Upon the request of Landlord, Tenant shall from time to time furnish to Landlord "paid receipts" or other written evidence that all such Taxes have been paid by Tenant when due. In the event Tenant shall fail to pay any such Taxes, Landlord shall have the right (but not the obligation) to pay or cause to be paid all such Taxes, and the reasonable costs thereof expended by or caused to be expended by Landlord plus interest thereon as provided in Section 37 of the Ground Lease shall be paid by Tenant on demand.

If any buildings or other improvements located upon the Demised Premises are determined to be subject to property taxation by the Dallas Central Appraisal District (or any successor entity or agency thereto or other agency with the authority to make such determination) ("DCAD"), Tenant will not contest any such determination. Additionally, if a final (non-appealable) determination is rendered by DCAD or a court of appropriate and competent jurisdiction that any such buildings or other improvements are not subject to property taxation, the Ground Lease Rental (as the same may be adjusted) for the year in which such final determination becomes effective shall be increased by an amount equal to the property tax revenue from such buildings and improvements that Tenant would have paid to the Town of Addison, Texas in that year but for such final determination (and such initial increased amount shall be paid to Landlord on or before December 31 of such year, unless otherwise agreed to by Landlord); thereafter, the Ground Lease Rental (as the same may be adjusted) as so increased shall continue, subject to adjustment as set forth in this Lease.

J. Amendment to Section 13 of the Ground Lease - Section 13 of the Ground Lease is amended in its entirety to read as follows:

Section 13. Insurance: At all times Tenant shall during the term hereof purchase and maintain at Tenant's sole cost and expense and in a company or companies lawfully authorized to do business in Texas such insurance relating to the Demised Premises as follows:

(i) Insurance against loss or damage to improvements by fire, lightning, and all other risks from time to time included under standard extended coverage policies, and sprinkler, vandalism and malicious mischief, all in amounts sufficient to prevent Landlord or Tenant from becoming co-insurers of any loss under the applicable policies but in any event in amounts not less than one hundred percent (100%) of the full insurable value of the Demised Premises and any and all improvements thereon. The term "full insurable value" as used herein means actual replacement value at the time of such loss. Upon request, such replacement value shall be determined by a qualified appraiser, a copy of whose findings shall be submitted to Landlord, and, thereafter, proper adjustment in the limits of insurance coverage shall be effected.

(ii) Commercial General Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$1,000,000 general aggregate for bodily injury, death or property damage or destruction occurring on, in or about the Demised Premises, which coverage shall include products/completed operations (\$1,000,000 products/ completed operations aggregate), and XCU (Explosion, Collapse, Underground) hazards. Coverage for products/completed operations must be maintained for at least two (2) years after

construction work has been completed. Coverage must be amended to provide for an each-project aggregate limit of insurance. Coverage must include contractual liability.

(iii) Statutory limits of workers compensation insurance and employer's liability with limits of liability of not less than \$1,000,000.00 each-occurrence each accident/\$1,000,000.00 by disease each-occurrence/\$1,000,000.00 by disease aggregate.

(iv) If applicable, boiler and pressure vessel insurance on all steam boilers, parts thereof and appurtenances attached or connected thereto which by reason of their use or existence are capable of bursting, erupting, collapsing, imploding or exploding, in the minimum amount of \$500,000.00 for damage to or destruction of property resulting from such perils.

(v) Such other insurance on improvements in such amounts and against such other insurable hazard which at the time are commonly obtained in the case of property similar to such improvements.

(vi) Hangarkeepers Legal Liability insurance, at limits of \$1,000,000.00 per-occurrence is required if Tenant is engaged in maintenance, repair, or servicing of aircraft belonging to a third-party, or if Tenant is otherwise involved in any operation in which Tenant has care, custody, or control of an aircraft that belongs to a third-party.

(vii) During any period of construction, a Builder's Risk Completed Value policy with an all risks endorsement in an amount equal to the greater of the full-completed value or the amount of the construction contract including any amendments or change orders thereto. The policy shall provide "All Risk" Builder's Risk Insurance (extended to include the perils of wind, collapse, vandalism/malicious mischief, and theft, including theft of materials whether or not attached to any structure).

(viii) Aircraft liability insurance against third party bodily injury or death and property damage or destruction at minimum limits required by regulatory agencies having jurisdiction at the Airport and which are acceptable to Landlord, but in any event not less than \$1,000,000.00 each occurrence (applies to the ownership, operation or use of aircraft by Tenant or any subtenant).

Tenant shall cause all such policies of insurance to comply with the following and be specifically endorsed as follows:

(i) The Town of Addison, Texas, and the Airport Manager and their respective past and present officials, officers, employees and agents shall be named as additional insureds;

(ii) All insurance policies which name the Town of Addison, Texas and the Airport Manager (and their respective past and present officials, officers, employees and agents) as additional insureds must be endorsed to read as primary coverage regardless of the application of other insurance;

(iii) A waiver of subrogation in favor of the Town of Addison, Texas and the Airport Manager (and their respective past and present officials, officers, employees and agents) shall be contained in each policy required herein;

(iv) All insurance policies shall be endorsed to require the insurer to immediately notify the Town of Addison, Texas and the Airport Manager of any material change in the insurance coverage;

(v) All insurance policies shall be endorsed to the effect that the Town of Addison, Texas and the Airport Manager will receive at least sixty (60) days written notice prior to cancellation or non-renewal of the insurance;

(vi) All liability policies shall contain no cross liability exclusions or insured versus insured restrictions applicable to the claims of the Town of Addison or the Airport Manager;

(vii) Tenant may maintain reasonable and customary deductibles; and

(viii) Insurance must be purchased from insurers that are financially acceptable to Landlord and licensed to do business in the State of Texas..

All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of insurance, satisfactory to Landlord, shall be prepared and executed by the insurance company or its authorized agent, promptly delivered to Landlord and updated as may be appropriate, and shall:

(i) List each insurance coverage described and required herein. Such certificates will also include a copy of the endorsements necessary to meet the requirements and instructions contained herein; and

(ii). Specifically set forth the notice-of-cancellation or termination provisions to the Town of Addison and the Airport Manager.

Upon request, Tenant shall furnish Landlord with complete copies of all insurance policies certified to be true and correct by the insurance carrier. Landlord reserves the right to review the insurance requirements contained herein and to reasonably adjust coverages and limits when deemed necessary and prudent by Landlord.

K. Amendment to Section 15 of the Ground Lease – Section 15 of the Ground Lease is amended in its entirety to read as follows:

Section 15. Condemnation:

A. Total Taking. If the entire Demised Premises are taken by right of eminent domain or conveyed in lieu thereof (a “Taking,” the date of which is the date that a condemning authority becomes authorized to take possession of the part of the Demised Premises so condemned), this Lease shall terminate as of the date of the Taking.

B. Partial Taking - Tenant's Rights. If any part of the Demised Premises becomes subject to a Taking and such Taking will prevent or impair Tenant from conducting on a permanent basis its business in the Demised Premises in a manner reasonably comparable to that conducted immediately before such Taking, then Tenant may, in Tenant's sole discretion, terminate this Lease as of the date of such Taking by giving written notice to Landlord within 30 days after the Taking, and Rental shall be apportioned as of the date of such Taking. If Tenant does not terminate this Lease, then Rental shall be abated on a reasonable basis as to that portion of the Demised Premises rendered untenable by the Taking, and Tenant shall promptly restore the improvements on the Demised Premises.

C. Partial Taking - Landlord's Rights. If any material portion, but less than all, of the Demised Premises becomes subject to a Taking, or if Landlord is required to pay any of the proceeds arising from a Taking to a mortgagee or other lender of Landlord, then Landlord may, in Landlord's sole discretion, terminate this Lease by delivering written notice thereof to Tenant within 30 days after such Taking, and Rental shall be apportioned as of the date of such Taking. If Landlord does not so terminate this Lease, then this Lease will continue, but if any portion of the Demised Premises has been taken, Rental shall abate as provided in the last sentence of Section 15.B., and Tenant shall promptly restore the improvements on the Demised Premises.

D. Temporary Taking. If all or any portion of the Demised Premises becomes subject to a Taking for a limited period of time, this Lease shall remain in full force and effect and Tenant shall continue to perform all of the terms, conditions and covenants of this Lease, including the payment of the Rental (but subject to a reasonable abatement of as to that portion of the Demised Premises rendered untenable by the Taking for a limited period of time) and all other amounts required hereunder. If any such temporary Taking terminates prior to the expiration of the Term, Tenant shall restore the Demised Premises as nearly as possible to the condition prior to such temporary Taking, at Tenant's sole cost and expense. Landlord shall be entitled to receive the entire award for any such temporary Taking, except that Tenant shall be entitled to receive the portion of such award which (i) compensates Tenant for its loss of use of the Demised Premises within the Term and (ii) reimburses Tenant for the reasonable out-of-pocket costs actually incurred by Tenant to restore the Premises as required by this subsection.

E. Award. If this Ground Lease is not terminated pursuant to subsection B. or subsection C. of this Section, Tenant shall promptly restore the improvements on the Demised Premises, and the condemnation proceeds to which Landlord and Tenant are entitled shall be awarded and paid first to cover the costs and expenses for restoring the remaining portion of the Demised Premises to a condition susceptible of efficient and economic occupation and operation by Tenant, and any remaining proceeds to which Landlord and Tenant are entitled shall be awarded and paid to Landlord and Tenant as their interests may appear. If this Lease is terminated pursuant to subsections A., B. or C. of this Section, condemnation proceeds to which Landlord and Tenant are entitled shall be awarded and paid to Landlord and Tenant as their interests may appear.

L. Amendment to Section 16 of the Ground Lease - Section 16 of the Ground Lease is amended in its entirety to read as follows:

Section 16. Utilities: Tenant shall be responsible at Tenant's sole cost and expense for obtaining all utility connections at or for the Demised Premises and Tenant shall pay all charges for water, electricity, gas, sewer, telephone or any other utility connections, tap-in fees and services furnished to the Demised Premises during the term hereof. Landlord shall in no event be liable or responsible for any cessation, interruption or future requirement by way of any applicable federal, state, and local laws, statutes, ordinances, codes, rules, regulations, orders, and standards for any such utility service.

Notwithstanding the foregoing, Landlord acknowledges that Tenant's obligation to make the Ground Lease and Tenant Hangar Lease Repairs to the Demised Premises will require that the Demised Premises have a dedicated fire suppression connection to the City's water supply, which may require the City's modification of the water supply to the Demised Premises from that existing as of the Effective Date of the July 2009 Amendment. Landlord agrees to complete any such modification to the Demised Premises boundary line at its sole cost and in a timely manner so as not to unreasonably interfere with the Ground Lease and Tenant Hangar Lease Repairs, Tenant's construction of Additional Improvements and/or certificate of occupancy needs. Tenant acknowledges and agrees to pay to Landlord a one-time tap-in fee of Seven Thousand Five Hundred Dollars and no/100 (\$7,500.00) within fifteen (15) days of the City's completion of its water supply modification obligations under this Section.

M. Amendment to Section 18 of the Ground Lease - Section 18 of the Ground Lease is amended in its entirety to read as follows:

Section 18. Landlord's Rules and Regulations:

Landlord has adopted *Addison Airport Minimum Standards and Requirements for Commercial Aeronautical Service Providers* (also commonly referred to as the "Minimum Standards" or "Airport Minimum Standards") and *Addison Airport Rules and Regulations* (also commonly referred to as the "Rules and Regulations" or "Airport Rules and Regulations"), which shall govern Tenant in the use of the Demised Premises and all Common Facilities, a copy of which has been furnished to Tenant. The Minimum Standards and Rules and Regulations are incorporated by reference as if written verbatim herein, and Tenant agrees to comply fully at all times with these governing documents. Landlord, in its sole discretion, shall have the right to amend, modify and alter these Minimum Standards and Rules and Regulations from time to time in any manner or may introduce other regulations as deemed necessary for the purpose of assuring the safety, welfare, convenience and/or protection of property of Landlord, Tenant and/or all other tenants and customers of the Airport.

N. Amendment to Section 21 of the Ground Lease - Section 21 of the Ground Lease is amended in its entirety to read as follows:

21. Indemnity and Exculpation and Release.

A. **Exculpation.** The Town of Addison, Texas and all other Addison Persons and the Manager Persons (as the terms “Addison Persons” and “Manager Persons” are defined in Subsection B below) shall not be liable to Tenant or to any Tenant Persons (as the term “Tenant Persons” is defined in Subsection B below), or to any other person, for any death or injury to persons or damage to or destruction of property or any other harm on or about the Demised Premises or any adjacent area owned by Landlord caused by or resulting from any act or omission of Tenant or any Tenant Person or any other person entering the Demised Premises under express or implied invitation of Tenant, or arising out of the use or occupation of the Demised Premises by Tenant or by any Tenant Person and/or the conduct of Tenant’s business thereon, or arising out of any breach or default by Tenant in the performance of Tenant’s obligations hereunder; and Tenant hereby agrees to and shall DEFEND, INDEMNIFY, AND HOLD HARMLESS the Town of Addison, Texas and all other Addison Persons and the Manager Persons from and against any and all liability, damages, costs, penalties, suits, judgments, losses, expenses or claims arising out of such damage, destruction, injury, death or harm.

B. **[NOTE: PROVISION UNDER REVIEW] TENANT’S INDEMNITY OBLIGATION.** Tenant shall DEFEND , INDEMNIFY AND HOLD HARMLESS (i) the Town of Addison, Texas, and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas, individually or collectively, in both their official and private capacities (the Town of Addison, Texas, and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas each being an “Addison Person” and collectively the “Addison Persons”) and (ii) Airport Manager and Airport Manager's owners, officers, employees and agents (Airport Manager and Airport Manager's owners, officers, employees and representatives each being a "Manager Person" and collectively the "Manager Persons"), from and against any and all claims, actions, proceedings, causes of action, demands, losses, harm, damages, penalties, fines, liabilities, expenses, lawsuits, judgments, costs, and fees (including reasonable attorney fees and court costs) of any kind and nature whatsoever made upon, incurred by, suffered by, or asserted against any Addison Person or any Manager Person, whether directly or indirectly (collectively for purposes of this Section, "Damages"), that result from, relate to, or arise out of, in whole or in part, (i) any condition of the Demised Premises caused in whole or in part by Tenant or by any of Tenant's owners, directors, shareholders, partners, managers, officers, employees, agents, representatives, engineers, consultants, contractors, subcontractors, tenants, licensees, invitees, patrons, concessionaires, or any other person or entity for whom Tenant is legally responsible, and their respective owners, directors, shareholders, partners, officers, managers, employees, agents, representatives, engineers, consultants, contractors, subcontractors, tenants, licensees, invitees, patrons, and concessionaires, or any other person acting by or under the authority or with the permission of Tenant, Tenant's tenants, or any other person entering the Demised Premises under express or implied invitation of Tenant or licensee during the Lease Term (individually, including Tenant, a “Tenant Person”, and collectively, including Tenant, the “Tenant Persons”), (ii) the Demised Premises becoming out of repair due to the fault of Tenant or any Tenant

Person, for any reason including by failure of equipment, pipes, or wiring, or broken glass, or by the backing up of drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the Demised Premises, regardless of the source, or by dampness or by fire, explosion, falling plaster or ceiling, (iii) representations or warranties by Tenant under this Lease, and/or (iv) any act or omission of Tenant or any Tenant Person under, in connection with, or in the performance of, this Lease. **SUCH DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION SHALL AND DOES INCLUDE DAMAGES ALLEGED OR FOUND TO HAVE BEEN CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OF THE TOWN OF ADDISON, TEXAS, ANY ADDISON PERSON OR ANY MANAGER PERSON, OR BY ANY ACT OR OMISSION BY THE TOWN OF ADDISON, TEXAS, ANY ADDISON PERSON OR ANY MANAGER PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.**

Tenant shall promptly advise Landlord in writing of any claim or demand against Town of Addison, Texas, any Addison Person, Manager Person, or Tenant or any Tenant Person related to or arising out of Tenant's activities under this Lease and shall see to the investigation and defense of such claim or demand at Tenant's sole cost and expense. The Addison Persons and Manager Persons, as the case may be, shall have the right, at the Addison Persons' or Manager Persons' (as the case may be) option and at their own expense, to participate in such defense without relieving Tenant of any of its obligations hereunder.

C. Release. Tenant hereby **RELEASES** the Town of Addison, Texas and all Addison Persons and all Manager Persons from, and agrees that all Addison Persons and Manager Persons shall not be liable to Tenant or any Tenant Person for (i) any death or injury to any person or persons or damage to or destruction of property of any kind resulting from the Demised Premises becoming out of repair or by defect in or failure of equipment, pipes, or wiring, or broken glass, or by the backing up of drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the Demised Premises, regardless of the source, or by dampness or by fire, explosion, falling plaster or ceiling or for any other reason whatsoever, and for (ii) for, any loss or damage that may be occasioned by or through the acts or omissions of other tenants of Landlord or caused by operations in construction of any private, public or quasi-public work. **Notwithstanding the foregoing, the release from liability provided in this subsection shall not apply to an event or events to the extent the gross negligence or intentionally wrongful act or omission of one or more Addison Persons or Manager Persons solely or substantially caused such event(s).**

D. The provisions of this Section 21 shall survive the expiration or termination of this Lease.

O. Addition of Section 21.1 to the Ground Lease – A new Section 21.1 is added to the Ground Lease to read as follows:

Section 21.1. Environmental Compliance.

A. The term "Hazardous Materials" means any substance, material, or waste which is now or hereafter classified or considered to be hazardous, toxic, or dangerous under any

Law relating to pollution or the protection or regulation of human health, natural resources or the environment, or poses or threatens to pose a hazard to the health or safety of persons on the Demised Premises or any other portion the Airport.

Tenant shall not use, generate, store, or dispose of, or permit the use, generation, storage or disposal of Hazardous Materials on or about the Demised Premises, any common area, or any other portion of the Airport except in a manner and quantity necessary for the ordinary performance of Tenant's business, and then in compliance with all Laws. If Tenant breaches its obligations under this subsection A of this Section 21.1, Landlord may immediately take any and all action reasonably appropriate to remedy the same, including taking all appropriate action to clean up or remediate any contamination resulting from Tenant's use, generation, storage or disposal of Hazardous Materials.

B. Cleanup; TENANT'S INDEMNITY OBLIGATION.

1. Tenant shall, at Tenant's own expense, comply with all Laws relating to Hazardous Materials. In furtherance and not in limitation of the foregoing, Tenant shall, at Tenant's own expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Authority") under such Laws.

Should any Authority require that a cleanup plan be prepared and that a cleanup be undertaken because of the existence of Hazardous Materials which were installed, stored, used, treated, transported, disposed of or discharged on the Demised Premises and/or any portion of the Airport by (i) Tenant or by any Tenant Persons, Tenant shall, at Tenant's own cost and expense, prepare and submit the required plans and financial assurances and carry out the approved plans in accordance with such Laws and to Landlord's reasonable satisfaction.

At no cost or expense to Landlord, Tenant shall promptly provide all information requested by Landlord and in Tenant's possession, custody or control or which may be reasonably requested by Tenant from a third party in which Tenant has a right to obtain such information regarding the Demised Premises and all Tenant Persons' use of and operations on the Demised Premises and common facilities during the term of this Lease, for Landlord's preparation of affidavits or other documents required by Landlord to determine the applicability of such Laws to the Demised Premises and/or any portion of the Airport facilities, as the case may be, and Tenant shall sign the affidavits promptly when requested to do so by Landlord.

2. Tenant's Indemnity Obligation. Without limiting any other indemnity, hold harmless, and defense obligation of Tenant set forth in this Lease, Tenant shall INDEMNIFY, DEFEND, SAVE, AND HOLD HARMLESS the Town of Addison, Texas and all Addison Persons and all Manager Persons from and against, and reimburse the Town of Addison, Texas, Addison Persons and the Manager Persons (as the case may be) for, any and all obligations, damages, injunctions, fines, penalties, demands, claims, costs, expenses, actions, causes of action, judgments, liabilities, suits, proceedings, harm, and losses of whatever nature (including, without limitation, attorneys' fees and court costs), and all cleanup or removal costs and all actions of any kind arising out of or in any way connected with the use, generation, storage, or

disposal of Hazardous Materials in, on, under, or within the Demised Premises and/or any portion of the Airport by Tenant or by any Tenant Person; and from all fines, penalties, suits, judgments, procedures, proceedings, claims, actions, and causes of action of any kind whatsoever arising out of Tenant's or any Tenant Person's failure to provide all information, make all submissions and/or take all steps required by any Law. SUCH DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION SHALL AND DOES INCLUDE DAMAGES ALLEGED OR FOUND TO HAVE BEEN CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OF THE TOWN OF ADDISON, TEXAS, ANY ADDISON PERSON, OR ANY MANAGER PERSON, OR BY ANY ACT OR OMISSION BY THE TOWN OF ADDISON, TEXAS, ANY ADDISON PERSON OR ANY MANAGER PERSON THAT GIVES RISE TO STRICT LIABILITY OF ANY KIND.

Tenant's obligations and liabilities under this Section 21.1 shall continue and survive the termination or expiration of this Lease and for so long as Tenant may have any liability hereunder. In addition to and not in limitation of Landlord's other rights and remedies, Tenant's failure to abide by the terms of this Section shall be restrainable by injunction.

C. Tenant shall promptly supply Landlord and Airport Manager with copies of any notices, correspondence and submissions made by Tenant to or received by Tenant from any governmental entity, agency, or authority regarding any alleged violation or problem under any Law.

D. Tenant's obligations and liability pursuant to the terms of this Paragraph 21.1 shall survive the expiration or earlier termination of this Lease.

P. Amendment to Section 22 of the Ground Lease - Section 22 of the Ground Lease is amended in its entirety to read as follows:

22. Events of Default by Tenant. The occurrence of any of the following events shall be deemed to be an event of default ("Event of Default") by Tenant under this Lease:

A. Failure of Tenant to pay any installment of rent or any other sum payable to Landlord hereunder on the date that the same is due, or to keep in full force and effect the insurance required of Tenant under this Lease, and such failure shall continue for a period of ten (10) days after the date of delivery of written notice thereof from Landlord to Tenant, provided, however, that Landlord is required to deliver only one (1) written notice of such failure by Tenant during each calendar year, and if such written notice is delivered by Landlord to Tenant during a calendar year, thereafter during such calendar year Landlord is not required to deliver any additional or further written notice of any such failure by Tenant;

B. Failure of Tenant to comply with any other term, condition or covenant of this Lease, other than the payment of rent or other sum of money or the failure to keep in full force and effect the insurance required of Tenant hereunder, and such failure shall not be cured within thirty (30) days after written notice thereof to Tenant; provided however,

that if such failure is not reasonably capable of cure within such period, no Event of Default shall be deemed to occur if within the twenty (20) day period after such written notice is delivered to Tenant, Tenant delivers to Landlord written notice of the curative measures which Tenant proposes to undertake, and after such delivery Tenant immediately begins to initiate such measures to cure such failure and thereafter prosecutes the curing of such failure with diligence and continuity until completion thereof, the time within which such failure may be cured shall be extended for such period as may be reasonably necessary to complete the curing of such failure with diligence and continuity, but in any event not to exceed one hundred twenty (120) days after the delivery of written notice of such failure by Landlord to Tenant. Regarding an Event of Default relating to any alleged violation of any Laws (including without limitation Hazardous Materials Laws), Tenant's cooperation with the applicable Authority or Authorities in addressing the same until completion or settlement thereof shall be deemed Tenant's acceptable cure hereunder, regardless of the time period involved;

C. Insolvency, the making of a transfer in fraud of creditors, or the making of an assignment for the benefit of creditors by Tenant, its members, or any guarantor of Tenant's obligations;

D. Filing of a petition under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar law or statute of the United States or any State thereof by Tenant, its members, or any guarantor of Tenant's obligations, or adjudication as a bankrupt or insolvent in proceedings filed against Tenant, its members, or such guarantor;

E. Appointment of a receiver or trustee for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations; or

F. Abandonment by Tenant of any substantial portion of the Demised Premises or cessation of use of the Demised Premises for the purposes leased, and such abandonment or cessation shall continue for a period of sixty (60) days after written notice thereof from Landlord to Tenant without Tenant's cure thereof; provided however, that if such abandonment or cessation is not reasonably capable of cure within such period, no Event of Default shall be deemed to occur if within the thirty (30) day period after such written notice is delivered to Tenant, Tenant delivers to Landlord written notice of the curative measures which Tenant proposes to undertake, and after such delivery Tenant immediately begins to initiate such measures to cure such abandonment or cessation and thereafter prosecutes the curing of such abandonment or cessation with diligence and continuity until completion thereof, the time within which such abandonment or cessation may be cured shall be extended for such period as may be reasonably necessary to complete the curing of such abandonment or cessation with diligence and continuity, but in any event not to exceed one hundred eighty (180) days after the delivery of written notice of such abandonment or cessation by Landlord to Tenant.

P. Amendment to Section 39 of the Ground Lease - Section 39 of the Ground Lease is amended in its entirety to read as follows:

Section 39. Force Majeure.

A. In the event performance by Landlord of any term, condition or covenant in this Lease is delayed or prevented by any Act of God, strike, lockout, shortage of material or labor, restriction by any governmental authority, civil riot, flood, or any other cause not within the control of Landlord, the period for performance of such term, condition or covenant shall be extended for a period equal to the period Landlord is so delayed or prevented.

B. Except for the payment of any rent or any other payment to be made by, or any other monetary obligation of, Tenant under this Lease, and the provision of insurance by Tenant under this Lease, in the event performance by Tenant of any term, condition or covenant in this Lease is delayed or prevented by any Act of God, strike, lockout, shortage of material or labor, restriction by any governmental authority, the delay of any governmental approvals, civil riot, flood, or any other cause not within the control of Tenant, the period for performance of such term, condition or covenant shall be extended for a period equal to the period Tenant is so delayed or prevented.

Q. Addition of New Section 50 the Ground Lease – A new Section 50 of the Ground Lease is added to the Ground Lease to read as follows:

Section 50. Mandatory Non-Binding Mediation. If any dispute (except for a dispute regarding or relating to the payment of any Rental or any other payment to be made by, or any other monetary obligation of, Tenant under this Lease, and a dispute concerning the provision of insurance by Tenant under this Lease) arises between Landlord and Tenant relating to this Lease (the “Dispute”), Landlord and Tenant will first utilize the following procedures specified in this Section 50 (the “Procedure”) before resorting to any court proceedings, unless the lack of an immediate court proceeding would cause irreparable harm (as determined solely by the party who would or might suffer such harm):

(a) The party seeking to initiate the Procedure (the “Initiating Party”) will give notification (“Notification”) to the other party. The Notification must describe in general terms the nature of the Dispute and the Initiating Party’s requested relief. Additionally, the Notification must identify one or more individuals with authority to settle the Dispute on the Initiating Party’s behalf. The party receiving the Notification (the “Responding Party”) will have five (5) business days within which to designate by reply Notification to the Initiating Party one or more individuals with authority to settle the Dispute on the Responding Party’s behalf. The individuals so designated will be known as the “Authorized Individuals”. The Initiating Party and the Responding Party will collectively be referred to as the “Disputing Parties” or individually as a “Disputing Party”.

(b) The Authorized Individuals may investigate the Dispute as they deem appropriate, but they agree to promptly, and in no event not later than fourteen (14) days from the date of the Initiating Party’s Notification, meet to discuss the resolution of the Dispute. The Authorized Individuals will meet at the times and places and with the frequency as they may agree. If the Dispute has not been resolved within fourteen (14) days from their initial meeting date, the Disputing Parties will cease direct negotiations and will submit the Dispute to mediation in accordance with the following procedure:

(i) The Authorized Individuals will have five (5) business days from the date they cease direct negotiations to submit to each other by Notification a written list of acceptable qualified attorney-mediators not affiliated with any party. Within five (5) days from the date the list is received, the Authorized Individuals will rank the mediators in numerical order of preference and exchange the rankings. If one or more names are on both lists, the highest-ranking person will be designated as the mediator. If no mediator has been selected under this procedure, the Disputing Parties agree jointly to request a state district or federal district judge of their choosing, from the State of Texas, to supply a list of potential qualified attorney-mediators. Within five (5) days from the date the list is received, the Authorized Individuals will rank the mediators in numerical order of preference and exchange the rankings. If one or more names are on both lists, the highest-ranking person will be designated as the mediator. If no mediator has been selected under this procedure, either of the Disputing Parties may unilaterally request a local state district judge for Dallas County, Texas, to supply the list. Within five (5) business days from the date the list is received, the Authorized Individuals will again rank the proposed mediators in numerical order of preference and will simultaneously exchange the list and will select as the mediator the individual receiving the highest combined ranking. If the mediator is not available to serve, they will proceed to contact the mediator who was next highest in ranking until they are able to select a mediator.

(ii) In consultation with the mediator selected, each Disputing Party will cause its Authorized Individual to cooperate with the other Authorized Individual in promptly designating a mutually convenient time and place for the mediation. Unless circumstances require otherwise, the time for mediation shall not be later than thirty (30) days after selecting the mediator.

(iii) If any Disputing Party has substantial need for information in another Disputing Party's possession or control in order to prepare for the mediation, all Disputing Parties will attempt to agree to procedures to expeditiously request and exchange the information and the scope of such request with the mediator's help if required.

(iv) At least seven (7) days before the first scheduled mediation session, each Disputing Party will deliver to the mediator, and by Notification deliver to the other Disputing Party, a general and concise written summary of its views on the Dispute and any other matters required by the mediator. The mediator may also request that a confidential issue paper be submitted by each Disputing Party to the mediator.

(v) In the mediation, each Disputing Party will be represented by its Authorized Individual and may also be represented by counsel. In addition, each Disputing Party may, with the mediator's permission and subject to the confidentiality provisions of this Section 50, bring additional persons as needed to respond to questions, contribute information and participate in the negotiations.

(vi) The mediator will determine the format for the meetings. The format must be designed to insure that (A) both the mediator and the Authorized Individuals have an opportunity to hear an oral presentation of each Disputing Party's views

on the Dispute, and (B) the Authorized Individuals attempt to negotiate to resolve the Dispute, with or without the assistance of counsel or others permitted to attend, but with the mediator's assistance. To this end, the mediator is authorized to conduct both joint meetings and separate private caucuses with the Disputing Parties. The mediation session will be private and the Disputing Parties agree to not disclose or release any information to third-parties (except as allowed under Subsection (x) below). The Parties will require the mediator to keep confidential all information learned in private caucus with any Disputing Party unless specifically authorized by the Disputing Party to disclose the information to the other Disputing Party. The Disputing Parties commit to participate in the proceedings with the intention of resolving the Dispute if at all possible.

(vii) The Disputing Parties agree to participate in the mediation procedure to its conclusion. The mediation will be terminated by (a) executing a settlement agreement between the Disputing Parties, (b) declaring to the mediator that the mediation is terminated, or (c) a Disputing Party declaring in writing that the mediation process is terminated when one (1) full day's mediation session is concluded.

(viii) Even if the mediation is terminated without the resolution of the Dispute, the Disputing Parties agree not to terminate negotiations and not to commence any court proceedings before five (5) days following the termination of the mediation. In any event, any Disputing Party may terminate the mediation procedure if the other Disputing Party fails to comply with this Procedure or if any claim in the Dispute, in the absence of such termination, could be barred by any applicable statute of limitations.

(ix) The mediator's fees and expenses will be shared equally among the Disputing Parties. The mediator will be disqualified as a witness, consultant, expert, or counsel for any Disputing Party with respect to the Dispute and any related matters.

(x) Mediation is a compromise and offer to compromise subject to Rule 408 of the Texas and Federal Rules of Evidence (and as the same may be amended or superseded). The entire mediation process is confidential, and no stenographic, visual or audio record will be made. Subject to Rule 408 of the Texas and Federal Rules of Evidence, all conduct, statements, promises, offers, views and opinions, whether oral or written, made in the course of the mediation by any Disputing Party, their Authorized Individuals or any of their agents, employees, representatives or other invitees and by the mediator are confidential and, in addition and where appropriate, will be deemed privileged, and shall not be disclosed to anyone who is not (A) a party's agent, employee, expert, witness, or representative and (B) bound by the same confidentiality standards as the parties hereto. Evidence otherwise discoverable or admissible, however, is not excluded from discovery or admission as a result of its use in the mediation.

Section 3. Expansion Option to Ground Lease. Provided this Ground Lease is in full force and effect and Tenant is in good standing with Landlord and not in default of this Ground Lease or any other agreement or contract with Landlord at the time, , Tenant shall have the

exclusive right, but not the duty, to exercise an option (the "Expansion Option") to add to the Demised Premises that certain parcel of real property at Addison Airport consisting of approximately .628 acres (subject to the determination of a professional surveyor) of improved land now used for the R-5 T-hangars owned and operated by Landlord as generally described in Exhibit E attached hereto and made a part hereof (the "Option Land"). Tenant may exercise the Expansion Option at any time after the Effective Date of this July 2009 Amendment but before December 31, 2019, and only after Tenant has given Landlord no less than ninety (90) calendar days' advance written notice of its desire and intent to exercise the Expansion Option (the "Expansion Notice"). Unless Landlord and Tenant agree otherwise, the City shall deliver the Option Land to Tenant for Tenant's use and occupancy pursuant to this Ground Lease ninety (90) days following Landlord's receipt of the Expansion Notice (such date of delivery being the "Landlord Delivery Date"). Prior to Tenant's Expansion Notice, Landlord shall not undertake or allow any activity, lease, encumbrance or other obligation upon or involving the Option Land that is inconsistent with Tenant's Expansion Option rights as stated herein.

Should Tenant exercise the aforementioned Expansion Option, the following terms and conditions shall apply:

1. The City hereby agrees and shall release and deliver to Tenant the Option Land in its "AS IS" and "WHERE IS" condition on or before the Landlord Delivery Date without any duty or obligation to demolish or remove any existing structure or building improvement thereon and subject to the provisions of and as set forth in Section 7 of this Ground Lease, as amended herein; provided however, that the Option Land shall be, free and clear of all personal property, trash and loose debris.

2. The use and occupancy of the Option Land by Tenant is to and shall be pursuant and subject to Section 6 and to all other provisions of the Ground Lease, and in connection with such use and occupancy:

A. Tenant shall construct at Tenant's sole cost, expense and risk (except as may be otherwise agreed to in writing between Landlord and Tenant), Expansion Building Improvements in accordance with plans and specifications to be approved in writing by Landlord prior to the commencement of any construction. The term "Expansion Building Improvements" means (i) a conventional aircraft hangar and related aviation use building approximately 6,000 square feet in size with no less than a clear span height of twenty-six (26) feet and at least of comparable character and quality as the existing building improvements on the Demised Premises as of the Effective Date of the July 2009 Amendment, and (ii) together with other related improvements, all to be submitted for consideration of approval in advance by Landlord. Except as provided for in this Ground Lease, Tenant may not construct, locate, install, place or erect any other improvements upon the Option Land or Demised Premises without the prior written consent of Landlord.

B. The Expansion Building Improvements shall be constructed in accordance with plans and specifications prepared by an architect and/or engineer selected by Tenant (the "Design Plan"), which Design Plan shall be submitted to Landlord and approved in writing by Landlord at its sole discretion, which approval shall be a mandatory condition prior to the construction of the Expansion Building Improvements. Any architect, engineer or contractor chosen by Tenant to prepare the Design Plan shall be duly licensed to practice architecture, engineering or construction, as the case may be, in the State of Texas. All construction shall be performed in a first-class, workmanlike manner and in compliance with all applicable Laws. Tenant agrees to promptly pay

and discharge all costs, expenses, claims for damages (including consequential damages) or injury (including, without limitation, claims for personal injury or death, or property damage or destruction, or economic loss) or any other harm, penalties, fines, liens and any and all other liabilities and obligations which arise in connection with such construction. **Tenant shall DEFEND, INDEMNIFY, and HOLD HARMLESS the Town of Addison, Texas, all Addison Persons and Manager Persons from and against any and all such costs, expenses, claims, damages, penalties, fines liens, liabilities, and obligations without limitation, INCLUDING SUCH COSTS, EXPENSES, CLAIMS, DAMAGES, PENALTIES, FINES, LIENS, LIABILITIES, AND OBLIGATIONS WHICH ARE CAUSED BY OR RESULT FROM, IN WHOLE OR IN PART, THE NEGLIGENCE OF THE TOWN OF ADDISON, TEXAS, ANY ADDISON PERSON OR MANAGER PERSON, OR ANY ACT OR OMISSION BY THE TOWN OF ADDISON, TEXAS, ANY ADDISON PERSON OR ANY MANAGER PERSON THAT GIVES RISE TO STRICT LIABILITY OF ANY KIND.** It is expressly understood and agreed that Tenant's construction of the Expansion Building Improvements shall include the finish-out of the Expansion Building Improvements as shall be submitted by Tenant to Landlord and as may be approved in writing by Landlord.

C. Landlord's approval of the Design Plan or any other plans and specifications does not impose on Landlord any responsibility whatsoever, including, without limitation, any responsibility for the conformance of the plans and specifications with any governmental laws, rules, regulations, standards, building or other codes, and the like, for which Tenant and its contractors shall have full and complete responsibility and liability.

D. For purposes hereof, construction shall be deemed to have commenced when all of the following events have occurred, proof of which shall have been delivered to Landlord : (i) written approval of the Design Plan by Landlord, (ii) Tenant has been issued the required building permit(s) or licenses necessary to construct the Building Improvements on the Demised Premises, (iii) the Federal Aviation Administration ("FAA") determination to Tenant's filing of Form 7460 Notice of Proposed Construction or Alternation, (iv) procurement of Builder's Risk insurance coverage (and delivery to Landlord of an insurance certificate reflecting the same), (v) execution of a contract to perform the work set forth in the Design Plan with a qualified contractor, and (vi) actual mobilization of construction equipment on the Option Land. If Tenant fails to commence construction (as defined above) within one-hundred twenty (120) days after the Landlord Delivery Date, Landlord may terminate all rights, claims or privileges granted to Tenant under this Section 3 by providing written notice of such termination to Tenant, and thereafter Tenant shall have no further right to occupy or use the Option Land, and Tenant shall surrender the Option Land to Landlord in the same condition as existed on the Landlord Delivery Date.

E. After commencement of construction, Tenant shall complete construction of the Expansion Building Improvements with reasonable diligence (but in any Tenant must have achieved Substantial Completion of the Expansion Building Improvements within eighteen (18) months after the Landlord Delivery Date (such eighteen (18) month period being referred to herein as the "Substantial Completion Period"), and Tenant must have achieved Final Completion of the Expansion Building Improvements within 120 days after Substantial Completion is achieved (such 120 day period being referred to herein as the "Final Completion Period"), without material deviation from the Design Plan, and any deviation from the Design Plan shall be subject to the review and prior approval of Landlord.

F. If construction of the Expansion Building Improvements is not Substantially Complete on or before the expiration of eighteen (18) months after the Landlord Delivery Date, in addition to all other rights and remedies of Landlord (including, without limitation, the right to terminate this Ground Lease in accordance with the provisions of this Ground Lease), Landlord may assess a penalty of One Hundred Dollars (\$100.00) for each day thereafter until Substantial Completion and Final Completion of the Expansion Building Improvements have been achieved. Said penalty shall accrue daily and be subject to Section 37 of the Ground Lease and, if said penalty is left unpaid by Tenant, the same shall constitute a default of the Ground Lease pursuant to Section 22 of the Ground Lease, as amended.

G. Tenant agrees to accept the Option Land in accordance with Section 7 of this Ground Lease; however, should the City fail to be able to release the Option Land to Tenant on the Landlord Delivery Date for reasons outside of Tenant's control (e.g. City is unable to timely relocate existing tenants), and such failure causes a delay in the Substantial Completion of the Expansion Building Improvements, then the Substantial Completion Date shall be extended by the number of days between the Landlord Delivery Date and the actual date the City delivers the Optional Land to Tenant.

H. Tenant shall properly and timely submit to the FAA, the Texas Department of Transportation (TxDOT), and any other governmental entity or agency having jurisdiction regarding Addison Airport, a Notice of Proposed Construction or Alteration (FAA Form 7460), when and as required by applicable Laws.

I. Tenant further agrees that the Landlord shall be authorized at all times during any Expansion Building Improvements construction to enter upon the Demised Premises and the Option Land, and all parts thereof, upon reasonable prior notice except in case of emergency, in order to observe the performance of such construction.

J. "Substantial Completion" of the construction of the Expansion Building Improvements shall be deemed to have occurred upon the issuance by the City of a certificate of temporary or final occupancy for the Expansion Building Improvements. "Final Completion" of the construction of the Expansion Building Improvements shall be deemed to occur upon [the issuance by Tenant's architect who designed the Building Improvements of such documentation as may be necessary to establish the full and final completion (closeout) of the construction of the Building Improvements and the delivery by Tenant to Landlord of comprehensive As-Built drawings and documentation reviewed and certified (sealed) by Tenant's architect reflecting all approved changes and modifications to the originally approved Design Plan.]

K. No later than ten (10) days following the earlier of (i) the achievement of Substantial Completion or (ii) the end of the Substantial Completion Period, Tenant shall present evidence satisfactory to Landlord that Tenant has achieved Substantial Completion of the Expansion Building Improvements. Not later than ten (10) days following the earlier of (i) the achievement of Final Completion or (ii) the end of the Final Completion Period, Tenant shall present evidence satisfactory to Landlord that Tenant has achieved Final Completion of the Expansion Building Improvements.

Upon Landlord's determination that Tenant has fully, finally and timely complied with and satisfied to Landlord's reasonable satisfaction each of the terms and conditions set forth herein

regarding the construction of the Expansion Building Improvements, Landlord will notify Tenant of the same in writing (the "Confirmation of Construction"). If, however, Landlord determines that Tenant has failed to fully, finally and timely comply with and satisfy to Landlord's reasonable satisfaction all of the terms and conditions set forth herein regarding the construction of the Expansion Building Improvements, Landlord shall deliver to Tenant written notice of such failure and requirements for satisfactory completion (if satisfactory completion can be achieved in accordance with this Amendment).

L. Effective the first full month after Substantial Completion of the Expansion Building Improvements, the Base Rental, as adjusted, shall be increased to an amount equal to the product of (i) the then monthly Base Rental rate per gross square foot of the Demised Premises (ii) times the total number of gross square feet of the original Demised Premises plus the Option Land (as then determined by a third-party professional surveyor or by use of a then existing survey used in connection with construction of the Expansion Building Improvements on the Option Land) combined. Thereafter, the Base Rental, as modified herein, shall continue to be adjusted pursuant to Section 5 of this Ground Lease without interruption.

M. Notwithstanding any other provision of this Ground Lease and as provided in Section 26 of this Ground Lease, all improvements on the Demised Premises, including, without limitation, the Expansion Building Improvements, shall become the sole property of Landlord upon the expiration or termination of this Ground Lease, free and clear of any claim of Tenant and any and all persons or entities claiming under or through Tenant (including, without limitation, any holder of a leasehold mortgage).

N. All other terms and conditions of the Ground Lease shall be applicable to the Option Land and continue in full an in effect for the duration of the original Term.

Section 4. Amendment to Term: Subject to the earlier termination of the Ground Lease, the Ground Lease is, as of the Effective Date of this July 2009 Amendment, to end at the end of August 31, 2018 (such date being the last day of the original term of the Ground Lease as set forth in Section 3 of the Ground Lease (the "Original Term"), but in accordance with the 1996 Ground Lease Amendment the term of the Ground Lease will be extended at the end of the Original Term through December 31, 2036, provided the Ground Lease continues in full force and effect until August 31, 2018. However, the term of the Ground Lease may be modified in accordance with the following:

A. *Completion of Ground Lease and Tenant Hangar Lease Repairs and Additional Improvements.*

1. If:

(a) Tenant fully and finally completes all of the Ground Lease and Tenant Hangar Lease Repairs and all of the Additional Repairs in accordance with the terms and provisions of this Ground Lease (and including, without limitation, this July 2009 Amendment) (the date of such full and final completion being the "Final Completion Date"), and

(b) the construction costs of the Ground Lease Repairs, the Tenant Hangar Lease Repairs, and the Additional Improvements equal or exceed Five Hundred Thousand and No/100 Dollars (\$500,000.00) (the "Minimum Construction Amount"),

and provided Tenant is not then in default of this Ground Lease (as amended), then this Ground Lease (as amended) shall, beginning on the date next following the Final Completion Date, be extended for an additional eighteen (18) years and four (4) months beyond the end of the Original Term (the “Earlier Term Extension”), so that the term of the said Ground Lease shall continue through December 31, 2036, subject to the earlier termination of the said Ground Lease.

2. In connection with the Minimum Construction Amount, Tenant shall present evidence satisfactory to Landlord seeking to show and establish the same. Such evidence shall include true and correct copies of all receipts or other documents or records indicating the nature of the construction work performed, the cost thereof, the amount paid for such construction work, and evidence of such payment. Upon Landlord’s review of such evidence, Landlord shall notify Tenant in writing whether or not such evidence, in Landlord’s sole opinion, shows and establishes that the cost to construct the Ground Lease Repairs, the Tenant Hangar Lease Repairs, and the Additional Improvements equals or exceeds the Minimum Construction Amount. In the event the evidence fails to show that the cost to construct the Ground Lease Repairs, the Tenant Hangar Lease Repairs, and the Additional Improvements equals or exceeds the Minimum Construction Amount, the Earlier Term Extension shall not take effect.

3. Landlord and Tenant agree to execute and deliver a written memorandum confirming the Earlier Term Extension (if the Earlier Term Extension has gone into effect), which confirmation may be filed in the Official Public Records of Dallas County, Texas. If Tenant believes that the Final Completion Date has occurred in accordance with the provisions hereof, but Landlord refuses to execute such memorandum, Landlord shall, provided the applicable time period to complete each of the Ground Lease Repairs, the Tenant Hangar Lease Repairs, and the Additional Improvements has not passed, provide Tenant a detailed written statement of all further actions regarding the Ground Lease Repairs, Tenant Hangar Lease Repairs, and Additional Improvements required for Landlord to execute the memorandum within ten (10) business days following Landlord’s receipt of Tenant’s written request therefor.

B. *Expansion Option.*

If (i) the Earlier Term Extension has been granted and is in effect, (ii) Tenant has timely exercised the Expansion Option and thereafter fully and finally completed the Expansion Building Improvements in accordance with the terms and provisions of this Ground Lease (and including, without limitation, this July 2009 Amendment), (iii) Landlord has issued to Tenant the Confirmation of Construction (the date of such full and final completion being the “Expansion Building Improvements Completion Date”), and (iv) Tenant is not then in default of this Ground Lease (and including, without limitation, this July 2009 Amendment), then as of the Expansion Building Improvements Completion Date, the term of this Ground Lease (which shall then include both the original Demised Premises and the Option Land with the Expansion Building Improvements made thereto) shall be further extended until December 31, 2049 pursuant to a written extension of term to be executed by Landlord and Tenant (the “Additional Term Extension”), subject, however, to the termination provisions of this Ground Lease.

If all of the above and foregoing conditions of the first paragraph of this subsection B. of this Section 4 have not been fully satisfied, the Additional Term Extension Term shall not be given and shall not go into effect, and this Ground Lease shall not be extended and the same shall end at the end of the day on December 31, 2036, subject, however, to the termination provisions of this Ground Lease.

Landlord and Tenant agree to execute and deliver a written memorandum confirming the Additional Term Extension (if the Additional Term Extension has gone into effect), which confirmation may be filed in the Official Public Records of Dallas County, Texas. If Tenant believes that the Expansion Building Improvements Completion Date has occurred, but Landlord refuses to execute such Additional Term Extension, Landlord shall provided the applicable time period to complete the Expansion Building Improvements has not passed, provide Tenant a detailed written statement of all further actions required for Landlord to execute the Additional Term Extension within ten (10) business days following Landlord's receipt of Tenant's written request therefor.

Section 5. Transaction Documents. This Amendment is a part of the Victory Jet / PlaneSmart! Process and a component of an integrated and concurrent set of transactions and agreements between one or more of Landlord, Tenant and Victory Jet, Inc. (the former tenant), including the Victory Jet/PlaneSmart! Ground Lease Assignment, the July 2009 Victory Jet – City Amendment to Hangar Lease, the July 2009 Victory Jet-PlaneSmart! Assignment of Hangar Lease, Reciprocal Easement Agreement between Landlord and Tenant (a true and correct copy of which is attached hereto as Exhibit F and incorporated herein by reference), and Memorandum of Ground Lease and Hangar Lease Assignments and Amendments (collectively with this Amendment, the "Transaction Documents"). The concurrent execution and recording (as applicable) as of the Effective Date by all applicable parties of each of the Transaction Documents is a condition precedent to the validity and effectiveness of this Amendment.

Section 6. No Other Amendments; Exhibits. Landlord and Tenant, together with their respective successors and assigns, each hereby adopts, confirms, ratifies and agrees to be bound by all the terms, covenants, provisions and conditions as set out in the Ground Lease, as amended or modified, and including, without limitation, as amended and modified by this Amendment, and unless expressly modified by this Amendment, all terms, conditions, and provision contained in the Ground Lease, as amended or modified, remain unchanged and in full force and effect.

However, notwithstanding the reference in Section 49 of the Ground Lease to this "Lease, consisting of forty-nine (49) paragraphs and Exhibits A through B attached hereto," the Ground Lease consists of and includes the Ground Lease executed on April 1, 1978 between the City of Addison, Texas (the same being the Town of Addison, Texas (the "City")) and Addison Airport of Texas, Inc., as landlord, and Charles E. Wagley ("Wagley"), as tenant, together with and including all applicable amendments and exhibits to such amendments, and including, without limitation, this July 2009 Amendment and all exhibits to this Amendment.

The exhibits referenced herein as being attached to this July 2009 Amendment are incorporated herein and made a part hereof for all purposes.

Section 7. Binding Effect; Condition In Which This Second Amendment Is Void Ab Initio.

A. This Amendment to Ground Lease is and shall be for the benefit of, and binding upon, the parties hereto and their respective heirs, executors, administrators, successors, and assigns, as permitted by the Ground Lease.

B. Notwithstanding the foregoing or any other provision of this July 2009 Amendment, if Victory Jet and PlaneSmart! fail to finalize, consummate and fully complete the Victory Jet / PlaneSmart! Process by the Process Closing Date (that is, if all of the Transaction Documents, including, without limitation, the Victory Jet/PlaneSmart! Ground Lease Assignment, the 2009 Ground Lease Amendment, the July 2009 Victory Jet – City Amendment to Hangar Lease, the July 2009 Victory Jet – PlaneSmart! Assignment of Hangar Lease, and related documents are not fully executed by all parties to the respective documents and completely finalized by the Process Closing Date), then this July 2009 Amendment shall be null and void *ab initio* and have no force or effect whatsoever, and the parties agree that it shall be as if this July 2009 Amendment had never been executed and that the Ground Lease, as assigned and amended prior to this July 2009 Amendment, shall be in full force and effect.

Section 8. Consent and Recording. This Amendment is subject to the filing requirements of the City. Landlord or Tenant may record this Amendment to Ground Lease or a memorandum hereof provided said memorandum or Amendment to Ground Lease is fully executed by the parties in the Official Public Records of Dallas County, Texas.

Section 9. Applicable Law; Venue. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Amendment; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Amendment, and all obligations of the parties created by this Amendment are performable in Dallas County, Texas. Venue for any action under this Amendment shall lie exclusively in Dallas County, Texas.

Section 10. Final Agreement. This Amendment shall constitute the final agreement and understanding of the parties on the subject matter hereof and can only be modified by further written instrument signed and executed by both parties.

Section 11. Authority to Execute. The undersigned officers and/or agents of the parties hereto are the properly authorized officials or officers and have the necessary authority to execute this Amendment on behalf of the parties hereto.

IN WITNESS WHEREOF, the undersigned parties have executed and delivered this Amendment as of the Effective Date.

LANDLORD:

TENANT:

TOWN OF ADDISON, TEXAS

PLANESMART! PROPERTIES, INC.

By: _____
Ron Whitehead, City Manager

By: _____
Michael Brosler

Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS §

COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 2009 by Ron Whitehead, City Manager for the Town of Addison, a Texas home-rule municipality.

Notary Public, State of Texas

Print Name: _____

My commission expires: _____

STATE OF TEXAS §

COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 2009 by Michael Brosler, _____ of PlaneSmart! Properties, LLC, a Texas limited liability company, on behalf of said company

Notary Public, State of Texas

Print Name: _____

My commission expires: _____

EXHIBIT A

(In the interest of conserving resources, a true and correct copy of the Ground Lease, as amended and modified, as of the Effective Date of this Amendment to Ground Lease is available for review upon request.)

EXHIBIT B

[legal description of Demised Premises as of Effective Date of the Amendment]

EXHIBIT C

(In the interest of conserving resources, a true and correct copy of the Hangar Lease, as amended and modified, as of the Effective Date of this Amendment to Ground Lease is available for review upon request.)

EXHIBIT D

Ground Lease Repairs and Hangar Lease Repairs – Obligations of Tenant and Landlord

- I. Pursuant to the July 2009 Amendment to which this Exhibit D is attached, Tenant agrees to and shall make the following **Ground Lease Repairs**:

In accordance with and subject to the terms, conditions, and provisions of the Ground Lease and this Amendment, Tenant hereby agrees to and shall make the following repairs, modifications, and improvements to the Demised Premises:

1. Improve drainage at the parking lot on the north side of the building by replacing it with new pavement that is sloped to drain to a shallow valley gutter and into the grass swale. Adjust grades in same parking lot to improve drainage and eliminate or mitigate water pond areas on the pavement. Confirm drainage requirements per Town of Addison and Addison Airport ordinances, rules, regulations, building codes, and standards.
2. Improve drive-ability of east drive entry at north parking lot (closest to Addison Road) by cutting and filling the paved surfaces to achieve a more leveled and balanced entry. Reconstruct new drive to match the parking lot's paved surfaces.
3. North parking lot paved surface is in poor condition; reconstruct the sub-base and pavement surface to conform to industry and Town of Addison and Addison Airport building code standards.
4. Repair or improve all sidewalks to conform to current Town of Addison and Addison Airport building code standards, including barrier free ramps.
5. Replace existing concrete aircraft apron south of the main hangar where failure has occurred by saw-cut, removal, compaction and patch. Clean and seal all existing expansion joints.
6. Remove existing aircraft apron constructed of asphalt pavement and reconstruct the same with either concrete or asphalt consistent with Town of Addison and Addison Airport building codes, and standards. Any sub-base that has failed must be replaced prior to reconstruction.
7. All paved surfaces shall be engineered and reconstructed to slope away from the buildings and towards designated drainage surfaces and/or storm sewers as directed by the Town of Addison, Texas.
8. All heating, ventilation and air-conditioning systems, plumbing and electrical systems shall be repaired or replaced so to be made fully operational and in conformance with Town of Addison and Addison Airport building codes, and with industry standards.
9. Building areas to be occupied as office space shall be equipped and maintained at all times with an automated fire suppression system pursuant to the Town of Addison and Addison Airport building codes, and standards.
10. Any portion of the building improvements designed and intended to be used for aircraft maintenance and repair shall be equipped and maintained at all times with

an automated fire suppression system as required by the Town of Addison and Addison Airport building codes, and standards.

11. At a minimum, Tenant shall prune, irrigate and keep all landscaping in first class condition as required by the Town of Addison and Addison Airport building codes, and standards.
12. Tenant shall comply with all other requirements of the Town of Addison for the purpose of obtaining and keeping a valid Certificate of Occupancy or equivalent certification pursuant to Town of Addison and Addison Airport building code and standards.

II. Pursuant to the Amendment to which this Exhibit D is attached, Tenant agrees to and shall make the following Tenant Hangar Lease Repairs:

1. The existing aircraft apron constructed of asphalt or concrete, located immediately in front of and between the exterior wall/hangar door track of T-hangar Building R5 Units ,03, 05, 07, 09, 11, 13 and 15 and the property boundary line common to Property #013A, (as further illustrated in Exhibit C-3) which has failed or is otherwise deemed by the Landlord to be in poor condition, shall be removed and reconstructed with either concrete or asphalt consistent with Town of Addison and Addison Airport ordinances, rules, regulations, building code and standards. Any sub-base that has failed shall be replaced prior to reconstruction.
2. All paved surfaces shall be engineered and reconstructed to slope away from the buildings and towards designated drainage surfaces and/or storm sewers as directed by the Town of Addison and in compliance with the Town of Addison's and the Addison Airport's ordinances, rules, regulations and building codes and industry standards (the following graphic is for illustrative purposes only).



The above graphic is for illustrative purposes only.

III. Pursuant to the Amendment to which this Exhibit D is attached, Landlord agrees to and shall make the following Landlord Hangar Lease Repairs. Landlord's commencement and completion of such Hangar Lease Repairs shall be coordinated with and timely performed in relation to Tenant's commencement and completion of Tenant's Ground Lease and Tenant Hangar Lease Repairs and Tenant's Additional Improvements:

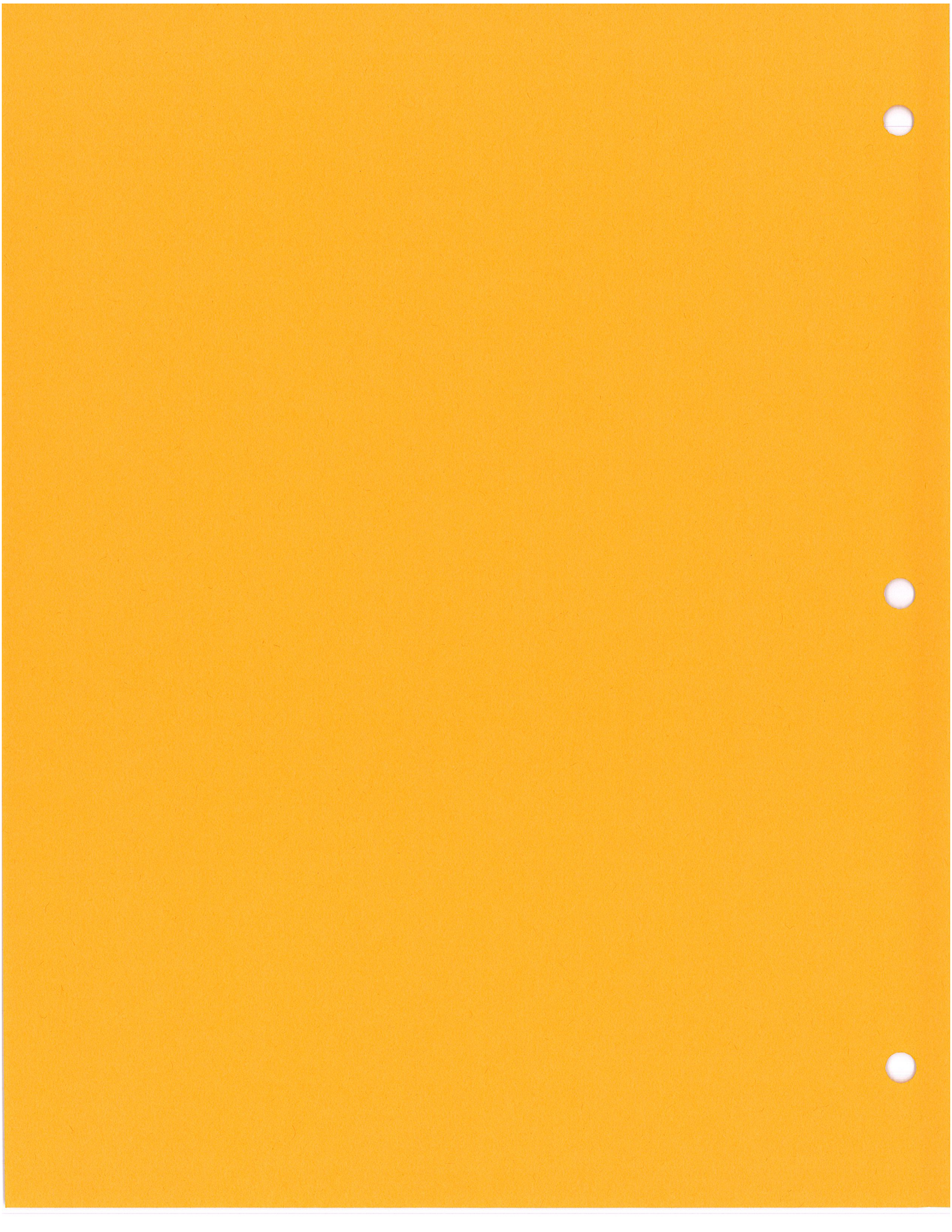
1. The repair or replace or otherwise restore to good condition the roof protecting the T-hangar Building R5 Units, 03, 05, 07, 09, 11, 13 and 15.
2. All exterior metal siding and hangar doors for each of the above listed hangar shall be repaired, replaced or otherwise brought into good working order and condition; and repainted with a paint and color mutually acceptable to the City and PlaneSmart!.

EXHIBIT E

EXHIBIT F

Please refer to Exhibit E to Council Packet





STATE OF TEXAS §
 § **SECOND AMENDMENT TO HANGAR LEASE**
COUNTY OF DALLAS §

This SECOND AMENDMENT TO HANGAR LEASE (the "Second Amendment") is entered into and made effective as of _____, 2009 (the "Effective Date"), at Addison, Texas, by and between **VICTORY JET, INC.**, a Texas corporation (herein referred to as "Victory Jet" or "Tenant") and the Town of Addison, Texas (herein referred to as the "City" or "Landlord").

WHEREAS, a Hangar Lease was executed on March 1, 1996 between the City and Addison Airport of Texas, Inc., as landlord, and Henley's Aviation Investments, Inc., a Texas corporation ("Henley's Aviation"), as tenant (a true and correct copy of the Hangar Lease, as it has been amended and modified as of the Effective Date of this Second Amendment (with all assignments or transfers thereof and all amendments or modifications thereto), is attached hereto as Exhibit A and is referred to in this Second Amendment as the "Hangar Lease"), by the terms of which certain hangars described in the Hangar Lease and located adjacent to 15841 Addison Road within the City and commonly referred to as Property #0120, Building R5 Units 03, 05, 07, 09, 11, 13 and 15 (also referred to (and referred to in the Hangar Lease) as Hangars 803 South, 805, 807, 809, 811, 813 and 815) at Addison Airport, Dallas County, Texas and owned by the City (the said hangars as described in and which is the subject of the Hangar Lease being referred to herein as the "Leased Hangars") were leased to Henley's Aviation; and

WHEREAS, at the time of the execution of the Hangar Lease, Henley's Aviation by assignment became the tenant under a Ground Lease of certain property abutting the Leased Hangars site (being that Ground Lease executed on April 1, 1978 between the City of Addison, Texas and Addison Airport of Texas, Inc., as landlord, and Charles E. Wagley, as amended (the "Ground Lease")), which Ground Lease was amended by that "Amendment To Ground Lease" (the "1996 Ground Lease Amendment") filed of record as Instrument #20080173519 of the Official Public Records of Dallas County, Texas (the "OPR"); and

WHEREAS, the terms and provisions of the Hangar Lease, and the terms and provisions of the Ground Lease (by virtue of the 1996 Ground Lease Amendment), were made to interrelate, so that:

- upon the removal of any of the hangars subject to the Hangar Lease prior to the expiration or termination of the Ground Lease, the Ground Lease would be amended to include a portion of the land upon which the hangars leased by the Hangar Lease are situated, and
- the Hangar Lease would terminate upon the first to occur of the removal of the leased hangars or the termination or expiration of the ground lease; and

WHEREAS, in connection with a voluntary petition in bankruptcy filed by Henley's Aviation, on or about June 4, 2008 Henley's Aviation assigned and conveyed its leasehold interest as tenant in the Ground Lease and in the Hangar Lease to its creditor, the C.E. Wagley Children's Trust, Dee Dee Planas, Trustee (the "Trust"), pursuant to that Deed in Lieu Agreement filed of record as Instrument #200802110-9 in the OPR; and

WHEREAS, on or about August 21, 2008, the Trust assigned and conveyed its leasehold interest as tenant in the Ground Lease and in the Hangar Lease to Victory Jet, Inc., a Texas corporation ("Victory Jet"), pursuant to that instrument entitled "Assignment of Hangar Lease" (the "August 2008 Assignment"), evidenced by that Memorandum of Lease filed as a matter of public record as Instrument #20080273996 of the OPR; and

WHEREAS, by virtue of such assignments, Victory Jet is the current Tenant under the Hangar Lease; and

WHEREAS, a material condition to the City's consent to the assignment of the Hangar Lease by the Trust to Victory Jet was that Victory Jet would make certain improvements and repairs to the Leased Hangars and the premises occupied by the Leased Hangars set forth in that Amendment to Hangar Lease entered into and made effective August 21, 2008 as evidenced by that Memorandum of Ground Lease and Hangar Lease filed as Instrument #20080273996 of the OPR (the "August 2008 Amendment");

WHEREAS, Victory Jet desires to assign its leasehold interests in the Hangar Lease and in the Ground Lease to PlaneSmart Properties!, LLC, a Texas limited liability company ("PlaneSmart!"), and to accomplish the same entered into negotiations with PlaneSmart! as the proposed assignee; and

WHEREAS, the arrangement and proposal arising out of the said negotiations required the input of the City, and discussions by and between the City, Victory Jet and PlaneSmart! resulted in a proposed process (the "Victory Jet / PlaneSmart! Process") regarding Victory Jet's assignment of its leasehold interest in the Ground Lease and the Hangar Lease to PlaneSmart!, as follows:

- Victory Jet, subject to the City's consent, would assign to PlaneSmart! its leasehold interest in the Ground Lease (the "Victory Jet/PlaneSmart Ground Lease Assignment"),
- Following and in connection with said assignment, PlaneSmart! and the City would enter into an agreement amending the Ground Lease, including making certain modifications to the August 2008 Amendment (the "2009 Ground Lease Amendment"),
- Victory Jet and the City would amend the Hangar Lease in order to, among other things, amend description of the hangars being leased (the "2009 Hangar Lease Amendment"), and

- Victory Jet, following such amendment to the Hangar Lease and subject to the City's consent, would assign to PlaneSmart! its leasehold interest as tenant in the Hangar Lease (the "Victory Jet/PlaneSmart! Hangar Lease Assignment"); and

WHEREAS, Victory Jet and PlaneSmart! have entered into an agreement which, among other things, provides for the Victory Jet / Plane Smart! Process to be finalized, consummated and fully completed on or before 5:00 p.m. (Central Daylight Time) on _____, 2009 (such date and time being the "Process Closing Date"); and

WHEREAS, a material condition to the Landlord's consent to the assignment of the Hangar Lease by Victory Jet to PlaneSmart! is that Landlord and Victory Jet enter into this Second Amendment prior to and in connection with such assignment.

NOW, THEREFORE, for and in consideration of the above and foregoing premises, the mutual promises, covenants, and conditions contained herein, and other good and valuable consideration, the sufficiency of which are hereby acknowledged, the Landlord and Tenant do hereby agree as follows:

AGREEMENT

Section 1. Incorporation of Premises. The above and foregoing premises are true and correct and are incorporated herein and made a part of this Second Amendment for all purposes.

Section 2. Amendments and Modifications to Hangar Lease. Subject to the full and final completion of the Victory Jet / Plane Smart! Process by no later than the Process Closing Date and to the provisions of Section 4.B. of this Second Amendment, the Hangar Lease, as described in the above and foregoing recitals and premises to this Second Amendment, is hereby amended and modified as follows:

A. Amendment to Description of Leased Hangars. The Hangar Lease is hereby amended by amending the description of the Leased Hangars which are leased and subject to the terms and conditions of the Hangar Lease, so that from and after the Effective Date of this Second Amendment, the Leased Hangar shall consist of and comprise that property commonly referred to as Property #0120, Building R5 Unit #03 (also sometimes referred to as Hangar 803 South) located at Addison Airport, Dallas County, Texas and owned by the City.

B. Removed Hangars. Pursuant to the amendment to the Hangar Lease set forth in subsection A. of this Section 2, certain hangars have been removed from and are no longer a part of the Hangar Lease (such removed hangars being those identified as Hangars 805, 807, 809, 811, 813 and 815 (the "Removed Hangars") at Addison Airport). Notwithstanding the amendment to the description of the Leased Hangars set forth in subsection A. of this Section 2, such amendment shall not and does not release Victory Jet (or any tenant of the Removed Hangars prior in time to Victory Jet) from any liabilities or responsibilities for or in connection with the Removed Hangars during the time that the Removed Hangars were included within the Hangar Lease, and Victory Jet (and any tenant of the Removed Hangars prior in time to Victory

Jet) shall continue to be liable and responsible for the Removed Hangars as a result of their tenancy of and in the Removed Hangars.

C. Modifications to August 2008 Amendment. As set forth above in the recitals and premises to this Second Amendment, the City and Victory Jet previously entered into that "Amendment to Hangar Lease" made effective as of August 21, 2008. The said August 2008 Amendment provides for the Tenant to make certain repairs to the Leased Hangars (which repairs are described in the August 2008 Amendment as the "Scheduled Repairs") and certain terms and conditions related to the Scheduled Repairs (such description, terms and conditions being included in Section 2.A through (and including) Section 2.F. of the August 2008 Amendment).

Landlord and Tenant agree that the terms, conditions and provisions included in the said Section 2.A. through (and including) Section 2.F. shall be deleted and shall, from and after the Effective Date of this Second Amendment, have no further force or effect. However, all of the remaining sections, subsections, paragraphs, terms, conditions, and provisions of the August 2008 Amendment are not amended by this Second Amendment and remain unchanged and in full force and effect.

Section 3. No Other Amendments. Landlord and Tenant, together with their respective successors and assigns, each hereby adopts, confirms, ratifies and agrees to be bound by all the terms, covenants, provisions and conditions as set out in the Hangar Lease, as amended or modified, and including, without limitation, as amended and modified by this Second Amendment, and unless expressly modified by this Second Amendment, all terms, conditions, and provision contained in the Hangar Lease, as amended or modified, remain unchanged and in full force and effect.

Section 4. Binding Effect; Condition In Which This Second Amendment Is Void Ab Initio.

A. This Second Amendment to Hangar Lease is and shall be for the benefit of, and binding upon, the parties hereto and their respective heirs, executors, administrators, successors, and assigns, as permitted by the Hangar Lease.

B. Notwithstanding the foregoing or any other provision of this Second Amendment, if Victory Jet and PlaneSmart! fail to finalize, consummate and fully complete the Victory Jet / PlaneSmart Process by the Process Closing Date (that is, if all of the Victory Jet/PlaneSmart Ground Lease Assignment, the 2009 Ground Lease Amendment, the 2009 Hangar Lease Amendment, the 2009 Hangar Lease Amendment, and related documents are not fully executed by all parties to the respective documents and completely finalized by the Process Closing Date), then this Second Amendment shall be null and void *ab initio* and have no force or effect whatsoever, and the parties agree that it shall be as if this Second Amendment had never been executed and that the Hangar Lease, as amended prior to this Second Amendment, shall be in full force and effect.

Section 5. Consent and Recording: This Amendment is subject to the consent and filing requirements of the Town of Addison, Texas. Landlord may record this Amendment to Hangar Lease or a memorandum hereof in the official public records of Dallas County, Texas.

Section 6. Applicable Law; Venue. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Amendment; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Amendment, and all obligations of the parties created by this Amendment are performable in Dallas County, Texas. Venue for any action under this Amendment shall lie exclusively in Dallas County, Texas.

Section 7. Final Agreement. This Amendment shall constitute the final agreement and understanding of the parties on the subject matter hereof and can only be modified by further written instrument signed and executed by both parties.

Section 8. Authority to Execute. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Amendment on behalf of the parties hereto.

IN WITNESS WHEREOF, the undersigned parties have executed and delivered this Assignment on the day and the year first set forth above.

LANDLORD:

TENANT:

TOWN OF ADDISON, TEXAS

VICTORY JET, INC.

By: _____
Ron Whitehead, City Manager

By: _____
Ray Kinney, President

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ACKNOWLEDGMENT

STATE OF TEXAS §

Amendment to Hangar Lease

Page 5 of 7

Document #: 1343463

COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 2008 by Ron Whitehead, City Manager for the Town of Addison, a Texas home-rule municipality.

Notary Public, State of Texas

Print Name: _____

My commission expires: _____

STATE OF TEXAS §

COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 2008 by Ray Kinney, President of Victory Jet, Inc., a Texas corporation, on behalf of said corporation

Notary Public, State of Texas

Print Name: _____

My commission expires: _____

EXHIBIT A

In the interest of conserving resources, a true and correct copy of the Hangar Lease, as amended and modified as of the Effective Date of this Second Amendment to Hangar Lease is available upon request





STATE OF TEXAS §
 §
COUNTY OF DALLAS §

ASSIGNMENT OF HANGAR LEASE

This Assignment of Hangar Lease (the "Assignment") is entered into and effective as of _____, 2009, at Addison, Texas, by and between Victory Jet, Inc., a Texas corporation (herein referred to as "Assignor") and PlaneSmart! Properties, LLC, a Texas limited liability company (herein referred to as "Assignee").

WHEREAS, a Hangar Lease was executed on March 1, 1996 between the Town of Addison, Texas (the "City") and Addison Airport of Texas, Inc., as landlord, and Henley's Aviation Investments, Inc., a Texas corporation ("Henley's Aviation"), as tenant by the terms of which certain hangars described in the Hangar Lease located adjacent to 15841 Addison Road within the City and commonly referred to as Property #0120; Building R5 Units 03, 05, 07, 09, 11, 13 and 15 (also referred to as Units 803 South, 805, 807, 809, 811, 813 and 815 at Addison Airport within the Town of Addison, Texas and owned by the City (the said hangars as described in and which is the subject of the Hangar Lease being referred to herein as the "Leased Hangars") were leased to Henley's Aviation; and

WHEREAS, at the time of the execution of the Hangar Lease, Henley's Aviation by assignment became the tenant under a Ground Lease of certain property abutting the Leased Hangars site, which Ground Lease was executed on April 1, 1978 between the City of Addison, Texas and Addison Airport of Texas, Inc., as landlord, and Charles E. Wagley, and a true and correct copy of which is on file with the City (the said Ground Lease, as amended, being referred to herein as the "Ground Lease"); and

WHEREAS, on October 2, 2007, Henley's Aviation filed a voluntary petition under chapter 11 of title 11, 11 U.S.C. §§101, *et seq.*, in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division entitled *In re Henley's Aviation Investments, Inc.*, Case No. 07-34905 (the "Case"); and

WHEREAS, in connection with the Case, Henley's Aviation, the C.E. Wagley Children's Trust dated January 17, 1992 (the said Trust being a creditor of Henley's Aviation and the successor in interest to Charles E. Wagley, and being referred to herein as the "Trust"), and the City entered into an agreement dated February 28, 2008 (the "Settlement Agreement") which addressed certain matters pertaining to the Hangar Lease and the Ground Lease; and

WHEREAS, pursuant to the Settlement Agreement, the Hangar Lease was assigned by Henley's Aviation to the Trust by that certain Assignment of Hangar Lease made effective February 28, 2008, and the Ground Lease was assigned by Henley's Aviation to the Trust by that certain Deed In Lieu Of Foreclosure made effective June 4, 2008, filed as a matter of record as Instrument #20080211049 of the OPR; and

WHEREAS, thereafter, by that Assignment of Hangar Lease entered into and made effective August 21, 2008 (the "August 2008 Assignment"), the Hangar Lease was assigned by the Trust to Victory Jet, Inc., a Texas corporation ("Victory Jet"), and by that Assignment of Ground Lease entered into and made effective August 21, 2008 the Ground Lease was assigned by the Trust to Victory Jet, each of which assignments are evidenced by that Memorandum of Ground Lease and Hangar Lease filed of record as Instrument #2008027396 of the OPR; and

WHEREAS, in connection with the August 2008 Assignment, the Hangar Lease was amended by that Amendment to Hangar Lease between the City and Victory Jet entered into and effective as of August 21, 2008 (the "August 2008 Amendment"), wherein Victory Jet agreed, among other things, to make or cause to complete certain improvements and repairs to the Leased Hangars as set forth in the August 2008 Amendment (the "Repairs"); and

WHEREAS, thereafter, by that Second Amendment to Hangar Lease between the City and Victory Jet entered into and effective as of _____, 2009 (the "Second Amendment"), the Hangar Lease was further amended by, among other things, amending the Leased Hangars subject to the Hangar Lease; and

WHEREAS, the Hangar Lease provides that, upon the expiration or termination of that certain agreement referred to and defined in the Hangar Lease as the "Base Lease" (and being an Agreement for Operation of the Addison Airport between the City and Addison Airport of Texas, Inc.), the City is entitled to all of the rights, benefits and remedies, and will perform the duties, covenants and obligations, of the Landlord under the Hangar Lease; and

WHEREAS, the said Base Lease has expired and the City is the Landlord under the Hangar Lease; and

WHEREAS, by virtue of all such assignments or other conveyances, Assignor is the Tenant under the Hangar Lease, and a true and correct copy of the Hangar Lease, together with all amendments or modifications thereto, is attached hereto as Exhibit "A" (the "Hangar Lease"); and

WHEREAS, Assignor desires to assign the Hangar Lease to Assignee pursuant to this Assignment, this Assignment being a part of a transaction between Assignor and Assignee involving (i) the assignment of Assignor's interest in the Hangar Lease to Assignee pursuant to this Assignment, (ii) an amendment to the Hangar Lease (the "July 2009 Victory Jet – City Amendment to Hangar Lease"), (iii) the assignment of Assignor's interest in the Ground Lease to Assignee (the "Victory Jet/PlaneSmart! Ground Lease Assignment"), and (iv) an amendment to the Ground Lease (the "2009 Ground Lease Amendment"), and other matters in connection therewith and related thereto; and

WHEREAS, the Hangar Lease provides in Section 9 thereof that, without the prior written consent of the Landlord, the Tenant may not assign the Hangar Lease or any rights of Tenant under the Hangar Lease (except as provided therein), that any assignment must be expressly subject to all the terms and provisions of the Hangar Lease, and that any assignment

must include a written agreement from the Assignee whereby the Assignee agrees to be bound by the terms and provisions of the Hangar Lease; and

WHEREAS, Assignor desires to assign the Hangar Lease to Assignee, and Assignee desires to accept the Assignment thereof in accordance with the terms and conditions of this Assignment.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and conditions contained herein, the sufficiency of which are hereby acknowledged, the parties hereto, each intending to be legally bound agree as follows:

AGREEMENT

1. Assignor hereby assigns, bargains, sells, and conveys to Assignee, effective as of the date above, all of Assignor's right, title, duties, responsibilities, and interest in and to the Hangar Lease, attached hereto as Exhibit A, TO HAVE AND TO HOLD the same, for the remaining term thereof, and Assignor does hereby bind itself and its successors and assigns to warrant and forever defend the same unto Assignee against every person or persons lawfully claiming any part thereof through Assignor.

2. Assignee hereby agrees to and shall be bound by and comply with all of the terms, provisions, duties, conditions, and obligations of tenant under the Hangar Lease. For purposes of notice under the Hangar Lease, the address, telephone number, facsimile telephone number, and electronic mail address of Assignee is:

PlaneSmart! Properties, LLC
15841 Addison Road
Addison, Texas 75001
972-380-8004 (office)
972-380-8012 (fax)
mbrosler@planesmart.com

3. Nothing in this Agreement shall be construed or be deemed to modify, alter, amend or change any term or condition of the Hangar Lease, except as set forth herein.

4. Assignor acknowledges that in addition to any other rights or remedies provided in the Hangar Lease or by law, in equity, or otherwise, Landlord may at its own option, collect directly from the Assignee all rents becoming due under such assignment and apply such rent against any sums due to Landlord. No such collection by Landlord from Assignee, any future or other assignee of the tenant's leasehold interest in the Hangar Lease, or any subtenant shall release Assignor from the payment or performance of Assignor's obligations under the Hangar Lease.

5. The above and foregoing premises and recitals to this Assignment and all other statements made herein are true and correct, and Assignor and Assignee both warrant and represent that such premises, recitals and statements are true and correct, and that in giving its

consent, Landlord (as defined in the Consent of Landlord attached hereto) is entitled to rely upon such representations and statements.

6. The undersigned officers and/or agents of the parties hereto are the properly authorized persons and have the necessary authority to execute this Assignment on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

IN WITNESS WHEREOF, Assignor and Assignee have executed and delivered this Assignment on the day and the year first set forth above.

ASSIGNOR:

ASSIGNEE:

VICTORY JET, INC.

PLANESMART! PROPERTIES, LLC

By: Mr. Ray Kinney, President

By: Michael Brosler, Manager

ACKNOWLEDGMENT

STATE OF TEXAS §

COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 2009 by Ray Kinney, President of Victory Jet, Inc., a Texas corporation on behalf of said corporation.

Notary Public, State of Texas

Print Name: _____

My commission expires: _____

STATE OF TEXAS §

COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 2009 by Michael Brosler, Manager of PlaneSmart! Properties, LLC, a Texas limited liability company, on behalf of said company

Notary Public, State of Texas

Print Name: _____

My commission expires: _____

CONSENT OF LANDLORD

The Town of Addison, Texas ("Landlord") is the Landlord in the Hangar Lease described in the foregoing Assignment of Hangar Lease (the "Assignment") entered into and effective as of _____ 2009, at Addison, Texas, by and between Victory Jet, Inc., a Texas corporation (herein referred to as "Assignor") and PlaneSmart! Properties, LLC, a Texas limited liability company (herein referred to as "Assignee"). In executing this Consent of Landlord ("Consent"), Landlord is relying upon the warranties and representations made in the foregoing Assignment by both Assignor and Assignee, and in relying upon the same Landlord hereby consents to the foregoing Assignment from Assignor to Assignee.

Notwithstanding this Consent, Landlord does not waive any of its rights under the Hangar Lease as to the Assignor or the Assignee, and does not release Assignor from its covenants, obligations, duties, or responsibilities under or in connection with the Hangar Lease, and Assignor shall be and remain liable and responsible for all such covenants, obligations, duties, or responsibilities. In addition, notwithstanding any provisions of this Consent of Landlord or the above and foregoing Assignment to the contrary, this Consent shall not operate as a waiver of any prohibition against further assignment, transfer, conveyance, pledge, change of control, or subletting of the Hangar Lease or the premises described therein without Landlord's prior written consent.

This Consent shall be and remain valid only if and provided that, by no later than 6:00 o'clock p.m. on _____, _____, 2009:

(i) the Assignment has been executed by both Assignor and Assignee,

(ii) all matters in connection with the transfer, sale, and/or conveyance by Assignor to Assignee of the Assignor's interest in the Hangar Lease and in the Ground Lease (as the term "Ground Lease" is described in the Assignment) have been fully consummated and completed and the transaction closed as reasonably determined by Landlord (such matters including, without limitation, the full execution and finalization of each of this Assignment, the July 2009 Victory Jet – City Amendment to Hangar Lease (as described in the Assignment), the Victory Jet/PlaneSmart! Ground Lease Assignment (as described in the Assignment), the 2009 Ground Lease Amendment (as described in the Assignment), and other documents related thereto and in connection therewith), and

(iii) (a) a fully executed original of the Assignment, (b) true and correct and fully executed and notarized originals of all other documents (including, without limitation, those documents and instruments described in paragraph (ii), above, of this Consent) in connection with the closing of the sale, transfer, and conveyance of the Assignor's interest in the Hangar Lease and in the Ground Lease to Assignee required by Landlord, (c) an original "Memorandum of Assignment of Ground Lease and Amendment and Hangar Lease and Amendment" to be substantially in the form attached hereto as "Exhibit B") has been delivered to Landlord for the purpose of the public recording of the same and has been executed and notarized by Assignor and Assignee, and (d) all proceeds due and payable to the Town of Addison pursuant to this Assignment and all matters related thereto and any other funds or moneys due and payable to the

Town of Addison in connection with or related to this matter, have all been delivered to the Landlord c/o of Mr. Bill Dyer, Addison Airport Real Estate Manager, at 16051 Addison Road, Suite 220, Addison, Texas 75001.

Otherwise, this Consent shall be null and void *ab initio* as if it had never been given and executed.

Signed this ____ day of _____, 2009.

LANDLORD:

TOWN OF ADDISON, TEXAS

By: _____
Ron Whitehead, City Manager

Exhibit "A"

In the interest of conserving resources, a true and correct copy of the Hangar Lease as amended and modified as of the Effective Date of this Assignment of Hangar Lease is available upon request

Exhibit "B"

Please refer to Exhibit "G" in the Council Packet for copy of the Memorandum of Assignment and Amendment of Ground Lease and Hangar Lease.





RECIPROCAL EASEMENT AGREEMENT

This RECIPROCAL EASEMENT AGREEMENT (the "Agreement") is made and entered into as of the _____ day of _____, 2009 (the "Effective Date") by PlaneSmart! Properties, LLC, a Texas limited liability company ("PlaneSmart!") and the Town of Addison, Texas (herein referred to as the "City" or "Landlord") (jointly referred to sometimes as the "Parties").

WHEREAS, PlaneSmart! is the leasehold owner of real property located at the Addison Airport in Addison, Dallas County, Texas more particularly described in Exhibit "A" attached hereto and incorporated herein for all purposes (Tract "A"); and

WHEREAS, the City is the owner and operator of the Addison Airport in Addison, Dallas County, Texas including but not limited to that certain tract of real property improved with multiple T-hangar aircraft storage units for the purpose of leasing to third party users more particularly described in the attached Exhibit "B" and incorporated into this Agreement for all purposes ("Tract B"); and

WHEREAS, PlaneSmart! and the City desire for a section of aircraft apron area generally described as that area that lies thirty-five (35) feet on either side of that common property boundary line between Tract "A" and Tract "B" for a distance of two hundred and twenty-eight and 44/100 (228.44) feet shown on the Category IA, Condition II Land Title Survey prepared by Shield & Lee Surveyors dated July 28, 2008 (hereinafter called the "Ramp Area") located on Tract A and Tract B, respectively, to be accessible to both the City and PlaneSmart! and all of their respective employees, contractors, agents, representatives and invitees for ingress and egress to and from the Common Area (as defined in the Ground Lease) known as Taxiway Romeo.

NOW, THEREFORE, Plane Smart and the City hereby agree as follows:

ARTICLE I

Grant of Easements and Rights

1.01 PlaneSmart!, for itself and its successors and assigns, does hereby grant, sell, convey and deliver to the City, its successors and assigns, for as long City continues to operate the Tract B T-hangars as aircraft storage rental property, a non-exclusive, perpetual and permanent right-of-way easement for the purpose of aircraft, vehicular and pedestrian access over and across its portion of the Ramp Area.

1.02 The City, for itself and its successors and assigns, does hereby grant, sell, convey and deliver to PlaneSmart!, its successors and assigns, a non-exclusive, perpetual and permanent right-of-way easement for the purpose of aircraft, vehicular and pedestrian access over and across its portion of the Ramp Area.

ARTICLE II

Improvements

2.01 PlaneSmart! and the City each hereby covenant and agree to cause to be constructed, at its own expense, surface improvements on its respective portion of the Ramp Area sufficient to provide a completely operable ramp meeting all standards for ramp construction, configuration and finish imposed by the City for ramp construction intended for similar use (the "Improvements").

ARTICLE III
Maintenance of Improvements

3.01 PlaneSmart! hereby covenants and agrees to maintain and repair at its sole cost and expense, until the Ground Lease expires or is earlier terminated, that portion of the Ramp Area which lies within Tract "A." Such maintenance and repair shall include, but not be limited to, cleaning, sweeping, ice and snow removal, repair of paving and lighting, restriping of paving and such other necessary maintenance and repairs, including the necessary safety measures to the extent necessary to maintain the Improvements on the Tract "A" Ramp Area in a condition substantially equivalent to their condition and usefulness when newly constructed, reasonable wear and tear excepted.

3.02 The City hereby covenants and agrees to maintain and repair at its sole cost and expense that portion of the Ramp Area which lies within Tract "B." Such maintenance and repair shall include, but not be limited to, cleaning, sweeping, ice and snow removal, repair of paving and lighting, restriping of paving and such other necessary maintenance and repairs, including the necessary safety measures to the extent necessary to maintain the Improvements on the Tract "B" Ramp Area in a condition substantially equivalent to their condition and usefulness when newly constructed, reasonable wear and tear excepted.

3.03 The Parties hereby covenant and agree to fairly and reasonably share in the cost and expense of maintenance and repair any portion of the Ramp Area that is not exclusive to either Tract "A" or Tract "B", respectively.

ARTICLE IV
Termination of Agreement

4.01 This Agreement shall automatically terminate upon the expiration or early termination of the PlaneSmart! Ground Lease.

4.02 This Agreement shall automatically terminate upon the City's election, being at its sole discretion, to demolish and remove the T-hangar aircraft storage units improvements from the Tract "B" property.

4.03 This Agreement may be terminated by written mutual agreement of the Parties.

ARTICLE V
Transaction Documents

5.01. This Agreement is a component of an integrated and concurrent set of transactions and agreements between one or more of the City, PlaneSmart! and Victory Jet, Inc., including Assignment of Ground Lease between Victory Jet, Inc. and PlaneSmart!; Amendment of Ground Lease between the City and PlaneSmart!; Second Amendment of Hangar Lease by and between Victory Jet, Inc. and the City; Assignment of Hangar Lease between the City and PlaneSmart!; Agreement Regarding Hangar Property between the City and PlaneSmart!, Reciprocal Easement between City and PlaneSmart! and; Memorandum of Assignment and Amendment of Ground Lease and Hangar Lease (collectively with this Agreement, the "Transaction Documents"). The concurrent execution and recording (as applicable) as of the Effective Date by all applicable parties of each of the Transaction Documents is a condition precedent to the validity and effectiveness of this Agreement.

ARTICLE VI
Miscellaneous

6.01 The Parties mutually agree that no aircraft, vehicle or other equipment will be left unattended on the Ramp Area thereby hindering access to and from Taxiway Romeo other than during periods of normal loading, unloading or refueling.

6.02 The Parties agrees that if they or any future owner of the Ramp Area shall be in default of any of the easements, covenants, agreements, terms or restrictions contained herein, then the non-defaulting party shall have the right, but shall not be obligated, to cure such default, provided it is a curable default under this Agreement, and provided that such defaulting party (hereinafter referred to as the "Defaulting Party"), and any mortgagee having an interest in the Ramp Area upon which the default has occurred are notified in writing of such intended cure in the manner provided hereinafter at least ten (10) days prior to the date of effecting any curative action. All expenses and costs incurred by the non-defaulting party effecting such cure, together with reasonable attorneys' fees and costs for collecting such costs and interest thereon, shall be a demand obligation owing by the Defaulting Party to the party effecting such cure, and such demand obligation shall bear interest at the lesser of eighteen percent (18%) per annum or the maximum rate then permitted under applicable law. The non-defaulting party or any mortgagee electing to effect such cure, its directors, officers, employees, agents, servants and workmen, shall have the right of entry and ingress and egress upon that portion of the Ramp Area upon which such default occurred as is necessary for effecting any such cure. The Defaulting Party hereby agrees to indemnify and hold harmless any such party so entering upon such Ramp Area from all claims, demands, liabilities and judgments arising from any such entry for the purpose of effecting any such cure. Additionally, the City, PlaneSmart! or a mortgagee effecting such cure, in the event that breach of such covenant, agreement or term is not subject to cure as provided herein, shall have the right to institute suit and obtain protective or mandatory injunction to prevent a continuing breach of or to enforce the continued observance by such Defaulting Party of the covenants, agreements, terms, conditions and restrictions contained herein, and the City,

PlaneSmart! and/or such mortgagee shall have the right to ordinary damages against such Defaulting Party occasioned by any such continuing default under this Agreement.

6.03 The City covenants and agrees that the servitudes, easements, rights, rights-of-way, privileges, agreements, covenants and restrictions, and all other terms hereof, shall be binding upon its respective successors and assigns, and all other persons or entities having or hereafter acquiring any right, title or interest in Tract B, and all other persons and entities claiming by, through or under said owners or lessees and their respective successors and assigns. In the event any owner or lessee or future owner or lessee of all or any part of Tract B shall convey either all or any portion of such Tract, such owner or lessee so conveying shall automatically be freed and relieved, from and after the date of recording of such conveyance, of all liability for future performance of any covenants, agreements or obligations on the part of such owner or lessee which are required by this Agreement to thereafter be performed with respect to any such Tract or the portion of any such Tract so conveyed, except as herein otherwise specified. It is intended hereby that the agreements and obligations contained in this Agreement shall be binding on such owner or lessee only as to that owner's or lessee's period of ownership or lease, or subsequent periods of ownership or lease, though such conveying owner or lessee shall remain liable after the date of recording of such conveyance for any obligations arising or incurred prior to such date of recording during such conveying owner's period of ownership or lease.

6.04 Any notice, demand, request or communication required or permitted hereunder shall be in writing and hand delivered or sent by United States mail, postage prepaid, registered or certified mail returned receipt requested or by any recordable transmittal such as electronic mail (email) with time and date stamp, addressed as follows:

If to PlaneSmart!:

15841 Addison Road
Addison, Texas 75001
Attn: Michael Brosler
mbrosler@planesmart.com

If to the City:

16051 Addison Road, #220
Addison, Texas 75001
Attn: Airport Director

Or to such other address or to the attention of such other person as hereafter shall be designated in writing by the applicable parties sent in accordance herewith.

6.05 A default under this Agreement by the City or PlaneSmart! shall constitute and be deemed an Event of Default under PlaneSmart!'s Ground Lease covering Tract A.

6.06 When the context in which words are used in this Agreement indicates that such is the intent, words in the singular number shall include the plural and vice versa, and the words in masculine gender shall include the feminine and neuter genders and vice versa.

6.07 Every provision in this Agreement is intended to be severable. In the event that any provision of this Agreement shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remaining provisions of this Agreement.

IN WITNESS WHEREOF, Grantor has executed this Agreement as of the date hereinabove set forth.

THE TOWN OF ADDISON:

PLANE SMART PROPERTIES, LLC

By: Mr. Ron Whitehead, City Manager

By: Michael Brosler

Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS §

COUNTY OF DALLAS §

 This instrument was acknowledged before me on the _____ day of _____, 2009 by Ron Whitehead, City Manager for the Town of Addison, a Texas home-rule municipality.

Notary Public, State of Texas

Print Name: _____

My commission expires: _____

STATE OF TEXAS §

COUNTY OF DALLAS §

 This instrument was acknowledged before me on the _____ day of _____, 2009 by Michael Brosler, _____ of PlaneSmart! Properties, LLC, a Texas limited liability company, on behalf of said company

Notary Public, State of Texas

Print Name: _____

My commission expires: _____

Exhibit “A”

Legal Description of PlaneSmart!’s Ground Lease Property

Exhibit “B”

Legal Description of the City’s Hangar Lease Property

Exhibit "C"

Description or Easement Area

EXHIBIT C
70' WIDE RECIPROCAL EASEMENT

BEING a 70 foot wide reciprocal easement situated in the Edward Cook Survey, Abstract No. 326, Dallas County, Texas, and being a part of the Final Plat of Addison Airport, an addition to the Town of Addison, Texas, according to the plat thereof recorded in Volume 2005131, Page 82 of the Deed Records of Dallas County, Texas (DRDCT), also being a portion of that same tract of land as described in ground lease to Victory Jet, Inc. recorded under Clerk's File No. 20080173519 DRDCT, and a portion of that same tract of land owned by the Town on Addison and known as 4768 Airport Parkway, Property #013C, and being more particularly described as follows:

COMMENCING at a 1/2-inch iron rod found with plastic cap stamped "Shields & Lee" at the northwest corner of said Victory Jet tract same being the northeast corner of said Property #013C;

THENCE S 06°12'33" E, along the west line of said Victory Jet lease tract and east line of said Property #013C, 185.39 feet to a 'PK' nail found;

THENCE N 84°01'52" E, continuing along the west line of said Victory Jet lease tract and east line of said Property #013C, 14.64 feet to the **POINT of BEGINNING**;

THENCE N 84°01'52" E, continuing along the west line of said Victory Jet lease tract and east line of said Property #013C, at 35.00 feet passing a cut 'x' set in the west line of said Victory Jet lease tract and east line of said Property #013C, entering into said Property #013C, in all a distance of 70.00 feet;

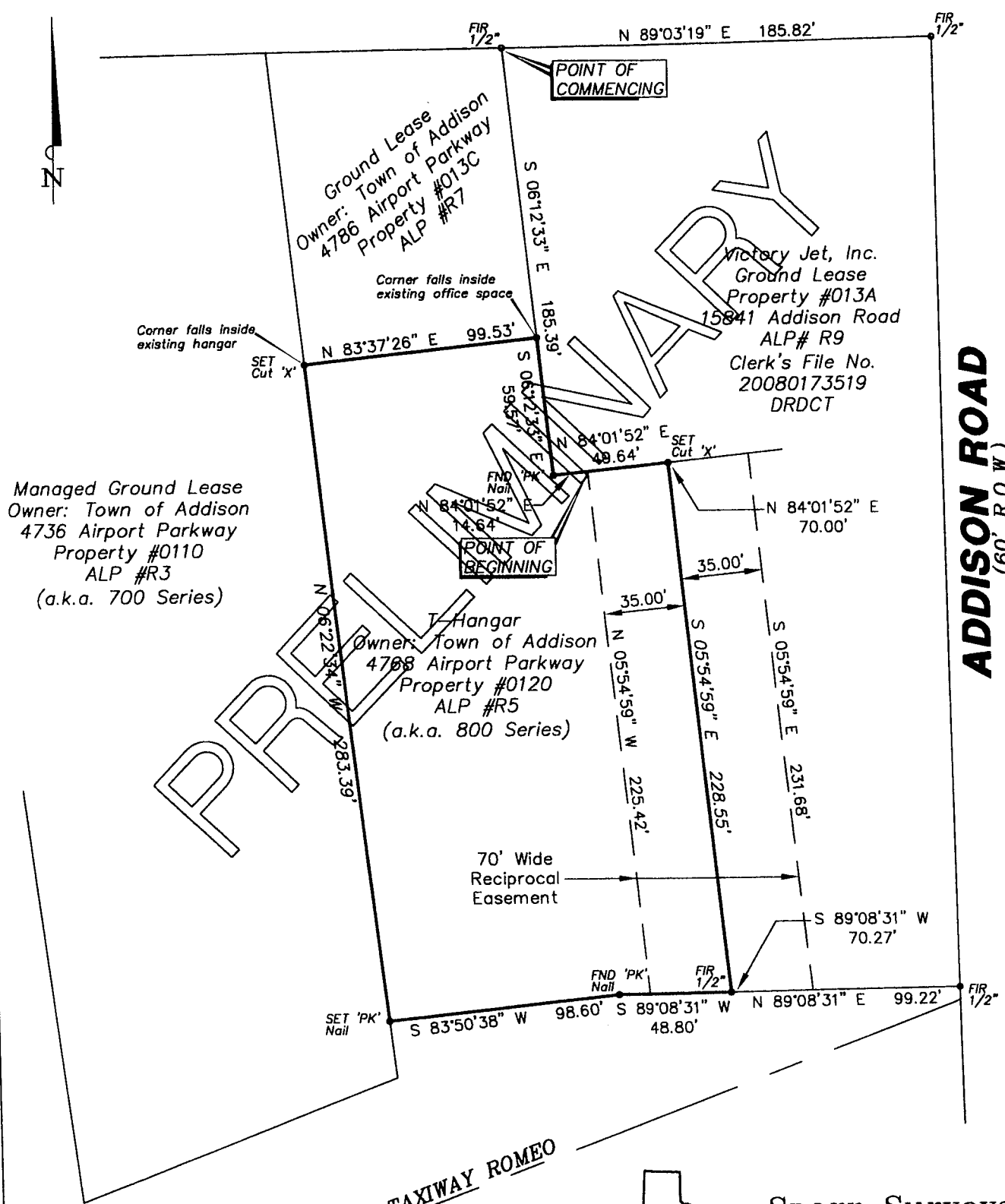
THENCE S 05°54'59" E, at all times remaining 35.00 feet east of and parallel to the west line of said Victory Jet lease tract and east line of said Property #013C, 231.68 feet to a point in the south line of said Property #013C;

THENCE S 89°08'31" W, at 35.14 feet passing a 1/2-inch iron rod found at the southwest corner of said Victory Jet lease tract, same being the southeast corner of said Property #013C, continuing along the south line of said Property #013C, in all a distance of 70.27 feet;

THENCE N 05°54'59" W, departing the south line of said Property #013C, at all times remaining 35.00 feet west of and parallel to the west line of said Victory Jet lease tract and east line of said Property #013C, 225.42 feet to the **POINT of BEGINNING and CONTAINING** 0.367 acre of land.

Brad Sparr
Registered Professional
Land Surveyor No. 3701

EXHIBIT C



Managed Ground Lease
 Owner: Town of Addison
 4736 Airport Parkway
 Property #0110
 ALP #R3
 (a.k.a. 700 Series)

Ground Lease
 Owner: Town of Addison
 4786 Airport Parkway
 Property #013C
 ALP #R7

Corner falls inside
 existing office space

Corner falls inside
 existing hangar

Victory Jet, Inc.
 Ground Lease
 Property #013A
 15841 Addison Road
 ALP# R9
 Clerk's File No.
 20080173519
 DRDCT

T-Hangar
 Owner: Town of Addison
 4768 Airport Parkway
 Property #0120
 ALP #R5
 (a.k.a. 800 Series)

70' Wide
 Reciprocal
 Easement

ADDISON ROAD
 (60' R.O.W.)

TAXIWAY ROMEO

Scale 1" = 60'
 Date 07-08-2009
 JOB No.: 19000N



Sparr Surveys
 2553 C.R. 722
 McKinney, Texas 75069
 (214) 544-2297





BANK ESTOPPEL AGREEMENT FORM

To Be Created On Bank Letterhead

_____, 2009

Town of Addison
P.O. Box 9010
Addison, Texas 75001-9010

RE: Ground Lease dated April 1, 1978, by and among the Town of Addison, Texas, a home-rule municipality (the "City", the same being the Town of Addison, Texas) and Addison Airport of Texas, Inc., a Texas corporation, as Landlord (the City now being the sole Landlord under the said Ground Lease, the "Base Lease" (as defined in the said Ground Lease) having expired, and the City alone being referred to herein as the "Landlord") and Charles E. Wagley, as tenant;

- the description of the real property subject to the said Ground Lease (the "Demised Premises") having then been modified by that Memorandum of Lease dated June 5, 1978 filed in Volume 78112, Page 0855 of the Official Public Records of Dallas County, Texas (the "OPR"); and
- the said Ground Lease then being amended and the Demised Premises again modified by that Amendment Agreement dated February 8, 1979; and
- the said Ground Lease being then amended by that Addendum effective May 1, 1994, with the description of the Demised Premises being further modified as set forth in the said Addendum; and
- the said Ground Lease then being assigned by Charles E. Wagley to Henley's Aviation Investments, Inc., a Texas corporation, by that Assignment of Ground Lease entered into and effective March 1, 1996 filed of record as Instrument #200101646487 of the OPR ; and
- the said Ground Lease then being amended by that Amendment To Ground Lease entered into and made effective March 1, 1996 and filed of record as Instrument #20080173519 of the OPR; and
- pursuant to a certain Settlement Agreement the said Ground Lease was then assigned by Henley's Aviation Investments, Inc. to Dee Dee Planas, Trustee of the C.E. Wagley Children's Trust dated January 17, 1992 (successor in interest to

Charles E. Wagley) (the "Wagley Trust") by that Deed in Lieu Agreement made effective June 4, 2008 and recorded as Instrument #20080211049 of the OPR; and

- the said Ground Lease was then assigned from the Wagley Trust to Victory Jet, Inc., a Texas corporation ("Victory Jet"), by that Assignment of Ground Lease entered into and made effective August 21, 2008, which assignment is reflected in that certain Memorandum of Ground Lease and Hangar Lease dated August 21, 2008 and filed of record as Instrument #2008027396 of the OPR; and;
- the said Ground Lease was then amended by that Amendment to Ground Lease entered into between the City and Victory Jet and effective August 21, 2008; and
- the tenant's leasehold interest in the said Ground Lease was then assigned by Victory Jet to PlaneSmart! Properties, LLC, a Texas limited liability company ("PlaneSmart!") by that Assignment of Ground Lease entered into and made effective _____, 2009 (the "PlaneSmart! Assignment"); and
- in connection with the PlaneSmart! Assignment, the said Ground Lease was then amended by that Amendment to Ground Lease Agreement between the City and PlaneSmart! effective _____, 2009 and which is reflected in that Memorandum of Ground Lease and Hangar Lease dated _____, 2009 and filed of records as Instrument #_____ in the OPR; and

by virtue of the above and foregoing assignments, PlaneSmart! is the "Tenant" of the said Ground Lease (the said Ground Lease, as amended and modified, being referred to herein as the "Ground Lease"), by which Ground Lease Landlord leases to Tenant, and Tenant leases from Landlord, certain real property (the "Demised Premises ") located generally at 15841 Addison Road at Addison Airport in the Town of Addison, Dallas County, Texas and as more specifically described in the Ground Lease (and being approximately 1.309 acres of land).

[Recitals are Preliminary]

Gentlemen:

JPMorgan Chase Bank, N.A., a national banking association (the "Bank") intends to make a loan to Plane Smart! Properties, LLC, a Texas limited liability company, which loan (the "Loan") in the amount of _____ (\$_____.00) will be secured by, among other things, a lien against the leasehold interest of Tenant under the Ground Lease in the Demised Premises created pursuant to a leasehold deed of trust (the "Leasehold Deed of Trust") to be executed by Tenant to David L. Mendez, as Trustee for the benefit of Bank, which Leasehold Deed of Trust shall be subordinate and inferior to the Ground Lease, and which shall be in substantially the form of the Leasehold Deed of Trust attached hereto. The proceeds of the Loan are to be used in accordance with the Ground Lease. The duties and liabilities of the Tenant under the Loan and Leasehold Deed of Trust and are sometimes referred to herein as the "Obligation."

The Bank has advised the Borrower that as a condition of the Loan, Bank requires that Tenant obtain the written acknowledgment and consent of Landlord to the execution by Tenant of the above-described Leasehold Deed of Trust and the written acknowledgment and consent of Landlord to the statements set forth in this letter.

Therefore, by executing the enclosed copy of this letter and returning it to the undersigned, Landlord hereby specifically states as follows (but notwithstanding any statement or provision hereof, Landlord's statements herein do not constitute approval by Landlord of the terms, conditions and provisions of the Leasehold Deed of Trust) (when the actual knowledge of the Landlord is referred to herein, the same means the actual knowledge of Bill Dyer, real estate manager for the Addison Airport, with the firm of Washington Staubach Addison Airport Venture):

1. Landlord consents to and takes notice of the encumbrance by Tenant of Tenant's leasehold interest under the Ground Lease pursuant to the Leasehold Deed of Trust. Landlord acknowledges that the encumbering of the leasehold estate by the Leasehold Deed of Trust is permitted under the Ground Lease.
2. The Ground Lease is (a) in effect; (b) has not been modified, altered or amended to the best of Landlord's actual knowledge except as described herein; (c) no default under the Ground Lease has occurred by Landlord or Tenant to the best of Landlord's actual knowledge.
3. Until the Obligation is satisfied, Landlord will not modify the Ground Lease without giving Bank prior written notice of such modification.
4. Landlord will give to Bank, at the address of Bank specified in this letter or at such other address as Bank may hereafter designate in writing to Landlord, prompt written notice of any default by Tenant under the Ground Lease simultaneously with the giving of such notice to Tenant (if such notice is required under the Ground Lease), and Bank shall have the right, but not the obligation, for a period of fifteen (15) days after its receipt of such notice or within any longer period of time specified in such notice, to take such action or to make such payment as may be necessary or appropriate to cure any such default so specified, the intent being that Landlord shall not exercise Landlord's right to terminate the Ground Lease without first giving Bank the notice provided for herein and affording Bank the right to cure such default as provided for herein.
5. For the purposes of this letter, any notice to Bank may be delivered in person or shall be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage prepaid, registered, or certified mail, return receipt requested, addressed to Bank, as the case may be, at the above-described address. Bank's address for notice may be changed by written notice delivered as provided herein.
6. If Bank or a third party (provided such third party has been approved in writing by Landlord) succeeds to the interest of Tenant in and to the Ground Lease by means of

foreclosure under the Leasehold Deed of Trust, by means of a transfer in lieu of such foreclosure, or by any other lawful means due to the default of Borrower under the Loan or Tenant under the Leasehold Deed of Trust, Landlord shall thereafter accept, recognize and treat Bank or such approved third party as the tenant under the Ground Lease and Landlord shall continue to perform all of its obligations under the Ground Lease subject, however, to the terms and conditions of the Ground Lease. Bank may thereafter, with the written consent of the Landlord, which consent shall not be unreasonably withheld or delayed, assign its leasehold right, title, and interest in and to the Ground Lease. For purposes hereof and any applicable law, and without limitation as to other grounds for Landlord withholding consent, it shall be deemed to be reasonable for Landlord to withhold its consent when any one or more of the following apply:

- (a) the proposed assignee is of a character or of a reputation or is engaged in a business which is not consistent with the master or strategic plan of Addison Airport as determined by Landlord;
- (b) the proposed assignee has not demonstrated sufficient financial responsibility or creditworthiness to the satisfaction of Landlord in light of the duties, obligations, and responsibilities of the tenant under the Ground Lease at the time when the consent is requested;
- (c) the proposed assignee's intended use of the Demised Premises (as such term is defined in the Ground Lease) is inconsistent with the Ground Lease;
- (d) the proposed assignment would cause Landlord to be in violation of another lease or agreement to which Landlord is a party or to which Landlord or the Addison Airport is subject (including, without limitation, any grant agreements or grant assurances of the Federal Aviation Administration or any other governmental entity or agency);
- (e) if at any time consent is requested or at any time prior to the granting of consent, tenant is in default under the Ground Lease or would be in default under the Ground Lease but for the pendency of a grace or cure period, provided that if such default is cured within such grace or cure period, then Landlord may not continue to withhold its consent solely for this circumstance; or
- (f) the proposed assignee does not intend to occupy the entire Demised Premises as described in the Ground Lease and conduct its business therefrom for a substantial portion of the then remaining term of the Ground Lease.

For purposes hereof and any applicable law, and without limitation as to other grounds for Landlord delaying consent, it shall be deemed to be reasonable for Landlord to delay its consent for a period of 45 days after the receipt by Landlord of all information requested by Landlord regarding or in connection with the proposed assignment and the proposed assignee.

7. (a) Bank represents to Landlord that Bank has the right pursuant to the Leasehold Deed of Trust to access and remove from the Demised Premises Tenant's personal property to enforce Bank's security interest (but excluding any fixtures, or trade fixtures or trade fixtures that cannot be removed without injury to the property, installed at or within the Demised Premises), either during the term of the Ground Lease or within thirty (30) days after the expiration or termination of the Ground Lease. If Bank exercises this right after the end of the Ground Lease term, Bank must, for that period, pay all rent and comply with all other requirements of Tenant under the Ground Lease as a condition to exercising this right.
- (b) Landlord subordinates to Bank's security interest any lien (contractual or statutory) that Landlord has in any of Tenant's personal property (but excluding any fixtures, or trade fixtures that cannot be removed without injury to the property, installed at or within the Demised Premises) located at the Demised Premises.
8. To the actual knowledge of Landlord no rent has been paid more than thirty (30) days in advance of its due date.
9. This letter will not be affected by any renewal of the Obligation.

Very truly yours,

JPMORGAN CHASE BANK, N.A.

By: _____

Name: _____

Title: _____

Signed this the _____ day of _____, 2009.

TOWN OF ADDISON, TEXAS

Witnessed

By: _____

By: _____

Name: _____

Name: _____

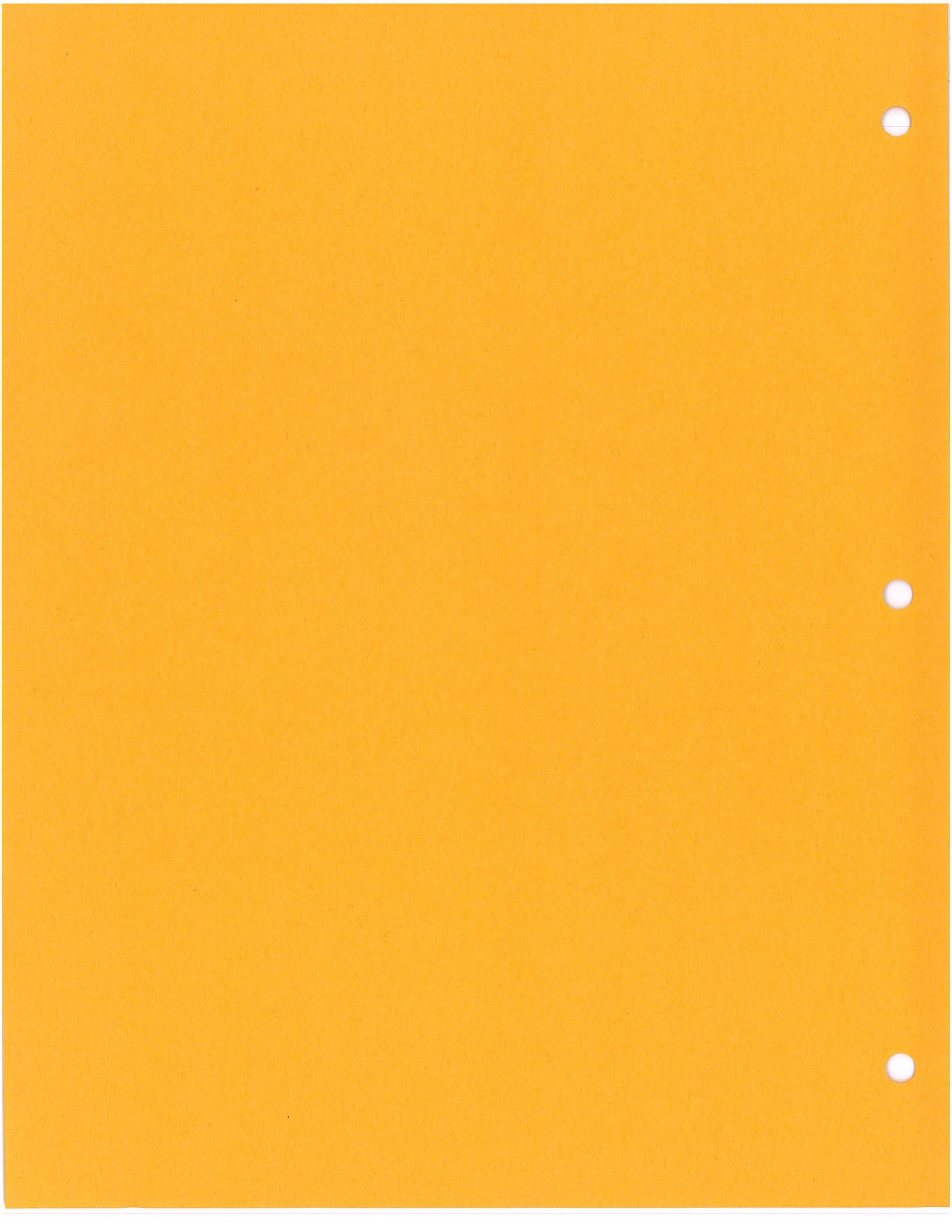
Title: _____

Title: _____

cc: Real Estate Manager
Addison Airport
16051 Addison Road, Suite 220
Addison, Texas 75001

***THE REFERENCED "LEASEHOLD DEED OF TRUST" SHALL BE PROVIDED
BY THE BANK UPON FINALIZATION OF THIS TRANSACTION.***





**MEMORANDUM OF ASSIGNMENT AND AMENDMENT OF
GROUND LEASE AND HANGAR LEASE**

Date: _____, 2009

Landlord: Town of Addison, Texas, a home-ruled municipality
Landlord's Mailing Address: P.O. Box 9010
Addison, Texas 75001-9010

Assignor: Victory Jet, Inc., a Texas corporation
Assignor's Mailing Address: Attn: Mr. Ray Kinney, President and Owner
17415 Club Hill Court
Dallas, TX 75248

Assignee/Tenant: PlaneSmart! Properties, LLC,
a Texas limited liability company
Assignee/Tenant's Mailing Address: Attn: Mr. Michael Brosler
15841 Addison Road
Addison, Texas 75001

Description of Ground Lease: Executed on April 1, 1978 between the City of Addison, Texas (the same being the Town of Addison, Texas) and Addison Airport of Texas, Inc., as landlord, and Charles E. Wagley, as tenant by the terms of which certain real property owned by the City and located generally at 15841 Addison Road within the Addison Airport within the Town of Addison, Texas and owned by the City (the "Ground Lease Property" was leased to the tenant, according to the Map thereof recorded in Volume 2005131, Page 82, Deed Records, Dallas County, Texas, being the same property described in Exhibit "D" to Amendment to Ground Lease filed 05/27/2008 as Instrument # 20080173519 and in Exhibit "A" attached to the Memorandum of Ground Lease and Hangar Lease filed 8/21/2008 as Instrument #20080273996 in the Real Property Records, Dallas County, Texas, and further described in **Exhibit "A"** attached hereto and made a part hereof and leased to Tenant; the primary Term of said Ground Lease is September 1, 1978 through December 31, 2018. The primary Term of said Ground Lease is subject to conditional extension as stated in the 2009 Ground Lease Amendment (as defined below).

Description of Hangar Lease: Executed on March 1, 1996 between the Town of Addison, Texas (the "City") and Addison Airport of Texas, Inc., as landlord, and Henley's Aviation Investments, Inc., a Texas corporation, as tenant, by the terms of which certain real property located in proximity of 15841 Addison Road, adjacent to the Ground Lease premises, and

commonly referred to as Property #0120; Building R5 Units 03, 05, 07, 09, 11, 13 and 15 (also referred to as 803 South, 805, 807, 809, 811, 813 and 815 or the "Leased Hangars") at Addison Airport within the Town of Addison, Texas and owned by the City (the "Hangar Property") was leased to the said Henley's Aviation Investments, Inc., as further described in **Exhibit "B"** attached hereto and made a part hereof; the Term of said lease commenced March 1, 1996 and shall continue until the first to occur of either the removal of the Leased Hangars, as provided for therein or termination or expiration of the Ground Lease. The Hangar Lease was amended by that Amendment to Hangar Lease entered into on August 21, 2008 wherein the Tenant agreed to make certain improvements and repairs to the Leased Hangars. The Hangar Leases was again amended by that Second Amendment to Hangar Lease entered into on _____, 2009, wherein the leased premises was redefined to included Unit #03 only (the "Leased Hangar") and deleted the terms, conditions and provisions included in items 2.A through Section 2.F of the August 2008 Amendment.

WHEREAS, the above-referenced Ground Lease, as amended and modified, has been assigned by Assignor to Assignee pursuant to that certain Assignment of Ground Lease executed by Assignor and Assignee, consented to by Landlord, and made effective on _____, 2009 (the "2009 Ground Lease Assignment").

WHEREAS, the above-referenced Ground Lease, as amended and modified, has been amended by Landlord and Assignee pursuant to that certain Amendment to Ground Lease executed by Landlord and Assignee and made effective on _____, 2009 (the "2009 Ground Lease Amendment"). Such 2009 Ground Lease Amendment, among other provisions:

(1) provides Assignee a conditional extension of the Term of the Ground Lease until December 31, 2036 upon the completion of (a) the Ground Lease Repairs and Hangar Repairs pursuant to the 2009 Ground Lease Amendment, and (b) the completion of the "Additional Improvements" pursuant to the 2009 Ground Lease Amendment; and

(2) provides Assignee a conditional option to add certain Option Land with and into the Ground Lease Property and become subject to the Ground Lease, and upon the satisfaction of said conditions the term of the Ground Lease shall be extended until December 31, 2049; and

WHEREAS, the above-referenced Hangar Lease, as amended and modified, has been assigned by Assignor to Assignee by way of that certain Assignment of Hangar Lease Agreement executed and made effective on _____, 2009 the "2009 Hangar Lease Assignment").

WHEREAS, portions of the above-referenced Ground Lease Property and the above-referenced Hangar Property are the subject of that certain Reciprocal Easement Agreement between Landlord and Assignee, executed by Landlord and Assignee and made effective on _____, 2009 (the "2009 Reciprocal Easement").

Additional Provisions: The Ground Lease having been amended and modified, the Hangar Lease as amended and modified, together with the 2009 Ground Lease Assignment, the 2009 Hangar Lease Assignment and the 2009 Reciprocal Easement (collectively the "Ground Lease and Hangar Lease Documents") are all incorporated herein and made a part hereof by reference and are binding upon the parties hereto and their respective heirs, executors, administrators, successors, and assigns in interests. Should a conflict arise between any term of this Memorandum and any of the Ground Lease and Hangar Lease Documents, each as amended and modified, the respective and applicable Ground Lease and Hangar Lease Document(s) shall prevail.

ASSIGNOR:

VICTORY JET, INC.

By: _____
Mr. Ray Kinney, President

ASSIGNEE:

PLANESMART PROPERTIES, LLC

By: _____
Michael Brosler

Title: _____

LANDLORD:

Town of Addison, Texas

By: _____
Ron Whitehead, City Manager

ACKNOWLEDGEMENT

STATE OF TEXAS §

COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 2009 by Ray Kinney, President of Victory Jet, Inc., a Texas corporation on behalf of said corporation.

Notary Public, State of Texas

Print Name: _____

My commission expires: _____

STATE OF TEXAS §

COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 2009 by Michael Brosler, _____(Title) of PlaneSmart! Properties, LLC, a Texas limited liability company, on behalf of said company

Notary Public, State of Texas

Print Name: _____

My commission expires: _____

ACKNOWLEDGMENT

STATE OF TEXAS §

COUNTY OF DALLAS §

This instrument was acknowledged before me on this the ____ day of _____, 2009 by Ron Whitehead, City Manager of the Town of Addison, Texas, a Texas home-ruled municipality, on behalf of said municipality.

Notary Public, State of Texas

Print Name: _____

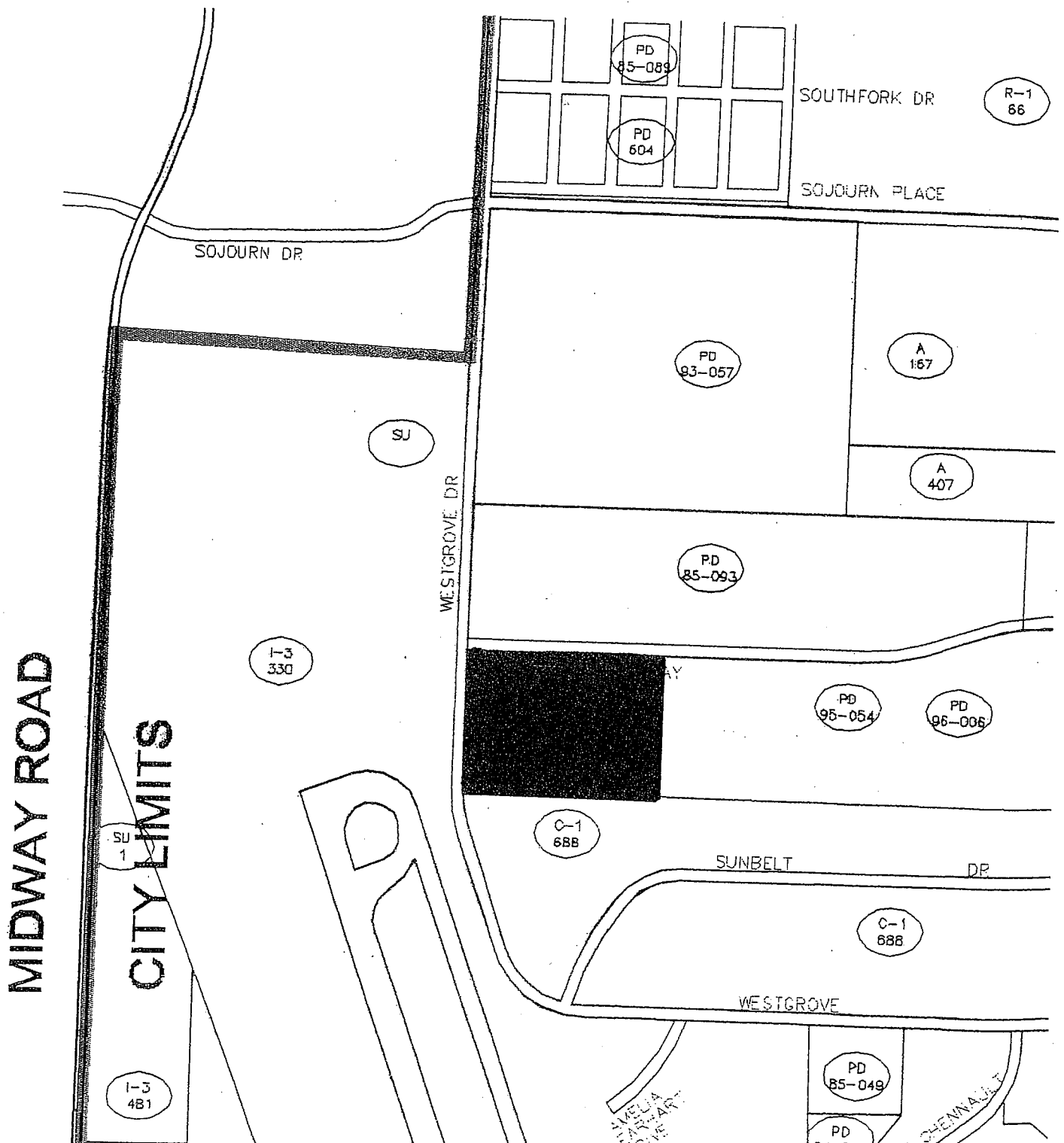
My commission expires: _____

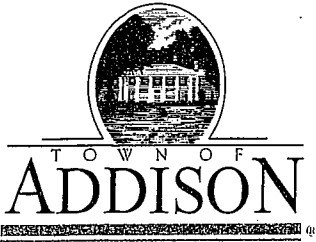
EXHIBIT "A"

EXHIBIT 'B'

REPLAT/Lot 2R, Block A, Excel Plaza

REPLAT/Lot 2R, Block A, Excel Plaza. Requesting approval of a replat for one lot of 7.725 acres, located at the southeast corner of the intersection of Westgrove Drive and Excel Parkway, on application from NNN Addison.Com Center, represented by Mr. Kelli Burchett of Grubb-Ellis.





DEVELOPMENT SERVICES
(972) 450-2880 Fax: (972) 450-2837

16801 Westgrove
Post Office Box 9010 Addison, Texas 75001-9010

June 18, 2009

STAFF REPORT

RE: REPLAT/Lot 2R, Block A, Excel Plaza

LOCATION: One lot of 7.725 acres, located at the southeast corner of the intersection of Westgrove Drive and Excel Parkway

REQUEST: Approval of a replat

APPLICANT: NNN Addison.Com Center, represented by Mr. Kelli Burchett of Grubb-Ellis

DISCUSSION:

Background. This property is zoned PD, Planned Development through Ordinance 099-025. At this point, the Environmental Protection Agency, a federal agency, is planning to lease a portion of the building. The EPA is planning to store equipment in a secured area behind the building. The EPA will use the equipment to respond to an environmental event, such as a hurricane or tornado. In order to provide a secured yard for the equipment, the property owner needs to re-route a fire lane. In addition, there are water and detention area drainage easements that need to be added to the plat.

Public Works Review. The Public Works Department has reviewed the proposed replat, and recommends approval subject to the following conditions:

1. Label P.O.B.
2. Identify the limits of the detention area easement.
3. Add a 20' right-of-way corner clip at Westgrove Drive and Excel Parkway.
4. Add a signature block for the mayor and city secretary.
5. Provide a closure sheet.

RECOMMENDATION:

REPLAT/Lot 2R, Block A, Excel Plaza
June 18, 2009

Page 2

Staff recommends approval of the replat for Lot 2R, Block A, Excel Plaza subject to the conditions listed above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "CMORAN". The letters are stylized and connected, with a large "C" and "M" at the beginning.

Carmen Moran
Director of Development Services

COMMISSION FINDINGS:

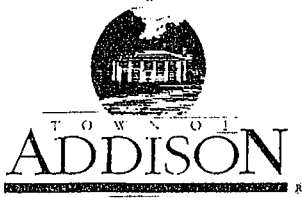
The Addison Planning and Zoning Commission, meeting in regular session on June 25, 2009, voted to recommend approval of the request for replat of Lot 2R, Block A, Excel Plaza, subject to the following conditions:

1. Label P.O.B.
2. Identify the limits of the detention area easement.
3. Add a 20' right-of-way corner clip at Westgrove Drive and Excel Parkway.
4. Add a signature block for the mayor and city secretary.
5. Provide a closure sheet.

Voting Aye: DeFrancisco, Doherty, Gaines, Hewitt, Resnik, Wheeler

Voting Nay: none

Absent: Wood



PUBLIC WORKS DEPARTMENT
Post Office Box 9010 Addison, Texas 75001-9010

(972) 450-2871 FAX (972) 450-2837
16801 Westgrove

Memorandum

To: Carmen Moran
CC: Nancy Cline
From: Clay Barnett
Date: 6/18/2009
Re: Lot 2R, Block A Excel Plaza

-
1. Label P.O.B.
 2. Identify the limits of the detention area easement.
 3. Add a 20' right-of-way corner clip at Westgrove Drive and Excel Parkway.
 4. Add a signature block for the mayor and city secretary.
 5. Provide a closure sheet.

Council Agenda Item: #R15

SUMMARY:

This item is to award a contract to BTA Services Ltd, dba Action Services for Pavement Markings, Bid 09-17.

FINANCIAL IMPACT:

Budgeted Amount: \$70,000

Contract Amount: \$39,459

This project is funded for 2008-09 in the Street Operations Budget.

Project Manager: Robin Jones

BACKGROUND:

On an annual basis the Street Division contracts the replacement of worn and missing pavement markings. This project replaces pavement markings at 50 locations around Town with over 30 of the locations being signalized intersections.

Prior to bids being opened on June 30, 2009 this project was advertised twice in the Dallas Mornings News and listed with Demand Star. Six contractors submitted bids with BTA Services Ltd, dba Action Services submitting the low bid. BTA has successfully completed similar pavement marking projects in Addison.

RECOMMENDATION:

Staff recommends awarding this project in the amount of \$39,459 for the installation of pavement markings at various locations to BTA Services Ltd, dba Action Services

Pavement Markings

BID NO 09-17

DUE: June 30, 2009

10:00 AM

BIDDER	Signed	Bid Bond	Bid Total
Texas Highway Markings, LLC	Y	Y	\$ 69,976.50
Striping Technology	Y	Y	\$ 81,637.50
Striping Plus	Y	Y	\$ 58,516.80
Action Services	Y	Y	\$ 39,459.00
Highway Technologies	Y	Y	\$ 93,277.84
Stripe-a-zone, Inc	Y	Y	\$ 59,435.45

Matthew McCombs

Matt McCombs, Management Analyst

Robin Jones

Witness

Council Agenda Item: #R16

SUMMARY:

This item is for the presentation and discussion of the status of the Storm Water Management Program.

FINANCIAL IMPACT:

none

BACKGROUND:

The Texas Commission on Environmental Quality is the permitting authority for storm water discharges in Texas. Beginning in 1990, Phase I began and included cities with populations over 100,000. On August 13, 2007, the Texas Commission on Environmental Quality approved the Pollutant Discharge Elimination System federal permit to authorize discharges of storm water from regulated small municipal separate storm sewer systems ("Phase II" MS4s) into or adjacent to waters of the State. The permit requires that over the next five years, the Town of Addison must implement a series of programs in an effort to reduce or eliminate pollutants from entering streams and creeks.

An annual Public Hearing is required by TCEQ to educate the public about stormwater runoff. Staff will present a summary of education efforts and other steps to meet the requirements.

Staff has requested an "expanded level of service" in the amount of \$70,000 in this year's budget process for evaluating and studying the advantages and disadvantages of a Storm Water Utility Fee. A user-based fee would allow the Town of Addison to properly allocate the cost of such programs.

The Water Quality Action Plan recommends several phases of work that will be discussed in the presentation. Staff has requested expanded levels of service for 2009-2010 of \$55,000 for Unidirectional Flushing Pilot Area 1 and \$80,000 for chemical monitoring stations.

RECOMMENDATION:

Discussion item only.

Council Agenda Item: #R17

SUMMARY:

This item is for the presentation and discussion of the results of the Water Quality Action Plan that was prepared by Freese & Nichols, Inc.

FINANCIAL IMPACT:

Study cost: \$64,980.00

BACKGROUND:

In the last 10 years, drinking water standards have been modified that require water treatment plants to be retrofitted to eliminate some disinfectant by-products. As a result, the water leaving the treatment plants has more instability than in times past. In June 2006, the Town of Addison experienced nitrification for the first time in our ground storage tank at Surveyor. Nitrification is a bacterial conversion (oxidation) of ammonia to nitrite and then on to nitrate. Ammonia is used with chlorine (chloramines) for disinfection. Too much ammonia (free ammonia) and a combination of low chlorine residuals, water age, high water temperature and low pH are risk factors that will contribute to nitrification. Although heterotrophic bacteria and nitrification may not pose a direct threat to public health, it contributes to the problem of low chlorine residuals. Staff responded quickly after collecting a very low chlorine residual and was able to isolate the tank before the water was pumped into our system. Samples were taken and very high levels of nitrates were found. The tank was then disinfected with free chlorine (calcium hypochlorite) that kills bacteria.

Since June of 2006, staff has learned that most of the surrounding cities have been experiencing the same issues and similar to Addison have taken precautions to control nitrification in their systems. Such precautions have included increased collections of chlorine residuals from three a day to six a day, aggressively flushing dead end lines and low water usage areas, and managing tank levels. Staff's emphasis is to ensure that chlorine residuals are always above state minimums. The state mandates that all public water drinking suppliers must maintain a chlorine residual (chloramines) of minimum 0.5 mg/l and maximum of 4.0 mg/l. Once levels fall below 0.5 mg/l a boil water notice must be delivered to the water systems customers.

Staff contracted with Freese & Nichols, Inc. (FNI) in 2008, to prepare a Water Quality Action Plan. As part of the contract, Freese & Nichols conducted three tasks. Task 1: Review historical water quality data & provide recommendations for focused water quality sampling plan. Task 2: Analyze water quality enhancement alternatives for Addison. Task 3: Create water quality action plan and phasing recommendations.

The Water Quality Action Plan recommends several phases of work that will be discussed in the presentation. Staff requested “expanded level of services” during the 2009-2010 budget process of \$55,000 for Unidirectional Flushing Pilot Area 1 and \$80,000 for chemical monitoring stations.

RECOMMENDATION:

Discussion item only.

Council Agenda Item: #R18

SUMMARY:

This item is for the approval of a supplemental agreement to the Engineering Services Agreement with Freese & Nichols, Inc., in an amount not to exceed \$129,300.00 for additional design services on the proposed 1.5 Million Gallon Elevated Storage Tank.

FINANCIAL IMPACT:

Original Cost:	\$550,000.00
Additional Professional Services:	\$129,300.00
Procurement of demo wind turbine:	\$ 41,620.00

Funds are available in the Utility Fund from 2008 sale of certificates of obligation.

Project Manager: Nancy S. Cline, P.E.

BACKGROUND:

The Texas Commission in Environmental Quality (TCEQ) has recommended that the Town pursue construction of additional elevated storage in order to provide 100 gallons of elevated storage per connection. A letter to the Town of Addison from TCEQ, dated January 7, 2006, indicated that the Town had reached 94.5% of its elevated storage capacity. Freese and Nichols, Inc. was retained in 2006 by the Town of Addison to perform a Water Distribution Study. The 2006 study determined that additional elevated storage was needed. At the November 27, 2007 Council meeting, Council approved a contract with Freese & Nichols, Inc. to perform preliminary engineering for the elevated storage tank (EST). With the high visibility of the proposed location of the new tower (Surveyor and Belt Line) and its proximity to the planned Arapaho Rd. trail extension to the utility easement, the new water tower offers and opportunity to provide an iconic statement for the community.

On November 11, 2008, Council approved a professional design services contract with Freese & Nichols for \$550,000 for the design and general construction representation services. It included a hemisphere painted carbon steel bowl on a 46 ft diameter concrete pedestal, a stainless steel veneer at bottom of pedestal, 15 solar wind turbines mounted on top of the tank bowl, and ground floor storage with roll-up door. The original contract also includes assistance from Freese & Nichols in evaluating and recommending the placement of a demonstration wind turbine on the ground level near the EST that would allow the Town to evaluate the advantages of including additional wind turbines at the top of the EST.

The proposed contract amendment will include the design of an approximately 830 square foot learning center room in the pedestal of the elevated tank. The first floor of the elevated tank will have half of the space dedicated to the classroom and the remaining half available for storage for Public Works. A crane will be installed above the first floor to allow for storage on a second floor. The learning center design will include an enclosed room for data displays, restrooms (water supply and sanitary sewer service), access doors, an HVAC system, ADA accessibility to the room, room interior and exterior walls and ceiling coatings/texturing, room interior floor coating / covering. The learning center will include a technology center which will enable guests to view energy production and wind measurement data, a PowerPoint presentation on the elevated tank, and other videos / presentations ad desired. A chlorine analyzer will also be included to monitor the water quality in the elevated storage tank.

The contract amendment also includes installation of two anemometers and wind measurement services and purchase of the wind measuring systems. The anemometers will be installed on top of the existing elevated tank and on top of the wind turbine demonstration unit at the new tank site. The wind measurement system will remain on-site as part of the wind energy system after the system is installed. The wind measurement system will be used to collect decision-making data as it relates to wind energy potential on the site. Upon completion of the new elevated tank, the wind measurement system from the existing tank will be relocated to the new elevated tank.

The total amount for the contract including learning center design, design of the audio/visual equipment for the learning center, design of the chlorine analyzer and installation and purchase of the wind measuring systems is \$129,300.

RECOMMENDATION:

Staff recommends that Council authorize the City manger to enter into a supplemental agreement to the Engineering Services Agreement with Freese & Nichols, Inc., in the amount not to exceed \$129,300.00, for additional design services on the proposed 1.5 Million Gallon Elevated Storage Tank.

Council Agenda Item: #R19

SUMMARY:

This item is for the contract with SWG Energy to install a 3.5 KW Cleanfield Wind Turbine for \$41,620.00 on the future Elevated Storage Tank site at Surveyor and Arapaho Road.

FINANCIAL IMPACT:

Original Cost:	\$550,000.00
Additional Professional Services:	\$129,300.00
Procurement of demo wind turbine:	\$ 41,620.00

Funds are available in the Utility Fund from 2008 sale of certificates of obligation.

Project Manager: Nancy S. Cline, P.E.

BACKGROUND:

The Texas Commission in Environmental Quality (TCEQ) has recommended that the Town pursue construction of additional elevated storage in order to provide 100 gallons of elevated storage per connection. A letter to the Town of Addison from TCEQ, dated January 7, 2006, indicated that the Town had reached 94.5% of its elevated storage capacity. Freese and Nichols, Inc. was retained in 2006 by the Town of Addison to perform a Water Distribution Study. The 2006 study determined that additional elevated storage was needed. At the November 27, 2007 Council meeting, Council approved a contract with Freese & Nichols, Inc. to perform preliminary engineering for the elevated storage tank (EST). With the high visibility of the proposed location of the new tower (Surveyor and Belt Line) and its proximity to the planned Arapaho Rd. trail extension to the utility easement, the new water tower offers and opportunity to provide an iconic statement for the community.

On November 11, 2008, Council approved a professional design services contract with Freese & Nichols for \$550,000 for the design and general construction representation services of the 1.5 million gallon tank. In the preliminary design phase of the elevated tank, the Town, Freese & Nichols and SWG Energy underwent an extensive evaluation process to select the most efficient wind turbine that fits the project constraints. While final design of the elevated tank is underway, a demonstration wind turbine unit will be installed at the new elevated tank site to begin evaluating system performance. The data from this unit will be evaluated along with the data from the anemometers.

This contract includes the installation of a 3.5 KW CleanField Wind turbine mounted on top of an approximately 60 ft pole, which will match the style of the nearby street light poles. The contract also includes the construction of a standard concrete pole base, complete balance of system, shipping of all equipment, complete turnkey installation, final connection by licensed electrician and final electrical permit inspection. The total cost of this contract is \$41,620.00

RECOMMENDATION:

Staff recommends that Council authorize the City Manager to enter into a contract with SWG Energy to install a 3.5 KW Cleanfield Wind Turbine for \$41,620 on the future Elevated Storage Tank site at Surveyor and Arapaho Road.

ATTACHMENT:

New Addison Water Towner Site CleanField Energy Demonstration Wind Turbine proposal

QuickTime™ and a
TIFF (Uncompressed) decompressor
are needed to see this picture.



**New Addison Water Tower Site
CleanField Energy Demonstration Wind Turbine
Turnkey System Description and Installed Costs
March 1, 2009**

CleanField Energy Model V3.5 Vertical Axis Wind Turbine System

Technical Review

The V3.5 VAWT has three major components (turbine, generator and inverter) that offer a series of features, which have been customized as a fully integrated system by Clearfield Energy™. This solution enables the complete system to be optimized for maximum efficiency and reliability.

Turbine

CleanField's turbine has been designed for simplicity by having fewer moving parts and providing increased reliability while the stationary center structure can accommodate grounding for lightning protection. The turbine was designed with a high aspect ratio in order to accommodate low nominal RPM of the turbine. As a result, a low blade speed ratio (ratio of blade speed to wind speed) minimizes audible noise.

The blades are connected to the shaft by way of a pair of struts with an aerodynamic profile that has very low power losses, contributing to a better power coefficient of the turbine. The turbine is equipped with a custom developed sensor/communication interface board, which communicates with the inverter for data collection, supervision and protection of the turbine resulting in extended life expectancy and lowering maintenance costs. The sensor board monitors turbine vibration for resonant frequency skipping or to shutdown turbine if excessive vibration is detected; generator temperature to reduce the output power of the turbine and eventually shut it down if thermal operating limits are approaching; ambient temperature to prevent the turbine start if outside temperature drops below -40C and prevent the bearing from damage; and electromechanical brake status to ensure controlled stoppage of turbine and control turbine speed to ensure that turbine is operated within safety limits and maximized efficiency.

Generator

The generator is a direct drive, low speed, permanent magnet generator (PMG) with an external rotor. Designed and built to match the turbine parameters (nominal rotational speed, nominal torque, assembly requirements etc.), it is an integral part of the system structure. The Fail-safe Electro-mechanical brake with status feedback is included in the generator (energized in order to be released) and will engage in case of power loss. Shutting down the power will stop the turbine from spinning and also allows service and maintenance work to proceed safely.

Inverter Electronics

The inverter has been designed with a custom algorithm for permanent magnet generator control. The flux vector control software provides an extremely sophisticated means of monitoring voltage, frequency, and current without costly and unreliable external sensors, which is capable of profiling and predicting patterns and conditions.

The V3.5 RPM is custom controlled by regulating current to and from the generator. The control algorithm allows variable speed operation and the generator delivers the optimum power by following the power curve of the turbine while staying within safety limits. As a result, even in high wind or gusty conditions, the turbine RPM will not exceed 160 RPM. This control

algorithm is fundamentally different than virtually all other small wind turbines available today, and is of significant advantage, providing improved performance and margins of safety.

Turbine Development & Validation

Cleanfield's V3.5 VAWT has gone through extensive product engineering, testing (lab and field) and validation.

Wind tunnel testing to validate product performance. Extensive testing has been performed by McMaster University at the University of Waterloo's wind tunnel, University of Western Ontario's Wind Tunnel Laboratory and at the National Research Council wind tunnel in Ottawa.

- Finite Element Analysis (FEA) of mechanical elements for static and fatigue analysis
- Structural cyclic fatigue testing of turbine shaft
- Structural testing of blades
- Inverter & generator tested and certified to CSA 22.2 No. 107.1-01

Turbine Mounting

The V3.5 Demonstration Turbine will be mounted to a specially engineered pole capable of withstanding the force of a wind generation system. Mounted to the top of the pole will be the turbine manufacturer's pre-engineered mounting plate that matches the wind turbine mounting plate. The two matching plates enable the turbine to be bolted to the pole. All installations will be subjected by manufacturer's engineering review.

Key Benefits of Vertical Axis Wind Turbines

VAWT's provide superior performance in urban environments due to their inherent characteristics. Some key benefits of vertical wind turbines over horizontal wind turbines are:

- Ability to effectively capture dirty/turbulent winds which are typical in urban environments; especially in built up areas;
- VAWT's do not need to yaw to capture wind as wind direction changes. They are able to capture wind from any direction; and,
- VAWT's are much more durable and reliable working in turbulent winds as they are designed to take the wind forces from all directions.

Cleanfield V3.5 Competitive Strengths

- V3.5 VAWT has been designed to effectively capture wind either off of rooftops or ground mount monopoles in both urban and suburban settings;
- Cleanfield's VAWT can be effectively roof mounted and does not need to be raised high above the rooftop to operate. They provide an excellent wind energy solution where there are height restrictions set by local regulations in urban environments;
- V3.5 turbine, generator and inverter has been designed as an integrated system resulting in optimized system performance;
- Variable speed operation;
- Elegant design is both simple and robust resulting in long life expectancy and minimal maintenance;
- Low nominal RPM resulting in lower blade speed ratio and negligible audible noise;
- Unique sensor board has been integrated into the turbine for data collection and

- supervision to monitor and protect the turbine;
- Advanced emergency braking mechanism to manage turbine speed and lock down the turbine when wind speeds are excessive;
- Turbine blades are made from gel coated reinforced fiberglass which minimizes icing conditions in the winter; and,
- Offsite monitoring option by Cleanfield via web enabled connection for preventative maintenance.

The Balance of the Grid Connected System

The following components comprise the complete balance of the wind turbines operating system. This includes; DC disconnect switch, AC disconnect switch, a dedicated circuit breaker inside the facility’s service panel, conduit, wiring to connect the wind turbine to the electrical connection of the facility at the electrical meter and service panel, combiner boxes, nuts/bolts, etc.. The system also includes its own dedicated safety monitoring device to monitor the turbine’s operation. Also built into the system is redundant safety for utility company maintenance or when servicing the wind turbine.

Department of Energy Net Zero Energy Facility

This facility has real potential to be classified and promoted as a Department of Energy Net Zero Energy Facility – one that produces as much energy as it utilizes. With an estimated total annual 64,000 kWh of electric energy produced onsite, there is good potential that this will be more than sufficient to satisfy all of the facilities energy demand.

The Cost of the Demonstration Turbine System

3.5KW CleanField Wind Turbine	
Pole Mounted to match the style of the nearby streetlight poles	
Concrete Construction of the Tower Base	
Complete Balance of System	
Shipping of all Equipment	
Complete Turnkey Installation	
Final Connection by Licensed Electrician	
Final Electrical Permit Inspection	
Turnkey Installed Cost	\$41,620

Stimulus Package Financial Incentives

Now that the American Recovery Act has been finalized, the town should be researching the potential for Stimulus Package matching funds, grants, rebates, incentives and bond funding that the Water Tower Wind Energy System can qualify for. With over \$79 billion of incentives targeted to renewable energy there are potentially multiple sources of funding from different Federal Government Agency’s.

Total Wind Energy System Project Budget

This funding also increases the potential to install more than the originally planned ten CleanField Energy wind turbines on the top of the new Water Tower.

Council Agenda Item **#ES1**

There are no attachments for this Item.

Council Agenda Item **#R20**

There are no attachments for this Item.