



Post Office Box 9010 Addison, Texas 75001-9010 5300 Belt Line Road  
(972) 450-7000 Fax: (972) 450-7043

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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.**

**SEPTEMBER 8, 2009**

**TOWN HALL**

**5300 BELT LINE ROAD**

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**WORK SESSION**

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Item #WS1 - Presentation and discussion regarding amendment to lease between the Town and Twin City Hotels, LLC regarding the Clay Pit Restaurant site located at 4460 Belt Line Road.

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Item #WS2 - Discussion regarding branding, and branding strategy and execution, for the Town of Addison.

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## REGULAR SESSION

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Pledge of Allegiance

Item #R1 - Consideration of Old Business.

Introduction of Employees

Discussion of Upcoming Events

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Item #R2 - Consent Agenda.

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#2a - Approval of the Minutes for:

August 18, 2009, Special Meeting and Work Session

August 24, 2009, Special Meeting and Work Session

August 25, 2009, Regular City Council Meeting and Work Session

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Item #R3 - Recognition of Town of Addison Paramedics for saving a life through administering CPR.

Attachment:

1. David Benson Memorandum
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Item #R4 - **PUBLIC HEARING**, discussion and consideration of action regarding the proposed Town of Addison's Annual Budget for the fiscal year beginning October 1, 2009, and ending September 30, 2010.

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Item #R5 - Presentation, discussion and consideration of approval of an ordinance amending the Town of Addison Annual Budget for the fiscal year ending September 30, 2009, and declaring an emergency.

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Attachments:

1. Council Agenda Item Overview
2. Ordinance

Administrative Recommendation:

Administration recommends approval.

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Item #R6 - Presentation, discussion and consideration of approval an ordinance for a Residential Garbage Rate Reduction.

Attachments:

1. Council Agenda Item Overview
2. Ordinance

Administrative Recommendation:

Administration recommends approval.

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Item #R7 - Presentation, discussion and consideration of approval of consent to (i) the Sale and Assignment of a Ground Leasehold Interest from Seaking Investment Partners, Ltd., to Eagle Land & Cattle Co. regarding the leased property located on Addison Airport at 4650 Airport Parkway, and an amendment to ground lease and estoppel letter in connection therewith; (ii) an amendment to a ground lease between the Town and Eagle Land & Cattle Co. regarding the property located on Addison Airport at 16151 Addison Road, and an estoppel letter in connection therewith; and (iii) a non-public Airport fueling license to Eagle Land & Cattle Co.

Attachments:

1. Council Agenda Item Overview
2. Bill Dyer Memorandum
3. Proposed Assignment Agreement between Seaking Investment Partners, Ltd. and Eagle Land & Cattle Company
4. Proposed Estoppel Letter (4650 Airport Parkway)
5. Proposed Estoppel Letter (16151 Addison Road)
6. Proposed Second Amendment to Ground Lease #0090 (4650 Airport Parkway)
7. Proposed Third Amendment to Ground Lease #0340 (16151 Addison Road)

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8. Eagle Land & Cattle Non-Public Fueling License

Administrative Recommendation:

Administration recommends approval.

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Item#R8 - Presentation, discussion and consideration of consent of an amendment to a ground lease between the Town and ExecHangar ADS, LC regarding an approximately 2.02 acre tract fronting on Claire Chennault on Addison Airport and an amendment to a non-public Airport fueling license in connection therewith.

Attachments:

1. Council Agenda Item Overview
2. Bill Dyer Memorandum
3. Proposed First Amendment to Ground Lease
4. First Amendment to Addison Airport Fuel License License Agreement

Administrative Recommendation:

Administration recommends approval.

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Item#R9 - Presentation, discussion and consideration of approval of consent of a non-exclusive ingress/egress easement between the Town and PlaneSmart! Properties, LLC in connection with the property located on the Addison Airport at 15841 Addison Road.

Attachments:

1. Council Agenda Item Overview
2. Bill Dyer Memorandum
3. Easement Agreement

Administrative Recommendation:

Administration recommends approval.



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**Item #R10 - PUBLIC HEARING** Case 1585-SUP/Volos Mediterranean Taverna. Presentation, discussion and consideration of approval of an ordinance amending an existing Special Use Permit for a restaurant and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 5000 Belt Line Road, Suite 300, on application from Volos Mediterranean Taverna, represented by Mr. Costa Arabatzis.

Attachments:

1. Docket map
2. Staff report
3. Plans

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on August 27, 2009, voted to recommend approval of the amendment to an existing Special Use Permit for a restaurant, and an amendment to an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption, subject to the following conditions:

-the landscaping contained within the proposed patio area shall remain.

The Commission considered an additional condition proposed by the staff which read:

-the applicant shall not use any terms, including the term “taverna”, or bar,” or any graphic depictions that denote alcoholic beverages in exterior signs.

However, upon reviewing evidence from the applicant that “taverna” meant small restaurant in Greek and not “tavern” the Commission deleted the condition regarding terms used in exterior signs. The staff has attached a definition from Dictionary.com of both the terms “taverna” and “cantina”.

Voting Aye: DeFrancisco, Doherty, Gaines, Hewitt, Wheeler

Voting Nay: none

Absent: Resnik, Wood

Administrative Recommendation:

Administration recommends approval.

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Item #R11 - **PUBLIC HEARING.** Case 1584-SUP/Los Cabos Mexican Grill. Presentation, discussion and consideration of approval an ordinance amending an existing Special Use Permit for a restaurant and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 17225 Dallas Parkway, on application from Two Rows, Inc., represented by Mr. Mike Brotzman.

Attachments:

1. Docket map
2. Staff report
3. Plans

Commission Findings:

The Addison Planning and Zoning Commission, meeting in regular session on August 27, 2009, voted to recommend approval of the amendment to an existing Special Use Permit for a restaurant and an amendment to an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption, subject to the following conditions:

-The applicant shall submit a landscape plan showing the existing landscape percentage, and the proposed area to be removed to make sure the site meets the overall 20 percent landscape requirement.

-The applicant/operator shall not use any terms (such as “bar”, “cantina” etc.) or graphic depictions which relate to alcoholic beverages in any exterior signs.

There was some discussion on case 1585-SUP regarding the use of the term “taverna.” The Commission decided to delete the condition prohibiting the use of the term “taverna” for the restaurant in case 1585-SUP. There was not a discussion of the term “cantina” during this case. However, the staff has attached the definitions from Dictionary.com for both “taverna” and “cantina.”

Voting Aye: DeFrancisco, Doherty, Gaines, Hewitt, Wheeler

Voting Nay: none

Absent: Resnik, Wood

Administrative Recommendation:

Administration recommends approval.

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Item #R12 - Presentation, discussion and consideration of approval an exception to Sec. 62-163 Sign area of the Addison sign ordinance for Los Cabos (Two Rows) located at 17225 Dallas Parkway.

Attachments:

1. Staff Report
2. Application
3. Plat w/picture

Administrative Recommendation:

Administration recommends approval as requested.

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Adjourn Meeting

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Posted:

September 4, 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**

There are no attachments for this Item.

Council Agenda Item **#WS2**

There are no attachments for this Item.

**OFFICIAL ACTIONS OF SPECIAL MEETING AND WORK SESSION  
OF THE CITY COUNCIL**

August 18, 2009  
6:00 P.M.  
Council Chambers  
5300 Belt Line Road

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

Absent: None

Item #S1 - Discussion regarding Redevelopment of Belt Line Road.

Lea Dunn led the discussion regarding the Redevelopment of Belt Line Road.

There was no action taken.

Item #S2 - Discussion regarding Proposed FY10 General Fund Budget.

Randy Moravec led the discussion regarding the Proposed FY10 General Fund Budget.

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

**OFFICIAL ACTIONS OF SPECIAL MEETING AND WORK SESSION  
OF THE CITY COUNCIL**

August 24, 2009  
6:00 P.M.  
Upstairs Conference Room  
5300 Belt Line Road

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

Absent: None

Item #S1 - Discussion regarding branding, and branding strategy and execution, for the Town of Addison.

Lea Dunn led the discussion regarding the branding, and branding strategy and execution, for the Town of Addison.

There was no action taken.

Item #S2 - Discussion regarding the Hotel Fund Budget for the 2009-2010 Fiscal Year.

Randy Moravec led the discussion regarding the Hotel Fund Budget for the 2009-2010 Fiscal Year.

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

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

August 25, 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 - Discussion regarding Airport Management Use of Fueling Permit Guidelines for Addison Airport Fuel Farm.

Mark Acevedo led the discussion regarding Airport Management Use of Fueling Permit Guidelines for Addison Airport Fuel Farm.

There was no action taken.

Item #WS2 - Discussion regarding the proposed education space, wind turbines, and other matters concerning the proposed new Elevated Storage Tank (Water Tower) to be located adjacent to the southeast corner of the intersection of Surveyor Boulevard and Arapaho Road.

Nancy Cline led the discussion regarding the proposed education space, wind turbines, and other matters concerning the proposed new Elevated Storage Tank (Water Tower) to be located adjacent to the southeast corner of the intersection of Surveyor Boulevard and Arapaho Road.

There was no action taken.

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Mayor-Joe Chow

Attest:

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City Secretary-Lea Dunn



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

August 25, 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: Jacob Chambers with the Police Department, Kirk McFarland with the Police Department and James (JJ) Kaiser with the Fire Department.

Item #R2 - Consent Agenda.

#2a - Approval of the Minutes for:

August 11, 2009, Regular City Council Meeting and Work Session

Councilmember Braun moved to approve the Minutes for:

August 11, 2009, Regular City Council Meeting and Work Session

Councilmember Blake seconded the motion. Motion carried.

Voting Aye: Chow, Braun, Clemens, Daseke, Lay, Mellow and Noble

Voting Nay: None

Absent: None

Item #R3 - **PUBLIC HEARING.** Presentation and discussion regarding the Airport and Utility Funds for the 2009-2010 Fiscal Year.

Randy Moravec made the presentation and led the discussion regarding the Airport and Utility Funds for the 2009-2010 Fiscal Year.

Mayor Chow opened the meeting as a Public Hearing. No one spoke.

Mayor Chow closed the meeting as a Public Hearing.

There was no action taken.

Item #R4 - Presentation, discussion and consideration of approval of the appointment of two members to the Board of Zoning Adjustment (the first term for current members Bob Baumann (appointment recommendation to be received from Councilmember Braun) and Becky Thompson (appointment recommendation to be received from Councilmember Lay) expired on August 14, 2009).

Councilmember Braun moved to approve the re-appointment of two members to the Board of Zoning Adjustment, Bob Baumann and Becky Thompson.

Councilmember Daseke seconded. Motion carried.

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

Item#R5 - Presentation, discussion and consideration of approval regarding the designation of persons to participate in the Class XXI Leadership Metrocrest Program.

Councilmember Daseke moved to approve the designation of the following residents to participate in the Class XXI Leadership Metrocrest Program:

Ed Copeland	5600 Celestial	Dallas	75254
Ralph Doherty	14718 Celestial Place	Dallas	75254
Sheila Griffin	14904 Havenshire Place	Dallas	75254
Dan Heinzerling	14589 Waterview Circle	Addison	75001
Traci Hetherington	5006 Parkview	Addison	75001
Marina Peake	15733 Seabolt Place	Addison	75001
Neil Resnik	15707 Spectrum	Addison	75001
Paul Walden	14806 Le Grande	Addison	75001

Councilmember Lay 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 approval of a supplemental agreement to the Engineering Services Agreement between the Town of Addison and Freese & Nichols, Inc., in an amount not to exceed \$112,000.00 for additional design services on the proposed 1.5 Million Gallon Elevated Storage Tank (Water Tower) to be located adjacent to the southeast corner of the intersection of Surveyor Boulevard and Arapaho Road.

Councilmember Braun moved to remove Item #R6 for consideration. This Item will be addressed during a future Council Meeting.

Councilmember Clemens seconded. Motion carried.

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

Item#R7 - 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 (Water Tower) site adjacent to the southeast corner of the intersection of Surveyor Boulevard and Arapaho Road.

Councilmember Blake moved to remove Item #R7 for consideration. This Item will be addressed during a future Council Meeting.

Councilmember Braun seconded. Motion carried.

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

Councilmember Braun recused himself for Item #R8 and left Council Chambers. He did not participate in the discussion or vote.

Item #R8 - Presentation, discussion and consideration of approval of Resolution approving a Modification to Master Facilities Agreement between the Town of Addison, UDR, Inc., and various property owners regarding an assignment of a portion of the property subject to the Master Facilities Agreement between the Town, UDR, Inc., and various property owners and concerning a development generally known as Vitruvian Park and generally located in an area south of Spring Valley Road and along and near Brookhaven Club Drive, and an Estoppel Certificate in connection with the assignment.

Councilmember Daseke moved to approve Resolution R09-016 approving a Modification to Master Facilities Agreement between the Town of Addison, UDR, Inc., and various property owners regarding an assignment of a portion of the property subject to the Master Facilities Agreement between the Town, UDR, Inc., and various property owners and concerning a development generally known as Vitruvian Park and generally located in an area south of Spring Valley Road and along and near Brookhaven Club Drive, and an Estoppel Certificate in connection with the assignment, subject to the approval of the City Manager and City Attorney.

Councilmember Mellow seconded. Motion carried.

Voting Aye: Chow, Clemens, Daseke, Lay, Mellow and Noble

Voting Nay: None

Absent: None

Abstaining: Braun

Councilmember Braun returned to Council Chambers.

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

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Mayor-Joe Chow

Attest:

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City Secretary-Lea Dunn

# Memorandum

**To:** Mayor Chow and Members of Town Council  
**From:** David C. Benson, Deputy Fire Chief - Operations  
**Date:** September 2, 2009  
**Re:** Recognition of Addison Firefighter/Paramedics:  
Lieutenant/Paramedic Keith Davis and Firefighter/Paramedics  
Jeff Cockrill, Jon Crist, Rob McClusky and Seth Day



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Not often do we experience the indescribable awe of actually saving the life of a fellow human being however it is that experience that continues to drive our personnel to be the best at what they do. There is an inherent pride in serving the public during a heightened time of need and having the ability as Firefighter/Paramedics to bring order and calm in dire situations is what led each and every one of our personnel to become Town of Addison Fire & EMS Professionals.

On the morning of July 13, 2009, Addison Fire personnel were dispatched to assist on an "Unconscious Person". While enroute, Addison crews were advised that the patient was possibly not breathing. Upon the crews' arrival the patient was receiving CPR from citizen bystanders.

Addison Paramedics quickly evaluated the patient and confirmed the absence of cardiac (heart) activity and resumed CPR. The patient was defibrillated (electrical shock to the heart muscle) a total of 5 times in an effort to convert the lethal cardiac rhythm to a normal, life sustaining heart beat. While the defibrillation was performed, intravenous (IV) fluids and medications were being administered as well as an endotracheal tube placed into the lungs so that the patient's respiratory effort could be assisted and managed as well.

After the 5<sup>th</sup> defibrillation, continued CPR, respiratory and intravenous drug administration, the patient converted to a sustained and meaningful cardiac rhythm producing a regular pulse. Shortly thereafter, spontaneous breathing returned and the patient began to move her arms and legs and even attempted to remove the airway tube from her lungs. The patient was lightly sedated to protect the IV fluids and her airway until care was transferred to the emergency room staff at the receiving hospital.

The patient continued to improve dramatically while in the emergency room and was ultimately transferred to the acute cardiac unit. The patient was later taken to surgery to receive an implanted device that will recognize that same lethal cardiac rhythm and instantly correct it with small amounts of electrical energy. The patient was given a great prognosis for a full recovery with no deficits and has returned to a normal, active life with few limitations.

**ITEM #R4**

There are no attachments for this Item.

**Council Agenda Item: #R5\_\_\_\_\_**

**SUMMARY:**

Council approval is requested of an ordinance amending the Town's Annual budget for the fiscal year ending September 30, 2009.

**FINANCIAL IMPACT:**

There is no direct financial impact associated with this item. Details of the amendments are presented in the attached materials. Below is a summary of the changes in total revenues, expenditures, and fund balance.

	<u>Original</u>	<u>Amended</u>
Total Revenues	\$59,750,570	\$56,863,100
Decrease in Fund Balance	<u>21,385,080</u>	<u>24,467,550</u>
Total Appropriations	\$81,135,650	\$81,330,650

**BACKGROUND:**

The annual budget is a blueprint of how financial resources are expected to be received and appropriated throughout the fiscal year. Inevitably, as the year progresses, variances with the budget occur in the various categories of revenue and expenditures. Each year, Financial and Strategic Services staff review the budget to determine which items should be recognized with formal budget attachments. Although variances occur in almost every one of the hundreds of detailed financial line items the Town maintains, budget amendments are presented to Council for only a few major categories using the following criteria:

- Appropriations for major cost centers (departments) will be exceeded. Financial and Strategic Services staff maintains budget control over operating department expenditures. Excess expenditures in one category are usually addressed with transfers of surpluses in other categories. However, if the excess expenditures are so large that the total department budget will be exceeded, these items must be addressed with a budget amendment.
- Revenues are significantly less than budgeted. A material shortage in a particular category may impact the ability to fund certain programs or significantly reduce fund balance.

In other words, any variance that has a detrimental impact on the Town's finances is addressed with a budget amendment. Other amendments may be presented to Council that acknowledge major increases in revenues and/or reductions in expenditures. However, these items are usually

presented in context with detrimental variances. For example, a reduction in the collection of hotel occupancy taxes will be partially offset by a reduction in visitor services advertising.

Major changes proposed for the 2008-09 budget are:

- Recognition of a (\$320,470) decrease in ad valorem taxes for the fiscal year. This decline is a result of a lower property tax levy associated with lower property values.
- Recognition of a (\$1,224,550) decrease in non-property taxes due to lower sales tax generation due to the national economic recession.
- Recognition of a (\$1,000,000) decrease in hotel occupancy taxes due to the reduced frequency of business and personal travel associated with the recession.
- Interest earnings are expected to come in (\$342,500) less than budgeted due to lower interest rates.
- Streets maintenance projects have exceeded budgeted levels by approximately \$100,000. A portion of several projects were not completed within FY 2008 and were therefore charged to this fiscal year instead.
- Public Works' recycling study has exceeded budget by approximately \$40,000.
- Council Projects' contractual services have exceeded budgeted levels by approximately \$55,000 due principally to the cost of broadcasting City Council meetings and developing the State of the City Presentation.

Budget amendments are typically presented to Council in June. The amendments have been delayed this year because staff wanted to be confident of revenue and expenditure trends before recommending budget amendments. Exhibit A reflects the changes for all funds, Exhibit B details the proposed budget changes, and Exhibit C shows how the changes affect the individual funds.

**RECOMMENDATION:**

Staff recommends that Council approve the attached ordinance amending the Town's annual budget for the fiscal year ending September 30, 2009.



AN ORDINANCE # \_\_\_\_\_

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS  
AMENDING THE ANNUAL BUDGET FOR THE FISCAL  
YEAR ENDING SEPTEMBER 30, 2009; PROVIDING THAT  
EXPENDITURES SHALL BE MADE IN ACCORDANCE WITH  
SAID BUDGET; PROVIDING FOR A REPEAL CLAUSE AND  
DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS,  
THAT:

SECTION 1. That in accordance with Section 5.08 of the City Charter, Ordinance No. \_\_\_\_ of the Town of Addison, Texas, amending the 2008-09 annual budget, be amended to appropriate \$81,330,650 for budget expenditures in the particulars stated in Exhibits A, B, and C attached and made a part of this ordinance.

SECTION 2. That all ordinances of the City in conflict with the provisions of this ordinance be, and the same are hereby repealed and all other ordinances of the city not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 3. The importance of this ordinance creates an emergency and an imperative public necessity, and the ordinance shall take effect and be in force from and after its adoption.

PASSED AND APPROVED BY MAJORITY VOTE OF THE CITY COUNCIL, this the \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Mayor Joe Chow

ATTEST:

\_\_\_\_\_  
Lea Dunn, City Secretary

**TOWN OF ADDISON**  
**COMBINED SUMMARY OF REVENUES AND EXPENDITURES AND CHANGES IN FUND BALANCE**  
**ALL FUNDS SUBJECT TO APPROPRIATION**  
*Amended 2008-09 Annual Budget*

	Special Revenue Funds		Debt Service Funds		Capital Project Funds			Proprietary Funds			TOTAL 08-09		
	General Fund	Hotel	Combined Other	General	Occupancy Tax Revenue	Streets	Parks	Combined Bonds	Airport	Utility	Combined Replacement	Amended	Original
BEGINNING BALANCES	\$ 11,816,630	\$ 5,693,370	\$ 410,610	\$ 1,545,270	\$ 909,330	\$ 2,363,590	\$ 921,340	\$ 29,681,210	\$ 1,032,580	\$ 8,964,360	\$ 6,446,281	\$ 69,784,571	\$ 69,784,571
REVENUES:													
Ad valorem tax	9,974,950	-	-	6,214,380	-	-	-	-	-	-	-	16,189,330	16,509,800
Non-property taxes	10,905,060	4,200,000	-	-	-	-	-	-	-	-	-	15,105,060	17,329,560
Franchise fees	2,559,680	-	-	-	-	-	-	-	-	-	-	2,559,680	2,559,680
Licenses and permits	658,560	-	-	-	-	-	-	-	-	-	-	658,560	658,560
Intergovernmental	-	-	-	-	-	600,000	-	-	50,000	-	-	650,000	650,000
Service fees	1,284,600	1,474,600	-	-	-	-	-	-	837,200	9,552,000	937,770	14,086,170	14,086,170
Fines and penalties	1,300,000	-	47,000	-	-	-	-	-	-	60,000	-	1,407,000	1,407,000
Rental income	156,500	730,000	-	-	-	-	-	-	3,240,000	-	-	4,126,500	4,126,500
Interest & other income	264,000	275,000	60,800	70,000	40,000	100,000	20,000	605,000	80,000	351,000	215,000	2,080,800	2,423,300
TOTAL REVENUES	27,103,350	6,679,600	107,800	6,284,380	40,000	700,000	20,000	605,000	4,207,200	9,963,000	1,152,770	56,863,100	59,750,570
Transfers from other funds	-	-	-	-	699,800	-	-	-	-	-	-	699,800	699,800
TOTAL AVAILABLE RESOURCES	38,919,980	12,372,970	518,410	7,829,650	1,649,130	3,063,590	941,340	30,286,210	5,239,780	18,927,360	7,599,051	127,347,471	130,234,941
EXPENDITURES:													
General Government	6,900,950	-	119,500	-	-	-	-	-	-	-	1,150,450	8,170,900	8,115,900
Public Safety	14,658,720	-	25,000	-	-	-	-	-	-	-	536,000	15,219,720	15,219,720
Urban Development	975,160	-	-	-	-	-	-	-	-	-	-	975,160	975,160
Streets	2,448,180	-	-	-	-	-	-	-	-	-	40,000	2,488,180	2,348,180
Parks & Recreation	4,193,810	-	30,000	-	-	-	-	-	-	-	43,000	4,266,810	4,266,810
Tourism	-	7,033,610	-	-	-	-	-	-	-	-	-	7,033,610	7,033,610
Aviation	-	-	-	-	-	-	-	-	3,408,640	-	-	3,408,640	3,408,640
Utilities	-	-	-	-	-	-	-	-	-	7,046,710	-	7,046,710	7,046,710
Debt service	-	-	-	6,378,130	718,790	-	-	-	390,270	2,986,590	-	10,473,780	10,473,780
Capital projects and other uses	-	-	-	-	-	1,243,000	941,340	18,115,000	200,000	1,747,800	-	22,247,140	22,247,140
TOTAL EXPENDITURES	29,176,820	7,033,610	174,500	6,378,130	718,790	1,243,000	941,340	18,115,000	3,998,910	11,781,100	1,769,450	81,330,650	81,135,650
Transfers to other funds	-	699,800	-	-	-	-	-	-	-	-	-	699,800	699,800
ENDING FUND BALANCES	\$ 9,743,160	\$ 4,639,560	\$ 343,910	\$ 1,451,520	\$ 930,340	\$ 1,820,590	\$ -	\$ 12,171,210	\$ 1,240,870	\$ 7,146,260	\$ 5,829,601	\$ 45,317,021	\$ 48,399,491

Total Revenues \$ 56,863,100  
Decrease in fund balance 24,467,550  
Total Appropriable funds \$ 81,330,650

Total Appropriations \$ 81,330,650

**TOWN OF ADDISON**  
**DETAIL OF RECOMMENDED FY 08-09 BUDGET AMENDMENTS**

Fund / Category	Revenues and Other Funding Sources/Uses	Expenditures							Total Department	
		Personal Services	Supplies	Maintenance	Contractual Services	Debt Service /Lease	Capital Outlay			
<b>General fund / Revenues</b>										
Reduction in Property Tax	\$ (320,470)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Reduction in Sales Tax	\$ (1,224,550)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Reduction in interest earnings	\$ (342,500)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total General Fund Revenues</b>	<b>\$ (1,887,520)</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
<b>General fund / Council Projects</b>										
Increase in Office Supplies	\$ -	\$ -	\$ 3,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3,000
Increase in Food Supplies	\$ -	\$ -	\$ 9,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 9,000
Council Meeting Internet Broadcast	\$ -	\$ -	\$ -	\$ -	\$ 43,000	\$ -	\$ -	\$ -	\$ -	\$ 43,000
<b>Total Council Projects</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 12,000</b>	<b>\$ -</b>	<b>\$ 43,000</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 55,000</b>
<b>General fund / Streets</b>										
Increase in Streets and Alleys	\$ -	\$ -	\$ -	\$ 52,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 52,000
Increase in Street Signs and Marking	\$ -	\$ -	\$ -	\$ 48,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 48,000
Increase in Professional Services	\$ -	\$ -	\$ -	\$ -	\$ 40,000	\$ -	\$ -	\$ -	\$ -	\$ 40,000
<b>Total Council Projects</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 100,000</b>	<b>\$ 40,000</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 140,000</b>
<b>Hotel fund / Revenues</b>										
Decrease in Anticipated HOT	\$ (1,000,000)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total Hotel Fund Revenues</b>	<b>\$ (1,000,000)</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>

**TOWN OF ADDISON**  
**GENERAL FUND**  
**SCHEDULE OF REVENUES BY SOURCE**  
*Amended 2008-09 Annual Budget*

	Actual 2007-08	Budget 2008-09	Amendments 2008-09	Amended Budget 2008-09
Ad valorem taxes:				
Current taxes	\$ 9,848,061	\$ 10,270,470	\$ (320,470)	\$ 9,950,000
Delinquent taxes	9,804	3,120	-	3,120
Penalty & interest	47,409	21,830	-	21,830
Non-property taxes:				-
Sales tax	10,649,989	11,124,500	(1,224,500)	9,900,000
Alcoholic beverage tax	987,289	1,005,060	-	1,005,060
Franchise / right-of-way use fees:				-
Electric franchise	1,574,344	1,550,000	-	1,550,000
Gas franchise	241,342	301,680	-	301,680
Telecommunication access fees	596,820	575,000	-	575,000
Cable franchise	128,020	125,000	-	125,000
Wireless network fees	8,401	1,000	-	1,000
Street rental fees	7,000	7,000	-	7,000
Licenses and permits:				
Business licenses and permits	153,965	158,560	-	158,560
Building and construction permits	644,041	500,000	-	500,000
Service fees:				
General government	626	600	-	600
Public safety	805,262	713,000	-	713,000
Urban development	9,421	5,000	-	5,000
Streets and sanitation	333,645	310,250	-	310,250
Recreation	89,634	74,100	-	74,100
Interfund	181,656	181,650	-	181,650
Court fines	1,222,897	1,300,000	-	1,300,000
Interest earnings	472,156	552,500	(342,500)	210,000
Rental income	157,546	156,500	-	156,500
Other	152,724	54,000	-	54,000
<b>TOTAL REVENUES</b>	<b>\$ 28,322,052</b>	<b>\$ 28,990,820</b>	<b>(1,887,470)</b>	<b>\$ 27,103,350</b>

**TOWN OF ADDISON**  
**GENERAL FUND**  
**STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES TO FUND BALANCE**  
*Amended 2008-09 Annual Budget*

	Actual 2007-08	Budget 2008-09	Amendments 2008-09	Amended Budget 2008-09
BEGINNING BALANCE	\$ 10,684,165	\$ 11,816,630	\$ -	\$ 11,816,630
REVENUES:			-	
Ad valorem taxes	9,905,274	10,295,420	(320,470)	9,974,950
Non-property taxes	11,637,278	12,129,560	(1,224,500)	10,905,060
Franchise fees	2,555,927	2,559,680	-	2,559,680
Licenses and permits	798,006	658,560	-	658,560
Intergovernmental	-	-	-	-
Service fees	1,420,244	1,284,600	-	1,284,600
Fines and penalties	1,222,897	1,300,000	-	1,300,000
Interest earnings	472,156	552,500	(342,500)	210,000
Rental income	157,546	156,500	-	156,500
Other	152,724	54,000	-	54,000
<b>TOTAL REVENUES</b>	<b>28,322,052</b>	<b>28,990,820</b>	<b>(1,887,470)</b>	<b>27,103,350</b>
<b>TOTAL RESOURCES AVAILABLE</b>	<b>39,006,217</b>	<b>40,807,450</b>	<b>(1,887,470)</b>	<b>38,919,980</b>
EXPENDITURES:				
General Government:				
City Manager	1,410,846	1,504,200	-	1,504,200
Financial and Strategic Services	866,087	1,052,050	-	1,052,050
General Services	940,874	880,370	-	880,370
Municipal Court	440,691	520,570	-	520,570
Human Resources	347,307	572,960	-	572,960
Information Technology	1,331,704	1,272,440	-	1,272,440
Combined Services	790,326	794,020	-	794,020
Council Projects	284,988	249,340	55,000	304,340
Public Safety:				
Police	7,156,061	7,392,850	-	7,392,850
Emergency Communications	988,521	1,150,000	-	1,150,000
Fire	5,957,037	6,115,870	-	6,115,870
Development Services	884,770	975,160	-	975,160
Streets	1,805,175	2,308,180	140,000	2,448,180
Parks and Recreation:				
Parks	2,537,338	2,766,050	-	2,766,050
Recreation	1,568,562	1,427,760	-	1,427,760
<b>TOTAL EXPENDITURES</b>	<b>27,310,287</b>	<b>28,981,820</b>	<b>195,000</b>	<b>29,176,820</b>
OTHER FINANCING SOURCES (USES):				
Interfund transfer	-	-	-	-
<b>ENDING FUND BALANCE</b>	<b>\$ 11,695,930</b>	<b>\$ 11,825,630</b>	<b>\$ (2,082,470)</b>	<b>\$ 9,743,160</b>

**TOWN OF ADDISON**  
**HOTEL SPECIAL REVENUE FUND**  
**STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES TO FUND BALANCE**  
*Amended 2008-09 Annual Budget*

	Actual 2007-08	Budget 2008-09	Amendments 2008-09	Amended Budget 2008-09
BEGINNING BALANCE	\$ 5,382,310	\$ 5,693,370	\$ -	\$ 5,693,370
REVENUES:				
Hotel/Motel occupancy taxes	5,204,247	5,200,000	(1,000,000)	4,200,000
Intergovernmental	-	-		-
Proceeds from special events	1,524,109	1,474,600	-	1,474,600
Conference centre rental	500,463	640,000	-	640,000
Theatre centre rental	86,487	90,000	-	90,000
Interest earnings and other	231,042	275,000	-	275,000
TOTAL REVENUES	<u>7,546,348</u>	<u>7,679,600</u>	<u>(1,000,000)</u>	<u>6,679,600</u>
TOTAL AVAILABLE RESOURCES	<u>12,928,658</u>	<u>13,372,970</u>	<u>(1,000,000)</u>	<u>12,372,970</u>
EXPENDITURES:				
Visitor services administration	880,633	1,292,700	-	1,292,700
Marketing	1,121,226	1,178,980	-	1,178,980
Special events	2,725,836	2,961,750	-	2,961,750
Conference centre	1,077,436	1,038,910	-	1,038,910
Performing arts	707,834	561,270	-	561,270
Capital projects	-	-	-	-
TOTAL EXPENDITURES	<u>6,512,965</u>	<u>7,033,610</u>	<u>-</u>	<u>7,033,610</u>
OTHER FINANCING SOURCES (USES):				
Transfer to debt service fund	<u>(700,000)</u>	<u>(699,800)</u>	<u>-</u>	<u>(699,800)</u>
ENDING FUND BALANCE	<u>\$ 5,715,693</u>	<u>\$ 5,639,560</u>	<u>\$ (1,000,000)</u>	<u>\$ 4,639,560</u>

## **Council Agenda Item: #R6**

### **SUMMARY:**

This item is to amend the Code of Ordinance of the City by amending Chapter 66 (Solid Waste) Article II (Collection And Disposal), Division 2 (Service Charge) by amending Section 66-52 decreasing from \$11.65 to \$11.11 the monthly fee for single family residential garbage and recycling collection.

### **FINANCIAL IMPACT:**

Budgeted Amount:     \$0

Cost:                     \$0

There is no impact to the Street Department operations budget.

### **BACKGROUND:**

The Town has a five-year contract with Waste Management to provide residential garbage and recycling collection to all single-family homes. This contract started October 1, 2000 and automatically renews for additional five-year periods if neither party requests termination.

Our contract rate adjusts up or down each year based on the Producer Price Index (PPI). This increase or reduction, tied to the PPI, has proven to be a fair method of establishing the collection rate while eliminating the need for the Town Council to hear an annual rate increase request.

The Town Finance Department informs the Public Works Department what the PPI should be. If Waste Management concurs, they're free to request a rate increase. In the event of a decrease in the PPI, the Town would request a rate reduction.

The current PPI decreased by 4.6%. A 4.6% decrease will reduce the monthly garbage/recycling rate from its current \$11.65 per home, per month, to \$11.11. This decrease will take effect October I, 2008 and be reflected on the November water bill.

### **RECOMMENDATION:**

Staff recommends passage of this amendment decreasing the residential garbage/recycling collection rate to \$11.11.

TOWN OF ADDISON, TEXAS

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING THE CODE OF ORDINANCES OF THE CITY BY AMENDING CHAPTER 66 (SOLID WASTE), ARTICLE II (COLLECTION AND DISPOSAL), DIVISION 2 (SERVICE CHARGE) BY AMENDING SECTION 66-52 THEREOF BY REDUCING THE MANDATORY MONTHLY FEE FOR GARBAGE COLLECTION, HAULING AND DISPOSAL (CURBSIDE PICKUP) FROM EACH SINGLE DWELLING UNIT WITHIN THE CITY FROM \$11.65 TO \$11.11; PROVIDING THAT SUCH INCREASED RATE SHALL TAKE EFFECT ON OCTOBER 1, 2009; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

**Section 1. Amendment.** Chapter 66 (Solid Waste), Article II (Collection and Disposal), Division 2 (Service Charge) of the Code of Ordinances (the "Code") of the Town of Addison, Texas (the "City") is hereby amended as set forth below, and all other chapters, articles, sections, subsections, paragraphs, sentences, phrases and words of the Code are not amended but are hereby ratified and affirmed.

A. Section 66-52 (Single dwelling units) of Chapter 66, Article II, Division 2 of the Code is hereby amended to read as follows (additions are underlined, deletions are ~~struck through~~):

All owners, lessees or persons in possession of residential property shall be charged a mandatory monthly fee for garbage collection, hauling and disposal from residences situated within the corporate limits of the town as follows:

Curbside pickup for each single dwelling unit, exclusive of sales tax and applicable state fees . . . \$11.11~~\$11.65~~.

**Section 2. Effective Date of Increase.** The change in the mandatory monthly fee for garbage collection, hauling and disposal from residences as set forth in Section 1 above shall be effective as of October 1, 2009.

**Section 3. Savings.** This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of those ordinances except in those instances



where the provisions of those Ordinances are in direct conflict with the provisions of this Ordinance.

**Section 4. Severability.** The sections, paragraphs, sentences, phrases, clauses and words of this Ordinance are severable, and if any section, paragraph, sentence, phrase, clause or word in this Ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portion of this Ordinance, and the City Council hereby declares that it would have passed such remaining portion of this Ordinance despite such invalidity, which remaining portion shall remain in full force and effect.

**Section 5. Effective Date.** This Ordinance shall become effective from and after its passage and approval and its publication as may be required by law.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this \_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Joe Chow, Mayor

ATTEST:

By: \_\_\_\_\_  
Lea Dunn, City Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
John Hill, City Attorney

## **Council Agenda Item: #R7**

### **SUMMARY:**

Presentation, discussion and consideration of approval of consent to the Sale and Assignment of a Ground Leasehold Interest between Seaking Investment Partners, Ltd. to Eagle, Land & Cattle, Co. affecting the leased property located at 4650 Airport Parkway.

### **BACKGROUND:**

Seaking Investment Partners, is requesting the Town's consideration and consent of the sale and assignment of their ground leasehold interest (GL#0090-05) to Eagle Land & Cattle, Co. ("EL&C") affecting the leased property located at 4650 Airport Parkway. The proposed transaction is comprised of an integrated and concurrent set of transactions and agreements between one or more of the Town, Seaking, EL&C and Liberty Capital Bank as outlined below.

- The Town consent to the sale and assignment of the Seaking Ground Lease located at 4650 Airport Parkway.
- Amend the Seaking Ground Lease to:
  - Extend the lease term by 15 years
  - Increase the rental rate from \$.51 to \$.61 per square foot of land
  - Update all other terms and conditions as we typically do with similar requests
- Amend their existing ground lease located at 16151 Addison Road to:
  - Extend the lease term by 10 years
  - Increase the rental rate from \$.58 to \$.61 per square foot of land
  - Update all other terms and conditions as we typically do
- Issue EL&C a non-public AvGas fueling permit with a term of 10 years at the standard tank rental rate plus the non-public fuel flowage fee of \$.20/gal (same as ExecHangar) and a minimum performance standard of 90,000 gallons per every 6 months.
- Consent to the creation of a leasehold mortgage and estoppel with Liberty Capital Bank (an Addison based bank)

### **RECOMMENDATION:**

Seaking's and EL&C's proposed transaction is contingent wholly upon the Town consenting to each of the actions outlined above. Staff and Airport Management recommends the City Council give its consent and authorize the City Manager to execute the required documents on behalf of the Town to facilitate the above transactions subject to the City Manager's review and oversight. The City Attorney has reviewed the aforementioned documents and finds them acceptable for the Town's use.



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

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Fax: 972-788-9334  
bill.dyer@addisonairport.net

**- MEMORANDUM -**

To: Mark Acevedo

From: Bill Dyer

CC: Joel Jenkinson

Date: August 14, 2009

Re: Proposed Sale and Assignment of Ground Leasehold Interest By Seaking Investment Partners, Ltd. to Eagle, Land & Cattle, Co. and other related actions

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Seaking Investment Partners, Ltd. ("Seaking") is requesting the Town's consideration and consent of the sale and assignment of their ground leasehold interest (GL#0090-05) to Eagle Land & Cattle, Co. ("EL&C") affecting the leased property located at 4650 Airport Parkway. The proposed transaction is comprised of an integrated and concurrent set of transactions and agreements between one or more of the Town, Seaking, EL&C and Addison based Liberty Capital Bank as outlined below (the "Transaction Documents"):

- the proposed Assignment of Ground Lease by and between Seaking and EL&C which shall be substantially in the form attached hereto as Exhibit "A";
- the creation of a leasehold mortgage by EL&C secured by a leasehold lien subordinate to the ground lease in favor of Liberty Capital Bank (the "Bank") for the purpose of financing the acquisition of the Seaking property and to fund limited improvements thereon. The Town's consent is to be evidenced by that estoppel letter by and between the Town and Bank substantially in the form attached hereto as Exhibit "B";
- EL&C to refinance their existing ground leasehold (GL#0340-20) interests located at 16151 Addison Road for the purposes of paying off and refinancing their existing lien held by Hibernia Bank (which is now a wholly owned subsidiary of Capital One and operating under the Capital One brand). This leasehold mortgage is to be secured by a leasehold lien made in favor of Liberty Capital Bank evidenced by that estoppel letter by and between the Town and Bank substantially in the form attached hereto as Exhibit "C";

- In order to secure the above financing, EL&C is further requesting the Town to agree:
  - to amend and modify the Seaking ground lease to include, among other things, a provision to extend the ground lease term for a period not less than fifteen (15) years so the remaining ground lease term subject to the leasehold mortgage is twenty-six (26) years. The proposed amendment is to be substantially in the form attached hereto as Exhibit "D";
  - Amend and modify the EL&C ground lease to include, but not necessarily be limited to, the provision to extend the ground lease term for a period of ten (10) years so the remaining ground lease term subject to the leasehold mortgage is twenty-one (21) years. The proposed amendment is to be substantially in the form attached hereto as Exhibit "E";
- Granting EL&C a non-public fueling license for AVGas fuel operations pursuant to the Addison Airport Fuel Farm License Agreement for a term not less than ten (10) years (see Exhibit "F" attached hereto).

Seaking's and EL&C's proposed transaction is contingent wholly upon the Town consenting to interrelated actions outlined above. Airport Management has reviewed Seaking's request together with the underlying transactions and recommends the City Council give its consent and authorize the City Manager to execute the required documents on behalf of the Town to facilitate the above transactions subject to the City Manager's review and oversight. The City Attorney has reviewed the aforementioned documents and finds them acceptable for the Town's use.

**Background Information:**

Regarding 4650 Airport Parkway: Seaking, a local real estate investment company, acquired the ground leased property located at 4650 Airport Parkway from Schoellkopf Hangar Corporation on November 30, 2007. The property is currently sub-leased and fully occupied by Omniflight Helicopter, Inc., which said sublease expired in December 2008 and continues on a month-to-month basis. The property consists of a 2.7-acre rectangular parcel of airport land bounded by Taxiway Alpha to the west, Taxiway Romeo to the south, the City owned R2 Patio hangars to the east and Airport Parkway to the north. The property is improved with an 11,900 square foot conventional hangar and approximately 12,004 square feet of split-level office and shop space. The building was first constructed in 1981 with periodic upgrades and improvements made over the years and regarded to be in good condition.

The underlying Ground Lease was first entered into by and between the Town and ATTI as the landlord and, Richard W. Cree Sr., the tenant, on October 30, 1980. The lease currently has a forty (40) year term, of which eleven (11) years remain. Without the proposed amendment, the lease is due to expire October 29, 2020. Currently the tenant pays to the Town \$4,960 in monthly rent or, \$59,525 annually, which is equivalent to \$.51 per square foot of land. This rate, which is adjusted bi-annually, is regarded slightly lower than the prevailing market rate of \$.60-\$.65 per square foot for flightline (fronting the runway) property with excellent landside access.





View of 4650 Airport Parkway facing west with the Pepsico Hangar to the right.

Regarding 16151 Addison Road: EL&C is the current ground tenant of this property. They sublease the entire property to its affiliate, American Flyers, an domestic and international flight training academy based out of Addison Airport for the past nineteen years. The property consists of a .75-acre parcel of airport land fronting Addison Road to the east, Glenn Curtiss (an airport ingress/egress right of way) to the north and various airport businesses and operations to its west and south.



View of 16151 Addison Road facing west.



The property is improved with 14,400 square foot conventional hangar and split-level office space. The building was first constructed in 1980 with periodic upgrades and improvements made over the years. The property is regarded to be well kept and in very good condition. The underlying Ground Lease was first entered into by and between the Town and ATTI as the landlord and, William R. White, the tenant, on June 30, 1980. The lease currently has a forty (40) year term, of which just over ten (10) years remain. Without the proposed amendment, the lease is due to expire June 29, 2020. Currently the tenant pays to the Town \$1,570 in monthly rent or, \$18,840 annually, which is equivalent to \$.58 per square foot of land. This rate, which is adjusted bi-annually, is regarded to be equivalent to the prevailing market rate given its size, limited aircraft apron and off-street parking.

Regarding Eagle Land & Cattle and American Flyers: Eagle Land & Cattle Co., a Texas corporation is the entity holding the ground lease to 16151 Addison Road since 1990. Its principals are individuals Hugh Lawrence, Christopher Tredemeyer, David Hauser and Steve Dunn. EL&C subleases the demised premises to American Flyers, a full service flight training academy of which Mr. Lawrence and McCormick are long time members of its governing board. American Flyers has flight training operations located in Atlanta, Chicago, Addison, Ft. Lauderdale, Ft. Worth, Houston, Morris Town, Santa Monica and Mexico City. Their headquarters are currently based in Chicago. American Flyers has been offering full service flight training domestically for over 70 years and are expanding their international presence as well. Both EL&C and American Flyers have been an exceptional tenant and operator at Addison Airport and in good standing with the Town of Addison.

### **Requested Action**

Seaking is requesting the Town to consider and consent to their proposed sale and assignment of their ground leasehold interests to EL&C. This transaction is wholly contingent upon the Town simultaneously considering and consenting to:

- EL&C creating a leasehold mortgage of the amount of \$1,000,000 secured by a leasehold lien against the Seaking leasehold interests subordinate to the ground lease. The loan proceeds are intended to be used by EL&C to acquire the Seaking property.
- EL&C creating a leasehold mortgage of the amount of \$500,000 secured by a leasehold lien against their leasehold interests at 16151 Addison Road subordinate to the ground lease. EL&C intends to use these loan proceeds to pay-off and refinance their existing leasehold lien held by Hibernia Bank (now Capital One).
- In order for EL&C to secure the proposed financing they are requesting the Town to consider and consent to amending both ground leases to include, among other things, a provision to extend the Seaking and EL&C lease terms by 15 and 10 years, respectively. The extended lease terms provide sufficient term remaining to fully-amortize the proposed leasehold mortgages.

- Granting EL&C a non-public fueling license for AVGas fuel operations pursuant to the Addison Airport Fuel Farm License Agreement for a term not less than ten (10) years.

In consideration of the above requested action EL&C is proposing to bring to the Town of Addison and the surrounding communities a broad array of economic advantages and benefits. Subject to the Town's consent to the requested actions, they are proposing to relocate and consolidate their existing flight school operations now located at Meacham Intl. Airport in Ft. Worth to Addison Airport. Additionally American Flyers is proposing to bring to Addison their existing maintenance operations located in Santa Monica, CA, relocate their sales force and make Addison Airport their new corporate headquarters. In their letter dated July 1, 2009 (see Exhibit "G"), American Flyers represented:

- The relocation of their Ft. Worth operations, which grossed over \$5 million in 2008 will bring 30-35 additional employees to Addison Airport. They project this facility will double its gross revenue over the next two years. During 2008 they trained over 125 students of which about 60% required extended stay accommodations for six months or more.
- The Ft. Worth operation will augment American Flyer's current fuel consumption at Addison with an additional 165,000 gallon for a total in excess of 270,000 gallons at a cost of over \$1,000,000.
- The Ft. Worth operation bought over \$100,000 in training supplies and leased additional aircraft at a cost of another \$100,000, mostly from local suppliers.
- American Flyers leased over \$300,000 in apartment and extended-stay housing in the Ft. Worth area last year to accommodate their domestic and international students. This does not include hotel, motel, restaurant, and entertainment dollars expended by the students and their families visiting.
- American Flyers anticipates spending considerable dollars each in advertising promoting American Flyers and Addison, Texas in the process.
- With Addison becoming the corporate headquarters for American Flyers, internal employee training will take place in Addison, requiring additional hotel and motel accommodations through out the year.

In addition to the above substantial economic benefits, EL&C has agreed to modify the current rental for both properties. The Seaking property rate would increase from \$.51 per square foot of gross land area to \$.61 per square foot, or about 20%. Both rates will continue to be adjusted bi-annually over the extended term. The EL&C property would increase just over 5%, from \$.58 per square foot to \$.61 per square foot. The impact of these increase results in about a 16%, or \$13,000 in annual ground rental for the Airport.

**Conclusion and Recommendation:**

Seaking Investment Partners, Ltd. is requesting the Town to consider and consent to their proposed sale and assignment of their leasehold interests to EL&C. In order to facilitate this transaction, the proposed sale and assignment is wholly contingent upon the Town

also considering and consenting to various actions requested by EL&C. In consideration of these actions, EL&C is offering to bring to the Town of Addison considerable economic benefit and advantages with the consolidation and relocation of several of their operating units from other parts of the country, most notably their Ft. Worth-Meacham flight school.

It is very difficult for Airport Management to assess with any degree of certainty the economic impact and benefit the EL&C/American Flyer proposal extends to the Town of Addison and Addison Airport. Some of the more apparent benefits stemming from the proposed transaction include:

- Certainly, American Flyers will benefit the local business community with its need for hotel, motel, restaurants, entertainment and extended stay facilities. The Town of Addison will most certainly serve as a place of destination for their students and families because of the many amenities the Town has to offer their students.
- The Seaking property will become essentially owner occupied, which it has not been for many years. An owner occupied property will typically keep the resulting equity from its operations (in the form of reinvestment) at the Airport instead of being redirected elsewhere or for other purposes.
- With the non-public fuel farm facility, American Flyers expects to augment the Airport's annual fuel flowage revenue by at least an additional \$40,000 each year over the next several years.
- The Airport will benefit from the rental of the AVGas tank of nearly \$9,000 a year, further reducing that facility's cost of operation to the Airport.
- Rental from both properties combined will increase Airport revenue by \$13,000 and will more appropriately reflect the prevailing market rate.
- The proposed use of their facilities is in keeping with the Town of Addison's long-term strategy for the Airport.
- American Flyers' domestic and international marketing program will greatly extend the promotion of the Town of Addison abroad.
- By amending the two ground lease, the terms and conditions of the leases will be updated to the Town's current requirements.
- The transaction further benefits the community through the relationship established by and between the Town of Addison, Liberty Bank (an Addison based bank) and American Flyers, a long-time operator at Addison Airport.

Airport Management recommends the Town to give consent to the requested actions and authorize the City Manager to execute the proposed amendments and estoppel letters (or any other document or certification as may be required of the Town necessary to facilitate the proposed transactions, subject to the review and oversight of the City Attorney. The City Attorney has reviewed each of the agreements described above and found them acceptable for the Town's purposes.



# **EXHIBIT "A"**

## **Assignment Agreement by and between Seaking Investment Partners and Eagle Land & Cattle Co. Ground Lease #0090**

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS       §

**ASSIGNMENT OF GROUND LEASE**

This Assignment of Ground Lease (the "Assignment") is entered into and effective as of \_\_\_\_\_ 2009, at Addison, Texas, by and between SEAKING INVESTMENT PARTNERS, LTD., a Texas limited partnership (herein referred to as "Assignor") and EAGLE, LAND & CATTLE CO., a Texas corporation (herein referred to as "Assignee").

**WHEREAS**, a Ground Lease was executed on February 11, 1980 between the City of Addison (the same being the Town of Addison, Texas) and Addison Airport of Texas, Inc., as Landlord, and Richard W. Cree, Sr., as Tenant, by the terms of which certain real property located at 4650 Airport Parkway, Addison, Texas 75001 (the "Demised Premises" and as more fully described in the said Ground Lease), in the Addison Airport within the Town of Addison, Texas (the "City") and owned by the City was leased to Richard W. Cree, Sr.; and

**WHEREAS**, the interests of the tenant under the said Ground Lease have been assigned under various assignments of lease (true and correct copies of which are included by reference and attached hereto as Exhibit A), as follows:

- by Assignment of Ground Lease dated February 11, 1980 from Richard W. Cree, Sr., as assignor, to Cree Ventures, Inc., as assignee (the said Assignment of Ground Lease being described in that "Memorandum of Assignment" recorded in Volume 81219, Page 2302 of the Official Public Records of Dallas County, Texas (the "OPR")); and
- the said Ground Lease then having been assigned by Cree Ventures, Inc., to Hugo W. Schoellkopf, Jr., and Caroline Hunt Schoellkopf, by that Assignment and Assumption of Lease entered into on October 28, 1981; and
- the said Ground Lease then having been assigned by Hugo W. Schoellkopf, Jr., and wife, Caroline Hunt Schoellkopf to Pumpkin Air, Inc., by that Assignment of Lease entered into on March 24, 1982; and
- the said Ground Lease then having been assigned by Pumpkin Air, Inc. to Caroline Hunt Schoellkopf by that Assignment of Ground Lease entered into on December 23, 1986, but effective as of 11:59 p.m. C.S.T. December 31, 1986; and
- the said Ground Lease then having been assigned by Caroline Hunt Schoellkopf to Hugo W. Schoellkopf, Jr., by that Assignment of Lease entered into on May 26, 1987, but effective as of 12:01 a.m. C.D.T., May 26, 1987; and
- the said Ground Lease then having been assigned by Hugo W. Schoellkopf, Jr. to Schoellkopf Hangar Corporation, a Texas corporation by that Assignment of Lease entered into on August 7, 1987, but effective as of 12:01 a.m., C.D.T., July 23, 1987; and

- the said Ground Lease then having been assigned by Schoellkopf Hangar Corporation to Seaking Investment Partners, Ltd., a Texas limited partnership (“Assignor”) as evidenced by that certain Assignment of Ground Lease entered into and made effective November 30, 2007 and recorded as Instrument #20070444337 in the OPR; and

**WHEREAS**, by virtue of such assignments, Assignor is the Tenant under the Ground Lease; and

**WHEREAS**, the Ground Lease was modified by that First Amendment to Ground Lease entered into and made effective as of November 30, 2007 whereby (i) the Demised Premises was modified as set forth in that "Boundary Survey" dated October 18, 2007 describing a 2.703 tract of land as prepared by Sparr Surveys, and (ii) the monthly rental was therein affirmed as stated in said amendment; 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 the City is the Landlord under the Ground 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.

**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 Ground 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 an 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 of Assignee is 16151 Addison Road, Addison, Texas 75001.

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 remedies provided in the Ground Lease or by law, 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 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.

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

**ASSIGNOR:**

**SEAKING INVESTMENT PARTNERS, LTD.,**  
a Texas limited partnership

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

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

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

**ASSIGNEE:**

**EAGLE LAND & CATTLE CO.,**  
a Texas corporation

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

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

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

**ACKNOWLEDGMENT**

**STATE OF TEXAS           §**  
**COUNTY OF DALLAS       §**

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, the \_\_\_\_\_ of SEAKING INVESTMENT PARTNERS, LTD., a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (he, she) executed the same for the purposes and consideration therein stated and as the act and deed of said corporation

GIVEN under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

[SEAL]

\_\_\_\_\_  
Notary Public, State of Texas

My commission expires: \_\_\_\_\_

**STATE OF TEXAS           §**  
**COUNTY OF DALLAS       §**

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, the \_\_\_\_\_ of EAGLE LAND & CATTLE CO., a Texas corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein stated, and as the act and deed of said limited partnership.

GIVEN under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_, 2009.

[SEAL]

\_\_\_\_\_  
Notary Public, State of Texas

My commission expires: \_\_\_\_\_

**CONSENT OF LANDLORD**

The Town of Addison, Texas ("Landlord") is the Landlord in the Ground Lease described in the above and foregoing Assignment of Ground Lease (the "Assignment") entered into and effective as of \_\_\_\_ day of \_\_\_\_\_ 2009, at Addison, Texas, by and between Seaking Investment Partners, Ltd, a Texas limited partnership (herein referred to as "Assignor") and Eagle Land & Cattle Co., a Texas corporation (herein referred to as "Assignee"). In executing this Consent of Landlord, Landlord is relying upon the warranty 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 of Landlord, 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 remain liable and responsible for all such covenants, obligations, duties, and responsibilities. In addition, notwithstanding any provision 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 and notarized by both Assignor and Assignee,

(ii) all other matters in connection with the transfer, sale, and/or conveyance by Assignor to Assignee of the Assignor's interest in the Ground Lease 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 this Assignment and any other documentation so required by Landlord relating to this transaction) and delivered to 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 all of paragraphs (i) and (ii) above, this Consent shall be null and void *ab initio* as if it had never been given and executed.

Signed this \_\_\_\_ day \_\_\_\_\_, 2009

**LANDLORD:**

**TOWN OF ADDISON, TEXAS**

By: \_\_\_\_\_  
Ron Whitehead, City Manager

**EXHIBIT "A"**

(a true and correct copy of which Ground Lease having been assigned, amended or modified follows this cover page.)



**EXHIBIT "B"**

**Proposed Estoppel Letter from  
Liberty Capital Bank  
Ground Lease #0090**

## BANK ESTOPPEL LETTER

[TO BE ON BANK LETTERHEAD]

\_\_\_\_\_, 2009

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

RE: Ground Lease executed on February 11, 1980 between the City of Addison (the same being the Town of Addison, Texas) and Addison Airport of Texas, Inc., as landlord, and Richard W. Cree, Sr., as tenant by the terms of which certain real property located at 4650 Airport Parkway, Addison, Texas 75001 (the "Demised Premises," and so called and as more fully described in the said Ground Lease), in the Addison Airport within the Town of Addison, Texas (the "City" or "Landlord") and owned by the City was leased to Richard W. Cree, Sr.; and thereafter:

1. the said Ground Lease was then assigned by that Assignment of Ground Lease dated February 11, 1980 from Richard W. Cree, Sr., as assignor, to Cree Ventures, Inc., as assignee (the said Assignment of Ground Lease being described in that "Memorandum of Assignment" recorded in Volume 81219, Page 2302 of the Official Public Records of Dallas County, Texas (the "OPR")); and
2. the said Ground Lease then having been assigned by Cree Ventures, Inc., to Hugo W. Schoellkopf, Jr., and Caroline Hunt Schoellkopf, by that Assignment and Assumption of Lease entered into on October 28, 1981; and
3. the said Ground Lease then having been assigned by Hugo W. Schoellkopf, Jr., and wife, Caroline Hunt Schoellkopf, to Pumpkin Air, Inc., by that Assignment of Lease entered into on March 24, 1982; and
4. the said Ground Lease then having been assigned by Pumpkin Air, Inc. to Caroline Hunt Schoellkopf by that Assignment of Ground Lease entered into on December 23, 1986, but effective as of 11:59 p.m. C.S.T. December 31, 1986; and
5. the said Ground Lease then having been assigned by Caroline Hunt Schoellkopf to Hugo W. Schoellkopf, Jr., by that Assignment of Lease entered into on May 26, 1987, but effective as of 12:01 a.m. C.D.T., May 26, 1987; and
6. the said Ground Lease then having been assigned by Hugo W. Schoellkopf, Jr. to Schoellkopf Hangar Corporation, a Texas corporation, by that Assignment of Lease entered into on August 7, 1987, but effective as of 12:01 a.m., C.D.T., July 23, 1987; and

7. the said Ground Lease then having been assigned by Schoellkopf Hangar Corporation to Seaking Investment Partners, Ltd., a Texas limited partnership, as evidenced by that certain Assignment of Ground Lease entered into and made effective November 30, 2007 and recorded as Instrument #20070444337 in the OPR; and
8. the said Ground Lease was then modified by that First Amendment to Ground Lease entered into and made effective as of November 30, 2007 whereby (i) the Demised Premises was described to be a 2.703 acre tract of land in the Boundary Survey prepared by Sparr Surveys, and (ii) the monthly rental was affirmed as stated therein; and
9. the said Ground Lease was then assigned by Seaking Investment Partners, Ltd to Eagle Land & Cattle Co., a Texas corporation (the "Tenant") by way of that Assignment of Ground Lease entered into and made effective \_\_\_\_\_, 2009 and recorded as Instrument # \_\_\_\_\_ recorded in the OPR; and
10. the said Ground Lease was then modified by that Second Amendment to Ground Lease entered into by the City, as Landlord, and Tenant and made effective on \_\_\_\_\_, 2009 (the said Ground Lease, as assigned, amended and modified being referred to hereinafter as the "Ground Lease").

Ladies and Gentlemen:

\_\_\_\_\_ (the "Bank"), a \_\_\_\_\_ [*type of entity and state of formation*] intends to make a loan to Eagle Land & Cattle Co., a Texas corporation, which loan (the "Loan") evidenced by a promissory note in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_ .00) will be secured by, among other things a lien against the leasehold interest of Tenant in the Demised Premises created pursuant to a leasehold deed of trust (the "Leasehold Deed of Trust") to be executed by Tenant to \_\_\_\_\_, as Trustee for the benefit of Bank, which Leasehold Deed of Trust shall be subordinate and inferior to the Ground Lease and Landlord's lien (contractual and statutory) and other rights thereunder and all terms and conditions thereof, which Leasehold Deed of Trust shall be in substantially the form of the Leasehold Deed of Trust attached hereto.

The Bank has advised Tenant that Bank requires 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 the 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 and agrees as follows (with the understanding that (i) nothing herein shall constitute approval by Landlord of any of the terms and conditions set forth in the Leasehold Deed of Trust, and (ii) except as otherwise expressly provided herein, nothing herein contained shall diminish or affect any of the Landlord's rights or remedies under the Ground Lease or otherwise) (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 takes notice of the Leasehold Deed of Trust and the subordinate and inferior lien provided for therein being impressed solely against the leasehold interest of Tenant in the Demised Premises.
2. The Ground Lease has not been modified, altered or amended to the best of Landlord's actual knowledge except as described herein.
3. Landlord has no actual knowledge of the existence of any default by Tenant under the Ground Lease, or of any lien against the Real Property other than that created by the Ground Lease, any lien for taxes, or as may be otherwise created or provided by law.
4. The Ground Lease may not be cancelled or terminated without the prior written consent of any Bank, unless Landlord complies with the terms and provisions of paragraphs 5 through 8 hereof or a court order. The Ground Lease may not be amended without Bank's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.
5. Notwithstanding anything to the contrary in the Ground Lease, Landlord may terminate the Ground Lease, or exercise any other remedies available to Landlord thereunder or at law and in equity because of a default thereunder only after Landlord has sent to Bank a written notice simultaneously with the notice of such default delivered to Tenant pursuant to the terms of the Ground Lease (or upon the occurrence of such default, if Tenant is not entitled to receive notice thereof hereunder), specifying such default, and
  - (a) if such default is a Monetary Default, Bank fails to cure such default within fifteen (15) days after Bank's receipt of such notice; or
  - (b) if such default is a Non-Monetary Default, which does impose a danger or hazard to the health, safety or welfare of the public, (A) Bank fails to commence and complete within thirty (30) days after the expiration of Tenant's 30-day cure period under the Ground Lease the work of curing such default, or (B) if the default cannot with diligence be cured within the said thirty (30) day period, if Bank fails (1) within the said thirty (30) day time period Bank gives notice to Landlord of the curative measures which Bank proposes to undertake and an estimate of the time to complete the cure, and (2) immediately after giving such notice proceeds to initiate such measures to cure such default and thereafter prosecutes the curing of such default to completion with all due diligence and continuity and in good faith to cure the default until completion, but in any event not to exceed 120 days after the expiration of Tenant's 30-day cure period under the Ground Lease.
    - (b-1) In the event a Non-Monetary Default is not susceptible to being cured by Bank without Bank succeeding to the interest of Tenant under 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, and thereby obtaining the right to possession of the Demised Premises (the "right to possession"), Bank, by commencing within ten (10) days after the expiration of Tenant's cure period and thereafter with all due diligence and continuity (but in any event not to exceed one (1) year after the expiration of Tenant's cure period) pursuing to completion

proceedings to so obtain the right to possession of the Demised Premises (and giving Landlord written notice thereof within five (5) business days after obtaining such right), shall be deemed to satisfy the foregoing requirement of subparagraph (b) of this paragraph 5 that Bank commence and carry to completion the curing of such default; provided that Bank shall commence immediately after obtaining the right to possession the curing of such default and (A) complete the same within thirty (30) days after obtaining the right to possession, or (B) if the default cannot with diligence be cured within the said thirty (30) day period after obtaining the right to possession, Bank shall (1) within the first ten (10) days after the date of obtaining the right to such possession give notice to Landlord of the curative measures which Bank proposes to undertake and an estimate of the time to complete the cure, and (2) immediately after giving such notice proceed to initiate such measures to cure such default and thereafter prosecute the curing of such default to completion with all due diligence and continuity and in good faith to cure the default until completion, but in any event not to exceed 120 days after the date of obtaining the right to possession.

Landlord may, without further notice to Bank, terminate the Ground Lease, or exercise any other remedies available to Landlord thereunder or at law, in equity, or otherwise, if Bank fails to comply with the provisions of this subparagraph (b-1) of this paragraph 5.

Notwithstanding the foregoing, if a Non-Monetary Default constitutes or involves a danger or hazard to public health or safety, Landlord may, after giving notice to the Bank, exercise any of its rights or remedies (other than termination of the Ground Lease) as may be available to it under the Ground Lease or law (but in the event of an emergency or urgent public necessity involving a Non-Monetary Default that constitutes or involves a danger or hazard to public health or safety, no notice to Bank is required prior to Landlord exercising any of such rights or remedies).

Under no circumstances are the rights granted to Bank under paragraph 5 assignable or otherwise transferable by Bank without the express written approval of Landlord. Such consent shall be at the sole discretion of Landlord.

In the event Bank becomes the beneficiary under a new leasehold deed of trust in connection with any transfer by Bank of the tenant's interest in the Ground Lease or any New Lease (hereinafter defined) (any such transfer being subject to the prior written approval of Landlord), the provisions of this paragraph 5 and paragraphs 6 through 12 hereof shall be included in an estoppel letter executed by Landlord in connection therewith.

6. If Bank acquires Tenant's interest in the Ground Lease pursuant to foreclosure proceedings, transfer in lieu of foreclosure, or by other lawful means, Bank is not required to cure any default under the Ground Lease existing prior to such acquisition that is personal to Tenant (such as insolvency or bankruptcy of Tenant, a prohibited assignment or subletting by Tenant, a change in control of Tenant, or any other Non-Monetary Default that by its nature relates only to, or can reasonably be performed only by, Tenant), provided however, this provision does not affect Landlord's rights under 11 U.S.C. §362 and 365.

7. Bank shall have the right, but not the obligation, to cure any default under the Ground Lease, and Landlord shall accept such performance by or at the insistence of Bank as if the same had been made by Tenant; provided, that such performance shall be subject to and in accordance with the Ground Lease.
  8. A. If the Ground Lease is rejected pursuant to 11 U.S.C. §365, or if the automatic stay is modified under 11 U.S.C §362, Landlord shall give prompt notice thereof to Bank (the "Termination Notice") and shall enter into a new lease with Bank (the "New Lease") covering the Demised Premises in recordable form, provided Bank elects to enter into such New Lease within twenty (20) days after Bank's receipt of the Termination Notice and executes and delivers within the said twenty (20) days such New Lease to Landlord (provided, however, that a New Lease shall not be entered into if the Ground Lease is not terminated in connection with or following such rejection or modification and Landlord elects that Bank assume the Ground Lease as provided for in subparagraph B of this paragraph 8, below). Notwithstanding anything else in this letter, if a Monetary Default exists, in order for Bank to preserve its rights as stated herein, Bank must timely cure the Monetary Default, including the payment of all reasonable attorneys' fees and expenses incurred by Landlord. The following terms and provisions shall apply to the New Lease:
    - (a) the New Lease shall be effective as of the date of termination of the Ground Lease (the "New Lease Effective Date"), and shall (subject to termination thereof) be effective for the remainder of the term of the Ground Lease at the rent (as adjusted) and upon all of the same terms and provisions of the Ground Lease. Upon the execution of a New Lease, in the event Landlord has not required the Bank to cure any Monetary Default, Bank or any new tenant (as may be approved in writing by Landlord) thereunder shall pay to Landlord, subject to the adjustments required below, any and all rent and all other sums payable to Landlord by Bank or such tenant pursuant to the New Lease which accrued during the period from the New Lease Effective Date to the date of execution and delivery of the New Lease (the "New Lease Execution Date"), plus any arrearages for the period prior to the New Lease Effective Date, less the net amount of all sums received by Landlord from any sublessees in occupancy of any part or parts of the Real Property up to the New Lease Execution Date; and
    - (b) following the rejection of the Ground Lease and/or the modification of the automatic stay, until Bank has failed within thirty (30) days after its receipt of the Termination Notice to elect to enter into a New Lease, Landlord shall not alter or in any way demolish any improvements on the Real Property. Landlord during the same period shall not remove, replace or change any furniture, furnishings, fixtures or equipment located on the Real Property.
  - B. In the alternative to the provisions of this paragraph 8, if the Ground Lease is not terminated in connection with or following a rejection of the Ground Lease or modification of the automatic stay, and in Landlord's sole discretion and at Landlord's sole election, the Bank shall assume the Ground Lease.
9. The provisions of this paragraph 9 and of paragraphs 8 and 10 shall survive the termination, rejection or disaffirmance of the Ground Lease and shall continue in full

force and effect thereafter to the same extent as if paragraphs 8, 9 and 10 were a separate and independent contract made by Landlord and Bank, and, from the effective date of such termination or whatever remedy is exercised by Landlord affecting Tenant's right of possession, rejection or disaffirmance of the Ground Lease to the date of execution and delivery of such New Lease or assumption of the Ground Lease, Bank may use and enjoy the Demised Premises subject to and in accordance with the Ground Lease.

10. After the rejection of the Ground Lease and during the period thereafter during which Bank shall enter into a New Lease or assume the Ground Lease (in Landlord's sole discretion), Landlord will not terminate any sublease or the rights of the subtenant under such a sublease unless such subtenant shall be in violation of any term, condition or provision of the Ground Lease. In the event a sublease is currently in place, if Bank takes any action to affect the quiet enjoyment of said subtenant or takes such other action with respect to which the subtenant alleges damages or potential damages, Bank shall indemnify Landlord and hold Landlord harmless for any damages alleged by subtenant resulting from Bank's actions, including reasonable attorneys' fees and other costs and expenses as may be incurred by Landlord.
11. All references in this Lease to Bank shall be construed to also refer to any designee or nominee of Bank in connection with the Bank's foreclosure under the Leasehold Deed of Trust, by means of a transfer in lieu of such foreclosure, or by any other lawful means, and thereby (but this does not give Bank the right to assign, transfer, sell, pledge, or otherwise convey the Ground Lease or any New Lease without Landlord's prior written consent).
12. As used herein, the following terms shall have the following meanings:
  - (a) "Monetary Default" means any failure by Tenant to pay, when and as the Ground Lease requires, any rent or sums of money the Ground Lease requires Tenant to pay, whether to Landlord or a third party.
  - (b) "Non-Monetary Default" means any breach by Tenant of its obligations under the Ground Lease, other than a Monetary Default.
13. For the purposes of this letter, any notice to Bank may be delivered (a) in person (and shall be deemed to be delivered when so delivered), or (b) shall be deemed to be delivered, whether actually received or not, (i) three (3) business days after it is deposited in United States mail, postage prepaid, registered, or certified mail, return receipt requested, addressed to Bank at the above-described address, or (ii) one (1) business day after deposit with a national overnight express courier, such as Federal Express, charges prepaid, addressed to Bank as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: .

14. If Bank or a third party (provided such third party is approved by Landlord in accordance with the terms of the Ground Lease for the approval of an assignee) 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 failure or inability of Tenant to pay the Loan secured by 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 prior 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 in its sole discretion;
- (b) the proposed assignee and/or its principals have 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 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 period, then Landlord may not continue to withhold its consent solely for this circumstance;
- (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; or
- (g) Landlord receives adequate assurance that the new tenant will perform under the Ground Lease including but not limited to personal guarantees of principals of the new tenant or a letter of credit.

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.

- 15. To the actual knowledge of Landlord no rent has been paid more than thirty (30) days in advance of its due date. For purposes of this letter, "days" means calendar days unless otherwise expressly provided for. The provisions of this letter shall terminate upon the earlier to occur of (i) payment in full of the Loan, (ii) the release of the lien on the Demised Premises created pursuant to the Leasehold Deed of Trust, and (iii) the expiration or termination of the Ground Lease (subject to any continuing rights expressly set forth in this letter). It is expressly understood that neither Bank nor Tenant shall cross collateralize the Demised Premises with any other form of indebtedness or obligation to the Bank. This letter will be construed under the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction; venue for all matters, claims, or proceedings hereunder lies exclusively in Dallas County, Texas.

Very truly yours,

\_\_\_\_\_ (BANK)

By: \_\_\_\_\_  
\_\_\_\_\_ (Name and Title)

Acknowledged and consented to the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

TOWN OF ADDISON, TEXAS

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

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

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

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

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

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

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# **EXHIBIT "C"**

## **Proposed Estoppel Letter from Liberty Capital Bank Ground Lease #0090**

**BANK ESTOPPEL LETTER**

[TO BE ON BANK LETTERHEAD]

\_\_\_\_\_, 2009

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

RE: Ground Lease executed on on September 4,1980 between the City of Addison (the same being the Town of Addison, Texas) and Addison Airport of Texas, Inc., as landlord, and William R. White, as tenant (the "Ground Lease," the same being recorded in Book and Volume 81006, Page 2460 of the Official Public Records of Dallas County, Texas (the "OPR"), by the terms of which certain real property located at 16151 Addison Road, Addison, Texas 75001 (the "Demised Premises"), in the Addison Airport within the Town of Addison, Texas (the "City") and owned by the City was leased to William R. White; and thereafter

1. the Ground Lease was amended by that certain Amendment to Ground Lease dated January 12, 1983 and recorded in the Book and Volume 84227, Page 0021 of the OPR, whereby, among other things, the Demised Premises were modified to include an area of .748 acres and the rental was increased \$664.11 per month payable in advance (the "First Amendment"); and
2. the Ground Lease was thereafter assigned by William R. White to Eagle Land & Cattle Co., a Texas corporation, by that certain Assignment of Lease dated January 15, 1990 and recorded in Book and Volume 90157, Page 0593 of the OPR; and
3. the Ground Lease was amended by that certain Agreement dated January 15, 1990 by and between the Town of Addison, Texas and Addison Airport of Texas, Inc., as landlord and Eagle Land & Cattle Co, as tenant, whereby the parties agreed that Landlord (being the Town of Addison, Texas) may hold special events from time to time which may limit Tenant's use of the Demised Premises; and
4. the Base Lease (as defined in the Ground Lease) between the Town of Addison, Texas and Addison Airport of Texas, Inc. has expired, and the Town of Addison, Texas alone is the Landlord under the Ground Lease.

Ladies and Gentlemen:

\_\_\_\_\_ (the "Bank"), a \_\_\_\_\_ [*type of entity and state of formation*]  
intends to make a loan to Eagle Land & Cattle Co., a Texas corporation, which loan (the "Loan")  
in the amount of \_\_\_\_\_ (\$\_\_\_\_\_.00) will be secured by, among  
other things a lien against the leasehold interest of Tenant in the Demised Premises created  
pursuant to a leasehold deed of trust (the "Leasehold Deed of Trust") to be executed by Tenant to

\_\_\_\_\_, as Trustee for the benefit of Bank, which Leasehold Deed of Trust shall be subordinate and inferior to the Ground Lease and Landlord's lien (contractual and statutory) and other rights thereunder and all terms and conditions thereof, which Leasehold Deed of Trust shall be in substantially the form of the Leasehold Deed of Trust attached hereto.

The Bank has advised Tenant that Bank requires 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 the 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 and agrees as follows (with the understanding that (i) nothing herein shall constitute approval by Landlord of any of the terms and conditions set forth in the Leasehold Deed of Trust, and (ii) except as otherwise expressly provided herein, nothing herein contained shall diminish or affect any of the Landlord's rights or remedies under the Ground Lease or otherwise) (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 takes notice of the Leasehold Deed of Trust and the subordinate and inferior lien provided for therein being impressed solely against the leasehold interest of Tenant in the Demised Premises.
2. The Ground Lease has not been modified, altered or amended to the best of Landlord's actual knowledge except as described herein.
3. Landlord has no actual knowledge of the existence of any default by Tenant under the Ground Lease, or of any lien against the Real Property other than that created by the Ground Lease, any lien for taxes, or as may be otherwise created or provided by law.
4. The Ground Lease may not be cancelled or terminated without the prior written consent of any Bank, unless Landlord complies with the terms and provisions of paragraphs 5 through 8 hereof or a court order. The Ground Lease may not be amended without Bank's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.
5. Notwithstanding anything to the contrary in the Ground Lease, Landlord may terminate the Ground Lease, or exercise any other remedies available to Landlord thereunder or at law and in equity because of a default thereunder only after Landlord has sent to Bank a written notice simultaneously with the notice of such default delivered to Tenant pursuant to the terms of the Ground Lease (or upon the occurrence of such default, if Tenant is not entitled to receive notice thereof hereunder), specifying such default, and
  - (a) if such default is a Monetary Default, Bank fails to cure such default within fifteen (15) days after Bank's receipt of such notice; or
  - (b) if such default is a Non-Monetary Default, which does impose a danger or hazard to the health, safety or welfare of the public, (A) Bank fails to commence and complete within thirty (30) days after the expiration of Tenant's 30-day cure period under the Ground Lease the work of curing such default, or (B) if the

default cannot with diligence be cured within the said thirty (30) day period, if Bank fails (1) within the said thirty (30) day time period Bank gives notice to Landlord of the curative measures which Bank proposes to undertake and an estimate of the time to complete the cure, and (2) immediately after giving such notice proceeds to initiate such measures to cure such default and thereafter prosecutes the curing of such default to completion with all due diligence and continuity and in good faith to cure the default until completion, but in any event not to exceed 120 days after the expiration of Tenant's 30-day cure period under the Ground Lease.

- (b-1) In the event a Non-Monetary Default is not susceptible to being cured by Bank without Bank succeeding to the interest of Tenant under 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, and thereby obtaining the right to possession of the Demised Premises (the "right to possession"), Bank, by commencing within ten (10) days after the expiration of Tenant's cure period and thereafter with all due diligence and continuity (but in any event not to exceed one (1) year after the expiration of Tenant's cure period) pursuing to completion proceedings to so obtain the right to possession of the Demised Premises (and giving Landlord written notice thereof within five (5) business days after obtaining such right), shall be deemed to satisfy the foregoing requirement of subparagraph (b) of this paragraph 5 that Bank commence and carry to completion the curing of such default; provided that Bank shall commence immediately after obtaining the right to possession the curing of such default and (A) complete the same within thirty (30) days after obtaining the right to possession, or (B) if the default cannot with diligence be cured within the said thirty (30) day period after obtaining the right to possession, Bank shall (1) within the first ten (10) days after the date of obtaining the right to such possession give notice to Landlord of the curative measures which Bank proposes to undertake and an estimate of the time to complete the cure, and (2) immediately after giving such notice proceed to initiate such measures to cure such default and thereafter prosecute the curing of such default to completion with all due diligence and continuity and in good faith to cure the default until completion, but in any event not to exceed 120 days after the date of obtaining the right to possession.

Landlord may, without further notice to Bank, terminate the Ground Lease, or exercise any other remedies available to Landlord thereunder or at law, in equity, or otherwise, if Bank fails to comply with the provisions of this subparagraph (b-1) of this paragraph 5.

Notwithstanding the foregoing, if a Non-Monetary Default constitutes or involves a danger or hazard to public health or safety, Landlord may, after giving notice to the Bank, exercise any of its rights or remedies (other than termination of the Ground Lease) as may be available to it under the Ground Lease or law (but in the event of an emergency or urgent public necessity involving a Non-Monetary Default that constitutes or involves a danger or hazard to public health or safety, no notice to Bank is required prior to Landlord exercising any of such rights or remedies).

Under no circumstances are the rights granted to Bank under paragraph 5 assignable or otherwise transferable by Bank without the express written approval of Landlord. Such consent shall be at the sole discretion of Landlord.

In the event Bank becomes the beneficiary under a new leasehold deed of trust in connection with any transfer by Bank of the tenant's interest in the Ground Lease or any New Lease (hereinafter defined) (any such transfer being subject to the prior written approval of Landlord), the provisions of this paragraph 5 and paragraphs 6 through 12 hereof shall be included in an estoppel letter executed by Landlord in connection therewith.

6. If Bank acquires Tenant's interest in the Ground Lease pursuant to foreclosure proceedings, transfer in lieu of foreclosure, or by other lawful means, Bank is not required to cure any default under the Ground Lease existing prior to such acquisition that is personal to Tenant (such as insolvency or bankruptcy of Tenant, a prohibited assignment or subletting by Tenant, a change in control of Tenant, or any other Non-Monetary Default that by its nature relates only to, or can reasonably be performed only by, Tenant), provided however, this provision does not affect Landlord's rights under 11 U.S.C. §362 and 365.
7. Bank shall have the right, but not the obligation, to cure any default under the Ground Lease, and Landlord shall accept such performance by or at the insistence of Bank as if the same had been made by Tenant; provided, that such performance shall be subject to and in accordance with the Ground Lease.
8. A. If the Ground Lease is rejected pursuant to 11 U.S.C. §365, or if the automatic stay is modified under 11 U.S.C. §362, Landlord shall give prompt notice thereof to Bank (the "Termination Notice") and shall enter into a new lease with Bank (the "New Lease") covering the Demised Premises in recordable form, provided Bank elects to enter into such New Lease within twenty (20) days after Bank's receipt of the Termination Notice and executes and delivers within the said twenty (20) days such New Lease to Landlord (provided, however, that a New Lease shall not be entered into if the Ground Lease is not terminated in connection with or following such rejection or modification and Landlord elects that Bank assume the Ground Lease as provided for in subparagraph B of this paragraph 8, below). Notwithstanding anything else in this letter, if a Monetary Default exists, in order for Bank to preserve its rights as stated herein, Bank must timely cure the Monetary Default, including the payment of all reasonable attorneys' fees and expenses incurred by Landlord. The following terms and provisions shall apply to the New Lease:
  - (a) the New Lease shall be effective as of the date of termination of the Ground Lease (the "New Lease Effective Date"), and shall (subject to termination thereof) be effective for the remainder of the term of the Ground Lease at the rent (as adjusted) and upon all of the same terms and provisions of the Ground Lease. Upon the execution of a New Lease, in the event Landlord has not required the Bank to cure any Monetary Default, Bank or any new tenant (as may be approved in writing by Landlord) thereunder shall pay to Landlord, subject to the adjustments required below, any and all rent and all other sums payable to Landlord by Bank or such tenant pursuant to the New Lease which accrued during the period from the New Lease Effective Date to the date of execution and

delivery of the New Lease (the “New Lease Execution Date”), plus any arrearages for the period prior to the New Lease Effective Date, less the net amount of all sums received by Landlord from any sublessees in occupancy of any part or parts of the Real Property up to the New Lease Execution Date; and

- (b) following the rejection of the Ground Lease and/or the modification of the automatic stay, until Bank has failed within thirty (30) days after its receipt of the Termination Notice to elect to enter into a New Lease, Landlord shall not alter or in any way demolish any improvements on the Real Property. Landlord during the same period shall not remove, replace or change any furniture, furnishings, fixtures or equipment located on the Real Property.
  - B. In the alternative to the provisions of this paragraph 8, if the Ground Lease is not terminated in connection with or following a rejection of the Ground Lease or modification of the automatic stay, and in Landlord’s sole discretion and at Landlord’s sole election, the Bank shall assume the Ground Lease.
9. The provisions of this paragraph 9 and of paragraphs 8 and 10 shall survive the termination, rejection or disaffirmance of the Ground Lease and shall continue in full force and effect thereafter to the same extent as if paragraphs 8, 9 and 10 were a separate and independent contract made by Landlord and Bank, and, from the effective date of such termination or whatever remedy is exercised by Landlord affecting Tenant’s right of possession, rejection or disaffirmance of the Ground Lease to the date of execution and delivery of such New Lease or assumption of the Ground Lease, Bank may use and enjoy the Demised Premises subject to and in accordance with the Ground Lease.
10. After the rejection of the Ground Lease and during the period thereafter during which Bank shall enter into a New Lease or assume the Ground Lease (in Landlord’s sole discretion), Landlord will not terminate any sublease or the rights of the subtenant under such a sublease unless such subtenant shall be in violation of any term, condition or provision of the Ground Lease. In the event a sublease is currently in place, if Bank takes any action to affect the quiet enjoyment of said subtenant or takes such other action with respect to which the subtenant alleges damages or potential damages, Bank shall indemnify Landlord and hold Landlord harmless for any damages alleged by subtenant resulting from Bank’s actions, including reasonable attorneys’ fees and other costs and expenses as may be incurred by Landlord.
11. All references in this Lease to Bank shall be construed to also refer to any designee or nominee of Bank in connection with the Bank’s foreclosure under the Leasehold Deed of Trust, by means of a transfer in lieu of such foreclosure, or by any other lawful means, and thereby (but this does not give Bank the right to assign, transfer, sell, pledge, or otherwise convey the Ground Lease or any New Lease without Landlord’s prior written consent).
12. As used herein, the following terms shall have the following meanings:
- (a) “Monetary Default” means any failure by Tenant to pay, when and as the Ground Lease requires, any rent or sums of money the Ground Lease requires Tenant to pay, whether to Landlord or a third party.

(b) "Non-Monetary Default" means any breach by Tenant of its obligations under the Ground Lease, other than a Monetary Default.

13. For the purposes of this letter, any notice to Bank may be delivered (a) in person (and shall be deemed to be delivered when so delivered), or (b) shall be deemed to be delivered, whether actually received or not, (i) three (3) business days after it is deposited in United States mail, postage prepaid, registered, or certified mail, return receipt requested, addressed to Bank at the above-described address, or (ii) one (1) business day after deposit with a national overnight express courier, such as Federal Express, charges prepaid, addressed to Bank as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: .

14. If Bank or a third party (provided such third party is approved by Landlord in accordance with the terms of the Ground Lease for the approval of an assignee) 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 failure or inability of Tenant to pay the Loan secured by 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 prior 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 in its sole discretion;
- (b) the proposed assignee and/or its principals have 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 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 period, then Landlord may not continue to withhold its consent solely for this circumstance;
- (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; or
- (g) Landlord receives adequate assurance that the new tenant will perform under the Ground Lease including but not limited to personal guarantees of principals of the new tenant or a letter of credit.

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.

15. To the actual knowledge of Landlord no rent has been paid more than thirty (30) days in advance of its due date. For purposes of this letter, "days" means calendar days unless otherwise expressly provided for. The provisions of this letter shall terminate upon the earlier to occur of (i) payment in full of the Loan, (ii) the release of the lien on the Demised Premises created pursuant to the Leasehold Deed of Trust, and (iii) the expiration or termination of the Ground Lease (subject to any continuing rights expressly set forth in this letter). It is expressly understood that neither Bank nor Tenant shall cross collateralize the Demised Premises with any other form of indebtedness or obligation to the Bank. This letter will be construed under the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction; venue for all matters, claims, or proceedings hereunder lies exclusively in Dallas County, Texas.

Very truly yours,

\_\_\_\_\_ (BANK)

By: \_\_\_\_\_  
\_\_\_\_\_ (Name and Title)

Acknowledged and consented to the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

TOWN OF ADDISON, TEXAS

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

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

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

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

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

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

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**EXHIBIT "D"**

**Proposed Second Amendment to  
Ground Lease #0090**

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

This Second Amendment to Ground Lease (hereinafter referred to as the "Second Amendment") is entered into and effective as of \_\_\_\_\_, 2009 (the "Effective Date"), between the Town of Addison, Texas, a home-rule municipality (hereinafter sometimes referred to as the "Landlord" or the "City"), and Eagle Land & Cattle Co., a Texas corporation ("Tenant").

**WHEREAS**, a Ground Lease was executed on February 11, 1980 between the City of Addison (the same being the Town of Addison, Texas) and Addison Airport of Texas, Inc., as Landlord, and Richard W. Cree, Sr., as Tenant, by the terms of which certain real property located at 4650 Airport Parkway, Addison, Texas 75001 (the "Demised Premises" and as more fully described in the said Ground Lease) in the Addison Airport within the Town of Addison, Texas (the "City") and owned by the City was leased to Richard W. Cree, Sr.; and

**WHEREAS**, the said Ground Lease was thereafter assigned by that certain Assignment of Ground Lease dated February 11, 1980 from Richard W. Cree, Sr., as assignor, to Cree Ventures, Inc., a Texas corporation as assignee (the said Assignment of Ground Lease being described in that "Memorandum of Assignment" recorded in Book and Volume 81219, Page 2302 of the Official Public Records of Dallas County, Texas (the "OPR")); and

**WHEREAS**, the said Ground Lease was thereafter assigned by Cree Ventures, Inc. to Hugo W. Schoellkopf, Jr., and wife, Caroline Hunt Schoellkopf by that certain Assignment and Assumption of Lease dated October 28, 1981; and

**WHEREAS**, the said Ground Lease then having been assigned by Hugo W. Schoellkopf, Jr., and wife, Caroline Hunt Schoellkopf to Pumpkin Air, Inc., by that Assignment of Lease entered into on March 24, 1982; and

**WHEREAS**, the said Ground Lease then having been assigned by Pumpkin Air, Inc. to Caroline Hunt Schoellkopf by that Assignment of Ground Lease entered into on December 23, 1986, but effective as of 11:59 p.m. C.S.T. December 31, 1986; and

**WHEREAS**, the said Ground Lease then having been assigned by Caroline Hunt Schoellkopf to Hugo W. Schoellkopf, Jr., by that Assignment of Lease entered into on May 26, 1987, but effective as of 12:01 a.m. C.D.T., May 26, 1987; and

**WHEREAS**, the said Ground Lease then having been assigned by Hugo W. Schoellkopf, Jr. to Schoellkopf Hangar Corporation, a Texas corporation by that Assignment of Lease entered into on August 7, 1987, but effective as of 12:01 a.m., C.D.T., July 23, 1987;

**WHEREAS**, the said Ground Lease then having been assigned by Schoellkopf Hangar Corporation to Seaking Investment Partners, Ltd., a Texas limited partnership ("Seaking") as evidenced by that certain Assignment of Ground Lease entered into and made effective November 30, 2007 and recorded in as Instrument #20070444337 in the OPR; and

**WHEREAS**, the said Ground Lease was thereafter amended by that First Amendment to Ground Lease entered into and made effective November 30, 2007 whereby (i) the description of the Demised Premises was modified in its entirety and replaced with the description set forth in that Boundary Survey dated October 18, 2007 describing a 2.703 acres tract of land prepared by Sparr Surveys; a true and correct copy is attached hereto as Exhibit "B" and incorporated herein by reference, and (ii) the rental was affirmed as stated therein; and

**WHEREAS**, the Ground Lease then having been assigned by Seaking to Tenant by that Assignment of Ground Lease entered into and made effective \_\_\_\_\_, 2009; and

**WHEREAS**, the Base Lease (as defined in the Ground Lease) between the Town of Addison, Texas and Addison Airport of Texas, Inc. has expired, and the Town of Addison, Texas alone is the Landlord under the Ground Lease; and

**WHEREAS**, Tenant has represented to Landlord that it intends to relocate and expand its international flight school, maintenance operations and corporate headquarters (including its sales center and training services) to Addison Airport and believes its relocation and expansion initiative offers the City and the Airport a broad array of economic advantages and benefits including but not limited an increased payroll and higher tax base, demand for hotel stays and apartment housing, avionic parts and services, increased consumption of aviation fuel, and extensive national and international advertising promoting Tenant's services together with Addison Airport and the Town of Addison; and

**WHEREAS**, in consideration of the aforementioned economic benefits and advantages and other consideration given, Landlord and Tenant desire to enter into this Second Amendment to Ground Lease regarding the matters set forth herein; and

**WHEREAS**, a true and correct copy of the said Ground Lease, together with all amendments and modifications thereto, is attached to this Second Amendment as Exhibit "A" (and is referred to herein as the "Ground Lease" or the "Lease").

**NOW, THEREFORE**, for and in consideration of the above and foregoing premises, the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Town of Addison, Texas and Eagle Land & Cattle Co., a Texas corporation, do hereby agree as follows:

**Section 1. Incorporation of Premises; Tenant Representations.** The above and foregoing premises and recitals are true and correct and are incorporated herein and made a part hereof.

In connection with the Lease and this Second Amendment and as a part thereof, Tenant represents and warrants to Landlord that Tenant: (i) is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, and shall remain in good standing throughout the term of this Agreement; (ii) it has the requisite power and authority to carry on its business as it is now being conducted; (iii) it has the legal capacity to enter into this Agreement; and, (iv) the execution, delivery and performance of this Agreement and the

consummation of the transactions contemplated by this Agreement have been authorized and approved by all action required on the part of the Tenant.

**Section 2. Amendments and Modifications to Ground Lease.** The Ground Lease, as described in the above and foregoing recitals, is hereby amended and modified as follows:

**A. Amendment to Term.** The term of the Ground Lease is modified in accordance with the following:

The Term of the Lease, scheduled to expire on October 29, 2020, shall be extended as of the Effective Date of this Amendment an additional one hundred eighty (180) months so it shall end on October 29, 2035 (the "First Lease Extension Period"), but subject, however, to the termination provisions of the Lease.

**B. 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, beginning the first day of the first month following the Effective Date of this Second Amendment, Tenant agrees to pay to Landlord, without offset or deduction, monthly rent for the Demised Premises at the rate of Seventy-One Thousand Seven Hundred Ninety-Six and 39/100 Dollars (\$71,796.39) (the "Base Rental") (such monthly rent amount being one-twelfth of the product of (i) \$0.61 times (ii) 117,699 (the number of square feet of gross land area included within the Demised Premises)). 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, below.

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

5. Adjustment of Rental: Commencing on November 1, 2011 and on every second anniversary thereafter (hereinafter referred to as the "Adjustment Date"), the monthly rental due under Section 4 Rental shall be adjusted as follows:

A. Monthly rent 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 as of November 1, 2009. 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 Rent amount during the first year of this Lease 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 decreased below the Base Rental set forth in Section 4 Rental, as modified above.

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.

**D. Amendment to Section 7 of the Ground Lease - Section 7 of the Ground Lease is amended in its entirety to read as follows:**

7. Acceptance of Demised Premises: Tenant acknowledges that Tenant has fully inspected the Demised Premises and accepts the Demised Premises 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. 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 LEASE.

Without limiting the foregoing, 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.

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

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. This Lease is subject to and Tenant shall comply at all times with all federal, state, and local laws, statutes, ordinances, rules, regulations, directives, orders, permits, standards, codes (including, without limitation, building codes and standards), zoning requirements, grant assurances, grant agreements, the Charter of the Town of Addison, all court orders, opinions and decisions, and all interpretations of the foregoing, of and by any governmental authority, entity, branch, or agency (including, without limitation, the Town of Addison, Texas, the State of Texas, the Federal Aviation Administration, the Texas Department of Transportation, the United States Environmental Protection Agency, and the Texas Commission on Environmental Quality, and any successor entities thereto) applicable or related to, whether directly or indirectly, this Lease, the Addison Airport, the Demised Premises, and the use and occupancy thereof, and whether in existence or hereafter enacted, adopted or imposed (collectively, "Laws," and "Law" means any of the foregoing). Tenant shall promptly comply with all governmental orders and directives and all other Laws for 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) any and all grant agreements or grant assurances now existing or as hereafter agreed to, adopted or imposed and to the terms of a grant, loan, or agreement under Section 22.055 of the Texas Transportation Code (and as the same may be amended or superseded).

Tenant agrees that any new construction or modification of existing improvements on the Demised Premises will comply with all standards and rules published by the Landlord or by any person or entity authorized by Landlord to manage and/or operate the Airport or any portion thereof or any function related thereto (such person and or entity, whether one or more, being the "Airport Manager"), including, but not limited to, the Airport's published "Construction/Maintenance Standards and Specifications," will comply with the Town of Addison building codes and zoning requirements or any other laws,



ordinances, permits, rules, regulations, or policies of the Town of Addison, Texas, and will meet or exceed all applicable State and Federal standards, permits, laws, rules, or regulations, and will otherwise comply with all Laws. Tenant recognizes that the referenced Construction/Maintenance Standards and Specifications, Town of Addison building codes and zoning requirements and other laws, ordinances, permits, rules, regulations or policies, and all applicable State and Federal standards, laws, rules, or regulations, and any other 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, 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 any provision or requirement of 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.

**F. Amendment to Section 9 of the Ground Lease – Section 9 of the Ground Lease, subparagraphs A., B., and E. of the Ground Lease are amended in their entirety to read as follows:**

9. Assignment, Subletting and Mortgaging of Leasehold Estates:

A. Without the prior written consent of Landlord, Tenant shall have no power to and shall not, either voluntarily or involuntarily, by operation of law or otherwise, assign, 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 may be deemed by Landlord (in Landlord's sole discretion) a default under Paragraph 22.B of this Lease. An assignment will be deemed to occur if the person or persons who own or have control of more than 50% of Tenant on the date of the Second Amendment to Ground Lease cease to own or have voting control of more than 50% of Tenant at any time during the Term; 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 policies of an entity, whether through ownership of voting securities or partnership interests, by contract, or otherwise. 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.

B. Tenant shall have the right to mortgage the leasehold estate of Tenant created hereby in order to secure a mortgage loan for the purpose of (i) obtaining funds for the construction of the improvements described in Paragraph 6, or (ii) for other construction upon the Demised Premises approved from time to time by Landlord in writing, or (iii) 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 and its successors and assigns 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 or its successors and assigns performs all of the obligations of Tenant hereunder; provided, however, that notwithstanding the foregoing or any other provision of this Lease, such mortgagee shall not and does not have the right and shall not and does not have the power to assign, sell, transfer, pledge, encumber, mortgage, license, or otherwise convey this

Lease, or any right, interest, obligation, or liability 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, pledge, encumbrance, mortgage, license, or other conveyance and any such subletting without the prior written consent of Landlord shall be null and void and may be deemed a default under Paragraph 22.B. of this Lease, it being the intent of this provision that such mortgagee shall have no greater right than Tenant to assign, sell, transfer, pledge, encumber, mortgage, license, or otherwise convey this Lease (or any right, interest, obligation, or liability hereunder), or to sublet the Demised Premises (or any portion thereof), or to use the Demised Premises. Landlord also agrees to consider the execution and delivery to such proposed leasehold mortgagee 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 to the mortgagee of such proposed leasehold mortgage.

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

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. In the event Tenant fails to pay any such Taxes, Landlord shall have the right (but not the obligation) to pay or cause to be paid such Taxes, and the reasonable costs thereof expended by or caused to be expended by Landlord plus interest thereon as provided in Paragraph 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 rent (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 rent (as the same may be adjusted) as so increased shall continue, subject to adjustment as set forth in this Lease.

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

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.

**I. Amendment to Section 18 of the Ground Lease – Section 18 of the Ground Lease is amended its entirety to read as follows:**

18. 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 protection of property of Landlord, Tenant and all other tenants and customers of the Airport.

**J. 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 (for purposes of this subparagraph A, 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 (for purposes of this subparagraph A, as the term “Tenant Persons” is defined in Subsection B below), or to any other person whomsoever, 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, in the performance of Tenant's obligations hereunder.

**B. TENANT'S INDEMNITY OBLIGATION.** Tenant shall DEFEND (WITH COUNSEL REASONABLY ACCEPTABLE TO LANDLORD), 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, liens, 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 or the Demised Premises, 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 during the Lease Term (collectively, "Tenant Persons"), (ii) any construction on or repair to the Demised Premises, or the Demised Premises becoming out of repair due to the fault of Tenant or any Tenant Persons, 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 Persons 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 OR GROSS NEGLIGENCE OF THE TOWN OF ADDISON, TEXAS, ANY ADDISON PERSON, THE AIRPORT MANAGER, OR ANY MANAGER PERSON, OR BY ANY ACT OR OMISSION BY THE TOWN OF ADDISON, TEXAS, ANY

**ADDISON PERSON, THE AIRPORT MANAGER, 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 the Town of Addison, any other Addison Person, any 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 other Addison Persons (as the term "Addison Persons" is defined in subsection B. of this Section) and Airport Manager and all other Manager Persons (as the term "Manager Persons" is defined in subsection B. of this Section) from, and agrees that the Town of Addison, Texas and all other Addison Persons, and Airport Manager and all other Manager Persons, shall not be liable to Tenant or any Tenant Persons (as the term "Tenant Persons" is defined in subsection B. of this Section) 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.

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

**K. Amendment to Section 21.1 of the Ground Lease - Section 21.1 of the Ground Lease is inserted in its entirety to read as follows:**

Section 21.1. Environmental Compliance.

A. Tenant shall not install, store, use, treat, transport, discharge or dispose (or permit, allow, or acquiesce in the installation, storage, use, treatment, transportation, discharge or disposal by 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/or their respective owners, directors, shareholders, partners, officers, managers, employees, agents, representatives, engineers, consultants, contractors, subcontractors, tenants, licensees, invitees, patrons, and concessionaires) on the Demised Premises or any portion of the common facilities (described in Paragraph 17), any: (a) asbestos in any form; (b) urea formaldehyde foam insulation; (c) transformers or other equipment which contain dielectric fluid containing



levels of polychlorinated biphenyls in excess of 50 parts per million; or (d) any other chemical, material, air pollutant, toxic pollutant, waste, or substance which is regulated as toxic or hazardous or exposure to which is prohibited, limited or regulated by the Resource Conservation Recovery Act (42 U.S.C. §6901, et seq., as amended or superseded), the Comprehensive and Environmental Response Compensation and Liability Act (42 U.S.C. §9601, et seq, as amended or superseded), the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Clean Air Act, and/or the Clean Water Act or any other federal, state, county, regional, local or other governmental authority law, rule, regulation, order, standard, permit, directive or policy, or which, even if not so regulated may or could pose a hazard to the health and safety of the occupants of the Demised Premises and/or any portions of the common facilities, and which is either: (i) in amounts in excess of that permitted or deemed safe under any applicable law, rule, regulation, order, standard, permit, directive or policy, or (ii) in any manner prohibited or deemed unsafe under applicable law, rule, regulation, order, standard, permit, directive or policy. (The substances referred to in (a), (b), (c) or (d) herein are collectively referred to hereinafter as "Hazardous Materials").

**B. Cleanup Laws; Tenant's Indemnity Obligation.**

1. Tenant shall, at Tenant's own expense, comply with any presently existing or hereafter enacted laws, rules, regulations, orders, standards, directives, permits, or notices relating to Hazardous Materials (collectively, "Cleanup Laws"). 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 the Cleanup 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 common facilities (as described in Paragraph 17) by (i) Tenant, or by (ii) 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/or their respective owners, directors, shareholders, partners, officers, managers, employees, agents, representatives, engineers, consultants, contractors, subcontractors, tenants, licensees, invitees, patrons, and concessionaires, or by (iii) any 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 during the Term of this Lease, 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 Cleanup Laws and to Landlord's satisfaction. At no cost or expense to Landlord, Tenant shall promptly provide all information requested by Landlord for preparation of affidavits or other documents required by Landlord to determine the applicability of the Cleanup Laws to the Demised Premises and/or any portion of the common facilities, as the case may be, and 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 other Addison Persons (as the term "Addison Persons" is defined in subsection B of Section 21, above), and the Manager Persons (as the term "Manager Persons" is defined in subsection B of Section 21, above), from and against, and reimburse the Town of Addison, Texas, the Addison Persons, the Airport Manager and all other 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 installation, storage, use, treatment, transporting, disposal or discharge of Hazardous Materials in, on, or to the Demised Premises and/or any portion of the common facilities by Tenant or by any Tenant Persons (as the term "Tenant Persons" is defined in subsection B of Section 21, above); 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 of Tenant Persons' failure to provide all information, make all submissions and take all steps required by the Authority under the Cleanup Laws or any other law, rules, regulation, standard, order, or policy (environmental or otherwise). 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 OR GROSS NEGLIGENCE OF THE TOWN OF ADDISON, TEXAS, ANY ADDISON PERSON, THE AIRPORT MANAGER OR ANY OTHER MANAGER PERSON, OR BY ANY ACT OR OMISSION BY THE TOWN OF ADDISON, TEXAS, ANY ADDISON PERSON, THE AIRPORT MANAGER OR ANY OTHER MANAGER PERSON THAT GIVES RISE TO STRICT LIABILITY OF ANY KIND.**

**Tenant's obligations and liabilities under this subparagraph shall continue (and survive the termination or expiration of this Lease) so long as there may be Hazardous Materials at the Demised Premises and/or any portion of the common facilities, that were installed, stored, used, treated, transported, disposed of or discharged during the Lease Term by Tenant or any of Tenant Persons. 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 authorities of the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, the FAA, TxDOT, or any other local, state or federal authority that requires submission of any information concerning environmental matters or Hazardous Materials.

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.

**L. 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.

**Section 3. No Other Amendments.** Except to the extent modified or amended herein, all other terms and obligations of the Ground Lease shall remain unchanged and in full force and effect.

**Section 4. Applicable Law; Venue.** In the event of any action under this Second Amendment, exclusive venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Second Amendment; and, with respect to any conflict of laws 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 Second Amendment. All obligations of the parties created by this Second Amendment are performable in Dallas County, Texas.

**Section 5. No Third Party Beneficiaries.** This Second Amendment and each of its provisions are solely for the benefit of the parties hereto and are not intended to and shall not create or grant any rights, contractual or otherwise, to any third person or entity.

**Section 6. 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, 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, the undersigned parties execute this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2009

**LANDLORD:**

**TENANT:**

**TOWN OF ADDISON, TEXAS**

**EAGLE LAND & CATTLE CO.**

By: \_\_\_\_\_  
Ron Whitehead, City Manager

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

Name (*Print*): \_\_\_\_\_

Its: (*Title*): \_\_\_\_\_

**ACKNOWLEDGMENT**

**STATE OF TEXAS           §**

**COUNTY OF DALLAS       §**

Before me, the undersigned authority, on this day personally appeared Ron Whitehead, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

[SEAL]           Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public, State of Texas

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

My commission expires: \_\_\_\_\_

**STATE OF TEXAS           §**

**COUNTY OF DALLAS       §**

Before me, the undersigned authority, on this day personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

[SEAL]           Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public, State of Texas

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

My commission expires: \_\_\_\_\_

**EXHIBIT A**

**COPY OF GROUND LEASE AS AMENDED AND MODIFIED**

**EXHIBIT B**

**PROPERTY SURVEY AND LEGAL DESCRIPTION  
OF DEMISED PREMISES**

# **EXHIBIT "E"**

## **Proposed Third Amendment to Ground Lease #0340**



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

This Third Amendment to Ground Lease (hereinafter referred to as the "Third Amendment") is entered into and effective as of \_\_\_\_\_, 2009 (the "Effective Date"), between the Town of Addison, Texas a home-rule municipality (hereinafter sometimes referred to as the "Landlord" or the "City"), and Eagle Land & Cattle Co., a Texas corporation ("Tenant").

**WHEREAS**, a Ground Lease was executed on September 4, 1980 between the City of Addison (the same being the Town of Addison, Texas) and Addison Airport of Texas, Inc., as Landlord, and William R. White, as Tenant (the "Ground Lease," the same being recorded in Book and Volume 81006, Page 2460 of the Official Public Records of Dallas County, Texas (the "OPR"), by the terms of which certain real property located at 16151 Addison Road, Addison, Texas 75001 (the "Demised Premises"), in the Addison Airport within the Town of Addison, Texas (the "City") and owned by the City was leased to William R. White; and

**WHEREAS**, the Ground Lease was thereafter amended by that certain Amendment to Ground Lease dated January 12, 1983 and recorded in the Book and Volume 84227, Page 0021 of the OPR, whereby, among other things, the Demised Premises were modified to include an area of .748 acres and the rental was increased \$664.11 per month payable in advance (the "First Amendment"); and

**WHEREAS**, the Ground Lease was thereafter assigned by William R. White to Eagle Land & Cattle Co., a Texas corporation, by that certain Assignment of Lease dated January 15, 1990 and recorded in Book and Volume 90157, Page 0593 of the OPR; and

**WHEREAS**, the Ground Lease was thereafter amended by that certain Agreement dated January 15, 1990 by and between the Town of Addison, Texas and Addison Airport of Texas, Inc., as landlord and Eagle Land & Cattle Co, as tenant, whereby the parties agreed that Landlord (being the Town of Addison, Texas) may hold special events from time to time which may limit Tenant's use of the Demised Premises; and

**WHEREAS**, the Base Lease (as defined in the Ground Lease) between the Town of Addison, Texas and Addison Airport of Texas, Inc. has expired, and the Town of Addison, Texas alone is the Landlord under the Ground Lease; and

**WHEREAS**, Landlord and Tenant desire to enter into this Third Amendment to Ground Lease regarding the matters set forth herein; and

**WHEREAS**, a true and correct copy of the said Ground Lease, together with all amendments and modifications thereto, is attached to this Third Amendment as Exhibit "A" (and is referred to herein as the "Ground Lease" or the "Lease").

**NOW, THEREFORE**, for and in consideration of the above and foregoing premises, the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the

sufficiency of which is hereby acknowledged, the Town of Addison, Texas and Eagle Land & Cattle Co., a Texas corporation, do hereby agree as follows:

**Section 1. Incorporation of Premises; Tenant Representations.** The above and foregoing recitals are true and correct and are incorporated herein and made a part hereof.

In connection with the Lease and this Third Amendment and as a part thereof, Tenant represents and warrants to Landlord that Tenant: (i) is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, and shall remain in good standing throughout the term of this Agreement; (ii) it has the requisite power and authority to carry on its business as it is now being conducted; (iii) it has the legal capacity to enter into this Agreement; and, (iv) the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been authorized and approved by all action required on the part of the Tenant.

**Section 2. Amendments and Modifications to Ground Lease.** The Ground Lease, as described in the above and foregoing recitals, is hereby amended and modified as follows:

**A. Amendment to Term.** The term of the Ground Lease is modified in accordance with the following:

The Term of the Lease, scheduled to expire on June 29, 2020, shall be extended as of the Effective Date of this Amendment an additional one hundred twenty (120) months so it shall end on June 29, 2030 (the "First Lease Extension Period"), but subject, however, to the termination provisions of the Ground Lease.

**B. 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, beginning the first day of the first month following the Effective Date of this Third Amendment, Tenant agrees to pay to Landlord, without offset or deduction, monthly rent for the Demised Premises at the rate of Nineteen Thousand Eight Hundred Eighty-Nine and 05/100 Dollars (\$19,889.05) (the "Base Rental") (such monthly rent amount being one-twelfth of the product of (i) \$0.61 times (ii) 32,605 (the number of square feet of gross land area included within the Demised Premises)). 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, below.

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

5. Adjustment of Rental: Commencing on June 30, 2011 and on every second anniversary thereafter (hereinafter referred to as the "Adjustment Date"), the monthly rental due under Section 4 Rental shall be adjusted as follows:

A. Monthly rent 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 as of June 30, 2009. 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 Rent amount during the first year of this Lease 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 decreased below the Base Rental set forth in Section 4 Rental as modified above.

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.

D. **Amendment to Section 7 of the Ground Lease - Section 7 of the Ground Lease is amended in its entirety to read as follows:**

7. Acceptance of Demised Premises: Tenant acknowledges that Tenant has fully inspected the Demised Premises and accepts the Demised Premises 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. 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 LEASE.

Without limiting the foregoing, 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.

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

**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. This Lease is subject to and Tenant shall comply at all times with all federal, state, and local laws, statutes, ordinances, rules, regulations, directives, orders, permits, standards, codes (including, without limitation, building codes and standards), zoning requirements, grant assurances, grant agreements, the Charter of the Town of Addison, all court orders, opinions and decisions, and all interpretations of the foregoing, of and by any governmental authority, entity, branch, or agency (including, without limitation, the Town of Addison, Texas, the State of Texas, the Federal Aviation Administration, the Texas Department of Transportation, the United States Environmental Protection Agency, and the Texas Commission on Environmental Quality, and any successor entities thereto) applicable or related to, whether directly or indirectly, this Lease, the Addison Airport, the Demised Premises, and the use and occupancy thereof, and whether in existence or hereafter enacted, adopted or imposed (collectively, "Laws," and "Law"

means any of the foregoing). Tenant shall promptly comply with all governmental orders and directives and all other Laws for 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) any and all grant agreements or grant assurances now existing or as hereafter agreed to, adopted or imposed and to the terms of a grant, loan, or agreement under Section 22.055 of the Texas Transportation Code (and as the same may be amended or superseded).

Tenant agrees that any new construction or modification of existing improvements on the Demised Premises will comply with all standards and rules published by the Landlord or by any person or entity authorized by Landlord to manage and/or operate the Airport or any portion thereof or any function related thereto (such person and or entity, whether one or more, being the "Airport Manager"), including, but not limited to, the Airport's published "Construction/Maintenance Standards and Specifications," will comply with the Town of Addison building codes and zoning requirements or any other laws, ordinances, permits, rules, regulations, or policies of the Town of Addison, Texas, and will meet or exceed all applicable State and Federal standards, permits, laws, rules, or regulations, and will otherwise comply with all Laws. Tenant recognizes that the referenced Construction/Maintenance Standards and Specifications, Town of Addison building codes and zoning requirements and other laws, ordinances, permits, rules, regulations or policies, and all applicable State and Federal standards, laws, rules, or regulations, and any other 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, 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 any provision or requirement of 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.

**G. Amendment to Section 9 of the Ground Lease – Section 9 of the Ground Lease, subparagraphs A., B., and E. of the Ground Lease are amended in their entirety to read as follows:**

9. Assignment, Subletting and Mortgaging of Leasehold Estates:

A. Without the prior written consent of Landlord, Tenant shall have no power to and shall not, either voluntarily or involuntarily, by operation of law or otherwise, assign, 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 may be deemed by Landlord (in Landlord's sole discretion) a default under Paragraph 22.B of this Lease. An assignment will be deemed to occur if the person or persons who own or have control of more than 50% of Tenant on the date of the Third Amendment to Ground Lease cease to own or have voting control of more than 50% of Tenant at any time during the Term; 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 policies of an entity, whether through ownership of voting securities or partnership interests, by contract, or otherwise. 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.

B. Tenant shall have the right to mortgage the leasehold estate of Tenant created hereby in order to secure a mortgage loan for the purpose of (i) obtaining funds for the construction of the improvements described in Paragraph 6, or (ii) for other construction upon the Demised Premises approved from time to time by Landlord in writing, or (iii) 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 and its successors and assigns 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 or its successors and assigns performs all of the obligations of Tenant hereunder; provided, however, that notwithstanding the foregoing or any other provision of this Lease, such mortgagee shall not and does not have the right and shall not and does not have the power to assign, sell, transfer, pledge, encumber, mortgage, license, or otherwise convey this Lease, or any right, interest, obligation, or liability 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, pledge, encumbrance, mortgage, license, or other conveyance and any such subletting without the prior written consent of Landlord shall be null and void and may be deemed a default under Paragraph 22.B. of this Lease, it being the intent of this provision that such mortgagee shall have no greater right than Tenant to assign, sell, transfer, pledge, encumber, mortgage, license, or otherwise convey this Lease (or any right, interest, obligation, or liability hereunder), or to sublet the Demised Premises (or any portion thereof), or to use the Demised Premises. Landlord also agrees to consider the execution and delivery to such proposed leasehold mortgagee 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 to the mortgagee of such proposed leasehold mortgage.

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

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. In the event Tenant fails to pay any such Taxes, Landlord shall have the right (but not the obligation) to pay or cause to be paid such Taxes, and the reasonable costs thereof expended by or caused to be expended by Landlord plus interest thereon as provided in Paragraph 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 rent (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 rent (as the same may be adjusted) as so increased shall continue, subject to adjustment as set forth in this Lease.

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

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.

**J. Amendment to Section 18 of the Ground Lease – Section 18 of the Ground Lease is amended its entirety to read as follows:**

18. 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 protection of property of Landlord, Tenant and all other tenants and customers of the Airport.

**K. 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 (for purposes of this subparagraph A, 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 (for purposes of this subparagraph A, as the term "Tenant Persons" is defined in Subsection B below), or to any other person whomsoever, 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 in the performance of Tenant's obligations hereunder.

**B. TENANT'S INDEMNITY OBLIGATION.** Tenant shall DEFEND (WITH COUNSEL REASONABLY ACCEPTABLE TO LANDLORD), 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, liens, 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 or the Demised Premises, 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 during the Lease Term (collectively, "Tenant

**Persons**”), (ii) any construction on or repair to the Demised Premises, or the Demised Premises becoming out of repair due to the fault of Tenant or any Tenant Persons, 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 Persons 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 OR GROSS NEGLIGENCE OF THE TOWN OF ADDISON, TEXAS, ANY ADDISON PERSON, THE AIRPORT MANAGER, OR ANY MANAGER PERSON, OR BY ANY ACT OR OMISSION BY THE TOWN OF ADDISON, TEXAS, ANY ADDISON PERSON, THE AIRPORT MANAGER, 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 the Town of Addison, any other Addison Person, any 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 other Addison Persons (as the term "Addison Persons" is defined in subsection B. of this Section) and Airport Manager, and all other Manager Persons (as the term "Manager Persons" is defined in subsection B. of this Section) from, and agrees that the Town of Addison, Texas and all other Addison Persons, and Airport Manager and all other Manager Persons, shall not be liable to Tenant or any Tenant Persons (as the term "Tenant Persons" is defined in subsection B. of this Section) 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.

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

L. **Amendment to Section 21.1 of the Ground Lease - Section 21.1 of the Ground Lease is inserted in its entirety to read as follows:**

Section 21.1. Environmental Compliance.

A. Tenant shall not install, store, use, treat, transport, discharge or dispose (or permit, allow, or acquiesce in the installation, storage, use, treatment, transportation, discharge or disposal by 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/or their respective owners, directors, shareholders, partners, officers, managers, employees, agents, representatives, engineers, consultants, contractors, subcontractors, tenants, licensees, invitees, patrons, and concessionaires) on the Demised Premises or any portion of the common facilities (described in Paragraph 17), any: (a) asbestos in any form; (b) urea formaldehyde foam insulation; (c) transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million; or (d) any other chemical, material, air pollutant, toxic pollutant, waste, or substance which is regulated as toxic or hazardous or exposure to which is prohibited, limited or regulated by the Resource Conservation Recovery Act (42 U.S.C. §6901, et seq., as amended or superseded), the Comprehensive and Environmental Response Compensation and Liability Act (42 U.S.C. §9601, et seq, as amended or superseded), the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Clean Air Act, and/or the Clean Water Act or any other federal, state, county, regional, local or other governmental authority law, rule, regulation, order, standard, permit, directive or policy, or which, even if not so regulated may or could pose a hazard to the health and safety of the occupants of the Demised Premises and/or any portions of the common facilities, and which is either: (i) in amounts in excess of that permitted or deemed safe under any applicable law, rule, regulation, order, standard, permit, directive or policy, or (ii) in any manner prohibited or deemed unsafe under applicable law, rule, regulation, order, standard, permit, directive or policy. (The substances referred to in (a), (b), (c) or (d) herein are collectively referred to hereinafter as "Hazardous Materials").

B. Cleanup Laws; Tenant's Indemnity Obligation.

1. Tenant shall, at Tenant's own expense, comply with any presently existing or hereafter enacted laws, rules, regulations, orders, standards, directives, permits, or notices relating to Hazardous Materials (collectively, "Cleanup Laws"). 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 the Cleanup 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 common facilities (as described in Paragraph 17) by (i) Tenant, or by (ii) 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/or their respective owners, directors, shareholders, partners, officers, managers,

employees, agents, representatives, engineers, consultants, contractors, subcontractors, tenants, licensees, invitees, patrons, and concessionaires, or by (iii) any 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 during the Term of this Lease, 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 Cleanup Laws and to Landlord's satisfaction. At no cost or expense to Landlord, Tenant shall promptly provide all information requested by Landlord for preparation of affidavits or other documents required by Landlord to determine the applicability of the Cleanup Laws to the Demised Premises and/or any portion of the common facilities, as the case may be, and 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 other Addison Persons (as the term "Addison Persons" is defined in subsection B of Section 21, above), and the Manager Persons (as the term "Manager Persons" is defined in subsection B of Section 21, above) from and against, and reimburse the Town of Addison, Texas, the Addison Persons, the Airport Manager and all other 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 installation, storage, use, treatment, transporting, disposal or discharge of Hazardous Materials in, on, or to the Demised Premises and/or any portion of the common facilities by Tenant or by any Tenant Persons (as the term "Tenant Persons" is defined in subsection B of Section 21, above); 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 of Tenant Persons' failure to provide all information, make all submissions and take all steps required by the Authority under the Cleanup Laws or any other law, rules, regulation, standard, order, or policy (environmental or otherwise). 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 OR GROSS NEGLIGENCE OF THE TOWN OF ADDISON, TEXAS, ANY ADDISON PERSON, THE AIRPORT MANAGER, OR ANY OTHER MANAGER PERSON, OR BY ANY ACT OR OMISSION BY THE TOWN OF ADDISON, TEXAS, ANY ADDISON PERSON, THE AIRPORT MANAGER, OR ANY OTHER MANAGER PERSON THAT GIVES RISE TO STRICT LIABILITY OF ANY KIND.**

**Tenant's obligations and liabilities under this subparagraph shall continue (and survive the termination or expiration of this Lease) so long as there may be Hazardous Materials at the Demised Premises and/or any portion of the common facilities, that were installed, stored, used, treated, transported, disposed of or**

**discharged during the Lease Term by Tenant or any of Tenant Persons. 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 authorities of the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, the FAA, TxDOT, or any other local, state or federal authority that requires submission of any information concerning environmental matters or Hazardous Materials.

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.

**M. 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.

**Section 3. No Other Amendments.** Except to the extent modified or amended herein, all other terms and obligations of the Ground Lease shall remain unchanged and in full force and effect.

**Section 4. Applicable Law; Venue.** In the event of any action under this Third Amendment, exclusive venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Third Amendment; and, with respect to any conflict of laws 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 Third Amendment. All obligations of the parties created by this Third Amendment are performable in Dallas County, Texas.

**Section 5. No Third Party Beneficiaries.** This Third Amendment and each of its provisions are solely for the benefit of the parties hereto and are not intended to and shall not create or grant any rights, contractual or otherwise, to any third person or entity.

**Section 6. 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, 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**, the undersigned parties execute this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2009

**LANDLORD:**

**TENANT:**

**TOWN OF ADDISON, TEXAS**

**EAGLE LAND & CATTLE CO.**

By: \_\_\_\_\_  
Ron Whitehead, City Manager

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

Name (*Print*): \_\_\_\_\_

Its: (*Title*): \_\_\_\_\_



**ACKNOWLEDGMENT**

**STATE OF TEXAS           §**

**COUNTY OF DALLAS       §**

Before me, the undersigned authority, on this day personally appeared Ron Whitehead, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

[SEAL]           Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public, State of Texas

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

My commission expires: \_\_\_\_\_

**STATE OF TEXAS           §**

**COUNTY OF DALLAS       §**

Before me, the undersigned authority, on this day personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

[SEAL]           Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public, State of Texas

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

My commission expires: \_\_\_\_\_

**EXHIBIT A**

**COPY OF GROUND LEASE AS AMENDED AND MODIFIED**

**EXHIBIT B**

**PROPERTY SURVEY AND LEGAL DESCRIPTION  
OF DEMISED PREMISES**

# **EXHIBIT "F"**

## **Proposed Non-public Fuel Farm License Agreement**



# Addison Airport

## Fuel Farm License Agreement

**EAGLE LAND & CATTLE CO.**

A faded, light blue background image of an airport terminal building with a curved roof and large windows, visible through the text.

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# ADDISON AIRPORT FUEL FARM LICENSE AGREEMENT

## SECTION 1

### DEFINITIONS AND CERTAIN BASIC PROVISIONS

1.1 The following list sets out certain defined terms and certain financial and other information pertaining to this License Agreement (“**License**” and “**Agreement**” are interchangeably used herein to mean one and the same):

- (a) “**Licensor**”: **TOWN OF ADDISON**, a Texas home-rule municipality.
  - (b) Licensor's Address: 5300 Belt Line Road, Dallas, Texas 75254.
  - (c) “**Manager**”: Washington Staubach Addison Airport Joint Venture
  - (d) Manager's Address: 16051 Addison Road, Suite #220, Addison, Texas 75001
  - (e) “**Licensee**”: **EAGLE LAND & CATTLE CO., a Texas corporation**
  - (f) Licensee's Address: **16151 Addison Road**  
**Addison, TX 75001**  
  
Primary Contact: Jill Cole Phone Number: 800-433-0808
  - (g) Licensee's Trade Name: **American Flyers**
  - (h) Licensee's Guarantor (if applicable, attach Guaranty as an exhibit): \_\_\_\_\_
- 
- (i) “**Fuel Farm**”: Licensor's property located in the Town of Addison, Dallas County, Texas, which property is described on Exhibit “A” and shown on Exhibit “B” attached to this License. With regard to Exhibits “A” and “B”, the parties agree that they are attached solely for the purpose of depicting the location of the Fuel Farm and the Fuel Tanks within the Fuel Farm and that no representation, warranty, or covenant is to be implied by any information shown on such exhibits.
  - (j) “**Fuel Tanks**”: The one (1) above-ground storage tank, together with all equipment attached thereto necessary for Licensee's use of the Fuel Tank in accordance with this License, situated in the Fuel Farm and identified on Exhibit “C” attached hereto, with a stipulated total capacity of **15,000** gallons (“**Total Licensee Gallon Capacity**”) of fuel, also being known as

Tank #	Designated Fuel Type	Licensee Gallon Capacity	% Of Total Fuel Farm Combined Capacity
#11	100 LL	15,000	4.762%
<b>Total</b>		<b>15,000</b>	<b>4.762% **</b>

\*\* The “**Licensee's Proportionate Share**”, calculated in accordance with Section 4.10, on the Commencement Date is established to be **4.762** Percent (**4.762** %).

- (k) “**Commencement Date**”: The earlier of (i) the date upon which Licensee commences use of the Fuel Tanks; or (ii) September 1, 2009.
- (l) “**Term**”: The period of time commencing on the Commencement Date and continuing until the last day of the calendar month sixty (60) months from the Commencement Date or the last month



of any properly exercised Term Extension (as described in Exhibit "D" attached hereto), whichever is later (i.e., if Commencement Date is March 10, 2006, the Term shall then expire no later than March 31, 2011 if no Term Extension is exercised).

- (m) "**Base Fee**": Annual Consideration for this License equal to the Total Licensee Gallon Capacity, multiplied by **\$0.2651** per gallon, payable in equal monthly installments as provided for in Section 4.
- (n) "**Additional Fee**": Annual Consideration for this License equal to the Total Licensee Gallon Capacity, multiplied by **\$3290** per gallon, payable in equal monthly installments as provided for in Section 4.
- (o) "**Fuel Flowage Fee**": Consideration for this License to receive and dispense aircraft fuel, equal to the Fuel Flowage Rate (as defined in Section 7.1 of this License) for each gallon of aviation fuel received by Licensee during the Term, payable in monthly installments as provided for in Section 7.
- (p) "**Security Deposit**": **\$742.63** Such Security Deposit is due and payable upon execution of this License and held on account on behalf of Licensee by Licensor in accordance with Section 28.4.
- (q) "**Permitted Use of Fuel Tanks**": Exclusively for the storage of fuel in support of aeronautical operations of type and grade approved in writing by Licensor in the capacity of a:

(Check only one)

**Public Fixed Based Operator** for retail delivery into aircraft at the Airport, for delivery into aircraft at the Airport owned, leased or otherwise operated by Licensee and for the purpose of fueling ground equipment at the Airport used in the support of Licensee's aeronautical operations at the Airport and for no other purpose, except for any such delivery to aircraft of holders of valid off-airport access permits or as otherwise approved in writing by Licensor.

**Non-public Operator** with delivery to aircraft owned or leased by Licensee and for the purpose of fueling ground equipment at the Airport used in the support of Licensee's aeronautical operations and for no other purpose. For the purpose herein, aircraft owned or leased by Licensee shall include, without limitation, all those aircraft listed on Exhibit G attached hereto, which list may be amended from time to time by Lessee. **LICENSEE IS HEREBY EXPRESSLY PROHIBITED FROM DISPENSING AIRCRAFT FUEL TO ANY AIRCRAFT NOT OWNED OR LEASED BY LICENSEE. LICENSEE IS HEREBY EXPRESSLY PROHIBITED FROM DISPENSING AIRCRAFT FUEL TO ANY LESSEE OR SUBLESSEE.**

- (r) "**Airport**": The Addison Airport situated in the Town of Addison, Dallas County, Texas.
- (s) "**Minimum Semi-Annual Gallons Received**": **90,000** gallons of aviation fuel (excluding diesel and mobile fuel), as described in Section 7.7.
- (t) "**Includes**" and "**including**", for purposes of this Agreement, are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

1.2 The following chart is provided as an estimate of Licensee's monthly and annual payment to Licensor as Consideration (as defined in Section 4.1). This chart, however, does not supersede the specific provisions contained elsewhere in this License.

<b>PAYMENTS IN ADVANCE:</b>	<b>Annual</b>	<b>Monthly</b>
Base Fee (Section 1.1(m) and 4.3)	<b>\$3,976.50</b>	<b>\$331.38</b>
Additional Fee (Section 1.1(n) and 4.4)	<b>\$4,935.00</b>	<b>\$411.25</b>
Subtotal of Payments in Advance	<b>\$8,911.50</b>	<b>\$742.63</b>
<b>PAYMENT IN ARREARS:</b>		
Fuel Flowage Fee <b>\$0.20</b> x total gallons received during the preceding month (Section 7).	<b>\$TBD</b>	<b>\$ TBD</b>
<b>TOTAL MONTHLY CONSIDERATION</b> (Payment In Advance plus Payment In Arrears)	<b>\$TBD</b>	<b>\$TBD</b>

## SECTION 2

### GRANTING CLAUSE

2.1 Licensor licenses the Fuel Tanks to Licensee, subject to and only upon the terms and conditions set forth in this License and further subject to all laws, codes, ordinances, rules, standards, policies, permits, and regulations now in effect or hereafter adopted, modified, or amended by Licensor or any governmental or quasi-governmental authority having jurisdiction over the Airport or any part thereof, and all requirements, conditions, and standards of any Airport grant or funding or any grant agreements or grant assurances of the Airport now in effect or as hereafter agreed to, adopted, issued, modified, amended, or established. This License is not a lease and grants no interest or estate in the Fuel Farm, including, without limitation, any leasehold interest.

## SECTION 3

### DELIVERY OF PREMISES

3.1 BY ACCEPTANCE OF THIS LICENSE, LICENSEE HEREBY AGREES THE FUEL FARM IS BEING DELIVERED TO LICENSEE IN GOOD WORKING CONDITION AND UNDERSTANDS THAT THE FUEL TANKS ARE BEING LICENSED TO LICENSEE, ON AN "AS IS", "WHERE IS" AND "WITH ALL FAULTS" BASIS, WITH LICENSEE ACCEPTING ALL DEFECTS, IF ANY AND LICENSOR MAKES NO REPRESENTATIONS (OTHER THAN AS TO LICENSOR'S OWNERSHIP OF THE FUEL FARM), WARRANTIES OR COVENANTS OF ANY KIND OR NATURE, WHETHER EXPRESS OR IMPLIED, AS TO THE HABITABILITY, FITNESS OR SUITABILITY OF THE FUEL FARM FOR A PARTICULAR PURPOSE, INCLUDING, BUT NOT LIMITED TO (AND LICENSOR HEREBY EXPRESSLY DISCLAIMS THE SAME), ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LICENSEE ACKNOWLEDGES AND AGREES THAT LICENSEE HAS HAD THE OPPORTUNITY TO INSPECT THE FUEL FARM, AND THAT ANY SUCH INSPECTION HAS BEEN ADEQUATE TO ENABLE LICENSEE TO MAKE LICENSEE'S OWN DETERMINATION REGARDING THE SUITABILITY OR FITNESS OF THE FUEL TANKS AND FUEL FARM. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LICENSEE HEREBY ASSUMES ALL RISK AND LIABILITY (AND AGREES THAT LICENSOR SHALL NOT BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL OR OTHER DAMAGE) RESULTING OR ARISING FROM OR RELATING TO THE USE, CONDITION, LOCATION, MAINTENANCE, REPAIR OR OPERATION OF THE FUEL FARM, EXCEPT TO THE EXTENT OTHERWISE EXPRESSLY HEREIN AGREED AND CONSENTED TO BY LICENSOR.

3.2 Licensor shall have the right upon ninety (90) day's prior written notice, to relocate Licensee to another Fuel Tank or Fuel Tanks (the "Replacement Fuel Tank(s)") in the Fuel Farm as Licensor deems, at its sole discretion, to be reasonably necessary. In the event of such relocation, the cost of relocating Licensee and the cost

of altering the Replacement Fuel Tanks to make them comparable to the current Fuel Tanks shall be borne by Licensor (except for those alterations or improvements made to the Fuel Tanks by Licensee with or without Licensor's prior consent). If Licensor exercises such right of relocation, this License shall continue in full force and effect without any change to the terms or other conditions, except that the Replacement Fuel Tanks shall be deemed substituted in Section 1.1(j) and an appropriate adjustment shall be made to the amount of the Consideration and any Security Deposit.

## SECTION 4

### PAYMENT OF BASE FEE AND ADDITIONAL FEE

4.1 The Base Fee and all other sums or charges payable by Licensee, including but not limited to Additional Fee and Fuel Flowage Fees and other fees required by this License, are sometimes herein referred to collectively as "**Consideration**". All payments of Consideration are to be paid by corporate, personal or cashier's check or money order. Payments of Consideration are not to be made in cash. The Licensor shall have the same remedies in the case of a default in the payment of Additional Fee and Fuel Flowage Fees and any other Consideration as are available to Licensor in the case of a default in the payment of the Base Fee.

4.2 The Consideration shall be payable to Licensor at Licensor's address set forth in Section 1.1(b) or, such other address designated by Licensor with prior written notice given to Licensee. Consideration shall not be considered paid until actually received by Licensor or Licensor's designee.

4.3 Beginning with the Commencement Date and continuing throughout the Term of this License, Licensee shall pay an annual Base Fee in the amount specified in Section 1.1(m), which Base Fee shall be paid by Licensee (separately or together with other Consideration due and payable) in equal monthly installments as required herein, without any interruption, offset or deduction of any nature. The first such monthly installment shall be due and payable on or before the Commencement Date, and subsequent installments shall be due and payable on or before the first day of each succeeding calendar month during the Term. If the Term of this License commences on a day other than the first day of a calendar month, or terminates on a day other than the last day of a calendar month, the Base Fee installment of such partial month as provided for under this Section 4.3 shall be prorated and such installment or installments so prorated shall be paid in advance (i.e., the quotient that results from dividing the number of calendar days of such partial month included in the Term by the total number of days in that month, then multiplying such quotient by one-twelfth of the Base Fee).

4.4 In addition to the Base Fee and any other Consideration required under this License, Licensee shall pay an Additional Fee which is to be assessed by Licensor annually for each fiscal year of Licensor, but said amount shall never be less than that specified in Section 1.1(n).

4.5 The Additional Fee payable by the Licensee under this License shall be equivalent to Licensee's Proportionate Share of Licensor's cost of operating and maintaining the Common Area and the Replacement Recovery Allowance provided for under Section 4.6. Such costs, hereinafter referred to as the "**Common Area Charge**", may include but not be limited to: all utilities which serve the Fuel Farm including water, sewer, electricity, gas and data/tele-communications; all systems and system components necessary and appurtenant to the operation of the Fuel Farm (i.e., motors, pumps, pipes, hoses, valves, regulators, vents, safety systems, separators, auxiliary power supply); structural systems including roof and canopy repair and maintenance; the costs of any third-party service agreement which may include the repair, maintenance and inspection of the Fuel Farm and any of its systems and system components; painting, cleaning, sweeping, landscaping, inspecting, repairing and replacing the Fuel Farm or any portion thereof; Licensor's reasonable overhead costs for administration and management; and the cost of any Real Estate Charges or Insurance Expenses for which Licensor is not reimbursed pursuant to Section 5, but specifically excluding all expenses paid or reimbursed by Licensee to Licensor pursuant to Section 6.

4.6 Licensor and Licensee agree that Licensor may include in the Additional Fee a reasonable reserve sufficient to pay the costs of the future replacement of the Fuel Tanks and Roofing System (the "**Replacement Recovery Allowance**"), which costs are to be amortized over a twenty-five (25) year and ten (10) year useful lifespan, respectively. Licensor, in its sole discretion, may adjust the monthly amount collected from Licensee for the Replacement Recovery Allowance from time to time to coincide with the industry's generally accepted replacement values for fuel tanks and roofing systems comparable to the Fuel Tanks and Roofing System.

4.7 If the Term of this License commences on a day other than the first day of a calendar month, or terminates on a day other than the last day of a calendar month, the Additional Fee for such partial month shall be pro-rated and paid in advance similarly as provided for the Base Fee under Section 4.3.

4.8 Prior to the commencement of Licensor's fiscal year beginning October 1, 2009 and prior to the commencement of each fiscal year of Licensor thereafter, Licensor shall provide Licensee an estimate of the Additional Fee for such fiscal year. The Additional Fee shall be due and payable by Licensee (separately or together with other Consideration due and payable) in equal monthly installments during such fiscal year, without any interruption, offset or deduction of any nature. The first such monthly installment shall be due and payable on the Commencement Date, and subsequent installments, as adjusted for each fiscal year during the Term, shall be due and payable on or before the first day of each succeeding calendar month during the Term. If the Term of this License commences on a day other than the first day of a calendar month, or terminates on a day other than the last day of a calendar month, the Additional Fee installment of such partial month as provided for under this Section 4.8 shall be prorated and such installment so prorated shall be paid in advance (i.e., the quotient that results from dividing the number of calendar days of such partial month included in the Term by the total number of days in that month, then multiplying such quotient by one-twelfth of the Additional Fee).

4.9 Within one hundred twenty (120) days following the conclusion of the Licensor's fiscal year ending September 30, 2009, and within one hundred twenty (120) days following the conclusion of each fiscal year of Licensor thereafter, or as soon thereafter as reasonably possible, Licensor shall furnish to Licensee an itemized statement reconciling the actual Common Area Charge and other costs for that fiscal year (or part thereof during the Term of this License) against the Additional Fee for such fiscal year or partial fiscal year. Within thirty (30) days of the delivery of such statement to Licensee, Licensee shall pay to Licensor the Licensee's Proportionate Share of the positive difference, if any, resulting from subtracting the Additional Fee paid by Licensee for such fiscal year from the Licensee's Proportionate Share of the actual Common Area Charge and other costs for such fiscal year. If such Additional Fee paid by Licensee exceeds Licensee's Proportionate Share of such Common Area Charge and other costs for such fiscal year or partial fiscal year, Licensor shall have the right, at its option, to credit such excess against the next accruing payment(s) of the Additional Fee due under this License or return such excess to Licensee.

4.10 The Licensee's Proportionate Share is that percentage, at the time when the applicable cost was incurred, determined by dividing the Total Licensee Gallon Capacity by the combined capacity of the fuel tanks in the Fuel Farm, as reasonably determined by Licensor. Licensee's Proportionate Share on the Commencement Date is stipulated by the parties in Section 1.1(j).

4.11 The amount of the actual Common Area Charge and other costs determined by Licensor under Section 4.9 shall be final, conclusive and binding upon the parties hereto on the date which is one hundred-eighty (180) calendar days following the date Licensor provides such itemized statement of reconciliation to Licensee.

4.12 In the event any Consideration due is not actually received by Licensor by the fifth (5<sup>th</sup>) day after such amount is due, or if any Consideration payment is made by check, which check is returned for insufficient funds, then in addition to the past due amount, immediately on Licensor's demand, Licensee shall pay to Licensor one of the following (the choice to be at the sole option of Licensor unless one of the choices is improper under applicable law, in which event the other alternative, if proper under applicable law, will automatically be deemed to have been selected): (a) a late charge in an amount equal to ten percent (10%) of such late Consideration, in order to compensate Licensor for its administrative and other overhead expenses; or (b) interest on such late Consideration then due at the maximum rate of interest which could legally be charged in the event of a loan of such late Consideration to Licensee (but in no event to exceed 1 ½% per month), such interest to accrue continuously on any unpaid balance of such Consideration due to Licensor by Licensee during the period commencing with the due date of such late Consideration and terminating with the date on which Licensee makes full payment of all such late Consideration. Any such late charge or interest payment shall be payable immediately on demand as additional Consideration. It is hereby agreed that in no event shall any charges permitted under this License, to the extent the same are considered to be interest under applicable law, ever exceed the maximum lawful rate of interest allowed under applicable law.

4.13 If Licensor fails to receive from Licensee any installment of Base Fee or Additional Fee within ten (10) days after the same is due for any two (2) consecutive calendar months, or if the payment of any Consideration is made by check, which check is returned for insufficient funds twice within any consecutive twelve (12) month period, Licensor may, by giving written notice to Licensee, and in addition to any late charge or interest accruing pursuant to Section 4.12 above, as well as any other rights and remedies accruing pursuant to Section 20 or Section

22 below, or any other provision of this License, at law or in equity, require subsequent Base Fee and Additional Fee installments to be paid quarterly in advance by cashier's check or money order and the delivery of Licensee's corporate or personal check will no longer constitute a payment of such Consideration. Any acceptance of a corporate or personal check for such Consideration shall not be construed as a subsequent waiver of said right to require payment by cashier's check or money order.

4.14 The obligation of Licensee to pay Consideration shall survive the expiration or earlier termination of this License.

## SECTION 5

### LICENSEE'S RESPONSIBILITY FOR PERSONAL PROPERTY TAXES AND REAL PROPERTY TAXES

5.1 Licensee shall be liable for all taxes, if any, levied against personal property owned by Licensee and placed within or used by Licensee within the Fuel Farm. If any personal property taxes are validly levied against Licensor or Licensor's property and Licensor pays the same, such taxes shall be included in the Common Area Charge.

5.2 If any Real Estate Charges (as defined below) are validly levied against Licensor or Licensor's property and Licensor pays the same, such Real Estate Charges shall be included in the Common Area Charge. All Insurance Expenses (as defined below) related to the Fuel Farm or Licensor's ownership of the Fuel Farm shall be included in the Common Area Charge. "**Real Estate Charges**" shall include, if any, ad valorem taxes, general and special assessments, any tax or excise on fees including Consideration, any tax or charge for governmental services (such as street maintenance or fire protection) and any tax or charge which replaces any of such above-described Real Estate Charges; provided, however, that Real Estate Charges shall not be deemed to include any franchise, estate, inheritance or general income tax. "**Insurance Expenses**" shall include all premiums and other expenses incurred by Licensor for liability insurance, and fire and extended coverage property insurance (plus whatever endorsements or special coverages which Licensor, in Licensor's sole discretion, may consider appropriate) and the amount of any deductible paid by Licensor in connection with any claim thereunder.

## SECTION 6

### COMMON AREA OF THE FUEL FARM

6.1 The term "**Common Area**" is defined for all purposes of this License as that part of the Fuel Farm which is maintained by Licensor, the expense of which may be incurred by Licensor and included as Common Area Expenses as provided for in Section 4.5, intended for the common use of all licensees of the Fuel Farm and other authorized persons. The Common Area includes all systems that comprise the Fuel Farm and are appurtenant thereto including but not limited to all utilities (water, sewer, electricity, gas and data/tele-communications); all systems and system components necessary to the operation and function of the Fuel Farm (i.e., motors, pumps, pipes, hoses, valves, regulators, vents, life and safety systems, separators, auxiliary power, lights, switches, meters, tanks), building infrastructures, parking areas, driveways, landscaping, curbs, loading area, lighting facilities, roofs and the like. Licensor reserves the right to change from time to time the rights and interests to, and the dimensions and location of, the Common Area, as well as the rights and interests to and the dimensions, identities, locations and types of any improvements in the Fuel Farm.

6.2 Licensee shall have the nonexclusive right to use the Common Area as constituted from time to time for the purpose or purposes described in Section 1.1(q), such use to be in common with Licensor, other licensees in the Fuel Farm and other authorized persons subject to such reasonable rules and regulations governing use as Licensor may from time to time prescribe.

## SECTION 7

### FUEL RECEIPT, REPORTING AND FUEL FLOWAGE FEES

7.1 As additional Consideration under this License, Licensee shall pay to Licensor the Fuel Flowage Fee at the Flowage Fee Rate. The "Flowage Fee Rate" (herein so called) is twenty cents (\$0.20) for each gallon of aviation fuel received by Licensee at the Airport during the Term, excluding any fuel not intended for aeronautical use (i.e.,

diesel and mobile fuel used in connection with ground support operations) during the Term; provided, however, the Town of Addison, Texas reserves the right to increase or decrease the Flowage Fee Rate as, in its sole discretion, may be necessary or reasonably appropriate. This License is conditioned upon the payment of the Fuel Flowage Fee at the Flowage Fee Rate, and such payment is required as set forth in and in accordance with Chapter 14, Article III, Division 2 of the Code of Ordinances of the Town of Addison, Texas (as the same may be amended or superseded). Licensor and Licensee herein agree and acknowledge that any payment made by Licensee of said Fuel Flowage Fee required hereunder is in satisfaction of the Fuel Flowage Fee at the Flowage Fee Rate established by the City Council of the Town of Addison, Texas. Licensor shall give Licensee at least thirty (30) days prior written notice before any change in the Flowage Fee Rate becomes effective.

7.2 The Fuel Flowage Fee shall be paid, with respect to each calendar month during the Term beginning with the month in which the Commencement Date occurs, on or before the fifth (5<sup>th</sup>) day of the calendar month following such month, without offset or deduction of any nature, at a sum equal to the product of the applicable Flowage Fee Rate multiplied by the total amount of fuel received at the Airport by Licensee during the preceding full or partial calendar month.

7.3 Licensee shall submit to Licensor with each monthly payment of the Fuel Flowage Fee, but in no event later than the fifth (5<sup>th</sup>) day of each month during the Term, a monthly fuel report (the "**Monthly Report**"), certified as being true and correct by a duly authorized representative of Licensee, showing for the preceding calendar month the amount of fuel received, sold or dispensed.

7.4 On or before the sixtieth (60<sup>th</sup>) day after the expiration of each calendar year, and the thirtieth (30<sup>th</sup>) day after the expiration or termination of this License, Licensee shall deliver to Licensor an annual fuel report (the "**Annual Report**"), certified as being true and correct by an authorized representative of Licensee, showing the amount of aviation fuel received, sold or dispensed during the calendar year preceding the date on which the Annual Report is due. In the event any provision of this License or the enforcement thereof by the Licensor, requires accounting of the Fuel Flowage Fee and the payment thereof for a period less than twelve (12) months, such shorter period shall be treated as one (1) year for the purpose of an Annual Report, and such Annual Report shall be delivered to Licensor within thirty (30) days after termination of such shorter period.

7.5 In addition to the information described in Section 7.4, each Monthly Report and each Annual Report shall include any and all additional information required by Licensor, and shall be in the form established by Licensor (which form may be modified, revised, or amended by Licensor in its sole discretion at any time). Each of the Monthly Reports and the Annual Reports are hereinafter referred to as a "**Fuel Report.**" In the event Licensor is not satisfied with any Fuel Report provided by Licensee, Licensor shall have the right to cause its auditors or designated representative to inspect Licensee's books and records, wherever located, evidencing and accounting for all aviation fuel received, sold or dispensed in or from the Airport for the reporting period or periods in question. Licensee hereby agrees to make available all books and records, including but not limited to its bills of lading, general ledgers, bank accounts and fuel sales receipts available for inspection during Licensee's normal business hours within five (5) days upon receipt of written demand by Licensor. If it is determined by the auditors that the amount of fuel received, sold or dispensed during such period(s) is understated by more than two percent (2%), the reasonable expense of such audit shall be borne by Licensee. Licensee shall promptly pay to Licensor any deficiency, or Licensor shall promptly refund to Licensee any overpayment, as the case may be, which is established by such audit.

7.6 If Licensee fails to prepare and deliver promptly any Fuel Report or other document required under this License, Licensor may, in addition to exercising any of the remedies provided to Licensor under this License or any law, rule, or regulation, engage a Certified Public Accountant to make an audit of all books and records of Licensee, including (without limitation) Licensee's bank accounts, which in any way pertain to or show the aviation fuel received, sold or dispensed and prepare the Fuel Report or other document that Licensee failed to prepare and deliver to Licensor. The Fuel Report or other document prepared by such Certified Public Accountant shall be conclusively binding on Licensee, and Licensee shall pay upon demand all expenses of the audit and other services in regard to preparing such Fuel Report or other document.

7.7 Licensee shall continuously during the Term of this License use its best efforts to maximize the quantity of fuel it receives at the Fuel Tanks at the Fuel Farm. Under no circumstance, however, shall Licensee fail to receive at least the following quantities of fuel at the Fuel Farm ("**Licensee's Minimum Standard to Operate Fuel Tanks**"), except as expressly provided under this Section 7.7:

- (a) If the Permitted Use of the Fuel Tanks is for a Public Fixed Based Operator as described in Section 1.1(q), Licensee's Minimum Standard to Operate Fuel Tanks is 320,000 gallons of fuel received at the Fuel Farm over each three (3) consecutive calendar month period during the Term (the "**Quarterly Minimum Gallons**"); provided, however, that
- (i) during the first six (6) calendar months immediately following the Commencement Date, Licensee shall exercise its best efforts to receive no less than 320,000 gallons of fuel, and
  - (ii) during the first year of this License ("**Licensee's Start-up Period**"), Licensee shall exercise its best efforts to receive no less than 896,000 gallons of fuel (the "**Start-up Period Minimum Gallons**").

Licensee's

- (i) failure to receive the Start-up Period Minimum Gallons during the Licensee's Start-up Period (the difference between the Start-up Period Minimum Gallons and the amount of fuel actually received during Licensee's Start-up Period being the "**Start-up Deficiency**"), or
- (ii) failure after the Start-up Period to receive at least the Quarterly Minimum Gallons (the difference between the Quarterly Minimum Gallons and the amount of fuel actually received by Licensee during any three (3) month period (following the Start-up Period) that Licensee failed to receive at least the Quarterly Minimum Gallons being the "**Quarterly Deficiency**"),

shall not constitute an event of default under this License if, during the three (3) consecutive calendar months immediately after Licensee receives written notice from Licensor of such failure (the "**FBO Notice Period**", beginning on the first day of the first calendar month following Licensee's receipt of the written notice), Licensee receives in the Fuel Tanks at the Fuel Farm an amount of fuel equal to or greater than the Start-up Deficiency or the Quarterly Deficiency, as the case may be, in addition to the Quarterly Minimum Gallons for the FBO Notice Period.

- (b) If the Permitted Use of the Fuel Tanks is for a Non-public Operator as described in Section 1.1(q), Licensee's Minimum Standard to Operate Fuel Tanks is 90,000 gallons received at the Fuel Farm over each six (6) consecutive calendar month period during the Term (the "**Semi-annual Minimum Gallons**"); provided, however, Licensee's failure to receive at least the Semi-annual Minimum Gallons (the difference between the Semi-annual Minimum Gallons and the amount of fuel actually received by Licensee during any six (6) month period that Licensee failed to receive at least the Semi-annual Minimum Gallons being the "**Semi-annual Deficiency**") shall not constitute an event of default under this License if, during the six (6) consecutive calendar months immediately after Licensee receives written notice from Licensor of such failure (the "**Non-public Notice Period**", beginning on the first day of the first calendar month following Licensee's receipt of the written notice), Licensee receives in the Fuel Tanks at the Fuel Farm an amount of fuel equal to or greater than the Semi-annual Deficiency, in addition to the Semi-annual Minimum Gallons for the Non-public Notice Period.
- (c) Licensee's cure rights under Section 20.1 shall not apply to the occurrence of any failure to satisfy the Licensee's Minimum Standard to Operate Fuel Tanks under this Section 7.7. Except as provided for in this Section 7.7, any such failure to perform under this Section 7.7 shall constitute an immediate event of default entitling Licensor to exercise its remedies under this License, at law, in equity, or otherwise.
- (d) Licensor reserves the right, in its sole discretion, to decrease the Quarterly Minimum Gallons or the Semi-Annual Minimum Gallons, or temporarily suspend or waive, and then reinstitute, the Licensee's Minimum Standard to Operate Fuel Tanks, as Licensor may deem to be necessary or appropriate, in its sole discretion, based upon but not limited to, a *force majeure* event that has prevented Licensee from receiving the minimum quantity of fuel required under this Section 7.7.
- (e) Licensor reserves the right, in its sole discretion, to uniformly increase for all Licensees the Quarterly Minimum Gallons or the Semi-Annual Minimum Gallons effective as of the 1<sup>st</sup> day of January of 2012

and on the 1<sup>st</sup> day of January every third (3rd) year thereafter during the Term, provided that Licensor has given Licensee three (3) years prior written notice of the increase.

## SECTION 8

### USES AND CARE OF THE FUEL FARM

8.1 Licensee shall commence all of its fueling operations at the Fuel Farm on or immediately after the Commencement Date and shall perform such operations in a commercially reasonable manner so as to produce the maximum amount of sales from the Fuel Tanks.

8.2 Licensee shall not use the Fuel Farm or the Fuel Tanks for any purpose other than the purpose authorized by Section 1.1(q). Licensee, without Licensor's prior written consent, shall not store anything in the Fuel Tanks, other than the designated fuel type and grade of fuel authorized in Section 1.1(j), or use the Fuel Farm for any purpose which creates a risk of release of toxic or otherwise Hazardous Substances or increases the insurance premium cost for the Fuel Farm or the Airport or invalidates any insurance policy carried on the Fuel Farm or the Airport, other than the ordinary risk associated with the prudent use of any substantially similar aircraft fuel farm. All fuel kept, stored or maintained in the Fuel Tanks by Licensee, and all other property of Licensee that is maintained or used at the Fuel Farm shall be delivered, kept, stored, maintained, transported, dispensed and otherwise used at Licensee's sole risk. Without limiting the generality of the foregoing, Licensee covenants and agrees that Licensee shall not, nor shall Licensee allow or permit any of Licensee's owners, officers, employees, agents, contractors or other representatives, or any other person for whom Licensee may be responsible or liable (Licensee, together with such other persons and entities being sometimes hereinafter collectively referred to as "**Licensee Parties**"), to cause, directly or indirectly, any release or discharge of any Hazardous Substances (as defined in Section 8.4) at the Fuel Farm or any other portion of the Airport or premises adjacent thereto. Without limiting the generality of the foregoing, Licensee further covenants and agrees that Licensee shall not, nor shall Licensee allow or permit any of the Licensee Parties to, bring into, maintain upon, generate, use, store, dispense or dispose of any Hazardous Substances in or about the Fuel Farm or any other portion of the Airport or premises adjacent thereto, unless such Hazardous Substances are maintained upon, generated, used, stored, dispensed or disposed of only (a) in such quantities as are reasonably necessary for Licensee's operations, (b) in accordance with the standards and instructions of the producer and distributor of such Hazardous Substances and, if fuel, the manufacturer of the Fuel Tanks and in compliance with all applicable laws, and (c) in such a manner as would prevent a release or discharge thereof in violation of applicable laws. Upon request of Licensor at any time, Licensee shall provide Licensor with a written list, certified to by Licensee in writing, identifying any Hazardous Substances then maintained upon, generated, used, stored, dispensed or disposed of at the Fuel Farm or elsewhere at the Airport or premises adjacent thereto by Licensee and the approximate quantity of same, together with a representation that neither Licensee nor any other Licensee Parties have released or discharged any Hazardous Substances in or about the Fuel Farm or any other portion of the Airport or adjacent premises in violation of these provisions, all certified as being true and correct by a duly authorized representative of Licensee. Upon any violation of the foregoing covenants, Licensee shall be obligated, at Licensee's sole cost, to immediately cease such violation and, if any Hazardous Substance has been released or discharged, remediate, clean-up and remove from the Fuel Farm or other portions of the Airport or premises adjacent thereto all such Hazardous Substances; provided, however, that any such remediation, clean-up and removal shall be undertaken only after written notice of the release or discharge has been given by Licensee to Licensor and Licensor has approved the method of remediation, clean-up and removal. Notwithstanding the proceeding or any other provision of this Agreement, the introduction, receipt, delivery, creation, use, storage, dispensing or disposal of any Hazardous Substances at the Fuel Farm or elsewhere at the Airport or premises adjacent thereto, and any remediation, clean-up or removal of released or discharged Hazardous Substances, by or on behalf of Licensee or any other Licensee Parties shall be conducted to the satisfaction of Licensor.

8.3 **INDEMNITY.** LICENSEE SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE LICENSOR, ITS OFFICIALS, OFFICERS, EMPLOYEES, AGENTS AND OTHER REPRESENTATIVES, AND THEIR RESPECTIVE HEIRS, SUCCESSORS AND ASSIGNS (TOGETHER, "LICENSOR INDEMNIFIED PERSONS"), FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, LOSSES, JUDGMENTS, DAMAGES (INCLUDING DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, AND OTHER DAMAGES), ACTIONS, FINES, PENALTIES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COSTS OF DEFENSE) (TOGETHER, "INDEMNIFIED DAMAGES") INCURRED BY LICENSOR OR OTHER SUCH



LICENSOR INDEMNIFIED PERSONS, OR ANY OF THEM, AS A RESULT OF, ARISING OUT OF, OR IN CONNECTION WITH ANY BREACH OF ANY PROVISION OF SECTION 8.2 OR ANY ACT OR OMISSION OF LICENSEE OR OF ANY OF LICENSEE PARTIES UNDER, RELATED TO, OR IN CONNECTION WITH THE RECEIPT, DELIVERY, STORAGE, MAINTENANCE, TRANSPORTATION, DISPENSING, OR OTHER USE OF ANY HAZARDOUS SUBSTANCES, INCLUDING ANY INDEMNIFIED DAMAGES CAUSED BY THE NEGLIGENCE OF THE LICENSOR OR ANY OF THE OTHER LICENSOR INDEMNIFIED PERSONS, BUT LICENSEE SHALL HAVE NO DUTY TO INDEMNIFY LICENSOR OR ANY LICENSOR INDEMNIFIED PERSON FOR INDEMNIFIED DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF LICENSOR OR SUCH LICENSOR INDEMNIFIED PERSON, UNLESS THE INSURANCE OF LICENSEE COVERS THE INDEMNIFIED DAMAGES CAUSED BY SUCH SOLE NEGLIGENCE.

8.4 As used in this Section 8, "**Hazardous Substances**" shall include, without limitation, any and all hazardous or toxic substances, materials, contaminants, pollutants, or wastes pertaining to health or the environment as are identified, defined or listed elsewhere in any applicable local, state and federal ordinances, rules, regulations, laws and statutes, as the same may hereafter be passed, issued, enacted and/or amended, such as asbestos, petroleum products, hazardous materials, hazardous wastes and hazardous and/or toxic substances as defined or used in the Comprehensive Environmental Response, Compensation And Liability Act Of 1980, as amended (42 U.S.C. §9601 Et Seq.) and The Resource Conservation And Recovery Act, as amended (42 U.S.C. §6901 Et Seq.).

8.5 Licensee shall not, nor shall Licensee permit or allow any other Licensee Parties to, (a) cause any damage or waste at or about the Fuel Farm; (b) overload the Fuel Tanks; (c) cause any objectionable or unpleasant odors to emanate from the Fuel Tanks, except odors ordinarily emanating from a substantially similar aircraft fuel farm; (d) take any other action which would constitute a nuisance or would disturb or endanger Licensor, its employees, agents and other representatives, other licensees of the Fuel Farm, other occupants or users of the Airport or any neighbors of the Airport; or (e) permit any unlawful practice to be carried on or committed on the Fuel Farm.

8.6 Licensee shall procure, at its sole expense, any permits and licenses required for the use of the Fuel Farm including, without limitation, any permit or license required by the fire department of Licensor. At Licensor's request, Licensee shall deliver to Licensor copies of all such permits and licenses.

8.7 Only authorized and properly trained personnel of Licensee shall use the Fuel Farm pursuant to Licensee's rights under this License. In addition, if Licensee's business makes it advisable for Licensee to take any extra precautions at the Fuel Farm, Licensee shall take all such extra precautions.

## SECTION 9

### MAINTENANCE AND REPAIR OF FUEL TANKS AND OTHER EQUIPMENT

9.1 During the Term, Licensee, at Licensee's sole expense, shall maintain, repair and replace, as reasonably and prudently required, all equipment at the Fuel Farm diagonally cross-hatched on Exhibit "F" attached hereto (collectively, the "**Licensee Equipment**"). Without limiting the generality of the forgoing, the Licensee Equipment shall include all fuel loading and unloading equipment, such as hoses, couplings, swivels and such devices used in connection with the Fuel Tanks, and all filters, separators or other filtering medium or such devices related to the Fuel Tanks. With regard to Exhibit "F", the parties agree that no representation, warranty, or covenant is to be implied by Exhibit "F". If any such maintenance, repairs or replacements required to be made by Licensee are not made within ten (10) days after written notice delivered to Licensee by Licensor (except in the event of an emergency, in which case such repairs, replacements, changes or upgrades shall be required to be made by Licensee, as quickly as reasonably possible under the circumstances), then Licensor may perform such maintenance, repairs and replacements, and Licensee shall pay to Licensor, on demand, the costs of such maintenance, repairs and replacements, plus 15% for Licensor's overhead, plus interest on such sums). If Licensor elects to perform such maintenance, repairs or replacements, Licensor shall have no liability to Licensee for any loss or damage that may result to Licensee's business by reason of the same.

9.2 Except for the obligations of Licensee to be responsible for the continued maintenance, repairs and replacements of the Licensee Equipment described in Section 9.1 and Licensee's obligations under Section 9.3, and subject to the other obligations of Licensee under this License, Licensor shall at all times keep the Fuel Farm in good condition and repair generally in keeping with the standards of Licensor for the Airport and prevailing industry standards. Licensor, however, shall not be required to make any repairs occasioned by the act, omission, damage or negligence of Licensee, its employees, agents or other representatives, or any other person entering or using the Fuel Farm allegedly through the rights granted to Licensee under this License; and the provisions of the previous sentence are expressly recognized to be subject to the provisions of Section 15 and Section 16 of this License. In the event that the Fuel Tanks or other parts of the Fuel Farm should become in need of repair required to be made by Licensor hereunder, Licensee shall give immediate written notice thereof to Licensor and Licensor shall have a commercially reasonable time after receipt of such written notice in which to make such repairs. The costs of Licensor incurred pursuant to this Section 9.2 shall be included in the Common Area Charge.

9.3 During the Term, Licensee shall keep the Fuel Tanks, and cooperate with Licensor and other licensees of the Fuel Farm in keeping the Fuel Farm sidewalks, service-ways and loading areas, neat, clean and free from debris.

## SECTION 10

### ALTERATIONS

10.1 Licensee shall not make any installations, alterations or replacements of improvements, fixtures or equipment at the Fuel Farm without the prior written consent of Licensor, which consent may be withheld in Licensor's sole discretion. Without limiting the generality of the immediately preceding sentence, any installation, alteration or replacement consented to by Licensor must be effected strictly in accordance with Licensor's instructions and shall not unreasonably interfere with or disrupt the activities of Licensor or any other licensees of fuel tanks at the Fuel Farm. Licensee shall, promptly following the completion of any installations, alterations or replacements consented to by Licensor, deliver to Licensor "as built" plans and specifications with respect to any such installations, alterations and replacements. Any permitted installation, alteration or replacement which may be made or installed by Licensee in connection with the Fuel Farm shall remain upon and become the property of Licensor on completion of such installation, alteration or replacement; provided, however, that Licensor may request their removal upon the expiration or earlier termination of this License, in which event Licensee shall remove the same and restore the Fuel Farm to its condition immediately preceding such installation, alteration or replacement, ordinary wear and tear excepted and subject to Sections 9.2, 15 and 16, at Licensee's sole cost and expense. In the event that Licensee fails to remove such installation, alteration and replacement from the Fuel Farm within ten (10) days after the date of expiration or earlier termination of this License, Licensor may, at its option, keep or dispose of the same as Licensor shall determine at its sole discretion, without any liability or obligation to Licensee whatsoever. Licensee shall be obligated to reimburse Licensor for any costs incurred by Licensor in removing and disposing of such installation, alteration and replacement, and restoring the Fuel Farm to its original condition immediately preceding such construction, ordinary wear and tear excepted and subject to Sections 9.2, 15 and 16.

10.2 **INDEMNITY.** All construction work done by Licensee on the Fuel Farm shall be performed in a good and workmanlike manner, lien-free and in compliance with all applicable laws, and in such manner as to cause a minimum of interference with other construction in progress at the Fuel Farm or the use of the Fuel Farm by Licensor or any other licensees of fuel tanks at the Fuel Farm. **LICENSEE AGREES TO DEFEND AND INDEMNIFY LICENSOR AND LICENSOR INDEMNIFIED PERSONS AND HOLD LICENSOR AND THE OTHER LICENSOR INDEMNIFIED PERSONS HARMLESS FROM AND AGAINST ANY INDEMNIFIED DAMAGES RESULTING FROM SUCH WORK, INCLUDING ANY INDEMNIFIED DAMAGES CAUSED BY THE NEGLIGENCE OF THE LICENSOR OR ANY OF THE OTHER LICENSOR INDEMNIFIED PERSONS, BUT LICENSEE SHALL HAVE NO DUTY TO INDEMNIFY LICENSOR OR ANY LICENSOR INDEMNIFIED PERSON FOR INDEMNIFIED DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF LICENSOR OR SUCH LICENSOR INDEMNIFIED PERSON, UNLESS THE INSURANCE OF LICENSEE COVERS THE INDEMNIFIED DAMAGES CAUSED BY SUCH SOLE NEGLIGENCE.**

10.3 In the event Licensee uses a general contractor to perform any installations, alterations or replacements on the Fuel Farm, Licensee shall, prior to the commencement of such work, require said general contractor to execute and deliver to Licensor a waiver and release of lien (in form and content reasonably satisfactory to Licensor) of any and all claims against Licensor and liens against the Fuel Farm to which such contractor might at any time be entitled, and to execute and record a Bond to Pay Claims (the “**Bond**”) in accordance with Chapter 53, Subchapter I of the Texas Property Code, as such may be amended, superseded or replaced from time to time, and shall deliver a copy of the recorded Bond to Licensor. The delivery of the waiver and release of lien and the Bond within the time period set forth above shall be a condition precedent to Licensee's ability to enter on and begin its installation, alteration or replacement work on the Fuel Tanks and, if applicable, to any reimbursement from Licensor for Licensee's work.

10.4 In the event that Licensor elects to modify all or any portion of the Fuel Farm, Licensee will cooperate with Licensor during such modification, including Licensee's tolerating temporary inconveniences.

## **SECTION 11**

### **ACCESS TO FUEL FARM, FUEL TANKS AND EQUIPMENT**

11.1 Licensor shall have the right to enter upon the Fuel Farm at any time for any purpose consistent with this License.

11.2 Neither Licensee nor any Licensee Parties shall enter onto the roof of the Fuel Farm.

11.3 Neither Licensee nor any Licensee Parties shall use or manipulate in any manner any fuel tanks at the Fuel Farm (other than the Fuel Tanks), or any equipment used solely therewith.

11.4 Licensor shall have no liability to Licensee for any loss of access by Licensee to the Fuel Farm or the Fuel Tanks by reason of any security requirement, legal requirement, casualty, accident, condemnation, alteration, maintenance, repair, strike, act of God, force majeure, or cause beyond the reasonable control of Licensor.

## **SECTION 12**

### **UTILITIES**

12.1 Failure by Licensor to furnish, or the interruption or termination of utility services in whole or in part, resulting from any security requirement, legal requirement, casualty, accident, condemnation, alteration, maintenance, repair, strike, act of God, force majeure, or cause beyond the reasonable control of Licensor, shall not render Licensor liable in any respect nor be construed as a breach of this License, nor work as an abatement of the Consideration, nor relieve Licensee from the obligation to fulfill any covenant or agreement hereof. Should any of the equipment or machinery used in providing such services for any cause cease to function properly, Licensor shall use reasonable diligence to repair such equipment or machinery but, except as otherwise expressly provided herein, Licensee shall have no claim for offset, abatement of the Consideration, damages or termination of this License on account of an interruption in service thereby or resulting therefrom.

## **SECTION 13**

### **INSURANCE COVERAGE**

13.1 Licensor shall procure and maintain throughout the Term of this License a policy or policies of insurance, causing the Fuel Farm to be insured under standard fire and extended coverage insurance and liability insurance or that which is typically available to a municipality for such purposes in the State of Texas (plus whatever endorsements or special coverages Licensor, at its sole and reasonable discretion, may consider appropriate), to the extent necessary to comply with Licensor's obligations pursuant to the provisions set forth in this License.

13.2 Licensee shall procure and maintain throughout the Term a policy or policies of insurance, at its sole cost and expense to meet or exceed the requirements specified in the then prevailing "Addison Airport Minimum Standards and Requirements For Commercial Aeronautical Service Providers" (the "**Minimum Licensee Insurance Standards**") which may be amended or modified by Licensor from time to time.

13.3 In the event no Minimum Licensee Insurance Standards are known to be in effect, Licensee shall procure and maintain throughout the Term, at the minimum, at its sole cost and expense: (a) a policy or policies of insurance causing the Licensee Equipment and Licensee's personal property at the Fuel Farm to be insured under standard Special Form or similar property insurance; (b) business automobile liability insurance for all owned and non-owned automobiles with a combined single limit of \$5,000,000 for bodily injury and property damage; and (c) commercial general liability insurance insuring Licensee on an occurrence basis against all claims, demands or actions arising out of or in connection with Licensee's use or occupancy of the Fuel Farm, or by the condition of the Fuel Farm. Licensee's commercial general liability policy or policies must provide coverage with a combined single limit of not less than \$5,000,000 per occurrence (with no offset for occurrences on property other than the Fuel Tanks), and Licensee's insurance policy or policies must list Licensor as a loss payee (as to the Special Form or similar property insurance) as to Licensor's interest in any of Licensee's property and as an "Additional Insured" as to all other insurance including, without limitation, the commercial general liability insurance, which shall also name as Additional Insured's any management personnel or company retained by Licensor to operate or manage the Fuel Farm and/or the Airport.

13.4 All such insurance must be written by insurance companies and on forms and with deductibles satisfactory to Licensor, and Licensee's insurance shall be primary (with any policies of Licensor being excess, secondary and non-contributory). If it becomes customary or otherwise a prudent business practice within Licensee's industry to provide insurance policies with limits higher than the foregoing limits or with coverages other than the foregoing coverages, then Licensee will provide Licensor with such additional insurance as may be requested by Licensor. Licensee also agrees to provide and maintain adequate workers' compensation insurance insuring against and satisfying Licensee's obligations and liabilities under the workers' compensation laws of the State of Texas in no less than statutorily required amounts, covering Licensee's agents and employees in the Fuel Tanks, and containing a waiver of subrogation in favor of Licensor.

13.5 **INDEMNITY. LICENSEE** HEREBY INDEMNIFIES, AGREES TO HOLD HARMLESS AND DEFEND LICENSOR AND THE OTHER LICENSOR INDEMNIFIED PERSONS FROM AND AGAINST ANY AND ALL INDEMNIFIED DAMAGES SUFFERED BY LICENSEE OR ANY OF LICENSEE'S EMPLOYEES, AGENTS OR OTHER REPRESENTATIVES AT OR ABOUT THE FUEL FARM WHICH WOULD HAVE BEEN OR IS COVERED BY AN APPROPRIATE WORKERS' COMPENSATION INSURANCE POLICY (AS MAY BE REQUIRED BY LAW TO BE CARRIED BY LICENSEE) AND/OR EMPLOYER'S LIABILITY INSURANCE POLICY, **INCLUDING ANY INDEMNIFIED DAMAGES CAUSED BY THE NEGLIGENCE OF THE LICENSOR OR ANY OF THE OTHER LICENSOR INDEMNIFIED PERSONS, BUT LICENSEE SHALL HAVE NO DUTY TO INDEMNIFY LICENSOR OR ANY LICENSOR INDEMNIFIED PERSON FOR INDEMNIFIED DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF LICENSOR OR SUCH LICENSOR INDEMNIFIED PERSON, UNLESS THE INSURANCE OF LICENSEE COVERS THE INDEMNIFIED DAMAGES CAUSED BY SUCH SOLE NEGLIGENCE.**

13.6 Licensee shall obtain a written obligation on the part of each insurance company to notify Licensor at least thirty (30) days prior to cancellation, non-renewal or modification of all such insurance described above. Such policies or duly executed certificates or other evidence of such insurance (in any event in form and content reasonably satisfactory to Licensor) shall be delivered to Licensor prior to the Commencement Date. Renewals of insurance shall be delivered to Licensor at least thirty (30) days prior to the expiration of the respective policy term(s). If Licensee should fail to comply with the foregoing requirement relating to insurance, Licensor may obtain such insurance on Licensee's behalf, and Licensee shall pay to Licensor on demand as additional Consideration the premium cost plus interest on such additional Consideration at the maximum contractual rate which could legally be charged in the event of a loan of such late Consideration to Licensee (but in no event to exceed 1 ½% per month).

## SECTION 14

### WAIVER OF LIABILITY; MUTUAL WAIVER OF SUBROGATION

14.1 Licensors and its agents, employees or authorized representatives shall not (a) be liable to Licensee, nor to Licensee's officers, owners, employees, representatives, contractors, agents or visitors, nor to any other person whomsoever, for any injury to person (including, without limitation, death) or damage to or destruction of property caused by the Fuel Tanks or other portion of the Fuel Farm becoming out of repair or by defect or failure of any structural element of the Fuel Tanks or of any equipment, pipes or wiring, or broken glass, or by the backing up of drains, or by fuel, gas, water, steam, electricity or oil leaking, escaping or flowing into the Fuel Tanks or the Fuel Farm, except where due to Licensor's willful acts or gross negligence in failing to maintain or make repairs required to be made hereunder, after the expiration of a reasonable time after written notice to Licensor of the need for such repairs and Licensor failed to remedy said condition; and (b) be liable to Licensee, nor to Licensee's officers, owners, employees, representatives, contractors, agents or visitors, nor to any other person whomsoever, for any loss or damage that may be occasioned by or through the acts or omissions of other licensees of fuel tanks at the Fuel Farm or of any other persons whomsoever, except for the willful misconduct or gross negligence of authorized employees, agents or authorized representatives of Licensor.

14.2 **INDEMNITY.** Licensor shall not be liable to Licensee, any Licensee Parties or any other person for (a) any injury to person (including, without limitation, death) or damage to or destruction of property on or about the Fuel Farm or any other portion of the Airport or premises adjacent thereto caused by the act or omission of Licensee, any Licensee Parties or any other person using the Fuel Farm or any equipment used in connection therewith under the express or implied invitation of Licensee; or (b) events, acts or occurrences arising out of any breach or default by Licensee in the performance of its obligations under this License. **LICENSEE AGREES TO AND SHALL DEFEND AND INDEMNIFY LICENSOR AND THE OTHER LICENSOR INDEMNIFIED PERSONS AND HOLD LICENSOR AND THE OTHER LICENSOR INDEMNIFIED PERSONS HARMLESS FROM AND AGAINST ANY AND ALL INDEMNIFIED DAMAGES ARISING OUT OF SUCH INJURY, INDEMNIFIED DAMAGES OR DESTRUCTION, OR INDEMNIFIED DAMAGES CAUSED BY (I) LICENSEE'S PERFORMANCE OF THIS AGREEMENT, (II) THE USE OF THE FUEL FARM, FUEL TANKS, OR ANY OTHER PORTION OF THE AIRPORT OR PROPERTY ADJACENT THERETO BY LICENSEE OR BY ANY LICENSEE PARTIES; (III) THE CONDUCT OF LICENSEE'S BUSINESS OR ANYTHING ELSE DONE OR PERMITTED BY LICENSEE (OR ANY OF LICENSEE PARTIES) TO BE DONE IN OR ABOUT THE FUEL FARM, FUEL TANKS, OR ANY OTHER PORTION OF THE AIRPORT OR PROPERTY ADJACENT THERETO; (IV) ANY MISREPRESENTATION OR BREACH OF WARRANTY BY LICENSEE UNDER THIS AGREEMENT; OR (V) WITHOUT LIMITING ANY OF THE FOREGOING, ANY ACT OR OMISSION OF LICENSEE OR OF ANY OF LICENSEE PARTIES UNDER, RELATED TO, OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING ANY INDEMNIFIED DAMAGES CAUSED BY THE NEGLIGENCE OF THE LICENSOR OR ANY OF THE OTHER LICENSOR INDEMNIFIED PERSONS, BUT LICENSEE SHALL HAVE NO DUTY TO INDEMNIFY LICENSOR OR ANY LICENSOR INDEMNIFIED PERSON FOR INDEMNIFIED DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF LICENSOR OR SUCH LICENSOR INDEMNIFIED PERSON, UNLESS THE INSURANCE OF LICENSEE COVERS THE INDEMNIFIED DAMAGES CAUSED BY SUCH SOLE NEGLIGENCE.**

14.3 Licensor and Licensee each hereby waives all right of recovery against the other, and releases the other from any and all liability or responsibility to the other, or to any other party claiming through or under them by way of subrogation or otherwise, for any loss or damage to property arising from any cause that is insurable under standard Special Form or similar property insurance or which is required herein to be insured thereby (and each party agrees to obtain an endorsement to that effect in their respective Special Form or similar property insurance policies), **EVEN IF SUCH LIABILITY OR LOSS IS CAUSED BY THE NEGLIGENCE OF THE OTHER PARTY**; provided, however, that this mutual waiver and release is applicable only with respect to any loss or damage occurring during the time when such Special Form or similar property insurance policies which are readily available in the marketplace contain a clause or permitted endorsement to the effect that any such waiver and release does not adversely affect or impair the policy or the right of the insured party to proceeds under such policy and further provided that this waiver and release shall be applicable only to the extent that insurance proceeds are actually paid and collected to cover for such loss or damage and shall not be applicable to the portion of any such

loss or damage which is not reimbursed by the damaged party's insurer because of the "deductible" in the damaged party's insurance coverage. The release specified in this Section 14.3 is cumulative with any releases or exculpations, which may be contained in any other provisions of this License.

## **SECTION 15**

### **DAMAGES BY CASUALTY**

15.1 Licensee shall give immediate written notice to the Licensor of any damage caused to the Fuel Farm or any Fuel Tank by fire or other casualty.

15.2 In the event that the Fuel Farm or any Fuel Tank is damaged or destroyed by fire or other casualty insurable under standard fire and extended coverage insurance, and Licensor does not elect to terminate this License as hereinafter provided, Licensor shall proceed with reasonable diligence and at its sole cost and expense (to the extent that insurance proceeds are available therefore, and provided that Licensee shall reimburse Licensor for any such costs and expenses for which Licensee may be liable under this License) to rebuild and repair the Fuel Farm or any Fuel Tank. In the event (a) the Fuel Farm or any Fuel Tank is destroyed or substantially damaged by a casualty not covered by Licensor's insurance or (b) the Fuel Farm or any Fuel Tank is destroyed or rendered unusable (as determined by Licensor), then Licensor may elect either to terminate this License as to all Fuel Tanks or just the damaged, destroyed or unusable Fuel Tank(s) or to proceed to rebuild and repair the Fuel Farm or any damaged, destroyed or unusable Fuel Tank. Licensor shall give written notice to Licensee of any such election within sixty (60) days' after the occurrence of such casualty and, if Licensor elects to rebuild and repair, shall proceed to do so with commercially reasonable diligence.

15.3 Licensor's obligation to rebuild and repair under this Section 15 shall, in any event, be limited to restoring the Fuel Farm or any Fuel Tank to substantially the condition in which the same existed prior to such fire or other casualty, exclusive of any Licensee Equipment, alterations, additions, improvements, fixtures and other equipment installed by Licensee. Licensee agrees that promptly after completion of such work by Licensor, Licensee will proceed with reasonable diligence and at Licensee's sole cost and expense to restore, repair and replace all Licensee Equipment and all alterations, additions, improvements, fixtures, signs and equipment installed by Licensee.

15.4 Licensee agrees that during any period of reconstruction or repair of the Fuel Farm or any Fuel Tank pursuant to this Section 15, it will continue the operation of its business within the Fuel Farm to the extent practical.

## **SECTION 16**

### **EMINENT DOMAIN**

16.1 If less than all of the Fuel Farm should be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or by private purchase in lieu thereof, at Licensor's election, this License shall terminate and Licensor shall credit Licensee for unearned Consideration, if any, effective on the date physical possession is taken by the condemning authority.

16.2 If less than all of the Fuel Farm should be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or by private purchase in lieu thereof, and Licensor elects not to terminate this License, Licensor shall make all necessary repairs or alterations to the remaining Fuel Farm and, promptly after completion of such work by Licensor, Licensee shall restore, repair and replace all Licensee Equipment and all alterations, additions, improvements, fixtures, signs and equipment installed by Licensee.

16.3 If all of the Fuel Farm should be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or by private purchase in lieu thereof, this License shall terminate effective on the date physical possession is taken by the condemning authority.

16.4 All compensation awarded for any taking (or the proceeds of private sale in lieu thereof) of the Fuel Farm shall be the property of Licensor, and Licensee hereby assigns its interest in any award related to such taking to Licensor.

16.5 Licensee agrees that during any period of reconstruction or repair of the Fuel Farm or any Fuel Tank pursuant to this Section 16, it will continue the operation of its business within the Fuel Farm to the extent practical.

## SECTION 17

### ASSIGNMENT AND SUBLETTING

17.1 Licensee shall not and has no authority to assign or in any manner transfer this License or any interest herein, sublicense its interest under this License or any part thereof, or grant any license, concession or other right of use of any portion of the Fuel Farm without Licensor's prior written consent, which may be withheld in Licensor's sole discretion. Any attempted assignment or transfer, or any attempt to grant any sublicense, concession or other right of use, in violation of the preceding sentence shall be null and void, *ab initio*. In determining whether or not to grant its consent, Licensor shall be entitled to take into consideration all factors including, without limitation, Licensor's desired Licensee mix, the reputation and net worth of the proposed transferee, purported intent and use of the facilities by the proposed transferee (even beyond what is specified in Section 1.1(q)) and the then-current market conditions (including market consideration). In addition, Licensor shall also be entitled to charge an assignment fee for processing and considering, but not necessarily consenting to, Licensee's request. Consent by Licensor to one or more assignments, transfers, or sublicenses shall not constitute a novation or waiver of Licensor's rights as to any subsequent assignments, transfers, and sublicenses. If Licensor consents, any unexercised extension options of Licensee described on Exhibit "D" attached hereto shall be deemed null and void, *ab initio*, and of no force or effect.

17.2 If Licensee is a corporation, partnership or other entity (other than a publicly traded entity), and if at any time during the Term of this License the person or persons who own a majority of either the outstanding voting rights or controlling interests of Licensee at the time of the execution of this License cease for any reason to own a majority of such voting rights or controlling interests (except as a result of transfers by devise or descent) of Licensee, the loss of a majority of such voting rights or controlling interests shall be deemed an assignment of this License by Licensee and, therefore, subject in all respects to the provisions of Section 17.1 above. For purposes hereof, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities or partnership interests, by contract, or otherwise. Licensee shall give to Licensor, upon Licensor's request, a list of such person or persons.

17.3 Any assignee or other transferee of an interest in and to this License shall be deemed, by acceptance of such assignment or other transfer or by use of the Fuel Farm, to have assumed all of the obligations set forth in or arising under this License. Such assumption shall be effective as of the earlier of the date of such assignment or other transfer, or the date on which the assignee or other transferee commences use of the Fuel Farm.

17.4 Notwithstanding any assignment, other transfer or subletting, Licensee shall at all times remain fully responsible and liable for the payment of the Consideration herein specified and for compliance with all of its other obligations under this License (even if future assignments, transfers and sublicenses occur subsequent to the assignment, transfer or sublicensing by Licensee, and regardless of whether or not Licensee's approval has been obtained for such future assignments, transfers and sublicensing). In the event that for any reason any assignment or transfer, or sublicense, concession or other right of use of any portion of the Fuel Farm, prohibited by this Section 17 is consummated without the prior written consent of Licensor, or if an assignment, sublicense or other transfer by Licensee is permitted by Licensor, and the consideration paid and/or payable by an assignee, transferee, sublicensee or other user by reason of this License exceeds the Consideration paid payable under this License, then Licensee shall be bound and obligated to pay Licensor all such excess consideration within ten (10) days following receipt thereof by Licensee from such assignee, transferee, sublicensee or other user. Finally, in the event of any assignment or transfer, or sublicense, concession or other right of use of any portion of the Fuel Farm, whether permitted by Licensor or otherwise consummated without Licensor's consent, it is understood and agreed that all consideration paid to Licensee by the assignee, transferee, sublicensee or other user shall be received by Licensee in trust for Licensor to be forwarded immediately to Licensor without offset or reduction of any kind, and upon election by Licensor such consideration shall be paid directly to Licensor as specified in Section 4.2 of this License (to be applied as a credit and offset to Licensee's Consideration obligation).

17.5 Licensee shall not and has no authority to mortgage, pledge or otherwise encumber its interest in this License, without the prior written consent of Licensor, which consent may be withheld in Licensor's sole discretion.

Any such mortgage, pledge or other encumbrance in violation of the preceding sentence shall be null and void, *ab initio*.

17.6 In the event of the transfer and assignment by Licensor of its interest in this License to a person or persons expressly assuming Licensor's obligations under this License, Licensor shall thereupon be released from any further obligations hereunder, and Licensee agrees to look solely to such successor in interest of the Licensor for performance of such obligations. Any security given by Licensee to secure performance of Licensee's obligations hereunder may be assigned and transferred by Licensor to such successor in interest and Licensor shall thereby be discharged of any further obligation relating thereto.

## SECTION 18

### ESTOPPELS

18.1 Licensee agrees that it will, from time to time upon request by Licensor, execute and deliver to Licensor a written statement addressed to Licensor (or to a party designated by Licensor), which statement shall identify Licensee and this License, shall certify that this License is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), shall confirm that Licensor is not in default as to any obligations of Licensor under this License (or if Licensor is in default, specifying any default), shall confirm Licensee's agreements contained in this License, and shall contain such other information or confirmations as Licensor may reasonably request. Licensor is hereby irrevocably appointed and authorized as the agent and attorney in fact of Licensee to execute and deliver any such written statement on Licensee's behalf if Licensee fails to do so within fourteen (14) business days after the delivery of a written request from Licensor to Licensee.

## SECTION 19

### NON-COMPETE

19.1 Licensee covenants and agrees that during the Term of this License, neither Licensee nor any person, firm or corporation, directly or indirectly controlling, controlled by or under common control with Licensee (and also, in the event Licensee is a corporation, if any officer or director thereof or shareholder owning more than ten percent (10%) of the outstanding stock thereof, or parent, subsidiary or related or affiliated corporation) either directly or indirectly shall operate or commence operation of any facility selling or that otherwise offers for sale any aircraft fuel of the type to be used by Licensee in the Fuel Tanks or similar or related items, or in any manner competes with the business of the Fuel Farm, within a straight-line radius of seven (7) miles of the Fuel Farm, which Licensee acknowledges is a reasonable area for the purpose of this provision. It is acknowledged that Licensor will incur damages by reason of the diversion of business from the Fuel Tanks and Fuel Farm to such other facility within such radius, as a proximate result of the establishment of such other facility.

## SECTION 20

### DEFAULT AND REMEDIES

20.1 Default by Licensee. The following events shall be deemed to be events of default by Licensee under this License:

- (a) Licensee shall fail to pay when due any Base Fee or other sum of Consideration including, but not limited to, Licensee's Additional Fee or adjusted Additional Fee and Fuel Flowage Fees as required to be paid by Licensee to Licensor under this License (hereinafter sometimes referred to as a "**Monetary Default**").
- (b) Licensee shall fail to comply with any term, provision or covenant of this License (other than a Monetary Default) and shall not cure such failure within thirty (30) days after delivery to Licensee notice of the occurrence of such default.



- (c) Licensee shall become insolvent, or shall make a transfer in fraud of creditors, or shall seek relief under Title 11 of the Bankruptcy Code (defined in Section 20.3 below) or shall make an assignment for the benefit of creditors, or Licensee shall admit in writing its inability to pay its debts as they become due.
- (d) Licensee shall file a petition under any section or chapter of the Bankruptcy Code, as amended, pertaining to bankruptcy or under any similar insolvency or debtor-relief law or statute of the United States or any state thereof, or Licensee shall be adjudged bankrupt or insolvent in proceedings filed against Licensee thereunder; or an involuntary case is commenced under 11 U.S.C. § 303 as amended or an insolvency, receivership or any similar proceedings are commenced under Federal or State law and such proceedings are not fully and finally dismissed, or a petition or answer proposing the adjudication of Licensee as bankrupt or its reorganization under any present or future federal or state bankruptcy or similar insolvency or debtor-relief law shall be filed in any court and such petition or answer shall not be discharged or denied within sixty (60) days after the filing thereof.
- (e) A receiver or trustee shall be appointed for all or substantially all of the assets of Licensee, or for the Fuel Tanks or any of Licensee's property located therein, in any proceeding brought by Licensee; or any such receiver or trustee shall be appointed in any proceeding brought against Licensee and shall not be discharged within sixty (60) days after such appointment or Licensee shall consent to or acquiesce in such appointment.
- (f) The license hereunder shall be revoked upon execution or other process of law in any action against Licensee.
- (g) The liquidation, termination or default of a lease, license or other written agreement with the Town of Addison, dissolution, forfeiture of right to do business or death of Licensee.

20.2 Remedies of Licensor. Upon the occurrence of any event of default by Licensee under this License, Licensor may:

- (a) immediately terminate this License and at the expense and liability of the Licensee, alter or change any or all locks or other security or power devices controlling access to the Fuel Farm or Fuel Tanks without posting or giving notice of any kind to Licensee.
- (b) do whatever Licensee is obligated to do under the terms of this License; and Licensee agrees to reimburse Licensor on demand for any expense which Licensor may incur in thus effecting compliance with Licensee's obligations under this License together with interest at the lesser of (i) the maximum rate permitted under applicable law or (ii) eighteen percent (18%) per annum.

20.3 Event of Bankruptcy. In addition to, and in no way limiting the other remedies set forth in this Section 20, Licensor and Licensee agree that if Licensee ever becomes the subject of a voluntary or involuntary bankruptcy, reorganization or other similar type proceeding under the federal bankruptcy laws, as now enacted or hereinafter amended, then:

- (a) "adequate protection" and "adequate assurance" of Licensor's interest under this License pursuant to the provisions of Sections 361, 362, 363, 364 and 365 (or their successor sections) of the Bankruptcy Code, 11 U.S.C. Paragraph 101, et seq. (such Bankruptcy Code as amended from time to time being herein referred to as the "**Bankruptcy Code**"), prior to assumption and/or assignment of this License by Licensee shall include, but not be limited to, all or any part of the following:
  - (1) curing all monetary and non-monetary defaults, including, without limitation, payment of attorneys' fees incurred by Licensor related to enforcing the terms and conditions of this License and the continued payment by Licensee of the Base Fee and all other Considerations due and owing hereunder and the performance of all other covenants and obligations hereunder by Licensee;
  - (2) the furnishing of an additional and/or new security deposit by Licensee in the amount of three (3) times the then-current monthly Base Fee and other Considerations payable hereunder; and

(3) in addition, the Licensee shall provide financial statements evidencing the financial condition and operating performance of any proposed assignee and guarantors, if any, which is sufficient to show that the proposed assignee is capable of performing in Licensor's sole discretion, all of the Licensee's obligations under the terms and conditions of this License, including, without limitation, the "adequate assurance" and "adequate protection" requirements set forth herein.

(b) in the event Licensor consents, in its sole discretion, to the assignment of this License, any person or entity, to which this License is assigned pursuant to the provisions of the Bankruptcy Code, shall be deemed without further act or deed to have assumed all of the obligations of Licensee arising under this License on and after the effective date of such assignment, including, without limitation, adequate protection and adequate assurance requirements under Section 20.3(a). Any such assignee shall, upon demand by Licensor, execute and deliver to Licensor an instrument confirming such assumption of liability, along with applicable guaranties of any principals of the assignee.

(c) notwithstanding the prohibition against assignment contained in Section 17.1 herein, if this License is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, any and all monies or other considerations payable or otherwise to be delivered to Licensor including Base Fees and other Considerations hereunder, shall be and remain the exclusive property of Licensor and shall not constitute property of Licensee or of the bankruptcy estate of Licensee. Any and all monies or other considerations constituting Licensor's property under the preceding sentence not paid or delivered to Licensor shall be held in trust by Licensee or Licensee's bankruptcy estate for the benefit of Licensor and shall be promptly paid to or turned over to Licensor.

(d) to the extent permitted by law, Licensor and Licensee agree that this License is a contract under which applicable law excuses Licensor from accepting performance from, or rendering performance to, any person or entity other than Licensee within the meaning of the Bankruptcy Code, 11 U.S.C. Paragraph 101, et seq.

20.4 No Waiver. The following do not constitute a waiver of any rights Licensor may have under the License: (a) failure of Licensor to declare any default immediately upon its occurrence, or delay in taking any action in connection with an event of default, shall not constitute a waiver of such default, nor shall it constitute an estoppel against Licensor, but Licensor shall have the right to declare the default at any time and take such action as is lawful or authorized under this License; (b) failure by Licensor to enforce its rights with respect to any one default shall not constitute a waiver of its rights with respect to any subsequent default; (c) receipt by Licensor of Licensee's keys to the Fuel Tanks or the Fuel Farm shall not constitute a termination of this License; and (d) no payment by Licensee or receipt by Licensor of (i) a lesser amount than the Consideration due under this License shall be deemed to be other than on account of the earliest Consideration due hereunder; and (ii) any endorsement or statement on any check or any letter accompanying any check or payment as Consideration shall not be deemed an accord and satisfaction and Licensor may accept such check or payment without prejudice to Licensor's right to recover the balance of such Consideration or pursue any other remedy in this License provided.

20.5 Remedies Cumulative. No right or remedy herein conferred upon or reserved to Licensor is intended to be exclusive of any other right or remedy it may have, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing by agreement, applicable law, common law, in equity, or otherwise. In addition to other remedies provided in this License, Licensor shall be entitled, to the extent permitted by applicable law, but without the requirement of a bond or evidence of irreparable harm, to injunctive relief in case of the violation, or attempted or threatened violation, of any of the covenants, agreements, conditions or provisions of this License, or to a decree compelling performance of any of the other covenants, agreements, conditions or provisions of this License, or to any other remedy allowed to Licensor by law, common law, in equity, or otherwise.

20.6 Evidence of Termination. To the extent any provision of applicable law requires some action by Licensor to evidence or effect the termination of this License or to evidence the termination of Licensee's right of occupancy, Licensee and Licensor hereby agree that written notice by Licensor to Licensee or to any of Licensee's agents, servants or employees, which states, in substance, that Licensor has elected to and has terminated this License, shall be sufficient to evidence and effect the termination herein provided for.

20.7 Licensor Default. Licensee shall not exercise any remedy for any breach or default by Licensor under this License without first giving written notice of such breach or default to Licensor and a commercially reasonable opportunity to cure such breach or default of not less than thirty (30) days from the date Licensor receives such notice.

## **SECTION 21**

### **HOLDING OVER**

21.1 In the event Licensee continues use of the Fuel Farm after the termination or expiration of this License and without the execution of a new license, it will be deemed to be using the Fuel Farm as a licensee under a license terminable at will at a daily fee equal to the Consideration herein provided plus one hundred percent (100%) of such amount, pro-rated on a daily basis, otherwise subject to all the conditions, provisions and obligations of this License insofar as the same are applicable to a license terminable at will.

## **SECTION 22**

### **EXPIRATION OR TERMINATION OF LICENSE**

22.1 Immediately prior to the expiration or earlier termination of Licensee's right to use the Fuel Farm pursuant to this License, Licensee shall:

- a) deliver the Fuel Tanks back to Licensor in good repair, excepting reasonable wear and tear and losses required to be restored by Licensor provided for in Section 9.1, Section 15 and Section 16;
- b) completely remove all sludge, solids, and residual substances from inside of the Fuel Tanks, piping and filtration devices in accordance with state and federal guidelines;
- c) dispose of tank bottom sludge according to state and federal laws and regulations;
- d) remove and replace all filters, separators or other filtering medium or such devices typically required under Section 9.1;
- e) secure the Fuel Tanks by bolting and locking all manways, valves and cap or plug fill lines, gauge openings or pump lines; and
- f) take all other actions reasonably necessary to empty, secure and stabilize the Fuel Tanks as instructed by Licensor.

22.2 On the surrender of the Fuel Tanks at the expiration or earlier termination of this License, Licensee shall give Licensor at least seventy-two (72) hours advance notice that the Fuel Tanks are ready for Licensor's inspection and acceptance. Upon this notification, Licensor shall then inspect the Fuel Tanks and call for the inspection by the Town of Addison Fire Department and any other regulatory entity having jurisdiction over such matters. Licensee agrees to remedy, at first reasonable opportunity, any exception or exceptions reported as a result of said inspections. Once all exceptions have been resolved and accepted by Licensor, Licensor shall deliver written notice to Licensee that Licensor has accepted the surrender of the Fuel Tanks pursuant to this Section 22, and Licensee's right to access and use of the Fuel Tanks and Fuel Farm is terminated.

## SECTION 23

### NOTICES

23.1 Wherever any notice is required or permitted hereunder, such notice shall be in writing. Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered when actually received by the designated addressee or, if earlier and regardless of whether actually received or not, when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the parties hereto at the respective addresses set out in Section 1.1 above, or at such other address as they might specify by written notice.

23.2 If and when included within the term "Licensor" as used in this License there are more than one person, firm or corporation, all shall jointly arrange among themselves for their joint execution of such notice specifying some individual at some specific address for the receipt of notices and payments to the Licensor; if and when included within the term "Licensee" as used in this instrument there are more than one person, firm or corporation, all shall jointly arrange among themselves for their joint execution of such a notice specifying some individual at some specific address for the receipt of notices and payments to Licensee. All parties included within the terms "Licensor" and "Licensee", respectively, shall be bound by notices and payments given in accordance with the provisions of this Section. 23.2 to the same effect as if each had received such notice or payment. In addition, Licensee agrees that Licensor's attorney, property manager or other agent may give notices to Licensee on Licensor's behalf.

## SECTION 24

### COMMISSIONS

**24.1 EACH PARTY HERETO REPRESENTS TO THE OTHER THAT IT HAS NOT AUTHORIZED ANY BROKER OR FINDER TO ACT ON ITS BEHALF IN CONNECTION WITH THE NEGOTIATION AND EXECUTION OF THIS LICENSE, AND LICENSOR AND LICENSEE EACH AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE OTHER FROM AND AGAINST ANY AND ALL INDEMNIFIED DAMAGES ARISING OUT OF OR RESULTING FROM ANY AGREEMENT, ARRANGEMENT OR UNDERSTANDING MADE OR ALLEGED TO HAVE BEEN MADE BY SUCH INDEMNIFYING PARTY WITH ANY SUCH OTHER BROKER OR FINDER IN CONNECTION WITH THIS LICENSE, INCLUDING ANY SUCH CLAIM, LOSS, DAMAGE, COST OR EXPENSE ARISING OUT OF THE NEGLIGENCE OF THE INDEMNIFIED PARTY, PROVIDED THAT INDEMNIFYING PARTY SHALL HAVE NO DUTY TO INDEMNIFY THE INDEMNIFIED PARTY FOR INDEMNIFIED DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF THE INDEMNIFIED PARTY.**

## SECTION 25

### CHANGES DUE TO LEGAL REQUIREMENTS

25.1 If for any reason the Fuel Farm was not constructed in compliance with any legal requirements in existence at the time of construction, Licensor shall have no liability to Licensee or any Licensee Parties as a result thereof, except that Licensor shall have a reasonable period of time after notification from Licensee of such noncompliance to cause the Fuel Farm to comply with such legal requirements. If there are any changes to such legal requirements after the date of completion of Licensor's construction of the Fuel Farm that require changes thereto, Licensor shall have a reasonable period of time after notification from Licensee to make such changes. All costs incurred by Licensor in causing the Fuel Farm to comply with applicable laws may be included in the Common Area Charge.

## SECTION 26

### APPLICABLE LAWS

26.1 Licensors and Licensees acknowledge that there are in effect federal, state, county and municipal laws, rules, regulations, standards, and policies (together, "laws") and that the same may hereafter be modified or amended and additional laws may hereafter be enacted or go into effect, relating to or affecting the Fuel Farm or the Fuel Tanks. Licensee shall not cause, or permit or allow the Licensee Parties to cause, any violation of any applicable laws. Moreover, Licensee shall have no claim against Licensor by reason of any changes Licensor may make in the Fuel Farm or the Fuel Tanks required by any applicable laws or any charges imposed upon Licensee, Licensee's customers or other invitees as a result of applicable laws.

26.2 If any provision in this License is held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this license shall not be affected thereby.

26.3 Licensee hereby acknowledges that Licensor is bound by the terms and conditions of any and all Federal Aviation Administration, Texas Department of Transportation, and other grant agreements, grant assurances and regulations regarding the Airport, and the terms of any grant, loan, regulation, or agreement under Section 22.055 of the Texas Transportation Code, as amended or superseded, whether now existing or made in the future. Without limiting the generality of Section 26.1, Licensee agrees not to take any action or omit to take any action in relation to the Fuel Farm that would cause Licensor to be in violation of such terms, conditions, agreements, assurances, regulations, grant or loan.

26.4 Licensor and Licensee hereby specifically acknowledge that U.S. Code of Federal Regulations Title 40 Part 112 – *Oil Pollution Prevention*, governs the conduct of the parties under the License. Licensor and Licensee hereby further specifically acknowledge that the National Fire Protection Association, Inc. (NFPA) 407, *Standard for Aircraft Fuel Servicing*, governs the conduct of the parties under the License. Without limiting the generality of Section 26.1, Licensee agrees not to take any action or omit to take any action in relation to the Fuel Farm that would cause Licensor to be in violation of such regulations or standards.

26.5 If, by reason of any applicable laws, the payment to, or collection by, Licensor of any Consideration or other charges payable by Licensee to Licensor pursuant to the provisions of this License is in excess of the amount (the "**Maximum Charge**") permitted by laws, then Licensee, during the period when such laws shall be in force and effect (the "**Freeze Period**"), shall not be required to pay, nor shall Licensor be permitted to collect, any sum in excess of the Maximum Charge. Upon the earlier of (i) the expiration of the Freeze Period, or (ii) the issuance of a final order or judgment of a court of competent jurisdiction declaring such laws to be invalid or not applicable to the provisions of this License, Licensee, to the extent not then proscribed by applicable law, and commencing with the first day of the month immediately following, shall pay to Licensor as additional Consideration, prorated in equal monthly installments over the balance of the Term of this License, a sum equal to the cumulative difference between the Maximum Charge and such Consideration or other charge during the Freeze Period. If any provision of this Section 26.5, or the application thereof, shall to any extent be declared to be invalid and unenforceable, the same shall not be deemed to effect the validity and enforceability of any of the other provisions of this Section 26.5 or of this License, all of which shall remain in effect to the fullest extent permitted by law.

## SECTION 27

### MANDATORY NON-BINDING MEDIATION

27.1 The parties have entered into this License in the belief that it is mutually advantageous to them. It is with that same spirit of cooperation that they pledge to attempt to resolve any dispute (unless the Dispute involves an event of default of a payment obligation under this License) amicably without the necessity of litigation. Accordingly, they agree if any dispute arises between them relating to this License (the "**Dispute**"), they will first utilize the following procedures specified in this Section 27 (the "**Procedure**") before resorting to any court proceedings, unless the lack of immediate court proceedings would cause irreparable harm without an adequate remedy at law:

(a) The party seeking to initiate the Procedure (the “**Initiating Party**”) will give 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 27, 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. 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 28

### MISCELLANEOUS

28.1. **INDEMNITY.** LICENSEE SHALL ALSO DEFEND AND INDEMNIFY LICENSOR AND THE LICENSOR INDEMNIFIED PERSONS AGAINST AND HOLD LICENSOR AND THE LICENSOR INDEMNIFIED PERSONS HARMLESS FROM ALL COSTS, EXPENSES, DEMANDS AND LIABILITY LICENSOR OR THE LICENSOR INDEMNIFIED PERSONS MAY INCUR IF LICENSOR OR ANY OF THE LICENSOR INDEMNIFIED PERSONS BECOME OR ARE MADE A PARTY TO ANY CLAIM OR ACTION (A) INSTITUTED BY LICENSEE AGAINST ANY THIRD PARTY, OR BY ANY THIRD PARTY AGAINST LICENSEE, OR AGAINST ANY PERSON HOLDING ANY INTEREST UNDER OR USING THE FUEL FARM BY LICENSE OR BY AGREEMENT WITH LICENSEE; (B) FOR FORECLOSURE OF ANY LIEN FOR LABOR OR MATERIAL FURNISHED TO OR FOR LICENSEE OR SUCH OTHER PERSON; (C) OTHERWISE ARISING OUT OF OR RESULTING FROM ANY ACT, OMISSION OR TRANSACTION OF LICENSEE, ANY OF LICENSEE PARTIES, OR SUCH OTHER PERSON; OR (D) NECESSARY TO PROTECT LICENSOR'S INTEREST UNDER THIS LICENSE IN A BANKRUPTCY

**PROCEEDING, OR OTHER PROCEEDING UNDER THE BANKRUPTCY CODE, 11 U.S.C. PARAGRAPH 101, ET SEQ., INCLUDING SUCH COSTS, EXPENSES, DEMANDS, AND LIABILITIES AS ARE OR MAY BE CAUSED BY THE NEGLIGENCE OF THE LICENSOR OR ANY OF THE LICENSOR INDEMNIFIED PERSONS, BUT LICENSEE SHALL HAVE NO DUTY TO INDEMNIFY LICENSOR OR ANY LICENSOR INDEMNIFIED PERSON FOR INDEMNIFIED DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF LICENSOR OR SUCH LICENSOR INDEMNIFIED PERSON, UNLESS THE INSURANCE OF LICENSEE COVERS THE INDEMNIFIED DAMAGES CAUSED BY SUCH SOLE NEGLIGENCE.**

28.2 Nothing in this License shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture or joint enterprise between the parties hereto, it being understood and agreed that neither the method of computation of Consideration, nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of Licensor and Licensee.

28.3 Licensee shall not, for any reason, withhold or reduce Licensee's required payments of Consideration and other charges provided in this License, it being agreed that the obligations of Licensor under this License are independent of Licensee's obligations except as may be otherwise expressly provided herein.

28.4 Licensee shall deposit the Security Deposit with Licensor upon Licensee's execution of this Lease. Licensor shall hold the Security Deposit without interest as security for the performance by Licensee of Licensee's covenants and obligations under this License. Licensor shall not be required to keep the Security Deposit separate from its other accounts and no trust relationship is created with respect to the Security Deposit. The Security Deposit is not an advance payment of rental or a measure of liquidated damages in case of an event of default by Licensee. Upon the occurrence of an event of default by Licensee, Licensor, from time to time, in addition to and without prejudice to any other remedy provided herein or provided by law, may use the Security Deposit to the extent necessary to make good any arrearages of Consideration and any other damage, injury, expense or liability caused to Licensor by any events of default by Licensee. If at any time during this License the Security Deposit then being held by Licensor is less than one monthly installment of the Base Fee plus the then prevailing Additional Fee, Licensee will be required to make an additional payment to Licensor so that the Security Deposit being held by Licensor is always equal to one monthly installment of the Base Fee plus the then prevailing Additional Fee. If an event of default by Licensee does not exist, and no condition exists, which, with the passage of time or the giving of notice, or both, would constitute an event of default, when this License expires or terminates, any remaining balance of such Security Deposit not used by Licensor in accordance with this License and applicable law shall be returned by Licensor to Licensee at the last address of Licensee according to the records of Licensor within a commercially reasonable time following such expiration or termination. Licensee's actual or attempted assignment, transfer, or encumbrance of the Security Deposit will not bind Licensor.

28.5 One or more waivers of any covenant, term or condition of this License by either party shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition. The consent or approval by either party to or of any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

28.6 If any provision of this License is held to be illegal, invalid, or unenforceable, under present or future governmental laws, rules, or regulations, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions shall remain in full force and effect. Licensee shall not record this License or any memorandum or short form hereof, nor shall Licensee permit or cause this License or any memorandum or short form hereof to be recorded. Any attempt at recordation of this License or of a memorandum or short form hereof by Licensee without having first obtained Licensor's written approval shall, at Licensor's option, constitute an automatic event of default by Licensee and, at Licensor's option, may void this License and Licensee's rights hereunder.

28.7 THE LAWS OF THE STATE OF TEXAS (WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS) SHALL GOVERN THE INTERPRETATION, VALIDITY, PERFORMANCE AND ENFORCEMENT OF THIS LICENSE. THIS LICENSE IS PERFORMABLE IN DALLAS COUNTY, TEXAS. VENUE FOR ANY ACTION UNDER THIS LICENSE SHALL BE IN DALLAS STATE DISTRICT COURT, DALLAS COUNTY, TEXAS, THE COUNTY IN WHICH CONSIDERATION SHALL BE PAID PURSUANT TO SECTION 1 AND SECTION 4.2 OF THIS LICENSE. BY EXECUTING THIS LICENSE, EACH PARTY HERETO (i) EXPRESSLY CONSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF THE



COURTS OF SUCH COUNTY AND THE STATE OF TEXAS; (II) WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY CLAIM OR DEFENSE THAT THE COURTS OF SUCH COUNTY AND STATE ARE NOT A PROPER OR CONVENIENT VENUE OR FORUM; AND (III) CONSENTS TO THE SERVICE OF PROCESS IN ANY MANNER AUTHORIZED BY TEXAS LAW.

28.8 The captions used herein are for convenience only and do not limit or amplify the provisions hereof.

28.9 Whenever herein the singular number is used, the same shall include the plural, and words of any gender shall include each other gender.

28.10 The terms, provisions and covenants contained in this License shall apply to, inure to the benefit of and be binding upon the parties and their respective heirs, successors in interest, legal representatives and permitted assigns except as otherwise herein expressly provided. Neither party shall be bound by this License in any way until both parties have executed this License and each party has received a copy of this License duly executed by the other. No provision of this License is intended to inure to the benefit of any third party.

28.11 This License and the schedules, riders and exhibits attached, if any (all of which are hereby incorporated by reference herein and made a part hereof), together with the rules and regulations adopted and promulgated by Licensor pursuant to the provisions of this License, contain the entire agreement between the parties, and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties, and no rights are created in favor of either party other than as specified or expressly contemplated in this License, and this License supersedes and revokes all previous negotiations, arrangements, letters of intent, offers to lease or license, lease or license proposals, brochures, representations and information conveyed, whether oral or in writing, between the parties or their respective representatives or any other person purporting to represent Licensor or Licensee. Licensee acknowledges that it has not been induced to enter into this License by any representations or warranties not set forth in this License, that Licensee has not relied upon any representations or warranties not contained in this License and that any rules of interpretation which would otherwise guide the interpretation of this License by virtue of the identity of the party drafting the terms and provisions of this License shall not apply (it being acknowledged and agreed that each party has been represented or had the opportunity to be represented by able counsel in connection with the negotiation and interpretation of this License and all terms and provisions hereof). No brochure, rendering, information, correspondence, representation, warranty or discussion shall be deemed to be a part of this License unless specifically set forth herein or specifically incorporated herein by reference. In addition, no agreement, discussion, course of dealing or course of performance between the parties shall be effective to change, modify or terminate this License or to release Licensee or any other obligated party with respect to liability for this License, either in whole or in part unless the same shall be in writing and duly signed by the party against whom enforcement of such change, modification or termination is sought.

28.12 Licensee agrees to treat the financial terms of this License as confidential and shall not allow disclosure of such financial terms without the prior written consent of Licensor unless required to undertake such disclosure by applicable law. The parties acknowledge that the financial terms of this License are confidential to the maximum extent allowed under applicable law, and any disclosure of it by Licensee would cause Licensor irreparable harm, which could not be measured in actual damages.

28.13 This License consists of twenty-eight (28) Sections and Exhibits "A" through "F". In the event any provision of an exhibit or other attached page shall be inconsistent with a provision in the body of this License, the provision set forth in the License shall be deemed to control.

28.14 If Licensee executes this License as a corporation or partnership, each of the persons executing this License on behalf of Licensee does hereby personally represent and warrant that Licensee is a duly authorized and existing corporation or partnership, that Licensee is qualified to do business in the state in which the Fuel Farm is located, that such corporation or partnership has full right and authority to enter into this License, and that each person signing this License on behalf of such corporation or partnership is authorized to do so. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement 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 the event any representation or warranty set forth in this Section 28.14 is materially false, all persons who execute this License on behalf of, or as the act and deed of Licensee, shall be individually liable as Licensee.

28.15 In addition to provisions of this Agreement expressly providing for the survival of provisions of this Agreement following the expiration or earlier termination of this Agreement, any other provision of this Agreement, including, without limitation, remedies for a breach or default under this Agreement or the payment of Compensation, that could be reasonably construed to be intended by the parties to survive such expiration or termination shall so survive. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement 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.

28.16 Licensor and Licensee hereby acknowledge and agree that they are knowledgeable and experienced in commercial transactions and further hereby acknowledge and agree that the provisions of this License for determining Consideration and other charges payable by Licensee are commercially reasonable and valid even though such methods may not state precise mathematical formulae for determining such charges. ACCORDINGLY, LICENSEE HEREBY VOLUNTARILY AND KNOWINGLY WAIVES ALL RIGHTS AND BENEFITS TO WHICH LICENSEE MAY BE ENTITLED UNDER SECTION 93.004 OF THE TEXAS PROPERTY CODE, AS ENACTED BY HOUSE BILL 2186, 77<sup>TH</sup> LEGISLATURE, AS SUCH SECTION NOW EXISTS OR AS SAME MAY BE HEREAFTER AMENDED OR SUCCEEDED, TO THE EXTENT SUCH SECTION IS APPLICABLE.

#### NOTICE OF INDEMNIFICATION

**THE PARTIES TO THIS LICENSE AGREEMENT HEREBY ACKNOWLEDGE AND AGREE THAT THIS LICENSE CONTAINS CERTAIN INDEMNIFICATION PROVISIONS FOR THE LICENSEE TO INDEMNIFY THE LICENSOR AND OTHER LICENSOR INDEMNIFIED PERSONS. IF A CLAIM IS MADE AGAINST LICENSOR OR ANY OTHER LICENSOR INDEMNIFIED PERSON THAT IS INDEMNIFIED BY LICENSEE UNDER THIS AGREEMENT, LICENSEE SHALL DEFEND LICENSOR OR SUCH LICENSOR INDEMNIFIED PERSON AT LICENSEE'S SOLE COST AND EXPENSE WITH COUNSEL REASONABLY ACCEPTABLE TO LICENSOR OR SUCH LICENSOR INDEMNIFIED PERSON, OR, AT LICENSEE'S ELECTION, LICENSEE SHALL REIMBURSE LICENSOR OR SUCH LICENSOR INDEMNIFIED PERSON FOR ANY FEES OR COSTS LICENSOR OR SUCH LICENSEE INDEMNIFIED PERSON INCURS IN DEFENDING ANY SUCH CLAIM. LICENSEE'S DEFENSE, INDEMNITY AND HOLD HARMLESS OBLIGATIONS UNDER THIS AGREEMENT SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.**

(THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK)

**EXECUTED** effective as of \_\_\_\_\_, 2009.

**LICENSOR:**

**TOWN OF ADDISON, TEXAS**

By: \_\_\_\_\_,  
Ron Whitehead, City Manager

**ATTEST:**

By: \_\_\_\_\_,  
\_\_\_\_\_, City Secretary

**LICENSEE:**

**EAGLE LAND & CATTLE CO.**

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

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

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

Date of Signature: \_\_\_\_\_

Taxpayer Identification No. \_\_\_\_\_

**ATTEST:**

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

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

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

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF ADDISON AIRPORT FUEL FARM**

**DESCRIPTION:**

BEING 106,831 Square Feet or 2.4525 Acres, Tract of land in the E. Cook Survey, Abstract 326, Dallas County, Texas, and located on Addison Municipal Airport, Addison, Texas and being more particularly described by metes and bounds as follows:

COMMENCING at a 5/8 inch iron rod found in the West Right-of-Way line of Addison Road (60' Right-of-Way), said point also being the southeast corner of a 0.6983 acres Addison Airport lease Tract; THENCE South 00° 52' 49" East and along said West line of Addison Road, a distance of 129.60 feet to a 5/8 inch iron rod set for the POINT OF BEGINNING, said point also being the northeast corner of said 2.4525 subject tract;

THENCE South 00° 52' 49" East and continuing along the said West line of Addison Road, a distance of 598.6 feet to a 5/8 inch iron rod set for corner;

THENCE South 89° 07' 11" West and departing said West line of Addison Road, a distance of 104.06 feet to a 5/8 inch iron rod set for corner;

THENCE North 14° 20' 57" West a distance of 390.27 feet to a PK Nail set for corner;

THENCE North 21° 29' 45" West a distance of 130.61 feet to a PK Nail set for corner;

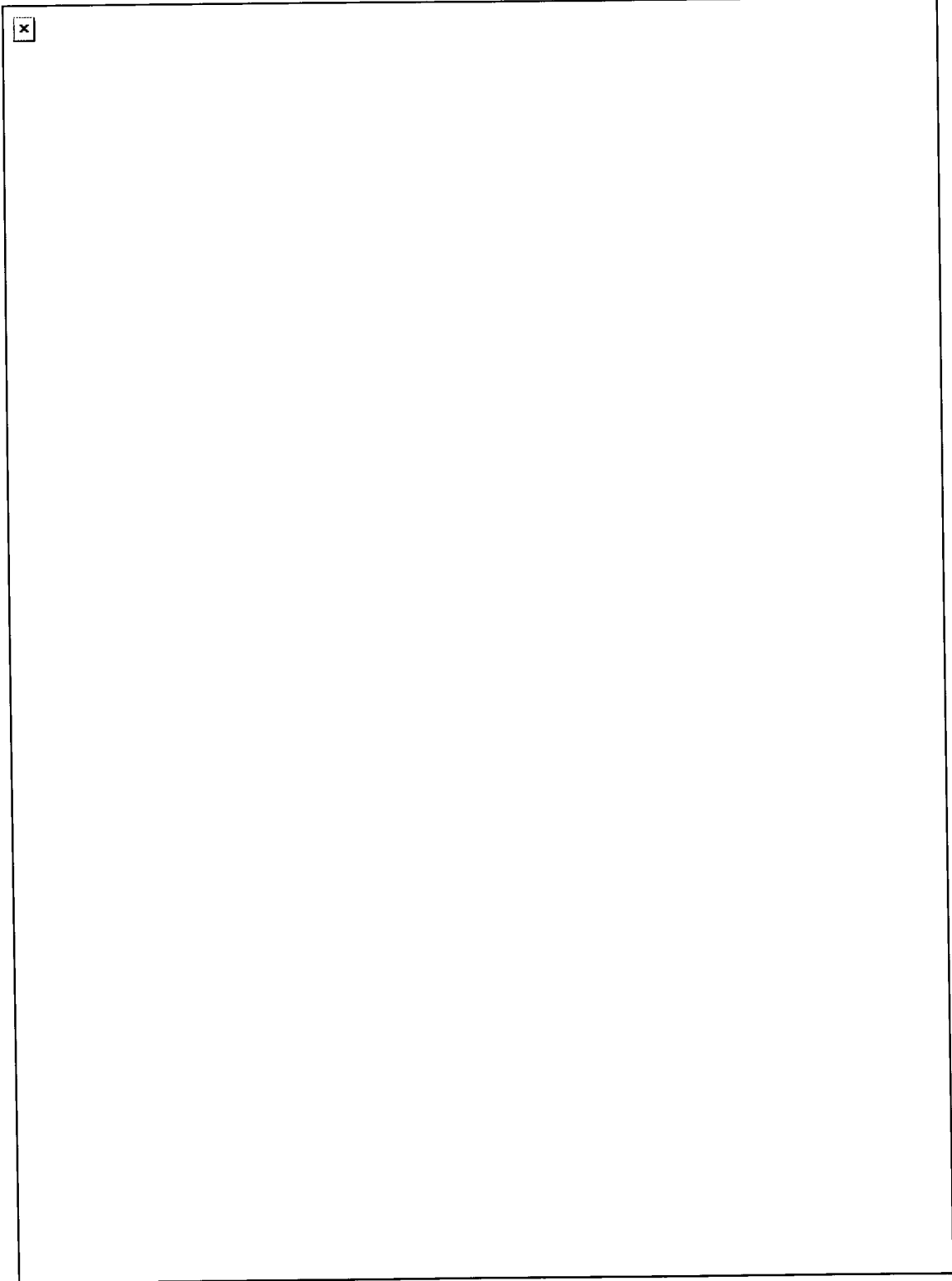
THENCE North 23° 40' 57" East a distance of 78.22 feet to a PK Nail set for corner;

THENCE North 69° 16' 38" East a distance of 75.84 feet to a PK Nail set for corner;

THENCE North 89° 07' 11" East a distance of 142.12 feet to the POINT OF BEGINNING, and CONTAINING 106,831 square feet or 2.4525 acres of land more or less.

**EXHIBIT "B"**

**SURVEY OF ADDISON AIRPORT FUEL FARM**



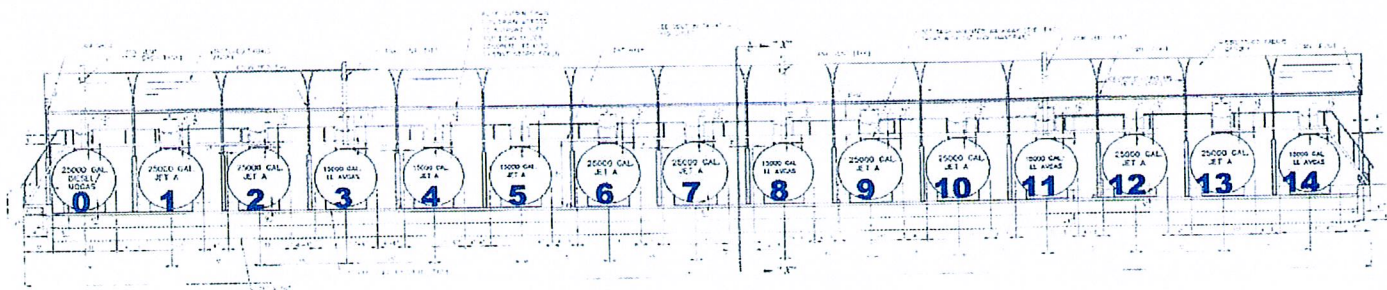
**EXHIBIT "C"**

**SITE PLAN AND TANK CAPACITY OF ADDISON AIRPORT FUEL FARM**

This Exhibit "C" is presented for the purpose of identifying the Fuel Tanks within the Fuel Farm, their capacity in gallons and percentage relative to the aggregate. This Exhibit "C" is subject to change at Licensor's discretion except as otherwise expressly restricted in the Agreement.

License Holder	Tank ID#	Designated Fuel Type	Tank Gallon Capacity	Capacity as % of Total Gallons	TCEQ #
<b>Mercury Air Center – Addison, Inc.</b>	00 <sub>a</sub>	Motor Vehicle Gasoline	10,000	0.03175	
<b>Mercury Air Center – Addison, Inc.</b>	00 <sub>b</sub>	Diesel	15,000	0.04762	
<b>Mercury Air Center – Addison, Inc.</b>	01	Jet A	25,000	0.07937	
<b>Mercury Air Center – Addison, Inc.</b>	02	Jet A	25,000	0.07937	
<b>Mercury Air Center – Addison, Inc.</b>	03	100 LL	15,000	0.04762	
<b>Cherry Air, Inc.</b>	04	Jet A	15,000	0.04762	
<b>Cherry Air, Inc.</b>	05	Jet A	15,000	0.04762	
<b>R. Stern FBO, Ltd.</b>	06	Jet A	25,000	0.07937	
<b>R. Stern FBO, Ltd.</b>	07	Jet A	25,000	0.07937	
<b>R. Stern FBO, Ltd.</b>	08	100 LL	15,000	0.04762	
<b>EXECHANGAR – ADS LC</b>	09	Jet A	25,000	0.07937	
<b>EXECHANGAR – ADS LC</b>	10	Jet A	25,000	0.07937	
<b>EAGLE LAND &amp; CATTLE CO.</b>	11	100 LL	15,000	0.04762	
<b>RR Investments, Inc.</b>	12	Jet A	25,000	0.07937	
<b>RR Investments, Inc.</b>	13	Jet A	25,000	0.07937	
<b>RR Investments, Inc.</b>	14	100 LL	15,000	0.04762	
<b>Totals</b>			<b>315,000</b>	<b>1.0000</b>	

*TCEQ=Texas Commission on Environmental Quality or its equivalence*



*East Sectional View*

**EXHIBIT "D"**

**TERM EXTENSIONS**

Licensee (but not any assignee, sublicensee or other transferee of Licensee, even if Licensor's consent thereto is obtained in accordance with the terms and conditions of Section 17 of this License) is granted the option(s) to extend the Term of this License for four (4) consecutive term(s) of sixty (60) months each (each, a "**Term Extension**"), provided (a) Licensee is not in default under the License or any other agreement with the Town of Addison at Addison Airport at the time of its exercise of the Term Extension, nor at the commencement date of the applicable Term Extension, and (b) Licensee gives written notice to Licensor of its exercise of the option to extend the Term between that period of time being sixty (60) months prior to the end of Term and six (6) months prior to the end of Term or Term Extension (the "**Option Period**"). Each Term Extension shall commence on the day immediately following the date of expiration of the immediately preceding original Term or Term Extension and shall be upon the same terms, conditions and Consideration as were in effect hereunder during such immediately preceding original Term or Term Extension, except (i) Licensee shall have no further right of renewal after the last Term Extension described above; and (ii) the monthly Base Fee during such each Term Extension will be as follows:

(a) the first Term Extension, from \_\_\_\_\_ to \_\_\_\_\_, shall be at the monthly Base Fee rate of \$.2786 per gallon/yr.; and

(b) the second Term Extension, from \_\_\_\_\_ to \_\_\_\_\_, shall be at the monthly Base Fee rate of \$.2928 per gallon/yr.; and

(c) the third Term Extension, from \_\_\_\_\_ to \_\_\_\_\_, shall be at the monthly Base Fee rate of \$.3078 per gallon/yr.; and

(d) the fourth Term Extension, from \_\_\_\_\_ to \_\_\_\_\_, shall be at the monthly Base Fee rate of \$.3235 per gallon/yr.

Licensee's rights under this Exhibit "D" shall terminate if the License or Licensee's right to use of the Fuel Tanks is terminated, or if Licensee fails to timely exercise Licensee's option to extend the Term of this License in accordance with the terms and conditions of this Exhibit "D" with TIME BEING OF THE ESSENCE WITH RESPECT TO LICENSEE'S EXERCISE THEREOF.

## EXHIBIT "E"

### STATEMENT OF LICENSOR'S INITIAL CONSTRUCTION RESPONSIBILITY

#### Description of Bulk Fuel and Dispensing System For Addison Airport

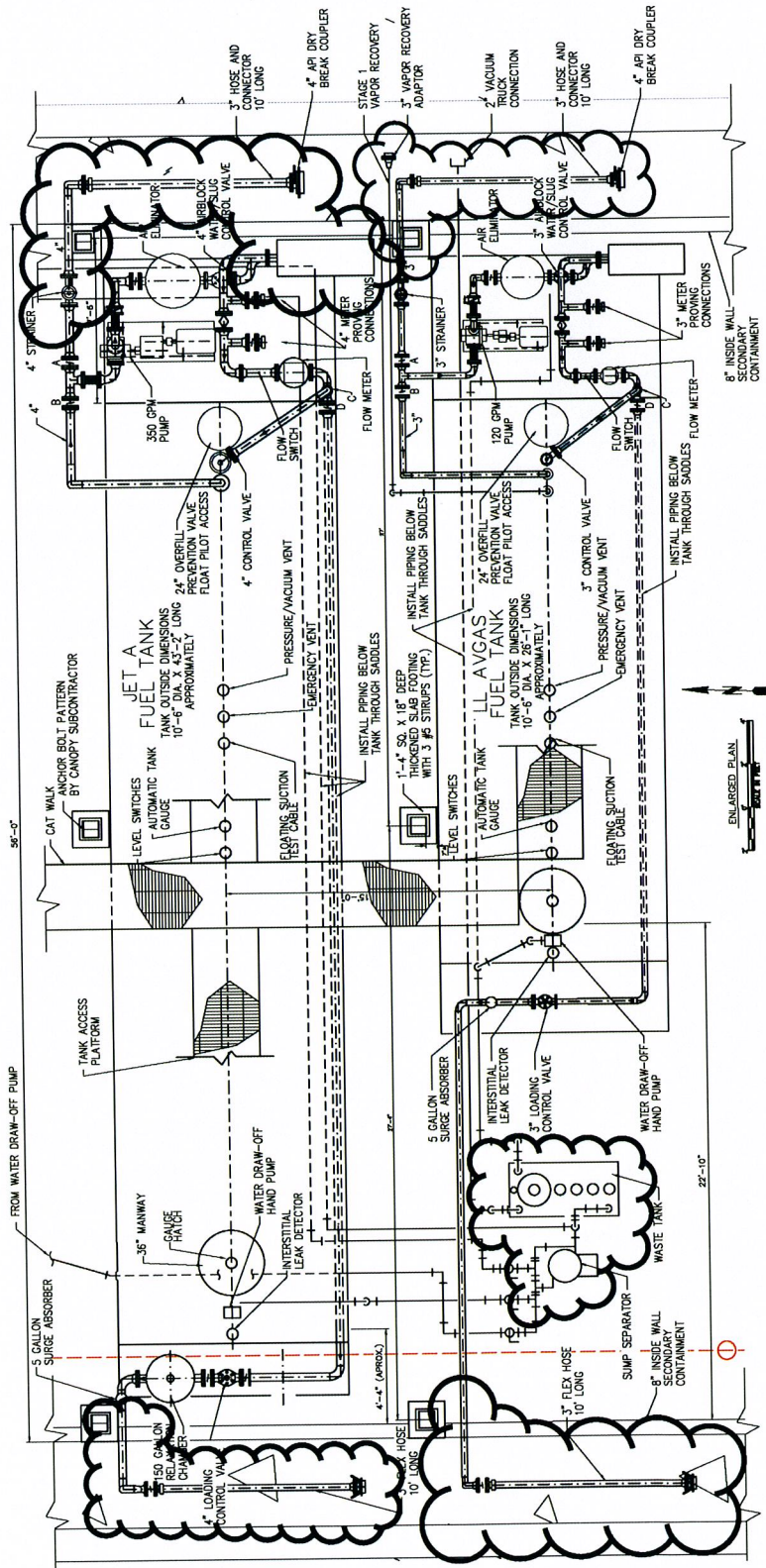
The proposed Bulk Fuel Storage and Dispensing System is to be centrally located with fifteen (15) individual bulk fuel storage tanks, with off-load and five (5) Fixed Base Operator (FBO) metered dispensing systems, in a consolidated, environmentally protected site, including tanks and operating equipment, with suitable architectural considerations to blend into the site. The horizontal mounted cylindrical tanks will have an approximate dimension of ten and one-half feet (10.5' W) diameter by forty-three feet (43' L) in length (25,000 gal), or alternatively, ten and one half feet (10.5') diameter by twenty-six feet (26') in length (15,000 gal). Fuel storage tanks will be double wall, 2-hour fire rated, protected tanks. Primary products to be dispensed are Low Lead AVGAS and Jet A Fuel, with one two-compartment tank of 10,000 and 15,000 gallon, with dispensing equipment for LL MoGas and Diesel. The Jet A off-load systems will be capable of off-loading 8,000 gallons to an over-the-road fuel tanker truck within 20 minutes at approximately 350 gallons/minute and the dispensing systems into the Airport refueling vehicles will be rated at approximately 300 gallons/minute. Industry standard filtration systems with automatic shutdown and alarms will be installed on the off-load side of the storage tanks, to protect product in the fuel storage tanks. Overflow protection devices will be installed on all fuel storage tanks and connected to the pump control panel. Pump/dispensing control panel or panels, will be logically sequenced, gauged to fuel storage tanks for fuel level indication, and clearly marked for ease of operations. An oil/water separator will be installed and connected to the secondary containment dike area, using a valve connection and the off-load/dispensing pad to allow for immediate wash-down of any spilled product. The off-load/dispensing pad will be large enough to provide a designated parking spot for any aircraft-refueling vehicle that develops a leak. Fuel storage area will have explosion proof electrical fixtures and control panel. A fresh water line will be required for emergency eye wash unit and a 1" hose and reel unit installed for wash down. The hose must reach all areas of the facility, including the oil/water separator. An emergency telephone/intercom/transmitter device will be installed with direct link to the Main Fire Station alarm room located at 4798 Airport Parkway, Addison, Texas 75001-3364. Fuel storage tanks will be mounted in an 18" high concrete low wall secondary containment area, connected to the oil/water separator so that any major spill in the containment area can be washed down and pumped out through the oil/water separator. Design will include area lighting, site storm drainage and connection, any required utilities relocation, and site appearance considerations. Access from the outside (airport land side) will be controlled with electrically operated gates and/or a code or key access pad. Paved access will be required from the street and from the airfield areas. Street connection will include driveways, curb and gutter.

Source: Addison Airport Project Specification Book for Bulk Fuel Storage and Dispensing System, Section 01000A, Paragraph 9, Page 5



EXHIBIT "F"

LICENSEE'S GENERAL AREAS OF RESPONSIBILITY FOR MAINTENANCE AND REPAIR



LL AVGAS AND JET A FUEL TANK LAYOUT PLAN

This diagram is attached for the purpose of depicting Licensee's general area of responsibility for the maintenance and repair within the Fuel Farm and with respect to the Fuel Tanks and that no representation, warranty, or covenant is to be implied by its accuracy, deviation, from actual conditions or any other information shown including dimensions, locations, title, reference or classification. Should a arise between this Exhibit and the meaning of the License Agreement, the License Agreement shall prevail.

**EXHIBIT "G"**

**LIST OF AIRCRAFT OWNED OR LEASED BY LICENSEE**

AIRCRAFT MAKE

AIRCRAFT MODEL

"N" NUMBER

# **EXHIBIT "G"**

**Letter From American Flyers dated  
July 1, 2009**



**AMERICAN FLYERS**

American Flyers  
16151 Addison Road  
Addison, Texas 75001

July 1, 2009

Dear Mr. Dyer:

One of our eight American Flyers' schools needs a new home.....Meacham Field, Fort Worth, Texas is our international training facility for Mexico, Spain, South and Central American students.

We believe we have found our new home at Addison Airport. Eagle Land & Cattle, Inc., American Flyers sister corporation, is under contract with Seaking Investment Partners, Ltd. to acquire their building and ground leasehold interests located at 4650 Airport Parkway. This facility will allow American Flyers to expand our international school and move both our corporate headquarters and national aircraft maintenance operations to Addison, Texas. These functions currently operate from Chicago, Illinois and Santa Monica, California respectively.

Our proposed acquisition and relocation of our international flight school, maintenance operations and corporate headquarters to Addison Airport is contingent upon:

1. Town's consideration and consent to proposed sale and assignment of Seaking's leasehold interests in their ground lease;
2. Consent to the creation of a leasehold mortgage to acquire and make limited improvements to the 4650 Airport Road property, which is to be secured by the leasehold interests of the property, as well as our facility located at 16151 Addison Road. In order to secure such financing, we request the Town:
  - a. agree to amend and modify the Seaking ground lease to include, but not limited to the provision to extend the ground lease term for a period not less than fifteen (15) years of which is to be added to it's remaining term of eleven (11) years.
  - b. agree to amend and modify the Eagle Land & Cattle ground lease to include, but not be limited to the provision to extend the ground lease term for a period of ten (10) years of which is to be added to it's remaining term of eleven (11) years.





3. Granting Eagle Land & Cattle, Inc. a non-public fueling permit for AVGas fuel operations only for a term not less than ten (10) years.
4. Consent to the creation of a leasehold mortgage for the purpose to acquire the leasehold interests and to make limited improvements thereto.

In consideration of the above Eagle Land & Cattle and American Flyers believe its relocation and expansion initiative at Addison Airport offers the Town a broad array of economic advantages and benefits including:

- Our Fort Worth training location grossed over \$ 5 million in 2008, with a payroll of more than \$ 1.1 million and 30 to 35 full time employees. Almost all of these employees will relocate to the Addison, Texas area. Over the next two years, we anticipate this facility will double it's gross. In 2008, our total student attendance in Ft. Worth was approximately 125 students, of which about 60% were with us for a minimum of six months. In 2009, we expect our student base to stay the same.
- In 2008, 11 aircraft used over 165,000 gallons of fuel to facilitate our customers from all over the world. When added to our current Addison facility, American Flyers purchased over 270,000 gallons of fuel at a cost of over \$ 1 million. Fuel is American Flyers second largest expense. It's imperative that we find the most cost effective way to purchase and fuel our aircraft. We currently have two locations, of our eight, that self-fuel. As our Ft. Worth and Addison schools are the largest in our system, we know that by having the ability to self-fuel at Addison Airport we can reduce our overall fuel expense. This allows us to use these dollars, previously spent on retail fuel, for the additional growth of our two North Texas locations.
- The American Flyers School in Fort Worth purchased over \$100,000 in training supplies in 2008 for its students.
- In addition to our own aircraft, the American Flyers Fort Worth location rented over \$100,000 of other aircraft, providing service to our students and customers.
- American Flyers in Fort Worth rented over \$300,000 of apartment space to house students while attending classes. This does not take into consideration hotel and



# AMERICAN FLYERS

motel usage for additional students. Fort Worth students also spent substantial money for food, entertainment, supplies and many other living expenses while attending training. It should be noted that because of the international nature of our aviation training program, many parents and relatives visit their children during their stay in the United States. Hotels close to Addison Airport will be used frequently.

It would be difficult to estimate the total amount of money spent during a year in the Addison area for housing, restaurants, theaters, food and many others living expenses, but this amount would be substantial.

- In 2008, American Flyers paid more than \$375,000 for aircraft parts and avionics repairs in Ft. Worth.
- American Flyers spent \$300,000 advertising our Ft. Worth training facility and airport. Our web site and space ads are read in all corners of the world. Together, with our existing facility at Addison, American Flyers anticipates spending \$450,000 per year advertising Addison, Texas, as our sites for domestic and international training. We would also be advertising our national office.
- American Flyers is not only locating our largest training facility to Addison but also our national maintenance function, relocating to Addison from Santa Monica, California. Within approximately one year, the national sales staff will also relocate to Addison. This will bring additional employees and functions to the Town of Addison.
- It should also be noted that because Addison will now become our company's national headquarters, internal employee training would be conducted in Addison. This will also bring additional hotel, motel and others dollars to this area.

It is our intention to bring our request formally to the Town for its consideration and consent by mid-August and, subject to the Town Council's consent, close the transaction as soon as practical thereafter.

We look forward to enhancing the Town of Addison and American Flyers' International Training Division with this relocation.

Respectfully,



Clark McCormack

President – American Flyers

## **Council Agenda Item: #R8**

### **SUMMARY:**

Presentation, discussion and consideration of approval of a First Amendment to Ground Lease by and between the Town of Addison and ExecHangar ADS, LC.

### **BACKGROUND:**

On December 1, 2007, the Town of Addison entered into a ground lease agreement and a non-public fuel license with ExecHangar ADS, LC. ExecHangar proposes to develop an executive hangar cooperative on a 2.02-acre site fronting Claire Chennault, which currently serves as the North City Ramp. The proposed development is a two-phase project where ExecHangar intends to construct two (2) 12,000 square foot executive hangars with offices in the first phase and the option to construct two more hangars of similar size and construction in the second phase.

Since entering into the agreement, ExecHangar has aggressively marketed the proposed development in accordance with their Prospectus dated June 1, 2007, however, because of extraordinary market conditions (volatile fuel prices) and the faltering economy over the past 18 months, ExecHangar has been unable to sell enough subscriptions to fulfill its offering. Consequently, the proposed development has been on indefinite hold. During this period, Dan Claassen, the Company Manager for ExecHangar has remained in regular communication with Airport Management keeping it posted on his status, marketing efforts and plans to adapt the company to the prevailing marketplace.

In connection with the proposed development, the Town granted ExecHangar a non-public fueling license. Under the license, ExecHangar is restricted to fuel only aircraft owned<sup>1</sup> by a Unit Owner on the demised premises. A subtenant at the property that does not hold ownership interest in ExecHangar pursuant to the Prospectus and/or the Ground Lease is expressly excluded from receiving any self-fueling privileges under the ExecHangar fuel license.

ExecHangar is requesting the Town of Addison to consider and consent certain modifications and amendments to the Ground Lease and License Agreement. Due to volatile market conditions and difficult economic climate over the past eighteen months, ExecHangar has experienced difficulty marketing its private offering as initially anticipated. Recently, ExecHangar has secured equity financing to construct and operate the first phase of the Building Improvements. Not only does the equity financing enable ExecHangar to construct the Building Improvements, it offers the Company a vehicle to offer seller financing, which should greatly enhance the marketability of the Units, especially in light of today's difficult and uncertain credit market.

The ExecHangar project is important to the Town of Addison and Addison Airport, because not only does it provide additional first class, state-of-the-art aircraft storage facilities targeted to corporate aircraft operators but it provides a unique ownership alternative for users at Addison Airport designed to attract new based aircraft to the Airport. Additionally, under the terms and conditions of the Ground Lease and License Agreement, as a restricted non-public fueler, a minimum of \$28,000 in additional revenue will be generated for the Airport over and above its ground rent and the standard fuel flowage rate.

### **RECOMMENDATION:**

Staff and Airport Management recommend the Town give its consent to the requested actions in order to allow ExecHangar to proceed with its proposed development and operations. The City Attorney has reviewed the proposed amendments and find them acceptable for the Town's purpose.






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@staubach.com](mailto:bill.dyer@staubach.com)

## Memorandum

To: Mark Acevedo  
From: Bill Dyer   
Cc: Joel Jenkinson  
Date: August 28, 2009

Re: **Proposed First Amendment to Ground Lease by and between the Town of Addison and ExecHangar ADS, LC**

ExecHangar ADS, LC is requesting the Town's consideration and consent to authorize the City Manager, on behalf of the Town, to enter into and execute the proposed First Amendment to Ground Lease attached hereto as Exhibit "A" and the proposed First Amendment to the Addison Airport Fuel Farm License Agreement attached hereto as Exhibit "B." The purpose of the amendments is to restate certain dates, terms and conditions to the original agreements because of the unforeseen delays and changing market conditions outlined below. Airport Management recommends the Town give its consent to the requested action. The City Attorney has reviewed the proposed amendments and found them acceptable for the Town's purposes.

### **Background:**

On December 1, 2007, the Town of Addison entered into a ground lease agreement (the "Ground Lease") and a non-public fuel license with ExecHangar ADS, LC (ExecHangar). Pursuant to the terms and conditions of the Ground Lease, ExecHangar proposes to develop an executive hangar cooperative on a 2.02-acre site fronting Claire Chennault, which currently serves as the North City Ramp. The proposed development is a two-phase project where ExecHangar intends to construct two (2) 12,000 square foot executive hangars with offices in the first phase and the option to construct two more hangars of similar size and construction in



the second phase. The Option Period for the second phase expires February 29, 2012. ExecHangar brings to Addison Airport a unique form of cooperative ownership structured around the benefits of shared-use facilities and services designed to effectively manage operating costs while also realizing market appreciation and related tax benefits, if any.

Since entering into the agreement, ExecHangar has aggressively marketed the proposed development in accordance with their Prospectus dated June 1, 2007 (as referenced in the Ground Lease); however, because of extraordinary market conditions (volatile fuel prices) and the faltering economy over the past 18 months, ExecHangar has been unable to sell enough subscriptions to fulfill its offering. Consequently, the proposed development has been on indefinite hold. During this period, Dan Claassen, the Company Manager for ExecHangar has remained in regular communication with Airport Management keeping it posted on his status, marketing efforts and plans to adapt the company to the prevailing marketplace.

In connection with the proposed development, the Town granted ExecHangar a non-public fueling license. Under the license, ExecHangar is restricted to fuel only aircraft owned<sup>1</sup> by a Unit Owner on the demised premises. A subtenant at the property that does not hold ownership interest in ExecHangar pursuant to the Prospectus and/or the Ground Lease is expressly excluded from receiving any self-fueling privileges under the ExecHangar fuel license.

### **Current Situation**

Instead of relying on the sale of subscriptions to raise the capital necessary to construct the proposed development, we are pleased to report ExecHangar has secured private equity funding sufficient to construct and operate the first phase of the development. ExecHangar has already closed on this financing arrangement and has reported to Airport Management it has been funded accordingly. They are now proceeding aggressively with the finalization of building design and the submission of construction documentation to the Town for the required permits.

As a result of the equity funding, ExecHangar has revised its Prospectus (dated August 10, 2009) to, among other things, provide for a two tier ownership structure. It is Airport Management's<sup>2</sup> understanding the new structure allows CoVentures ADS, LC, the Company Manager and holder of 100% of the ownership interests in ExecHangar ADS, LC, to sell "Units" of ownership interest to its subscribers while also offering a form of seller financing. This structure provides the mechanism where the equity partner is repaid as the Units are sold and extends another source of financing to Unit buyers, if so desired, which should help promote unit sales especially during the prevailing credit crises.

As required under the Ground Lease, ExecHangar is to give the Town at least sixty (60) days advance written notice of its intent to begin construction. ExecHangar has delivered such

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<sup>1</sup> The term "owned aircraft" includes leased aircraft where a Unit Owner has the financial obligation and control of the aircraft.

<sup>2</sup> Airport Management and the Town expressly do not render any form of opinion, consent or approval of the Prospectus with respect to its contents, or any of the terms and conditions set forth therein.

notice to Airport Management with the effective date of August 13, 2009. Subject to the Town giving its consent to the requested action, Airport Management will immediately prepare to turnover the demised premises to ExecHangar as required under the Ground Lease.

**Requested Action:**

ExecHangar is requesting the Town to consider and consent to certain modifications to the Ground Lease and License Agreement as summarized below:

**First Amendment to Ground Lease:**

- Extend the Commencement Date one year to the earlier of June 1, 2010 or the first day of the first month after Substantial Completion;
- Modify the description of the Building Improvements from 110 feet wide by 90 feet deep to 110 feet wide by 110 feet deep (an increase of 2,200 for each building);
- To avoid undue confusion, change the name of the Management Company from ExecHangar LC to CoVentures ADS LC. The principals of this affiliation and its purpose (to provide management and administration services, procure wholesale aviation fuel, equipment and construction services for Tenant) remain unchanged;
- Modifications to the calculation of the "minimum number of Units" a Member must acquire. The original formula is dependent upon the length times the width of a Member's aircraft plus three feet (3') to each dimension. It is proposed to eliminate the additional three-foot (3') requirement because it has proven unnecessary, wasteful and not required given how aircraft are "stacked" in a hangar. The impact of this change is difficult to assess since it is dependent upon the size of the actual aircraft. It is estimated that maybe one, or possible two additional mid-size aircraft could be stored in the hangar;
- Extend the deadline to commence construction of the Building Improvements one year to December 1, 2009;
- Extend the deadline for Substantial Completion one year to June 1, 2010;
- Supersede and replace in its entirety the Prospectus with that which is dated August 10, 2009;

**First Amendment to the Fuel Farm License Agreement**

- ExecHangar does not intend to use the 15,000 gallon AvGas 100LL fuel tank and is requesting to remove it from their inventory of tanks. Airport Management is in support of this request.
  - Eliminate Tank #11 (100LL) from the inventory of tanks subject to the License;
  - Reduce the Total Licensee Gallon Capacity to 50,000 gallons;

- Reduce Licensee's proportionate Share to 15.64%;
- Reduce required Security Deposit to \$2,475.41;
- Reduce Base Fee and Additional Fee (rental) accordingly;
- Extend the Commencement Date one year to June 1, 2010;
- Supersede and replace in its entirety the Prospectus with that which is dated August 10, 2009.

**Alternative Consideration:**

If the Town of Addison elects not to consent to the requested action, ExecHangar has technically breached the terms and conditions of the Ground Lease and License Agreement. The Town of Addison has the right to terminate both Agreements without further notice to the Tenant or Licensee, whichever the case may be.

**Conclusion and Recommendation:**

ExecHangar is requesting the Town of Addison to consider and consent certain modifications and amendments to the Ground Lease and License Agreement. Due to volatile market conditions and difficult economic climate over the past eighteen months, ExecHangar has experienced difficulty marketing its private offering as initially anticipated. Recently, ExecHangar has secured equity financing to construct and operate the first phase of the Building Improvements. Not only does the equity financing enable ExecHangar to construct the Building Improvements, it offers the Company a vehicle to offer seller financing, which should greatly enhance the marketability of the Units, especially in light of today's difficult and uncertain credit market.

The ExecHangar project is important to the Town of Addison and Addison Airport, because not only does it provide additional first class, state-of-the-art aircraft storage facilities targeted to corporate aircraft operators but it provides a unique ownership alternative for users at Addison Airport designed to attract new based aircraft to the Airport. Additionally, under the terms and conditions of the Ground Lease and License Agreement, as a restricted non-public fueler, a minimum of \$28,000 in additional revenue will be generated for the Airport over and above its ground rent and the standard fuel flowage rate.

Airport Management recommends the Town give its consent to the requested actions in order to allow ExecHangar to proceed with its proposed development and operations. The City Attorney has reviewed the proposed amendments and find them acceptable for the Town's purposes.

# **Exhibit "A"**

Proposed First Amendment to Ground Lease

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

This **FIRST AMENDMENT TO GROUND LEASE** (hereinafter referred to as the “First Amendment” or “Amendment”) is entered into and made effective as of \_\_\_\_\_, 2008 (the “Effective Date”) between the **Town of Addison**, Texas a Texas home-rule municipality (hereinafter sometimes referred to as “Landlord” or the “City”), and **ExecHangar ADS, LC**, a Kansas limited liability company (hereinafter referred to as “Tenant”) (Landlord and Tenant are sometimes referred to herein together as the “parties”).

**WHEREAS**, a Ground Lease was executed on December 1, 2007 between the City and Tenant (a true and correct copy of the Ground Lease is attached hereto as Exhibit “A”); and.

**WHEREAS**, the parties desire to amend the Ground Lease in the manner set forth below.

**NOW, THEREFORE**, for and in consideration of the above and foregoing premise, the sum of Ten and No/100 Dollars (\$10.00), the terms and conditions of this Amendment, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Landlord and Tenant 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 hereof.

**Section 2.    Amendments and Modifications to Ground Lease.** Notwithstanding anything in the Lease to the contrary, Tenant and its successors and assigns and Landlord agree as follows with respect to the Lease:

**A.    Amendment to Section 2.** **Section 2 of the Ground Lease is amended in its entirety to read as follows:**

**Section 2.    Term:**

A.    Subject to the termination and all other provisions of this Lease, the term hereof shall commence on the earlier of June 1, 2010 or the first day of the first month after Substantial Completion (as such term is defined in Section 6.H. below) of the Building Improvements as defined and described in Section 6 of this Agreement (the “Commencement Date”), and shall end at 5:00 p.m. local time on the last day of the four hundred eightieth (480th) full calendar month following the Commencement Date (the “Term”), it being the intent of the parties that the term of this Lease shall not exceed forty (40) years. Furthermore, it is expressly understood and agreed upon by Landlord and Tenant that any interest of any Member shall terminate simultaneously upon the expiration or earlier termination of this Lease Agreement. The period of time between the Effective

Date (and including the Effective Date) and the Commencement Date is herein referred to as the "Preliminary Period." Any entry upon the Leased Premises by Tenant during the Preliminary Period shall be subject to all of the terms and conditions hereof.

**B.** Following the Effective Date and prior to Tenant taking possession of the Leased Premises, Tenant shall give to the City written notice of Tenant's intent to commence construction of the Building Improvements on the Leased Premises ("Notice of Intent to Commence Construction"). Such notice must be given, if at all, not later than sixty (60) days prior to September 1, 2009. If Tenant does not give the City such notice within the said period of time, the City may terminate this Lease by giving written notice of such termination to Tenant.

Within sixty (60) days following the date of the City's receipt of the Notice of Intent to Commence Construction (the sixty (60) day period being the "60 Day Period"), the City shall tender possession of the Leased Premises to Tenant in its "AS IS" and "WHERE IS" condition (the date of such tender being the "City Delivery Date"), and Tenant shall accept the Leased Premises in its "AS IS, WHERE IS" condition and in accordance with Section 7, below; should the City be unable to tender possession of the Leased Premises to Tenant by the end of the 60 Day Period for any reason not caused in whole or in part by Tenant (e.g., City is unable to timely relocate existing tenants), and such failure causes Substantial Completion of the Building Improvements to be delayed to a date later than June 1, 2010, the Commencement Date shall be extended by the number of days between the last day of the 60 Day Period and the City Delivery Date.

**B. Amendment to Section 5, Paragraph A. Paragraph A to Section 5 is hereby amended so that it shall hereafter read as follows:**

**A.** For constructing and operating conventional aircraft hangars and ancillary and subordinate office facilities owned solely by Tenant. Tenant will construct two (2) conventional aircraft hangars (each hangar being approximately 110 feet wide, 110 feet deep with a minimum hangar door clearance of 26 feet high) in accordance with Section 6 below (such hangars and related improvements are referred to herein as the "Building Improvements") and are further described in Section 6 and in Exhibit 3 of this Lease).

**C. Amendment to Section 5, Paragraph A.2. Paragraph A.2 to Section 5 is hereby amended in its entirety to read as follows:**

*2. Management of Tenant.* Tenant shall be managed at all times by a manager ("Leased Premises Manager"). As set forth in the Prospectus and exhibits thereto, the Leased Premises Manager as of the Effective Date is Daniel L. Claassen, whose address is 8811 South Kansas, Sedgwick, KS 67135 ("Claassen"). The Leased Premises Manager shall manage and control the Leased Premises and the Building Improvements on behalf of the Tenant; as such, the Leased Premises Manager shall be responsible for ensuring Tenant's compliance with all of the terms, conditions, and provisions of this Lease and the Prospectus.

Tenant has entered or will enter into an agreement with CoVentures ADS LC, a Kansas limited liability company, whose primary address is 8811 South Kansas Sedgwick, Kansas 67135 (the “Management Company”), as set forth in the Prospectus. Pursuant to the Management Agreement, the Management Company provides certain management and administrative services for Tenant, and serves as operator of the Building Improvements on behalf of Tenant.

**D. Amendment to Section 5, Paragraph A.4. Paragraph A.4 to Section 5 is hereby amended in its entirety to read as follows:**

4. *Use of the Leased Premises.* In order to be eligible to use and occupy the Leased Premises (including, without limitation, the Building Improvements), a Member must own and hold, at any given time, a minimum number of Units in accordance with the following (the minimum number of Units is equal to the minimum number of square feet that a Member occupies in the Building Improvements) (see example of the calculations below in Exhibit 6.0 attached hereto and incorporated herein):

(i) *Single Aircraft.* If a Member owns one (1) Registered Member Aircraft, the number of Units the Member must own and hold is equal to the product when multiplying the overall length times the width of the Registered Member Aircraft.

(ii) *Multiple Aircraft.* If a Member owns more than one (1) Registered Member Aircraft (such aircraft together being a “Member Fleet”), the number of Units the Member must own and hold is the greater of:

- (a) the product when multiplying the overall length times the width of the largest of the Member Fleet, or
- (b) 50% of the total Units required for each Registered Member Aircraft in the Member Fleet (that is, calculating the product for each Registered Member Aircraft in the Member Fleet by multiplying the overall length times the width of each Registered Member Aircraft and then multiplying their sum by 50%).

**E. Amendment to Section 6, Paragraph D. Paragraph D to Section 6 of the Ground Lease is amended in its entirety to read as follows:**

**D.** If construction of the Building Improvements has not commenced (as described in subsection 1, below) on or before December 1, 2009, Landlord may terminate this Agreement by written notice to Tenant and this Agreement shall be and become null and void and neither party to this Agreement shall have any further rights one against the other, except that Landlord shall return to Tenant any deposits made to Tenant within five (5) business days following such termination.

1. For purposes hereof, construction shall be deemed to have commenced when all of the following events have occurred: (i) 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 Leased Premises, (iii) Tenant shall have received the Federal Aviation Administration's (FAA's) determination to Tenant's filing of Form 7460 Notice of Proposed Construction or Alteration and have delivered a true and correct copy of the same to the Landlord, (iv) execution of a contract to perform the work set forth in the Design Plan with a qualified contractor, (v) proof of required Builder's Risk Insurance Policy (or other acceptable form of Tenant's financial obligation to the project that is acceptable and satisfactory to the Landlord in the Landlord's sole discretion), and (vi) the initiation of actual mobilization of construction equipment on the Leased Premises (to perform the initial steps of construction of the Building Improvements, such as excavation for a foundation).

2. After commencement of construction, Tenant shall complete construction of the Building Improvements with reasonable diligence, without material deviation from the Design Plan, and any deviation from the Design Plan shall be subject to the review and approval of Landlord. If (i) construction of the Building Improvements is not Substantially Complete ("Substantial Completion" being defined in subsection H. of this Section) on or before June 1, 2010, and Final Completion ("Final Completion" being defined in subsection H. of this Section) achieved no later than one-hundred and twenty (120) days after the date of Substantial Completion, and if (ii) the Construction Costs of the Building Improvements do not exceed **\$1,500,000.00** as established by the Construction Costs Evidence which Tenant shall submit to Landlord on or before the Final Completion date, Landlord may terminate this Lease by providing written notice to Tenant and the same shall become null and void and neither party to this Agreement shall have any further rights one against the other, except that Landlord shall return to Tenant any deposits made to Tenant within five (5) business days following such termination and Tenant shall at Landlord's request remove any portion of the Building Improvements requested by Landlord and leave the premises in a good condition.

- F. Amendment to Exhibit 3.** This Exhibit 3-Description of Improvements To Be Constructed attached hereto hereby amends, replaces and supersedes Exhibit 3 to the Ground Lease in its entirety.
- G. Amendment to Exhibit 5.** This Exhibit 5-ExecHangar ADS LC attached hereto hereby amends, replaces and supersedes Exhibit 5 to the Ground Lease in its entirety.
- H. Amendment to Exhibit 6.** This Exhibit 6-Example Calculation of Minimum Units Required Pursuant To Section 5.A.4 hereby amends, replaces and supersedes Exhibit 5 to the Ground Lease in its entirety.



**Section 3. No Other Amendments.** Except to the extent modified or amended herein, all other terms and obligations of the Ground Lease shall remain unchanged and in full force and effect.

**Section 4. Applicable Law; Venue.** In the event of any action under this First Amendment, exclusive venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this First Amendment; and, with respect to any conflict of laws 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 First Amendment. All obligations of the parties created by this First Amendment are performable in Dallas County, Texas.

**Section 5. No Third Party Beneficiaries.** This First Amendment and each of its provisions are solely for the benefit of the parties hereto and are not intended to and shall not create or grant any rights, contractual or otherwise, to any third person or entity.

**Section 6. 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, 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.

**EXECUTED**, as of the day, month and year first above written.

**IN WITNESS WHEREOF**, the undersigned parties execute this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2009

**LANDLORD:**

**TOWN OF ADDISON, TEXAS**

By: \_\_\_\_\_  
Ron Whitehead, City Manager

**TENANT:**

**EXECHANGAR ADS, LC**

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

Name (*Print*): \_\_\_\_\_

Its: (*Title*): \_\_\_\_\_

**ACKNOWLEDGMENT**

**STATE OF TEXAS           §**

**COUNTY OF DALLAS       §**

Before me, the undersigned authority, on this day personally appeared Ron Whitehead, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

[SEAL]           Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public, State of Texas

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

My commission expires: \_\_\_\_\_

**STATE OF TEXAS           §**

**COUNTY OF DALLAS       §**

Before me, the undersigned authority, on this day personally appeared Daniel L. Claassen, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

[SEAL]           Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public, State of Texas

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

My commission expires: \_\_\_\_\_

### **Exhibit 3 – Description of Improvements To Be Constructed**

Tenant shall cause to have erected and/or constructed to or on the Leased Premises the Building Improvements generally described in this Exhibit 3. The term Building Improvements also includes any structures, fixtures, additions, aprons, parking areas taxiways/taxi lanes, landscape or any other building or site improvement located on the Leased Premises, including, without limitation, any alterations or improvements made pursuant to Section 12 of the Lease Agreement.

*Tenant shall construct two (2) approximately 12,000 square foot hangars with attached support facilities. The heated hangars will be approximately 110' wide and 110' deep with a minimum 30' building height and include an approximate 110' x 27'11" powered door. Each of the buildings will include men's and women's restrooms and limited private offices with one building also including a line office and lobby/reception area. Ramp area, vehicle parking and landscaping will be included in the construction of the project.*

This Exhibit 3 hereby includes by reference the complete set of construction documents approved by the Town of Addison for the Building Improvements including but not limited to all architectural, civil, mechanical, and electrical and landscape drawings and specifications, together with all change orders and as-built modifications, warranties and guaranties procured by Tenant.

**Exhibit 5.0 – ExecHangar ADS, LC**

**Offering Memorandum (the “Prospectus”) Dated December 1, 2007 first issued and made part of this Lease is hereby superseded and replaced in its entirety by the Offering Memorandum (the “Prospectus”) dated August 10, 2008 in its entirety.**

Or most current version consented to in advance and in writing by Landlord

## EXHIBIT 6

### Example Calculation of Minimum Units Required Pursuant To Section 5.A.4

							Minimum Required Units
Member 1							
	# of Aircraft	Aircraft Dimensions		Reqd. Space for Each	Total Feet Rqmt		
Eclipse 500	1	34	38	1,292	1,292		
Gulfstream 200	0	72	64	-	-		
Citation CJ1	0	43	47	-	-		
Hawker 750	0	51	51	-	-		
	1				1,292		
1) Largest Aircraft In Fleet							1,292
2) 50% of Fleet Requirement							646
<b>Member 1 Minimum Required Units Is</b>							<b>1,292</b>
Member 2							
	# of Aircraft	Aircraft Dimensions		Reqd. Space for Each	Total Feet Rqmt		
Eclipse 500	0	34	38	-	-		
Gulfstream 200	1	72	64	4,608	4,608		
Citation CJ1	1	43	47	2,021	2,021		
Hawker 750	0	51	51	-	-		
	2				6,629		
1) Largest Aircraft In Fleet							4,608
2) 50% of Fleet Requirement							3,315
<b>Member 2 Minimum Required Units Is</b>							<b>4,608</b>
Member 3							
	# of Aircraft	Aircraft Dimensions		Reqd. Space for Each	Total Feet Rqmt		
Eclipse 500	2	34	38	1,292	2,584		
Gulfstream 200	1	72	64	4,608	4,608		
Citation CJ1	1	43	47	2,021	2,021		
Hawker 750	1	51	51	2,601	2,601		
	5				11,814		
1) Largest Aircraft In Fleet							4,608
2) 50% of Fleet Requirement							5,907
<b>Member 3 Minimum Required Units Is</b>							<b>5,907</b>
Total Units Required							11,807
Maximum Building Capacity							12,000
<b>Remaining Units Available</b>							<b>193</b>
<b>Total Aircraft Registered To Use Facility</b>							<b>8</b>

In the above example, Member 1 has one airplane, therefore the minimum Unit requirement equates to the overall length of the aircraft times its width, or 1,292 Units

Member 2 owns two aircraft and the largest aircraft space requirement is greater than one half of the total fleet size. In this case, the minimum Unit requirement is then 5,025 Units. Provided Member 2's aircraft are properly registered with the Airport by Tenant, *both* aircraft may access the Lease Premises and be fueled by ExecHangar, however Member 2 has rights to only 5,025 square feet of hangar/office space at any given time.

Member 3 owns five aircraft in its fleet, but in this example half the total fleet size is greater than the single largest aircraft in the fleet. Consequently, the minimum unit requirement is one-half of Member 3's total fleet, or 5,907 Units. Provided Member 3's aircraft are properly registered with the Airport, all five may access the Lease Premises and be fueled by ExecHangar, however Member 3 has rights to only 5,907 square feet of hangar space at any given time.

**A TRUE AND COMPLETE COPY OF THE  
GROUND LEASE IS AVAILABLE UPON  
REQUEST**

# **Exhibit "B"**

Proposed First Amendment to Fuel Farm License Agreement



# **FIRST AMENDMENT TO THE ADDISON AIRPORT FUEL FARM LICENSE AGREEMENT**

This First Amendment to the Addison Airport Fuel Farm License Agreement (hereinafter referred to as the "First Amendment") is entered into and made effective as of \_\_\_\_\_, 2009 (the "Effective Date") between the Town of Addison, Texas a Texas home-rule municipality (hereinafter referred to as "Licensor"), and ExecHangar ADS LC, a Kansas limited liability company (hereinafter referred to as "Licensee") (Licensor and Licensee are sometimes referred to herein together as the "parties").

Licensor and Licensee first executed an Addison Airport Fuel Farm License Agreement on November 29, 2007 (a true and correct copy of the License is attached hereto as Exhibit "A"); and where now the parties desire to amend the License as of the Effective Date in the manner set forth below.

NOW THEREFORE, for and in consideration of the above and foregoing premises, the sum of Ten and No/100 Dollars (\$10.00), the terms and conditions of this Amendment, and other good and valuable considerations, the sufficiency of which is hereby acknowledged, Licensor and Licensee 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 hereof.

**Section 2. Amendments and Modifications to License Agreement.** Notwithstanding anything in the License to the contrary, Licensee and its successors and assigns and Licensor agree as follows with respect to the License:

**A. Amendment to Section 1.1(j).** Section 1.1(j) is amended in its entirety to read as follows:

(j) **"Fuel Tanks"**: The two (2\_) above-ground storage tanks, together with all equipment attached thereto necessary for Licensee's use of the Fuel Tank in accordance with this License, situated in the Fuel Farm and identified on Exhibit "C" attached hereto, with a stipulated combined capacity of **50,000** gallons ("**Total Licensee Gallon Capacity**") of fuel, also being known as:

<b>Tank #</b>	<b>Designated Fuel Type</b>	<b>Licensee Gallon Capacity</b>	<b>% Of Total Fuel Farm Combined Capacity</b>
# 9	Jet A	25,000	7.937%
#10	Jet A	25,000	7.937%
<b>Total</b>		<b>50,000</b>	<b>15.874%</b> **

\*\* The “**Licensee's Proportionate Share**”, calculated in accordance with Section 4.10, on the Commencement Date is established to be 15.87 Percent (**15.64%**).

**B. Amendment to Section 1.1(k).** Section 1.1(k) is amended in its entirety to read as follows:

(k) “**Commencement Date**”: The earlier of (i) the date upon which Licensee commences use of the Fuel Tanks; or (ii) June 1, 2010.

**C. Amendment to Section 1.1(p).** Section 1.1(p) is amended in its entirety to read as follows:

(p) “**Security Deposit**”: \$2,475.41 Such Security Deposit is due and payable upon execution of this License and held on account on behalf of Licensee by Licensor in accordance with Section 28.4.

**D. Amendment to Section 1.1(q).** Section 1.1(q) is amended in its entirety to read as follows:

(q) “**Permitted Use of Fuel Tanks**”: Exclusively for the storage of fuel in support of aeronautical operations of type and grade approved in writing by Licensor in the capacity of a:

*(Check only one)*

**Public Fixed Based Operator** for retail delivery into aircraft at the Airport, for delivery into aircraft at the Airport owned, leased or otherwise operated by Licensee and for the purpose of fueling ground equipment at the Airport used in the support of Licensee’s aeronautical operations at the Airport and for no other purpose, except for any such delivery to aircraft of holders of valid off-airport access permits or as otherwise approved in writing by Licensor.

**Non-public Operator** with delivery to aircraft owned or leased by Licensee and for the purpose of fueling ground equipment at the Airport used in the support of Licensee’s aeronautical operations

and for no other purpose. For the purpose herein, aircraft owned or leased by Licensee shall include, without limitation, aircraft owned or leased by the Members of Licensee as defined in the ExecHangar ADS LC Offering Memorandum (“Offering Memorandum”) dated August 10, 2009, as amended or modified, and attached hereto as Exhibit G and incorporated herein. **LICENSEE IS HEREBY EXPRESSLY PROHIBITED FROM DISPENSING AIRCRAFT FUEL TO ANY AIRCRAFT NOT OWNED OR LEASED BY LICENSEE OR ITS MEMBERS. LICENSEE IS HEREBY EXPRESSLY PROHIBITED FROM DISPENSING AIRCRAFT FUEL TO ANY LESSEE OR SUBLESSEE.**

E. **Amendment to Section 1.2.** Section 1.2 is amended in its entirety to read as follows:

1.2 The following chart is provided as an estimate of Licensee’s monthly and annual payment to Licensor as Consideration (as defined in Section 4.1). This chart, however, does not supersede the specific provisions contained elsewhere in this License.

<b>PAYMENTS IN ADVANCE:</b>	<b>Annual</b>	<b>Monthly</b>
<b>Base Fee (Section 1.1(m) and 4.3)</b>	<b>\$13,255.00</b>	<b>\$1,104.58</b>
<b>Additional Fee (Section 1.1(n) and 4.4)</b>	<b>\$16,450.00</b>	<b>\$1,370.83</b>
<b>Subtotal of Payments in Advance</b>	<b>\$29,704.96</b>	<b>\$2,475.41</b>
<b>PAYMENT IN ARREARS:</b>		
<b>Fuel Flowage Fee \$0.12 x total gallons received during the preceding month (Section 7).</b>	<b>\$TBD</b>	<b>\$ TBD</b>
<b>TOTAL MONTHLY CONSIDERATION (Payment In Advance plus Payment In Arrears)</b>	<b>\$TBD</b>	<b>\$TBD</b>

**Section 3. No Other Amendments.** Except to the extent modified or amended herein, all other terms and obligations of this License shall remain unchanged and in full force and effect.

**Section 4. Applicable Law; Venue.** In the event of any action under this Second Amendment, exclusive venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas

shall govern and apply to the interpretation, validity and enforcement of this First Amendment; and, with respect to any conflict of laws 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 First Amendment. All obligations of the parties created by this First Amendment are performable in Dallas County, Texas.

**Section 5. No Third Party Beneficiaries.** This First Amendment and each of its provisions are solely for the benefit of the parties hereto and are not intended to and shall not create or grant any rights, contractual or otherwise, to any third person or entity.

**Section 6. 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, 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.

**EXECUTED**, as of the day, month and year first above written.

**IN WITNESS WHEREOF**, the undersigned parties execute this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2009

**LANDLORD:**

**TENANT:**

**TOWN OF ADDISON, TEXAS**

**EXECHANGAR ADS, LC**

By: \_\_\_\_\_  
Ron Whitehead, City Manager

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

Name (*Print*): \_\_\_\_\_

Its: (*Title*): \_\_\_\_\_

**Exhibit A**  
**True and correct copy of License Agreement**

# **Exhibit "C"**

Notice of Intent to Proceed With Construction



August 13, 2009

Addison Airport  
Mr. William M Dyer, Real Estate Manager  
16051 Addison Rd #220  
Addison, TX 75001

Dear Mr. Dyer

The purpose of this letter is to conform with the construction notification requirement represented in section 2, paragraph B of the ground lease agreement by and between the Town of Addison (*landlord*) and ExecHangar ADS LC (*tenant*) dated November 14, 2007.

Please consider the construction notification represented above effective this 13<sup>th</sup> day of August, 2009.

Please note that we will be conducting soil sampling (*core drilling*) at the site in the near future in order to evaluate soil condition.

Respectfully,

A handwritten signature in cursive script that reads "Daniel L. Claassen". The signature is written in black ink and is positioned above the printed name and title.

Daniel L. Claassen  
*Company Manager*

DLC:mec

**Attached August 10, 2009 Prospectus**






TM

# ExecHangar

*fractional aircraft hangar operations*







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# ORGANIZATION

ExecHangar™ ADS LC ("**Company**") is a limited liability company formed for the purpose of operating a fractional ownership aircraft hangar ("**Project**") on Addison Airport (**ADS**).

The Kansas Revised Limited Liability Company Act was adopted in 1999. A limited liability company is an entity which has corporate characteristics while it may receive partnership tax treatment. A limited liability company is formed by filing Articles of Organization (*see Exhibit #1 - Articles of Organization*) with the Secretary of State which are similar to a corporation's Articles of Incorporation.

All members of a limited liability company have limited liability without regard to their participation in the management of the company's business. A member is only liable for his or her capital contributions and improper returns of capital.

A limited liability company is operated by a manager who is similar to a corporation's director. The manager appoints officers who are responsible for routine business operations of the company. The internal operation and management of a limited liability company are governed by an operating agreement (*see Exhibit #2 - Operating Agreement*) similar to a corporation's bylaws.

## DESCRIPTION OF SECURITIES

The Company is offering 69,696 Class B membership ("**Offering**") units ("**Units**") to investors ("**Owner**") based on square-foot allocation of available space with one Unit equal to one square foot of hangar space and/or office space allotment. Each Unit represents an Owner's interest in the Company. The Owner's ownership of the Company is proportionate to their ownership of Units.

The Units will be offered by the Company's manager ("**Company Manager**"), CoVentures™ ADS LC, who will not be compensated for the sale of the Units nor will the Company Manager be paid for any expenses incurred as they relate to the Offering. Owners shall make payment for Units and submit with executed subscription agreement ("**Subscription Agreement**") form and Assignment of LC Interest form to Company Manager. Purchasers will receive certificates for their Units.

These securities are being offered without registration under the Securities Act of 1933, as amended, or any other applicable securities laws, and are offered in reliance upon certain exemptions from registration provided by applicable law. These securities have not been recommended or approved by any federal or state securities commission, nor have such authorities passed upon the accuracy or adequacy of this document.

Should additional Owners be admitted in the future, Owner's ownership position would be adjusted accordingly. Additional Units would be offered according to the terms and conditions as set forth in this (*or a revised*) information circular ("**Prospectus**").

All proceeds from the sale of the Class A Units will be distributed to Class A unitholders as reimbursement for development costs associated with the Project. As a result, Owner will experience immediate dilution.

This Prospectus includes representations that are forward-looking statements ("**Statements**") within the meaning of Section 27A of the Securities Act of 1933, as amended and Section 21E of the Securities Exchange Act of 1934, as amended, including Statements regarding the Company's expectations, hopes, beliefs, intentions or strategies regarding the Company's operations. All Statements, other than statements of historical facts included in this Prospectus regarding the Company's financial position, business strategy and other plans and objectives for future operations, are such Statements. All Statements included in this Prospectus are based on information available to the Company on the date hereof, and the Company

assumes no obligation to update such Statements. Although the Company believes that the assumptions and expectations reflected in such Statements are reasonable, it can give no assurance that such expectations will prove to have been correct or that the Company will take any actions that may presently be planned.

## BUSINESS AND PROPERTY

Each Owner will purchase space equal to the size of the aircraft to occupy such space. Should Owner use such space for more than one aircraft, Owner must register all aircraft utilizing such space with Company. Owner may amend such aircraft registry from time to time. Space purchased by Owner and utilized by registered aircraft must accommodate either the largest aircraft registered or space equal to 50% of registered aircraft.

The primary investment objective of the Company is to provide Owners with the opportunity to participate in the economic benefits of owning and operating the Project (*see Exhibit #10 - Member's Rights, Responsibilities & Privileges*), together with any partnership tax benefits. The Company does not intend to make money but to assess the Owners, proportionate to the ownership percentage, for the fixed monthly cost of operations of the Company which include labor, utilities, lease payments, licences/fees, taxes, insurance and Project maintenance expenses. Such assessment fee may be adjusted from time to time to cover variations in expenses. Owners will be billed specifically for goods provided such Owner at the price such goods cost the Company.

Company Manager may occupy one office. Such Units will not be assessed monthly expenses.

The Company has entered into the Management Agreement, as defined herein, with manager of the Project ("**Project Manager**") whereby Project Manager will provide certain management and administrative services to the Company.

The Company is not currently having nor does it anticipate having any cash flow or liquidity problems. The Company is not in breach or default of any note, loan or lease or other indebtedness or financing arrangement.

Class A unitholders will be responsible for providing development funds necessary to develop the Project. Offering proceeds will be sufficient to satisfy all development expenses.

The Project is located in Addison, Texas, on Addison Airport (*ADS*). Addison Airport consists of runway 15/33 (*7,202' x 100'*). Addison Airport is conveniently served by Interstate 35E and Dallas North Tollway. Instrument approaches at Addison Airport include an ILS, GPS, RNAV as well as other non-precision approaches. Addison operates a fire station located on Addison Airport.

The Company has entered into a 40-year land lease agreement with the city of Addison which includes approximately two acres of land and an option for an additional approximately one acre of land. As is customary with airport leases, capital improvements to the leased property shall vest in the airport and become the property of the airport. Additionally, the Company will enter into a license agreement with the city of Addison for above-ground fuel storage tanks totaling 50,000 gallons.

The Class B Units represent one hangar building with eight offices and executive lobby plus three hangar buildings with twelve attached offices each. The total number of offices developed will be subject to the needs of Owners. The heated hangars will be 12,000 square feet (*approximately 110 feet by 110 feet*) each and the attached offices will be 384 square feet (*16 feet by 24 feet*) each. The buildings are 30' in height and include a 110' x 28' powered sliding door, restrooms and utility room. Owners may, at their discretion, purchase hangar and office space to be utilized in conjunction with their aircraft operations. The Company will maintain the equipment necessary to operate the Company. Ramp area, vehicle parking and

landscaping are part of the construction of the Project.

At the request of Owners, Company Manager may designate all or part of such buildings (*see Exhibit# 8 - Designation of Space*).

Cameras located inside and outside the Project will continuously monitor activity. Owners may view such activity from any internet location at any time. A coded building entry system will restrict entry/exit activity to the Project. Owners, and their invitees, will be allowed unlimited access to the buildings.

Owners will enjoy the use of the reception amenities and marshaling of Owners' aircraft. Any third-party work authorized by Owner on Owner's aircraft, such as aircraft maintenance, will be the responsibility of such Owner.

Company will purchase and maintain aircraft hangarkeeper's liability insurance coverage with limits not less than \$10,000,000 per occurrence and \$10,000,000 aggregate to cover damage to Owner's aircraft. Owners, to the fullest extent allowed by law, will save and hold Company harmless from any and all loss to Owner's aircraft that is not covered by Company's hangarkeeper's liability insurance and/or any loss or damage to Owner's aircraft that may exceed Company's hangarkeeper's liability insurance coverage limits.

Owners will be responsible for paying monthly billings which include expense assessments and goods or services utilized by Owner within 15 days from the date of billing. Late payments in excess of 30 days will result in the Owner surrendering Units owned to Company for resale (*see Exhibit# 4 - Assignment of LC Company Interest*) to satisfy unpaid expenses and Unit transfer fees. Any sales proceeds available after the payment of such financial obligations will be forwarded to forfeiting Owner.

Additional space may be purchased by Owners on an as-available basis.

Fuel will be purchased unbranded on the open wholesale market through a fuel supply contract with Project Manager (*see Exhibit# 5 - Fuel Supply Contract*). Major and independent oil companies offer unbranded fuel products. Accounts will be maintained at potential suppliers allowing the Company to take advantage of variable pricing. The Company will be able to take advantage of volume purchases through the brokerage services of Project Manager. The financial viability of fuel contracts will be monitored and offered as a possible additional savings opportunity.

Should any Owners require offices, such Owners will be required to pay for same and will be assessed an additional amount, based on size, to cover monthly expenses.

The Company Manager plans to employ individuals on behalf of the Company. Staff will be available to service the needs of the Owners. Company Manager will adjust work schedules of Company employees so as to best facilitate the needs of Owners. It is anticipated that Owners will need to schedule activities, specifically departure and arrival times, so that employee schedules may be coordinated.

Owners shall use and occupy the premises only for the purpose of conducting aviation-related activities. The premises shall be used for no other purpose. Owners shall not bring flammables, explosives or any other inherently dangerous substances on the premises. Personal possessions belonging to Owners and stored on premises are the sole responsibility of Owners.

## COMPANY MANAGEMENT

The Operating Agreement provides for the management of the Company. The Manager is given specific authorities to act for and on behalf of the Company and its operations.

The Company Manager and Project Manager is CoVentures™ ADS LC. The selling agent ("*Agent*") for the

Offering is Daniel L. Claassen, a member of Project Manager.

Daniel L. Claassen, a Company Manager member, has participated in the following business activities:

**FuelOutlet™:** Founder and company manager of eleven FuelOutlet™ unattended gasoline fueling facilities. The first six stations were public offerings located in and around Wichita, Kansas. The remaining five locations were private placements located in the Kansas City metro area. Mr. Claassen was the authorized securities sales agent in Kansas and Missouri.

**Cornerstone:** Founder and owner of Cornerstone, Inc., a management and development company with responsibilities in site selection, commercial construction, material purchasing, marketing, employee relations, employee training, project management, retail operations, customer support and coordinating with local, state, and national governing agencies. Cornerstone, Inc. manufactured and assembled the equipment to be installed at the facilities as well as provided construction and marketing oversight.

**FuelOutlet™ Propane:** Founder and owner of a propane marketing company with operations in five counties and a customer base of approximately 2,300. The company became the largest locally owned operation within four years of operation in its' market.

**Cornerstone Fuels:** Founder and former President/CEO of Cornerstone Fuels, Inc. a management and development company of unattended self-service aviation fueling facilities with operations located in California, Arizona, Texas, Oklahoma, Kansas and Minnesota. Responsibilities included supervision and organization of the company including coordinating with federal, state and local governmental agencies throughout the United States. Cornerstone Fuels, Inc. was the industry leader in unattended self-service aircraft fueling, operating a national chain of fueling facilities with approximately 5,000 customers. Equipment and operation procedures were specifically designed, manufactured and installed for unattended fueling operations by Cornerstone Fuels.

**Budget Storage:** General Partner and Founder of Budget Storage. Budget Storage consisted of over 200,000 square feet of mini-storage facilities in two states. Funding included both public and private securities offerings.

**AccuRent:** Founder and Manager of AccuRent™ LLC, an equipment rental company specializing in construction equipment.

**Aviation Services:** Founder and owner of an airport management company. Services included flight training, fuel sales, pilot supply sales, pilot services, charter operations and airport operations.

**Education:** Bachelor of Arts Degree, Liberal Arts and Sciences from McPherson College, McPherson, Kansas, May, 1979. Associate in Arts degree from Central College, McPherson, Kansas, May, 1977.

As founder, president, CEO and manager of several companies, Mr. Claassen has over 30 years of extensive experience in company marketing, operations and general company management. Additionally, Mr. Claassen has been successful in negotiating with various city, county, state and federal agencies. As a public speaker, Mr. Claassen has been engaged to represent various unique business developments and operation techniques to professional groups in convention. Mr. Claassen has successfully presented various trademarks and patents to the United States Government.

Mr. Claassen holds the following flight certificates/ratings; private, commercial, instrument, ground instructor, flight instructor, multi-engine, instrument instructor, multi-engine instructor and airline transport pilot with approximately 1,000 turbine hours and 3,300 flight hours.

Under the Operating Agreement, meetings of the members may be called by the Company Manager upon a 10-day written notice.

The Company will act as its own registrar/transfer agent for the certificates representing the Units offered herein.

Company Manager may expand Company at any time by offering additional Units of the Company up to 69,696 authorized Class B Units to potential new Owners under similar terms and conditions as represented herein. Company Manager is hereby authorized to execute the necessary documents to admit such Owners into the Company and develop/construct additional facilities to facilitate such Owners as may be required.

The Operating Agreement between the Company and the Company Manager provides that the Company Manager will not be liable to the Company for a loss by any act or omission by the Company Manager if the Company Manager determined such act was in good faith and did not constitute fraud or gross negligence. As a result, purchasers of Units might have a more limited right of action in certain circumstances than they would have in the absence of such a provision of the Operating Agreement.

The Management Agreement also provides that, to the extent permitted by law, the Company will indemnify the Company Manager against liability or related expenses, including attorney's fees, incurred in dealings with third parties, if the conduct of the Company Manager is consistent with the standards described in the preceding paragraph. A successful indemnification claim would deplete Company assets by the amount paid. The Company will not pay for any insurance covering liability of the Company Manager or any other persons for actions or omissions for which indemnification is not permitted by the Management Agreement, although they may be named as an additional insured party on policies payable for the benefits of the Company if there is no additional cost to the Company.

## FINANCIAL FORECAST

The forecasted annual expenses represented below are to the best of Company Manager's knowledge and belief, the Company's expected costs with the expected conditions and the expected course of action.

<i>Annual Expenses</i>	<i>Amount</i>	<i>Description</i>
Salaries	\$41,600	Full-time employee averaging \$20 per hour and 40 hours per week.
	\$7,800	Part-time employee averaging \$15 per hour and 10 hours per week.
Salary Expense	\$9,880	20% of salary expense.
Land Lease	\$79,535	\$.60 per square foot.
Fuel Farm License	\$29,705	\$.5941 per capacity (50,000 gallons).
Utilities	\$11,250	Includes electricity, gas, water, sewer, telephone and cell phone.
Insurance	\$17,312	
Specials/Taxes	\$18,000	Includes land, facility and personal property.
Legal/Accounting	\$12,000	
Maintenance	\$11,700	Building repairs, equipment maintenance and operational supplies.
Travel	\$18,000	Travel expenses of Company Manager.
Management	\$33,896	48,000 sq ft hangar space + 8,448 sq ft office space x .05 per month
Miscellaneous	\$3,000	
<b>Total</b>	<b>\$293,678</b>	

The financial assumptions disclosed herein are those that Company Manager believes are significant to the forecast. There will usually be differences between forecasted and actual results and those differences may be material. This forecast is based upon the assumption that the Company will construct and operate an aviation hangar utilizing the fractional ownership concept.

The Company has not had any historical operating results and thus no historical financial information is available.

The Company was formed as a limited liability company under the laws of the State of Kansas. A limited liability company is a hybrid entity that may combine the corporate legal benefit of limited liability for the Owners and the partnership's tax advantage of income flow through for income tax purposes. Deductions for losses which flow through to individual Owners will be limited to the Owner's tax basis. The amount of deductible loss may be further limited under the Internal Revenue Code at-risk provisions and the passive loss deduction limitation rules. A limited liability company may be classified for Federal income tax purposes either as a partnership or an association taxable as a corporation. As of January 1, 1997, the Internal Revenue Service issued new and revised Regulations addressing classification of business entities. These empowering regulations, commonly known as check-the-box regulations allow an unincorporated entity to elect their own tax treatment and determine whether to be classified as associations taxable as corporations or as partnerships.

Under the current tax regulations domestic limited liability companies are a partnership by default and need not file any election. The Company has chosen to be a limited liability company taxed as a partnership (*Rev. Ruling 94-30 and Rev. Proc. 95-10 rendered obsolete and superseded*).

The Company Manager has estimated operational expenses by using his experience, national average information and an analysis of the Dallas, Texas, market. Operational expenses such as labor, taxes and utilities are anticipated to grow three percent per year. The major components of the operating costs are labor, lease/license payments, management fees, utilities and taxes. The monthly assessment of the Owner will be adjusted according to the total number of issued Units.

The cash balance of the Company may be retained or increased for operation and expansion purposes.

The current net tangible book value of the Company is \$0. After giving effect to the sale of the number of Units offered hereby and the application of net proceeds therefrom, the pro forma net tangible book value of the Company on the date first written would have been unchanged.

## CONFLICTS OF INTEREST

The Company is subject to various potential conflicts of interest arising out of its relationship with the Company Manager. The Company Manager will devote only so much time to the business of the Company as in its judgment is reasonably necessary to perform its duties to the Company. The Company Manager may engage in other business ventures for its own account or for the account of others, and neither the Company nor any Owner shall have, by virtue of an investment in the Company, an interest in any such business ventures.

Company has entered into a Management Agreement with CoVentures™ ADS LC which provides five cents per square foot of Project space per month for management services plus travel expenses (*if any*). Such compensation shall increase five percent annually.

Company has entered into an agreement with CoVentures™ ADS LC to supply fuel to Company. Such agreement allows for a compensation of 2½¢ per gallon of fuel supplied to Company.

## RISK FACTORS

There is not any precedence regarding this type of development and operation, therefore, there can be no assurance that the Company will perform as anticipated.



This Prospectus includes a forecast of annual operations. Such forecast is the result of costs of operations evaluation in and around the Dallas area and was not examined by independent certified public accountants. Actual results of operations may differ materially from the forecasts. There can be no assurance that the Company will be able to achieve the financial condition or results as presented in the forecasts.

There are a number of income tax risks associated with an investment in the Company, including, among others, the possibility that the Company may not be treated as a partnership for federal income tax purposes.

The Company and its proposed activities will be subject to local, state and federal regulations. Applicable permits and licenses may need to be obtained and retained by the Company. The failure of the Company to secure applicable permits and licenses could have an adverse material impact on its operations. Environmental regulations will likely impact the Company's operations, particularly in the area of fuel storage and handling.

It is not anticipated that an active public market will develop or hereafter exist for the Units. Therefore investors may not be able to readily sell their Units should a need for funds arise, and the price received in any sale may be less than the value of the Units sold. Accordingly, no person should purchase any of the Units with funds which they may need to immediately convert into cash. Although there is no restriction on the transfer of Units, the Units should be purchased for long-term investment. An Owner may not be able to liquidate his investment in the event of an emergency or for any other reason or may be able to sell his interest only at a substantial discount.

The success of the Company's business may be dependent upon the services of Company Manager. The Company has entered into a Management Agreement, as more fully described herein, wherein the Company Manager will act as the Project Manager. The loss of the services of Company Manager could adversely affect the Company. Certain decisions with respect to the management of the Company will be made by the Project Manager. Accordingly, no person should purchase any of the Units unless he is willing to entrust those aspects of the management of the Company to Company Manager. The Company's future will also depend upon its ability to attract and retain additional skilled personnel.

There will be several conflicts of interest among the Company and affiliated entities, including, but not limited to, absence of arms-length negotiations.

Consistent with general business practices and available Company funds, the Company will carry insurance as it deems appropriate, but such insurance may be insufficient to cover all liabilities. The Company reserves the right, at its sole discretion, to increase or decrease any policy limits and types of insurance from time to time as it deems appropriate under the circumstances. Further, certain types of losses, generally of a catastrophic nature, may be either uninsurable or not economically insurable. Such risks generally include war, earthquake and flood, in addition to punitive damage awards. Should such a catastrophic disaster occur and not be covered by insurance, the Company's financial condition could be materially affected.

Project Manager will provide management and administrative services to other entities which may compete with the Company's need for management attention.

The Company's fuel farm license with the city of Addison is subject to renewal and requires that Company purchase, at a minimum, 360,000 gallons of fuel annually. Should Company not purchase 360,000 gallons of fuel each year, such license is subject to cancellation.

Each Owner is required to execute the Assignment of LC Company Interest document (*see Exhibit # 4 - Assignment of LC Company Interest*) which authorizes Company to seize Owner's interest in Company should Owner's outstanding bills and/or assessments not be paid in full within 30 days. Such Company ownership position will be forfeited to the Company for resale.

*This Prospectus has been prepared from information provided by the Company Manager and from other sources believed to be reliable. The Company does not make any representations or warranties, expressed or implied, as to the accuracy or completeness of such information.*

*This Prospectus has been prepared on a confidential basis solely for the benefit of qualified parties in connection with the analysis of the Company and Project.*

*This Prospectus is not and should not be construed as an offer to sell nor a solicitation of bid to buy securities, nor can or should this Prospectus be relied upon to provide necessary or sufficient information for potential members to make determination of whether to make an investment in the Company. Any party desiring to explore a possible transaction with Company must do so solely on the basis of that party's own due diligent review of the Company.*

*The Company expressly disclaims any and all liability which may be based on this Prospectus or any of its contents, errors therein or omissions therefrom. The recipient shall be entitled to rely solely on the representations and warranties made to it in the Subscription Agreement.*

**ARTICLES OF ORGANIZATION**  
ExecHangar™ ADS LC

KNOW ALL MEN BY THESE PRESENTS:

This document was executed and filed in accordance with the provisions of the Kansas Revised Limited Liability Company Act.

**A**RTICLE 1

The name of this Limited Liability Company is ExecHangar™ ADS LC.

**A**RTICLE 2

The name and address of resident agent and registered office is Daniel L. Claassen, 8811 South Kansas Road, Sedgwick, Harvey County, Kansas 67135.

I declare under penalty of perjury under the laws of the state of Kansas that the foregoing is true and correct. Executed on the \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Daniel L. Claassen, *Manager*

**OPERATING AGREEMENT**  
ExecHangar™ ADS LC

THIS OPERATING AGREEMENT of ExecHangar™ ADS LC (*this "Agreement"*), is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2009, by and among ExecHangar™ ADS LC, a Kansas limited liability company ("*Company*"), and those Persons, who or which, subsequent to the date of this Agreement may become, by its terms or agree in writing to be, bound by its provisions, hereinafter each of whom or which, are sometimes referred to as "*Member*" or collectively as "*Members*".

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

**REGULATION 1**  
DEFINITIONS

As used in this Agreement (*except as may be otherwise expressly provided herein or unless the context otherwise requires*), the following terms shall have the following meanings:

1.01 **Act.** The term "*Act*" shall mean the Kansas revised limited liability company act, K.S.A. §17-7662, et seq., as it may be amended from time-to-time, and any successor to such act.

1.02 **Affiliate.** The term "*Affiliate*" shall mean any Person who directly or indirectly controls, is controlled by, or is under common control with, another Person. As used in this definition of "*Affiliate*", the term "*control*" means either (a) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise, or (b) a direct or indirect equity interest of ten percent (10%) or more in the Person. Affiliate shall also be deemed to include any mother, father, spouse, brother, sister, and children of such Person.

1.03 **Agreement.** The term "*Agreement*" shall mean this Operating Agreement, as it may be amended, restated, supplemented, or supplanted from time-to-time.

1.04 **Articles of Organization.** The term "*Articles of Organization*" shall mean the articles of organization of Company, as may be amended from time-to-time, filed with the Kansas Secretary of State in accordance with the Act.

1.05 **Business Day.** The term "*Business Day*" shall mean the days Monday through Friday of each calendar week, except legal holidays recognized as such by either the government of the United States or of the State of Kansas.

1.06 **Capital Account.** The term "*Capital Account*" shall mean a separate capital account established for each Unit Holder by Company pursuant to Regulation 4.05 hereof and maintained in the manner and for the purposes provided in Regulation 4.

1.07 **Capital Contribution.** The term "*Capital Contribution*" shall mean the sum of the total amount of cash tendered by (a) all Members; (b) by all Members holding a certain class of Units; or (c) any one (1) Member, as the case may be (*or the predecessor holders of any Units of any such Members*).

1.08 **Class A Members.** The term "*Class A Members*" shall mean the Members holding Class A Units.

1.09 **Class B Members.** The term "*Class B Members*" shall mean the Members holding Class B Units.

1.10 **Class A Unit.** The term "*Class A Unit*" shall mean a Unit representing an interest in Company, other than a Class B Unit, issued from time-to-time to those Members who have executed this Agreement as set forth in Schedule A, attached hereto.

1.11 **Class B Unit.** The term "*Class B Unit*" shall mean a Unit representing an interest in Company, other than a Class A Unit, issued from time-to-time to those Members who have executed this Agreement as set forth in Schedule A, attached hereto.

1.12 **Code.** The term "*Code*" shall mean the Internal Revenue Code of 1986, as amended *(or any corresponding provisions of succeeding law)*.

1.13 **Company.** The term "*Company*" shall mean the limited liability company formed by the filing of Company's Articles of Organization with the Kansas Secretary of State.

1.14 **Company Property.** The term "*Company Property*" shall mean all property, whether real or personal, tangible or intangible, and whether owned, leased or acquired by Company from time-to-time.

1.15 **Distributable Cash Funds.** The term "*Distributable Cash Funds*" shall mean all the cash funds of Company, including cash funds from the refinancing of Company Property *(other than (a) Net Cash Proceeds and/or (b) proceeds from a Sale in connection with a dissolution of Company under Regulation 10.02)* which Manager determines are not *(x)* needed for the payment of existing or anticipated Company obligations and expenditures, including capital expenditures, *(y)* required by law to be reserved, or *(z)* needed for repair or replacement of Company Property *(whether for capital or non-capital items)*.

1.16 **Judicial Proceeding.** The term "*Judicial Proceeding*" shall mean any civil action, divorce, separate maintenance or similar domestic proceeding, or in the event that any Unit Holder makes a general assignment for the benefit of such Unit Holder's creditors, applies for or consents to the appointment of a receiver, trustee, or liquidator of all or a substantial part of such Unit Holder's assets, files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against such Unit Holder *(which is not released within ninety (90) days)*, or files a certificate of dissolution for such Unit Holder as an organized business entity formed under the laws of such Unit Holder's state of organization, dissolves, or otherwise terminates such Unit Holder's existence as a going business.

1.17 **Majority.** The term "*Majority*" shall mean, with respect to any agreement, consent, or vote of the Members entitled to vote, and subject to the allocation of voting rights set forth in Regulation 4, one *(1)* or more of the Members whose combined Sharing Ratios in the Class A Units and/or Class B Units entitled to vote, at the time of any such agreement, consent, or vote, or exceed fifty percent *(50%)* of the then outstanding Class A and/or Class B Units held by all Members entitled to vote.

1.18 **Manager.** The term "*Manager*" shall mean the Manager elected to serve in accordance with Regulation 6.01.

1.19 **Member.** The term "*Member*" shall mean those Persons executing this Agreement as Members of Company on the signature pages attached hereto; Substitute Members, if any; and additional Members admitted pursuant to Section 4.08 herein, if any.

**1.20 Net Cash Proceeds.** The term "*Net Cash Proceeds*" shall mean the net cash (*including both principal and interest*) realized by Company from a Sale (a) after payment of all expenses related to the transaction, (b) after payment of or provision for Company debts and obligations, and (c) after establishment and maintenance of such reserves as Manager may deem necessary or appropriate for anticipated income taxes, obligations, contingencies, capital improvements, replacements and working capital of Company.

**1.21 Person.** The term "*Person*" shall mean any natural person, partnership, corporation, trust, association, limited liability company, or other legally recognized entity.

**1.22 Profits and Losses.** The term "*Profits and Losses*" shall mean, at all times during the existence of Company, the income or loss of Company for federal income tax purposes, and any income of Company exempt from tax for such purpose, determined as of the close of Company's fiscal year, including, without limitation, each item of Company income, gain, loss, deduction and credit.

**1.23 Profits only Transferee.** The term "*Profits Only Transferee*" shall mean a Person to whom one (1) or more Units have been transferred, by transfer or assignment or otherwise, who has not been admitted as a Substitute Member pursuant to the provisions of this Agreement, as further described in Section 9.03. A Profits Only Transferee shall only be entitled to receive the share of Profits, Losses or other distributions by way of income and/or the return of capital to which the transferring Unit Holder would otherwise be entitled at the time said transferring Unit Holder would be entitled to receive the same and such Profits Only Transferee shall not have any right to participate in the management or affairs of Company, including the right to vote on, consent to, or otherwise participate in any decision of the Members.

**1.24 Proportionate Share.** The term "*Proportionate Share*" shall mean the Units offered for sale or transfer, which the proportion of the Sharing Ratio of each Member entitled to participate bears to the aggregate Sharing Ratios of all Members entitled to participate, but excluding the Units offered for sale or transfer. In addition, if any Unit offered for sale or transfer is not purchased by the Member(s) first entitled thereto, the term "*Proportionate Share*" shall include the Unit or Units not purchased by the Member(s) first entitled thereto, which the Sharing Ratio of each Member entitled to participate bears to the aggregate Sharing Ratios of all Members entitled to participate, but excluding the Units offered for sale or transfer and the Units of the Member(s) otherwise first entitled to so purchase the Units but who has/have declined to purchase the Units.

**1.25 Record Holder.** The term "*Record Holder*" shall mean the Person in whose name each Unit is registered on the books and records of Company as of the close of business on a particular Business Day.

**1.26 Sale.** The term "*Sale*" shall mean and include the sale, exchange, condemnation or similar eminent domain taking, casualty or other disposition of all or any portion of Company Property which is not in the ordinary course of business, and the sale of easements, rights of way or similar interests in Company Property or any other similar items which in accordance with the accounting methods used by Company are attributable to capital; provided, however, that the term "*Sale*" shall not refer to any transaction to the extent gain or loss is not recognized, or is elected not to be recognized, under any applicable section of the Code.

**1.27 Sharing Ratio.** Except as may be otherwise determined by all Members and set forth in Schedule A, attached hereto, the term "*Sharing Ratio*" shall mean for any Unit Holder the proportion obtained by dividing (a) the Units (*either Class A Units or Class B Units or all of them, as the case may be*) held by

such Unit Holder in Company by (b)the sum of all Units (either Class A Units or Class B Units or all of them, as the case may be) issued and outstanding in Company; provided, that in the event of any assignment by a Unit Holder of a Unit in Company, the Sharing Ratio of such Unit Holder shall be proportionately reduced, based upon the number of Units assigned compared to the total number of Units owned by such Unit Holder, and the assignee of such Unit or Units shall succeed to a proportionate share of the Sharing Ratio of such Unit Holder's assignor that is attributable to the Unit or Units transferred to such assignee. In the case of Class B Units, the Sharing Ratio shall be determined based upon the proportionate space occupied by the largest aircraft stored by such Class B Member utilizing such space in Company's hangar (s).

**1.28 Substitute Member.** The term "*Substitute Member*" shall mean an assignee or transferee of one (1) or more of the Units who has been admitted as a Member pursuant to the provisions of this Agreement, in place of such assignee's or transferee's assignor. A Substitute Member, upon such Substitute Member's admission as such, shall replace and succeed to the rights, privileges and liabilities of Unit Holder from whom the Substitute Member acquired such Substitute Member's Units to the extent of the Units so transferred.

**1.29 Tax Matters Partner.** The term "*Tax Matters Partner*" shall mean the Person designated pursuant to Regulation 8.01.

**1.30 Third Party.** The term "*Third Party*" shall mean a Person not a party to this Agreement, including a Profits Only Transferee. A Third Party does not include Company, the Members, or Substitute Members, but does include their respective Affiliates. Notwithstanding this definition of Third Party, Third Parties that are Unit Holders shall be governed by this Agreement as set forth herein.

**1.31 Treasury Regulations.** The term "*Treasury Regulations*" shall mean the income tax regulations promulgated under the Code, as such Treasury Regulations may be amended (including corresponding provisions of succeeding regulations).

**1.32 Unit(s).** The term "*Unit(s)*" shall mean one or more Class A Units and/or Class B Units and/or any fraction of such Units which represent an interest in Company.

**1.33 Unit Holder.** The term "*Unit Holder*" shall mean a Member holding Units in Company.

## REGULATION 2 ORGANIZATIONAL MATTERS

**2.01 Formation.** Company is formed as a limited liability company pursuant to the provisions of the Act. The rights and obligations of the Members, and the affairs of Company, shall be governed first by the mandatory provisions of the Act, second by Company's Articles of Organization, third by this Agreement and fourth by the optional provisions of the Act. In the event of any conflict among the foregoing, the conflict shall be resolved in the order of priority set forth in the preceding sentence.

**2.02 Name.** The name of Company is "*ExecHangar™ ADS LC*".

**2.03 Principal Office.** The principal office of Company in the State of Kansas shall be 8811 South Kansas Road, Sedgwick, Kansas 67135. Manager may from time-to-time change the location of the principal office. Company may also maintain offices at such other place or places as Manager deems advisable from time-to-time.

**2.04 Term.** Company commenced upon the filing for record of Company's Articles of Organization with the Kansas Secretary of State and shall continue until dissolved in accordance with Regulation 10.

**2.05 Filings.** Upon the request of Company, Members shall immediately execute and deliver all such certificates and other instruments conforming hereto as shall be necessary for Company to accomplish all filing, recording, publishing and other acts appropriate to comply with all requirements for the formation and operation of a limited liability company under the laws of the State of Kansas and for the formation, qualification and operation of a limited liability company in all jurisdictions where Company shall propose to conduct business.

**2.06 Company Property.** All Company Property owned by Company, whether real or personal, tangible or intangible, shall be deemed to be owned by Company as an entity, and no Unit Holder, individually, shall have any ownership of such property. No Unit Holder shall have the right to require the partition or sale of Company Property. Company shall hold its assets in its own name. The interest of any Unit Holder in Company (*as represented by Unit Holder's Units*) will be personal property for all purposes.

### REGULATION 3 PURPOSE

**3.01 Purpose of Company.** The purpose for which Company is formed is to engage in any lawful act or activity for which limited liability companies may be organized under the Act.

### REGULATION 4 VOTING RIGHTS; ADDITIONAL MEMBERS; AND CAPITAL CONTRIBUTIONS

**4.01 Voting Rights Among Class A Unit Holders.** Each Member owning Class A Units entitled to vote shall have the right to vote in accordance with the proportion of the Sharing Ratio which each Member owning Class A Units bears relative to the aggregate Sharing Ratios of all Members owning Class A Units entitled to vote.

**4.02 Voting Rights Among Class B Unit Holders.** Each Member owning Class B Units entitled to vote shall have the right to vote in accordance with the proportion of the Sharing Ratio which each Member owning Class B Units bears relative to the aggregate Sharing Ratios of all Members owning Class B Units entitled to vote.

**4.03 Voting Rights.** Except as otherwise expressly set forth herein, on all matters subject to a vote of Members, each Member entitled to vote shall have the right to vote in accordance with the proportion of such Member's combined Sharing Ratios of Class A Units and/or Class B Units as it bears relative to the aggregate Sharing Ratios of all Members owning Class A Units and/or Class B Units entitled to vote. Except as otherwise expressly set forth herein, Class A Units and Class B Units shall have equal voting rights and shall vote together as a single class.

**4.04 Capital Contributions; Units.** Each Member shall contribute to the capital of Company an amount equal to such Member's Capital Contribution in exchange for a corresponding number of Units as set forth in Schedule A attached hereto. Until a Class B Unit Holder shall have paid for such Member's Class B Units by paying the entire amount of such Member's Capital Contribution set forth in Schedule A attached hereto, all of such Member's Units shall be subject to a security interest in favor of



the Class A Unit Holders. In furtherance thereof, each Class B Unit Holder hereby grants to each Class A Unit Holder a security interest in such Member's Class B Units until such time as such Class B Unit Holder has made the entire Capital Contribution required hereby.

**4.05 Capital Accounts.** A separate Capital Account shall be maintained by Company for each Unit Holder in accordance with the capital accounting rules of Section 704(b) of the Code and the Treasury Regulations thereunder. Adjustments shall be made in each Unit Holder's Capital Account as required by the capital accounting rules of Section 704(b) of the Code and the Treasury Regulations promulgated thereunder.

**4.06 Interest.** Except as otherwise set forth herein, no interest shall be paid by Company on a Capital Contribution, on balances in a Capital Account, or on any other funds distributed or distributable under this Agreement. Each Member shall be credited with an initial Capital Account equal to the amount of their respective Capital Contribution.

**4.07 No Withdrawal.** Except as otherwise required under mandatory provisions of the Act, as set forth in Regulation 10.02 herein, and as otherwise specifically provided for herein, no Unit Holder shall have the right to withdraw, or receive any return of such Unit Holder's Capital Contribution. Except as otherwise expressly provided in Regulation 10.02 herein, and except as otherwise specifically set forth herein in Regulation 5.03 and 5.04, no Unit Holder shall have priority over any other Unit Holder, either as to the return of such Unit Holder's Capital Contribution or as to Profits and Losses.

**4.08 Admission of Additional Members; Additional Classes of Units.** The admission of new Members to Company shall be determined by Manager. The creation and issuance of additional classes of Units shall be accomplished only by a vote of Members holding at least a Majority of the Class A Units entitled to vote. In the event of such a vote, this Agreement shall be amended in terms satisfactory to a Majority of Class A Members and shall be executed by Company, a Majority of Class A Members, and each new Member. Such amendment shall, at a minimum, amend and restate Schedule A attached hereto by adding (a) the amount of the Capital Contribution to be remitted by the new Member and (b) the number and class of Units to be owned by such new Member. Such amended Schedule A shall be attached to this Agreement.

**4.09 Company Unit Represented by Certificate.** Manager shall issue and deliver to each Member a certificate evidencing such Member's respective ownership of the Units issued by Company to Members (each a "Certificate").

**4.10 Form of Certificate.** The Certificate to be issued by Company may be in such form and design as may be determined by Manager from time-to-time; provided, however, that each Certificate, at a minimum, shall set forth the following restrictive legends:

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY STATE. THEY MAY NOT BE SOLD, OFFERED FOR SALE, TRANSFERRED, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT AS TO THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND ANY APPLICABLE STATE SECURITIES LAWS, OR COMPANY SHALL HAVE BEEN FURNISHED WITH AN OPINION OF COUNSEL, SATISFACTORY TO COUNSEL FOR COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER ANY SUCH SECURITIES LAWS. THE TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO SUCH RESTRICTIONS UPON TRANSFER OF THE SAME AND ANY RIGHT OF FIRST REFUSAL AS MAY BE PROVIDED IN COMPANY'S THEN-CURRENT ARTICLES OF ORGANIZATION AND/OR THEN-CURRENT OPERATING AGREEMENT.

**4.11 Neither Responsible for Other's Commitments.** Except as otherwise set forth herein or as otherwise agreed to by Members, neither Members nor Company shall be responsible or liable for any indebtedness or obligations of the other Members incurred either before or after the execution of this Agreement.

## **R**EGULATION 5 ALLOCATIONS AND DISTRIBUTIONS

**5.01 Allocation Among Class A Unit Holders.** As among Unit Holders holding Class A Units, each such Unit Holder shall share Company items of Profits and Losses allocated, charged or credited to the Class A Units as a class hereunder in accordance with the proportion which the Sharing Ratio of each Class A Unit Holder bears relative to the aggregate Sharing Ratios of all Class A Units Unit Holders.

**5.02 Allocation Among Class B Unit Holders.** Class B Unit Holders shall not share in the Profits and Losses of Company. However, as among Unit Holders holding Class B Units, each such Unit Holder shall share Company expenses allocated, charged or credited to the Class B Units as a class hereunder in accordance with the proportion which the Sharing Ratio of each Class B Unit Unit Holder bears relative to the aggregate Sharing Ratios of all Class B Unit Unit Holders and shall be entitled to the benefit of cost savings associated with Class B Unit Holders being Members of Company.

**5.03 Allocation of Losses and Profits.** Except as otherwise expressly provided herein, all Profits and Losses of Company for each fiscal year, computed in accordance with tax accounting principles consistently applied, using such methods of accounting for depreciation and other items as Manager determines to use for federal income tax purposes, shall be allocated, charged or credited to Unit Holders as set forth in Schedule A, attached hereto.

**5.04 Distributions from Operations.** When Distributable Cash Funds are available and/or as otherwise provided in this Agreement, interim distributions shall be distributed to Class A Unit Holders out of Distributable Cash Funds as set forth in Schedule A, attached hereto.

**5.05 Distribution in the Event of Sale or Dissolution.** In the event of a Sale, or dissolution of Company in accordance with Regulation 9, Company shall make distributions out of Net Cash Proceeds as set forth in Regulation 10.02, attached hereto.

**5.06 Distributions to Pay Income Taxes.** Manager shall use Manager's good faith efforts, in light of the existing and anticipated financial conditions, in determining the availability of Distributable Cash Funds for payment to Unit Holders to enable them to pay their estimated federal and state income tax liability *(based upon the then highest (a) federal and (b) State of Kansas's marginal tax bracket imposed upon an individual)* that may be imposed upon Unit Holders' share of Company's Profits and Losses.

**5.07 Allocation in the Event of Transfer.** In the event of an assignment of a Unit Holder's interest in Company pursuant to Regulation 9, all Profits and Losses of Company for federal, state and local income tax purposes shall, unless otherwise required by applicable Treasury Regulations, be determined monthly and shall be allocated to Unit Holders in accordance with this Agreement, on the first *(/st/)* day of such month; provided, however, a Unit Holder transferring all or a portion of such Unit Holder's Units at any time during a month is deemed to have transferred the Units as of the first *(/st/)* day of the month following the transfer; provided, further, that gain or loss on a sale or other disposition of all or a substantial portion of the assets of Company shall be allocated to Unit Holders

of record on the day of such sale or other disposition. Notwithstanding any of the foregoing, Company may allocate such items on some other reasonable basis if Company determines that Company's methods of allocating such items do not satisfy the requirements of Section 706 of the Code and the Treasury Regulations promulgated thereunder.

**5.08 Qualified Income Offset.** Notwithstanding anything in this Regulation 5 to the contrary, in the event a Unit Holder unexpectedly receives any adjustment, allocation or distribution described in Section 1.704-1(b)(2)(iii)(d)(4), (5) or (6) of the Treasury Regulations, which causes or increases the deficit balance in such Unit Holder's capital account, then items of income and gain shall be allocated to such Unit Holder or Unit Holders in an amount and manner sufficient to eliminate the deficit balances in their Capital Accounts as quickly as possible.

## REGULATION 6

### MANAGEMENT; OPERATION OF BUSINESS; RESTRICTIVE COVENANTS

**6.01 Manager.** Company shall have one (1) Manager. Manager of Company is CoVentures™ ADS LC which shall serve as Manager of Company until such time as such Manager resigns or is removed in accordance with Regulation 6.02. In the event a Manager resigns, the replacement Manager shall be selected by a vote of a Majority of Members.

**6.02 Removal of Manager.** A vote of a Majority of Members shall have the right to remove Manager, with or without cause, and to choose a new Manager. The replacement Manager shall be selected by a vote of a Majority of Members.

**6.03 Management of Company.** The daily management of Company shall be vested solely with Manager chosen in accordance with this Agreement. Manager shall have full, complete, and exclusive authority, power and discretion to manage and control the business, property and affairs of Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of Company's business, property and affairs unless the approval or vote of Members is expressly required by the Articles of Organization or this Agreement. Except as otherwise set forth herein, Manager shall bind Company upon such Manager's signature alone. Manager shall be imposed with a fiduciary duty to conduct the business and affairs of Company in the best interests of Company and of Members, including the safekeeping and use of all Company funds and assets for the exclusive benefit of Company whether or not the same shall be in the immediate possession or control of Manager. No Member shall have any power or authority to bind Company unless each such Member has been expressly authorized by Manager or a Majority of Members to act as an agent of Company for a particular matter, transaction or series of same. Manager has the right to delegate Manager's powers and duties and create officer positions.

**6.04 Devotion of Time.** Manager shall not be expected to devote Manager's entire time and attention to Company's business, but only such time and effort as is required for the sound and proper management of Company.

**6.05(a) Company Indemnity.** To the maximum extent permitted by law, Company shall indemnify and hold harmless Manager, all Members, their respective Affiliates, and the employees and agents of Company *each, an "Indemnitee"* from and against any and all losses, claims, demands, costs, damages, liabilities, joint and several, expenses of any nature *(including attorneys' fees and disbursements)*, judgments, fines, settlements, penalties and other expenses actually and reasonably incurred by the Indemnitee in connection with any and all claims, demands, actions, suits, or

proceedings, civil, criminal, administrative or investigative, in which the Indemnitee may be involved, or threatened to be involved, as a party or otherwise, by reason of the fact that the Indemnitee is or was a Member or a Manager of Company, or is or was an employee or agent of Company, including Affiliates of the foregoing, arising out of or incidental to the business of Company, provided *(i)* the Indemnitee's conduct did not constitute willful misconduct or recklessness, *(ii)* the action is not based on breach of this Agreement, *(iii)* the Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in, or not opposed to, the best interests of Company and within the scope of such Indemnitee's authority, and *(iv)* with respect to a criminal action or proceeding, the Indemnitee had no reasonable cause to believe Indemnitee's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere, or its equivalent, shall not, in and of itself, create a presumption or otherwise constitute evidence that the Indemnitee acted in a manner contrary to that specified above.

**6.05(b) Advancement of Expenses.** Expenses incurred by an Indemnitee in defending any claim, demand, action, suit or proceeding subject to this Regulation 6.05 may, from time-to-time, be advanced by Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by Company of an undertaking by or on behalf of the Indemnitee to repay such amount(s) if it shall ultimately be determined that such Person is not entitled to be indemnified as authorized in this Regulation 6.05(a).

**6.05(c) Non-Exclusivity.** The indemnification provided by this Regulation 6.05(a) shall be in addition to any other rights to which the Indemnitee may be entitled under any agreement, vote of the Members, as a matter of law or equity, or otherwise, and shall inure to the benefit of the successors, assignees, heirs, personal representatives and administrators of the Indemnitee.

**6.05(d) Insurance.** Company may purchase and maintain insurance, at Company's expense, on behalf of any Indemnitee against any liability that may be asserted against or expense that may be incurred by an Indemnitee in connection with the activities of Company regardless of whether Company would have the power to indemnify such Indemnitee against such liability under the provisions of this Agreement.

**6.06 Outside Activities.** Each Unit Holder and such Unit Holder's Affiliates may have business interests and engage in business activities in addition to those relating to Company, including, without limitation, business interests and activities similar to that of Company for such Unit Holder's own account or for the account of others; and no provision of this Agreement shall be deemed to prohibit such Unit Holder from conducting such business and activities.

**6.07 Non-Disclosure of Confidential Information.** Unless authorized in writing by Company, Unit Holders shall not disclose any Confidential Information (*defined herein*) of Company to any Person nor shall any Unit Holders use the same for any purpose at any time. All Confidential Information which comes into a Unit Holder's possession or is generated by a Unit Holder shall be and remain the exclusive property of Company, and such Unit Holder agrees to return all such documents and tangible property of Company upon a Unit Holder's transfer of such Unit Holder's Units of Company or at such earlier times as Company may reasonably request. The term "*Confidential Information*" for purposes of this Agreement shall mean records, files, documents, lists, correspondence, letters, agreements, manuals, mailing lists, business plans, financial information, designs, software, strategic partners lists, customer lists, vendor lists, employee lists, licenses and their terms, information relating to Persons doing business with Company or its Affiliates, and any other data pertaining to the operational, financial, accounting and other matters with respect to the business, management and operation of Company, whether past, current or future, all of which Unit Holders, and each of them,

acknowledge are valuable, special and unique property of Company and which Company is entitled to protect and that Unit Holders have no right, title or interest in or to such materials. Notwithstanding anything to the contrary set forth above in this regulation, the provisions of this Regulation 6.07 shall not apply to information which: *(a)* is or becomes generally available to the public other than if such disclosure is a violation of any obligation to Company, *(b)* is required to be disclosed by law or by regulatory or judicial process. Company Manager is hereby authorized to provide any and/or all Unit Holder's information to Addison Airport management as may be required from time-to-time or *(c)* as may be required by contract.

**6.08 Reasonableness; Remedies; Survival.** Each Unit Holder hereby acknowledges that the prohibited activity contained in Regulation 6.07 is necessary and reasonable. Each Unit Holder hereby acknowledges and agrees that the restrictions set forth in this Agreement are reasonable and necessary, and that any violation thereof would result in substantial and irreparable injury to Company and neither Company nor its Affiliates may have an adequate remedy at law with respect to any such violation. Accordingly, each Unit Holder agrees that, in the event of any actual or threatened violation thereof, Company shall have the right and privilege to obtain, without the necessity of posting bond therefor, and in addition to any other remedies that may be available, equitable relief, including temporary and permanent injunctive relief, to cease or prevent any actual or threatened violation of any provision hereof. Further, in the event of a breach by such Unit Holder of any of the provisions of this Agreement, Company and each of its Affiliates, shall be entitled to an accounting and repayment of all profits, compensation, commissions, remunerations or other benefits that such Unit Holder, directly or indirectly, has realized and/or may realize as a result of, arising out of or in connection with any such breach. Regulation 6.07 and this Regulation 6.08 shall survive the termination of this Agreement as it pertains to any individual Unit Holder or the amendment of this Agreement to remove any individual Member or Members. Each Unit Holder acknowledges and agrees that the restrictive covenants and other provisions contained in Regulation 6.07 are in addition to, and not in lieu of, any other similar restrictive covenants and/or agreements between a Unit Holder and/or Unit Holders and Company.

## REGULATION 7

### BOOKS, RECORDS, ACCOUNTING AND OPERATING REQUIREMENTS

**7.01 Books and Records.** Appropriate books and records with respect to Company's business, including, without limitation, all books and records necessary to provide to Members any information, lists and copies of documents required to be provided pursuant to the Act shall at all times be kept at the principal office of Company or at such other places as agreed to by Members. Any records maintained by Company in the regular course of its business may be kept on, or be in the form of, photographs or any information storage device, provided that the records so kept are convertible into clearly legible written form within a reasonable period of time. Company shall permit all Members and/or any authorized representative of such Members, to visit, inspect and copy *(as to records)* at Company's expense the properties of Company, including its corporate and financial records, and to discuss its business and finances with Manager during normal business hours, following reasonable notice and as frequently as may be reasonably requested.

**7.02 Accounting.** The books of Company for regulatory and financial reporting purposes shall be maintained on either a cash or accrual basis of accounting, all of which shall be determined by the Tax Matters Partner. Company books for purposes of maintaining and determining Capital Accounts shall be maintained in accordance with the provisions of this Agreement, Section 704 of the Code and, to the extent not inconsistent therewith, the principles described herein for financial reporting and

regulatory purposes.

**7.03 Fiscal Year.** The fiscal year of Company shall be December 31.

**7.04 Operating Requirements.** Each Class B Unit Holder shall comply with all of the operating requirements as may be imposed by Manager from time to time to insure the efficient and safe operation of the Company Property for the mutual benefit of all Members, including, without limitation, the requirements set forth in the Member's Rights, Responsibilities and Privileges attached hereto as Schedule B, which Schedule may be amended by Manager from time to time in its sole discretion without a vote of the Members and shall automatically become a part of this Agreement. Each Class B Unit Holder shall also comply with each of the covenants set forth in the Ground Lease Agreement by and between Company and the Town of Addison, Texas, relating to conducting operations on Company Property and at the Addison Airport, including, without limitation, all requirements set forth in the Addison Airport Rules and Regulations. A copy of the Ground Lease Agreement and the Addison Airport Rules and Regulations shall be provided by Manager to each Class B Unit Holder upon request.

## REGULATION 8 TAX MATTERS

**8.01 Tax Matters Partner.** The Members hereby appoint the "*Tax Matters Partner*" (*hereinafter referred to as the "TMP"*), as defined in Section 6231(a)(7) of the Code, for Company is CoVentures™ ADS LC. The TMP is authorized to take such actions and to execute all statements and forms on behalf of Company which may be permitted or required by the applicable provision of the Code or Treasury Regulations promulgated thereunder, and Manager shall take all other actions that may be necessary or appropriate to effect the designation of the TMP. In the event of an audit of Company's income tax returns by the Internal Revenue Service, the TMP may, at the expense of Company, retain accountants and other professionals to participate or assist in the audit process. All expenses incurred by the TMP in such Person's capacity as TMP shall be expenses of Company and paid from Company funds. The TMP may be changed by a vote of a Majority of Members.

**8.02 Taxation as a Partnership.** No election shall be made by Company or any Unit Holder for Company to be excluded from the application of any provision of Subchapter K, Chapter 1, of Subtitle A of the Code or from any similar provisions of any state tax laws.

## REGULATION 9 TRANSFER OF UNITS

**9.01 The Term "Transfer."** The term "*transfer*", when used in this Article IX with respect to a Unit, shall be deemed to refer to a transaction by which a Unit Holder assigns, conveys, or transfers all or a portion of such Unit Holder's Units, or any interest therein, to another Person, and includes a sale, assignment, gift, pledge, encumbrance, hypothecation, mortgage or attempt to create or grant a security interest, transfer by will or intestate succession, exchange, distribution or any other form of disposition (including a liquidation or distribution of such Unit Holder), and (a) any consolidation or merger of a Unit Holder with another Person; (b) any sale, lease or transfer of all or substantially all of the property and assets of any Unit Holder; or (c) any voluntary or involuntary dissolution of any Unit Holder, in each case resulting in a loss of control of Unit Holder.

**9.02 Admission of Substitute Members Upon Transfer.** Upon a transfer of a Unit by a Unit Holder in accordance with this Article IX, the transferor shall have the power to give, and by transfer of any Units shall be deemed to have given, the transferee the right to apply to become a Substitute Member with respect to the Units acquired, subject to the conditions of and in the manner permitted under this Agreement. A transferee of Units shall only become a Substitute Member *(unless such transferee is a Member or Substitute Member with respect to other previously acquired Units)* upon all of the following conditions being satisfied:

*(a)* If the transferor is a Member, the instrument of assignment sets forth the intentions of the transferor that the transferee succeeds to the transferor's interest as a Substitute Member in such transferor's place or, if the transferor is not a Member, the transferee requests that the Members make such transferee a Substitute Member;

*(b)* The transferor and transferee shall have fulfilled all requirements of this Agreement;

*(c)* The transferee shall have paid all reasonable legal fees and filing costs incurred by Company in connection with such transferee's substitution as a Member; and

*(d)* The transferee executes and files all documents necessary for the transferee to be a Substitute Member and be bound by the terms hereof.

The admission of a transferee as a Substitute Member with respect to a transferred Unit shall become effective on the date that all the requirements set forth in Sections 9.02 *(a)* through *(d)* above have been fulfilled.

**9.03 No Prohibited Transfers; Profits Only Transferees.** No Units shall be transferred, in whole or in part, except in accordance with the terms and conditions set forth in this Article IX. Any transfer or purported transfer of any Units not made in accordance with this Article IX shall be null and void. If *(a)* there is an involuntary transfer by operation of law or otherwise and such involuntary transfer is not made in accordance with this Article IX or *(b)* a transfer is permitted in accordance with this Article IX, but the requirements set forth in Section 9.02 for the transferee to become a Substitute Member have not been fulfilled, then the transferee shall not be a Substitute Member, but shall instead be a Profits Only Transferee.

#### **9.04 Provisions Applicable to All Transfers.**

*(a)* The transfer restrictions on all Units shall be conspicuously noted by an appropriate legend on each Certificate, if any, issued by Company to a Unit Holder in accordance with Section 4.10.

*(b)* In no event shall any Unit be transferred to a minor or an incompetent except by will or intestate succession and in full compliance with the provisions of this Article IX.

*(c)* Company need not recognize, for any purpose, any transfer of all or any fraction of a Unit unless there shall have been filed with Company and recorded on Company's books a duly executed and acknowledged counterpart of the instrument of transfer and such instrument evidences the written acceptance by the transferee of all of the terms and provisions of this Agreement and such transferee expressly represents that such transfer was made in accordance with all applicable laws and regulations.

*(d)* Any Unit Holder *(including a transferee thereof)* shall be deemed conclusively to have agreed to

comply with and be bound by all terms and conditions of this Agreement, with the same effect as if such Unit Holder had executed an express acknowledgment thereof, whether or not such Unit Holder in fact has executed such an express acknowledgment.

*(e)* Any Member who transfers all of such Member's Units with respect to which such Member had been admitted as a Member shall cease to be a Member of Company upon a transfer of such Units in accordance with this Article IX and shall have no further rights as a Member in or with respect to Company (whether or not the transferee of such former Member is admitted to Company as a Substitute Member).

**9.5 Restrictions on Transfers.** Notwithstanding the other provisions of this Article IX, no transfer of any Unit of any Unit Holder in Company shall be made if the transfer *(a)* would violate applicable federal and/or state securities laws or rules and regulations of the Securities and Exchange Commission, any state securities commission or any other governmental authority with jurisdiction over the transfer; *(b)* would materially adversely affect the classification of Company as a partnership for federal or state income tax purposes; or *(c)* would affect Company's qualification as a limited liability company under the Act.

**9.6 Issuance of Certificates.** Upon the transfer of a Unit in accordance with this Article IX, Company shall, if Certificates have been issued, issue replacement Certificates after the surrender of such transferred Units. All Certificates shall contain restrictive legends in accordance with Section 4.10 and/or as otherwise required by law.

**9.7 Compliance with Applicable Law.** The restrictions on transfer contained in this Article IX are intended to comply *(and shall be interpreted consistently)* with any and all restrictions on transfer set forth in the Act.

**9.8 Lost, Stolen or Destroyed Certificates.** Company may issue a new Certificate in place of any Certificate previously issued if the Record Holder of the Certificate: *(a)* makes proof by affidavit that a previously issued Certificate has been lost, stolen, or destroyed; *(b)* requests the issuance of a new Certificate before Company has notice that the Units evidenced by such Certificate have been acquired by a purchaser for value in good faith and without notice of an adverse claim; *(c)* the Record Holder has complied with the terms of this Agreement; and *(d)* if required by Company, delivers to Company a bond with surety or sureties acceptable to Company, to indemnify Company against any claim that may be made on account of the alleged loss, destruction or theft of the Certificate. Company shall be entitled to treat such Record Holder as Unit Holder in fact of any Units and, accordingly, shall not be required to recognize any equitable or other claim or interest in or with respect to the Units on the part of any other Person, regardless of whether Company has actual or other notice thereof.

## REGULATION 10 DISSOLUTION

**10.01 Events Causing Dissolution.** Company shall be dissolved and its affairs shall be wound up only upon the occurrence of any of the following events:

- (a)* The expiration of the period fixed for the duration of Company by the Articles of Organization;
- (b)* The written agreement of a Majority of the Members;
- (c)* The bankruptcy of Company;
- (d)* The sale or other disposition of all or substantially all of Company's assets; or



(e) A court decree shall be issued finding that other circumstances exist which render a dissolution of Company equitable or required by law.

**10.02 Procedure on Dissolution.** Upon dissolution of Company, Manager shall proceed with reasonable promptness to wind up the business affairs of Company and to liquidate Company's business and assets by selling all of Company's assets and Company Property. The proceeds from the sale of the assets of Company and Company Property shall be distributed in the following order of priority:

**First**, to the payment to its creditors of all debts and liabilities of Company in the order of priority prescribed by law, except those liabilities owed to Members of Company on account of their contributions;

**Second**, to the establishment of reserves for any contingent liabilities or obligations of Company, as the case may be; and

**Third**, the balance, if any, shall be distributed among Class A Unit Holders to the extent of their Capital Contributions set forth in Schedule A;

**Fourth**, the balance, if any, shall be distributed among Class B Unit Holders to the extent of their Capital Contributions set forth in Schedule A; and

**Fifth**, the balance, if any, shall be distributed among Unit Holders in accordance with the allocation provisions as set forth in Section 5.03.

**10.03 Filing Articles of Dissolution.** Upon the completion of the distribution of Company's assets and Company Property as provided in Regulation 10.02, articles of dissolution shall be filed as required by the Act, and each Member agrees to take whatever action may be advisable or proper to carry out the provisions of this Regulation 10.

**10.04 Return of Capital.** The return of Capital Contributions shall be made solely from Company Property.

## REGULATION 11

### AMENDMENT OF AGREEMENT; MEETINGS, RECORD DATE

**11.01 Amendments.** All amendments to this Agreement shall require a Majority vote of all the Members.

**11.02 Limitations on Amendments.** Notwithstanding any other provision of this Agreement, no amendment to this Agreement may (a) enlarge the obligations of any Member under this Agreement, or (b) amend Regulation 6.07 (*Non-Disclosure*); Regulation 6.08 (*Reasonableness; Remedies; Survival*); Regulation 11.01 (*Amendments*); or this Regulation 11.02 (*Limitations on Amendments*) without the vote and/or consent of a Majority of Members.

**11.03 Meetings.** Meetings of Company may be called by Manager or by Members holding not less than fifty percent (50%) and entitled to vote at such meetings, by giving at least ten (10) days' prior written notice and not more than sixty (60) days' written notice of the time, place and purpose of the meeting to all Members entitled to vote at such meeting.

**11.04 Adjournment.** When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting, if the time and place thereof are announced at the meeting at which the adjournment is taken, unless such adjournment shall be for more than forty-five (45) days. At the adjourned meeting, Company may transact any business which might have been transacted at the

original meeting. If the adjournment is for more than forty-five (45) days, a notice of the adjourned meeting shall again be given in accordance with Regulation 11.03.

**11.05 Waiver of Notice; Consent to Meeting; Approval of Minutes.** The transactions of any meeting of Company, however called and noticed, and whenever held, are as valid as though conducted at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy, and if, either before or after the meeting, each of the Members entitled to vote, but not present in person or by proxy, approves by signing a written waiver of notice or an approval to the holding of the meeting or an approval of the minutes thereto. All waivers, consents, and approvals shall be filed with Company's records or made a part of the minutes of the meeting. Attendance of a Member at a meeting shall constitute a waiver of notice of the meeting, except when such Member objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened; and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters required to be included in the notice of the meeting, but not so included, if the objection is expressly made at the meeting.

**11.06 Quorum.** A Majority entitled to vote represented in person or by proxy, shall constitute a quorum at a meeting of Members. Members present at a duly called or held meeting at which a quorum is present may continue to participate at such meeting until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum if any action taken (*other than adjournment*) is approved by the requisite percentage of Units of Members specified in this Agreement. In the absence of a quorum, any meeting of Members may be adjourned from time-to-time by a vote of a Majority of the Members represented either in person or by proxy entitled to vote, but no other matters may be proposed, approved or disapproved, except as provided in Regulation 11.04.

**11.07 Action Without a Meeting.** Any action that may be taken by any vote of Members may be taken without a meeting if a consent to such action is signed by Members holding Units representing not less than the minimum numbers of votes that would be necessary to otherwise authorize or take such action at a meeting at which all Units entitled to vote thereon were present and voted. Prompt notice of the taking of any action without a meeting shall be given to those Members who have not consented in writing.

**11.08 Action by Members.** Except as otherwise specifically set forth herein, whenever in this Agreement the term "*approval by the Members*"; "*a majority vote of such quorum*"; "*as determined by the Members*"; or words of like import are used, or action of Members is required or permitted to be taken, the same, unless a greater interest is otherwise indicated or required by law, shall mean a Majority of the Members of Company entitled to vote.

## **R**EGULATION 12 LIMITED POWER OF ATTORNEY

12.01(a) Each Unit Holder by such Unit Holder's execution or adoption of this Agreement, to the extent permitted by law, hereby irrevocably and indefinitely makes, constitutes and appoints Manager of Company, such Unit Holder's true and lawful attorney-in-fact, to make, execute, sign, acknowledge, elect, deliver, file for recording at the appropriate public offices or to publish:

- (1) The Articles of Organization;
- (2) This Agreement;
- (3) Any statement of intent to dissolve or amendment thereof, instruments and documents which may

- be required under law, or by any state or governmental agency, or as may be appropriate for the conduct of Company business, its continuation or its dissolution in termination of Company pursuant to the terms of this Agreement;
- (4) Any amendments to this Agreement and/or the Articles of Organization which have been approved pursuant to the provisions of this Agreement and applicable law;
  - (5) The election to continue Company upon the death, retirement, resignation, expulsion, bankruptcy or dissolution of a Unit Holder;
  - (6) The correction of any erroneous statement in this Agreement and/or the Articles of Organization; and
  - (7) Any agreements or certificates required to admit additional Members into Company.

Without limitation, this power of attorney shall include amendment of the Articles of Organization and this Agreement to reflect:

- (1) A change in the name or address of Company or its resident agent;
- (2) The correction or clarification of an incorrect or erroneous statement in this Agreement or the Articles of Organization *(or any amendment of either or both of them)*; and
- (3) The amendment of this Agreement and/or the Articles of Organization where the effect of such amendment does not actually or potentially materially adversely affect the right of the Members.

Provided, however, that Manager in Manager's capacity as said attorney-in-fact shall only take actions and execute documents in accordance with the provisions of this Agreement and shall not take any action for a Unit Holder which would in any way increase the liability of a Unit Holder beyond the liability set forth in this Agreement or diminish the rights of a Member hereunder.

12.01(b) It is expressly acknowledged and agreed by each Unit Holder that this power of attorney is coupled with an interest and that it shall survive such Unit Holder's death or incapacity *(to the extent permitted by law)* and the sale, assignment or transfer by a Unit Holder of all or any part of such Unit Holder's Unit(s).

## REGULATION 13 GENERAL PROVISIONS

**13.01 Notices.** Except as otherwise set forth in this Agreement, any notice, consent, approval, demand, report or other communication required or permitted to be given, made or provided for under this Agreement shall be in writing and deemed to be fully given by its delivery personally or by its being sent by telefacsimile or comparable electronic system, sent by registered mail or certified mail, return receipt requested, or its being sent by national courier (a) with respect to Company, to the principal place of business of Company and/or (b) with respect to Unit Holders, to the addresses set forth in Schedule A, or to such other address or such other Person as any party hereto shall hereafter specify by written notice to the other parties hereto. Any notice given by telefacsimile or comparable electronic system shall be effective one (1) Business Day after transmission. Any notice given by mail shall be effective three (3) Business Days after deposit in the mail. Any notice given by national courier shall be effective upon the Business Day after the specific delivery time requested. Any notice given by personal delivery shall be effective one (1) Business Day after delivery.

**13.02 Captions.** All "Regulation" captions in this Agreement are for convenience only. They shall not be deemed part of this Agreement and in no way define, limit, extend or describe the scope or intent of any provisions hereof. Except as specifically provided otherwise, references to "Regulations" are to Regulations of this Agreement.

**13.03 Pronouns and Plurals.** Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

**13.04 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assignees.

**13.05 Integration.** This Agreement, including the Schedules attached hereto and hereby incorporated herein, constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

**13.06 Waiver.** No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, duty, agreement or condition.

**13.07 Counterparts; Facsimile Signatures.** This Agreement may be executed in counterparts, all of which together shall constitute an agreement binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart. Each party shall become bound by this Agreement immediately upon affixing such party's signature hereto, independently of the signature of any other party. Facsimile signatures of the parties hereto shall be binding.

**13.08 Applicable Law; Venue.** This Agreement shall be construed in accordance with and governed by the laws of the State of Kansas, without regard to its principles of conflict of laws. Any legal action brought to enforce or construe this Agreement shall be brought in the courts located in Harvey County, Kansas, and the parties hereby agree to the jurisdiction of such courts and agree that they will not invoke the doctrine of *forum non conveniens* or other similar defenses.

**13.09 Invalidity of Provisions.** If any provision of this Agreement is or becomes invalid, illegal, or unenforceable in any respect, and if the rights and obligations of the parties to this Agreement will not be materially and adversely affected thereby *(a)* such provision will be fully severable; *(b)* this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; *(c)* the remaining provisions of this Agreement will remain in full force and effect and not be affected by the illegal, invalid, or unenforceable provision or by its severance herefrom; and *(d)* in lieu of such illegal, invalid, or unenforceable provision there shall be added automatically as a part of this Agreement a legal, valid, and enforceable provision as similar in terms to such illegal, invalid, or unenforceable provisions as is possible.

**13.10 Limitation of Liability.** Anything herein to the contrary notwithstanding, except as otherwise expressly agreed to in writing, a Unit Holder shall not be personally liable for any debts, liabilities, or obligations of Company, whether to Company, to any of the other Unit Holders, or the creditors of Company, beyond the Capital Account of Unit Holder, together with Unit Holder's share of the assets and undistributed profits of Company.

**13.11 Consent of Spouses.** Unless a Member, the spouse of each Unit Holder shall consent to this Agreement by affixing his or her signature hereto. By consenting hereto, this Agreement shall become binding upon said spouse, his or her transferees, purchasers, heirs, personal representatives, successors, permitted assigns, trustees, beneficiaries, and, by consent hereto, each such spouse assumes the benefits and burdens of the terms of this Agreement.

**13.12 Further Assurance.** Each Unit Holder agrees that such Unit Holder will, from time-to-time, as may

reasonably be requested by Manager, execute, acknowledge, obtain, and deliver such documents, bills of sale, assignments, consents, and other instruments as may be required in order to complete and effect the transactions contemplated by this Agreement.

**13.13 Mutual Drafting.** The parties have participated jointly in the negotiation and drafting of this Agreement. In the event of an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of the provisions of this Agreement.

**13.14 No Separate Agreements.** No Member may enter into separate subscription agreements, buy-sell agreements or other similar agreements with respect to the transfer of Units, agreements among Members reallocating obligations to make additional capital contributions to Company, agreements relative to the withdrawal or expulsion of a Member, agreements relative to the dissolution or liquidation of Company, and other similar matters.

**IN WITNESS WHEREOF**, the parties hereto have executed this Operating Agreement of ExecHangar™ ADS LC as of the date first above written.

COMPANY  
ExecHangar™ ADS LC

MEMBERS

By: \_\_\_\_\_  
Daniel L. Claassen, *Manager*

\_\_\_\_\_  
Signature of Member

\_\_\_\_\_  
Printed Name of Member

# SCHEDULE A

## Unit Holders

<i>Class</i>	<i>Name</i>	<i>Number of Units</i>	<i>Sharing Ratio</i>	<i>Capital Contribution</i>	<i>Address/Contact Information</i>
A	CoVentures™ ADS LC	100	100%	\$1	8811 South Kansas Road Sedgwick KS 67135 phone 316 282 0430
B					

## MANAGEMENT AGREEMENT ExecHangar™ ADS LC

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between ExecHangar™ ADS LC ("*Company*") and CoVentures ADS LC ("*Project Manager*").

### SECTION 1 CONTRACT

Company does hereby contract Project Manager and Project Manager hereby accepts contract with Company upon the terms and conditions hereinafter set forth.

### SECTION 2 DUTIES

Project Manager shall serve as operator of the fractional ownership aircraft hangar located on Addison Airport in Dallas County, Texas, ("*Premises*") and shall do and perform all acts and services necessary to carry out the duties necessary for the operation of the Premises. The Project Manager shall devote the necessary time, attention, and energy to the business of the Company that may be required from time to time.

### SECTION 3 COMPENSATION FOR MANAGEMENT SERVICES

During the term of this agreement, Company agrees to pay Project Manager a fee 5¢ per square foot of Project space per month plus travel expenses. Such compensation shall increase five percent (5%) annually. Any change in compensation shall have no effect on any other provision of this Agreement.

### SECTION 4 RULES AND REGULATIONS

Project Manager shall comply at all times with all rules, regulations and policies made by Company for the management of the Premises or regarding the subject matter of this Agreement.

### SECTION 5 TERMINATION

This Agreement may be terminated at any time by the Project Manager upon 15-days written notice to the Company.

The Project Manager shall remain in office with the full authority until replaced. Any replacement of the Project Manager as represented herein, is not permitted unless the Project Manager fails to reasonably perform its duties and responsibilities as Project Manager to the Company as described herein and such failure is not corrected within 30 days of notification of such failure by the Company, or representative thereof, to the Project Manager.

## SECTION 6 ENTIRE AGREEMENT

This Agreement contains the entire understanding among the parties and supersedes any prior understandings between them regarding the subject matter contained herein. There are no representations, agreements, or understandings, oral or written, between or among the parties relating to the subject matter hereof which are not fully expressed herein.

## SECTION 7 PROJECT MANAGER'S REPRESENTATION

Project Manager represents and warrants that it is free to enter into this Agreement and not restricted in any way from performing under this Agreement.

## SECTION 8 SEVERABILITY

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but, if any provision of this Agreement shall be invalid or prohibited under such applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the provisions of this Agreement.

## SECTION 9 NOTICES

Any notices, or other communication required or desired to be given or made under the terms of this Agreement shall be in writing and personally served or served by registered or certified mail, deposited in the United States mail with postage thereon fully prepaid and addressed to the parties so to be served at the address of the parties. Any notice or other communication shall be deemed given or made on the day deposited in the mail.

## SECTION 10 INDEMNIFICATION

To the extent permitted by law, the Company will indemnify the Project Manager against liability or related expenses *(including attorney's fees)* incurred in dealings with third parties, if the conduct of the Project Manager is consistent with the standards as described in the Company's documents.

## SECTION 11 CAPTION

Any titles or captions of sections or paragraphs contained in this Agreement are solely for convenience of the parties and are not a part of and are not intended to govern, limit or aid in the construction of



any term or provisions of this Agreement.

**S**ECTION 12  
GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas.

IN WITNESS WHEREOF, the undersigned have executed this agreement as of the date first written above.

Company: ExecHangar™ ADS LC

Project Manager: CoVentures™ ADS LC

\_\_\_\_\_  
Daniel L. Claassen, *Manager*

\_\_\_\_\_  
Daniel L. Claassen, *Manager*

**ASSIGNMENT OF LC COMPANY INTEREST**  
ExecHangar™ ADS LC

This Assignment of LC Company Interest, executed this \_\_\_\_\_ day of \_\_\_\_\_, 2009, is by and between ExecHangar™ ADS LC ("*Company*") and \_\_\_\_\_ ("*Owner*").

WITNESSETH, that Owner, for good consideration and for the sum of \$1, the receipt whereof is hereby acknowledged by Company and Owner, does hereby remise, release and quitclaim unto Company forever, all the rights, title, interest in and claim which Owner has in and to Company and appurtenances thereto:

This Assignment of LC Company Interest is RESTRICTED and may only be implemented, acknowledged, utilized and/or filed if the Owner is past due in paying amounts owed Company. Such amounts must be past due and unpaid for a period of thirty (30) days and includes amounts owed for development costs and monthly assessments as described in the Prospectus.

THIS AGREEMENT ENTERED INTO AS OF THE DAY AND YEAR FIRST WRITTEN ABOVE.

Company: ExecHangar™ ADS LC

\_\_\_\_\_  
Daniel L. Claassen, *Manager*

## FUEL SUPPLY CONTRACT ExecHangar™ ADS LC

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between ExecHangar™ ADS LC ("*Company*") and CoVentures™ ADS LC ("*Supplier*").

### SECTION 1 CONTRACT

Company does hereby contract Supplier and Supplier hereby accepts contract with Company upon the terms and conditions hereinafter set forth.

### SECTION 2 DUTIES

Company shall purchase from Supplier any and all refined fuels consumed by Company and/or its Owners at its facility in Addison, Texas and Supplier shall provide Company with such fuels on an as-needed basis. Fuels are to be delivered to Company's place of business and deposited in Company's tanks or at a location designated by Company.

### SECTION 3 COMPENSATION FOR SERVICES

During the term of this agreement, Company agrees to pay Supplier for such product and services within 15 days of billing. The cost of product is to include the wholesale price of the product, applicable taxes, any processing or delivery expenses plus 2½¢ per gallon. Should payment for product as described herein be billed directly to users (*owners of the Company*), Company is to guarantee the payment of such billings.

### SECTION 4 LICENSES AND INSURANCE

Any delivery transport accessing Company's property is to be fully licensed and insured according to the federal, state and local guidelines.

### SECTION 5 TERMINATION

This Agreement shall remain in effect until terminated. Such Agreement may be terminated at any time by the Supplier upon 15 days written notice to Company.

Termination of the Supplier by Company is not permitted unless the Supplier fails to reasonably perform its duties and responsibilities as described herein and such failure is not corrected within 30 days of notification of such failure by the Company to Supplier, or representative thereof.

## SECTION 6 ENTIRE AGREEMENT

This Agreement contains the entire understanding among the parties and supersedes any prior understandings between them regarding the subject matter contained herein. There are no representations, agreements, or understandings, oral or written, between or among the parties relating to the subject matter hereof which are not fully expressed herein.

## SECTION 7 SUPPLIER'S REPRESENTATION

Supplier represents and warrants that it is free to enter into this Agreement and not restricted in any way from performing under this Agreement.

## SECTION 8 SEVERABILITY

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but, if any provision of this Agreement shall be invalid or prohibited under such applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the provisions of this Agreement.

## SECTION 9 NOTICES

Any notices, or other communication required or desired to be given or made under the terms of this Agreement shall be in writing and personally served or served by registered or certified mail, deposited in the United States mail with postage thereon fully prepaid and addressed to the parties so to be served at the addresses specified by the parties. Any notice or other communication shall be deemed given or made on the day deposited in the mail.

## SECTION 10 INDEMNIFICATION

To the extent permitted by law, the Company will indemnify the Project Manager against liability or related expenses *(including attorney's fees)* incurred in dealings with third parties, if the conduct of the Project Manager is consistent with the standards as described in the Company's documents.

## SECTION 11 CAPTION

Any titles or captions of sections or paragraphs contained in this Agreement are solely for convenience of the parties and are not a part of and are not intended to govern, limit or aid in the construction of

any term or provisions of this Agreement.

**S**ECTION 12  
GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas.

IN WITNESS WHEREOF, the undersigned have executed this agreement as of the date first written above.

Company: ExecHangar™ ADS LC

\_\_\_\_\_  
Daniel L. Claassen, *Manager*

SUPPLIER: CoVentures™ ADS LC

\_\_\_\_\_  
Daniel L. Claassen, *Manager*

# Ownership Certificate



Certificate # \_\_\_\_\_

This Ownership Certificate is issued to \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 2009, and represents \_\_\_\_\_ Class B Membership Unit(s) of the Sixty Nine Thousand Six Hundred Ninety-Six (69,696) authorized ExecHangar™ ADS LC Membership Units.

\_\_\_\_\_

\_\_\_\_\_  
Daniel L. Claassen, *Manager*

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY STATE. THEY MAY NOT BE SOLD, OFFERED FOR SALE, TRANSFERRED, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT AS TO THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND ANY APPLICABLE STATE SECURITIES LAWS, OR COMPANY SHALL HAVE BEEN FURNISHED WITH AN OPINION OF COUNSEL, SATISFACTORY TO COUNSEL FOR COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER ANY SUCH SECURITIES LAWS. THE TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO SUCH RESTRICTIONS UPON TRANSFER OF THE SAME AND ANY RIGHT OF FIRST REFUSAL AS MAY BE PROVIDED IN COMPANY'S THEN-CURRENT ARTICLES OF ORGANIZATION AND/OR THEN-CURRENT OPERATING AGREEMENT.



## DESIGNATION OF SPACE ExecHangar™ ADS LC

Company hereby assigns \_\_\_\_\_ a Member owning \_\_\_\_\_ Class B Membership Units (*including hangar space and office area*) of the Project located on Addison Airport, Addison, Texas, the space defined below. Such Member hereby has exclusive rights to occupy and utilize such hangar and/or office space for Member's uses in accordance with the terms of the Company's Operating Agreement and the term of the Ground Lease Agreement between the Company and Town of Addison, Texas, dated the 14<sup>th</sup> day of November, 2007.

Such assigned space is defined below and referenced in the Site Plan (*see attached*).

Hangar # (112,000 sq ft each)	Assigned Sq Ft	Office # (384 sq ft each)						Assigned Sq Ft
		A1	A2	A3	A4			
Hangar #A		A1	A2	A3	A4			
Hangar #B		B1	B2	B3	B4	B5	B6	
Hangar #C		C1	C2	C3	C4	C5	C6	
Hangar #D		D1	D2	D3	D4	D5	D6	

Company agrees that as long as Member is not in breach of the terms of the Company's Operating Agreement or the terms of the Ground Lease Agreement between the Company and Town of Addison, Texas, dated the 14<sup>th</sup> day of November, 2007, and so long as Member is not delinquent in payment of any amounts due to Company, Member shall have the exclusive right to the use of Said Building and Office(s) as represented herein.

Member hereby accepts the designation of the said building and office(s) for Members use in accordance with the terms of the Company's Operating Agreement and the terms of the Ground Lease Agreement between the Company and Town of Addison, Texas, dated the 14<sup>th</sup> day of November, 2007.

The foregoing designation is hereby accepted by the Company Manager and Member of ExecHangar™ ADS LC on this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

Manager: ExecHangar™ ADS LC

Member: ExecHangar™ ADS LC

\_\_\_\_\_  
Daniel L. Claassen, *Manager*

\_\_\_\_\_  
\_\_\_\_\_, *Member*



## SUBSCRIPTION AGREEMENT ExecHangar™ ADS LC

### INVESTMENT

I *(We)* desire to purchase Class B Membership Units in the Company as follows:

Hangar Units	Office Units	Total Units	Total Investment \$
--------------	--------------	-------------	------------------------

Make checks payable to CoVentures™ ADS LC.

### TYPE OF REGISTRATION *(see instructions for registration requirements)*

	Buyer	Co-Buyer
Company <i>(or)</i> Name		
Address		
Tax ID <i>(or)</i> Social Security #		
Phone #		

### SIGNATURES

The undersigned has the authority to enter into this Subscription Agreement on behalf of the person/s entity represented above. I *(We)* certify under penalty of perjury that this is *(these are)* my *(our)* correct Social Security number/s or Tax Identification number/s. I *(We)* certify that in consideration of the Company's issuing an interest in the Company that one or more of the statements, represented on the reverse side, are true and correct. I *(We)* also agree to furnish any additional information that the Company deems necessary to verify the information represented herein. I *(We)* affirm that I *(we)* have received and understand the Company prospectus dated the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

Signature of Subscriber *(s)*:

\_\_\_\_\_

Owner

\_\_\_\_\_

Co-Owner

2-Part Form  
*(please complete the reverse side of this Subscription Agreement)*

I am applying for the purchase of Class B Units in the Company as described in the Prospectus *(as amended or supplemented)*. I agree that if this subscription is accepted, it will be held, together with the accompanying payment, on the terms described in the Prospectus and that, if admitted, I will be bound by the terms and conditions of the Operating Agreement of the Limited Liability Company, the form of which is included in the Prospectus.

The above signed represent and warrant to Company that the statements selected below are true and correct.

- please select all that apply -

- Individual** with a net worth in excess of \$1,000,000. My net worth equity consists of personal property and real estate which includes my principal residence, cash, short-term investment, stock and securities. Equity in personal property and real estate is based on the fair market value of such property less debt securing such property. *(or)* I reasonably expect my income to be in excess of \$200,000 this year, and I have had an individual income in excess of \$200,000 in each of the last two years including foreign income, tax-exempt income and the full amount of capital gains and losses but excluding any income of my spouse or other family members and any unrealized capital appreciation.
- Individual *(including spouse)*** with a net worth in excess of \$1,000,000. Our net worth equity consists of personal property and real estate which includes our principal residence, cash, short-term investment, stock and securities. Equity in personal property and real estate is based on the fair market value of such property less debt securing such property. We reasonably expect our joint income to be in excess of \$300,000 this year and we have had joint income in excess of \$300,000 in each of the last two years including foreign income, tax-exempt income and the full amount of capital gains and losses but excluding any income for our family members and any unrealized capital appreciation.
- Company, Corporation, Limited Liability Company, Bank, Savings and Loan Association, Credit Union, Insurance Company, Registered Investment Company, Registered Business Development Company, Licensed Small Business Investment Company or an Employee Benefit Plan** maintained by the state, whose total assets exceed \$5,000,000.
- Organization** within the meaning of Section 501(c)(3) of the Internal Revenue Code, **Massachusetts, or similar Business Trust or Partnership** that was not formed for the specific purpose of acquiring the Class B Membership Units of the Company and that has total assets in excess of \$5,000,000.
- Employee Benefit Plan** within the meaning of Title 1 of ERISA whose plan fiduciary is either a bank, insurance company or registered investment advisor or whose total assets exceed \$5,000,000.
- Private Business Development Company** as defined in Section 202(a)(22) of the Investment Advisors Act of 1940.
- Trust** with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring Class B Units of the Company, whose purchase is directed by a sophisticated person *(a person who either alone or with his or her purchaser representative(s) has such knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of the prospective investment)*.
- Self-Directed Employee Benefit Plan** for which all persons making investment decisions are "accredited investors" within one or more of the categories described above.
- Entity** in which all of the equity owners are "accredited investors" within one or more of the categories described above.

## COMPANY ACCEPTANCE

*(to be completed by the Company Manager)*

The foregoing subscription accepted by the ExecHangar™ ADS on this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

Space Assignment *(optional)*: Hangar # \_\_\_\_\_, Office # \_\_\_\_\_ *(see attached Site Plan)*.

Company: ExecHangar™ ADS LC

\_\_\_\_\_  
Daniel L. Claassen, *Manager*

MEMBER'S RIGHTS, RESPONSIBILITIES AND PRIVILEGES  
ExecHangar™ ADS LC

Company to provide members ...

- ability to purchase hangar and office space, as available.
- goods and services *(including fuel)* at cost.
- secure premises.
- internet viewing of building cameras *(interior and exterior)*.
- aircraft ground support equipment.
- reception area and restrooms.
- 24-hour access to Project including equipment and employees.
- ability to utilize hangar space for vehicle storage when aircraft is in use.
- annual financial reports *(K's)*.
- unrestricted resale of Member Units *(ownership position)*.
- liability protection *(Limited Liability Company)*.

Members are responsible for ...

- purchasing hangar space that aircraft will occupy with one *(1)* Unit equal to one *(1)* square foot.
- purchasing office space as needed with one *(1)* office equal to three hundred eight four *(384)* square feet *(16' x 24')*.
- personal property stored on premises.
- their portion of Company expenses.
- maintaining a positive cash balance on account with Company.
- notifying on-site employees at least two *(2)* hours prior to requested action/services.
- restricting access to premises of any invitees without direct supervision of Member.
- using extreme caution when operating in the vicinity of other Owner's equipment.
- notifying Company Manager immediately of any grievance regarding on-site employee.
- surrender Units owned and vacate Project upon default of payments due Company.

Members are restricted from ...

- mistreating on-site employees.
- bring flammables, explosives or any inherently dangerous substance on premises.
- running equipment inside hangar.
- conducting illegal activities on the premises.
- dominating time of on-site employees.
- using Company equipment for any purpose other than to support Member's aircraft.

## **Council Agenda Item:#R9**

### **SUMMARY:**

Presentation, discussion and consideration of Non-Exclusive Landside Ingress/Egress Easement for the Benefit of PlaneSmart! Properties, LLC

### **BACKGROUND:**

The Town of Addison consented to the sale and assignment of the Victory Jet, Inc. ground lease to PlaneSmart! Properties, LLC (formally the Henley property) last month. In the course of finalizing the transactions, the title company concluded that although the lack of a bona-fide easement to the ground lease did not create an exception to title, they are not able to insure access to the demised premises under their policy. PlaneSmart! and their lender asked if the Town would consider granting such an easement.

### **RECOMMENDATION:**

Staff and Airport Management recommend the Town give its consent and authorize the City Manager to execute the proposed Easement Agreement on behalf of the Town of Addison. The City Attorney has reviewed the Agreement and find it acceptable for the Town's purpose



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

**- MEMORANDUM -**

To: Mark Acevedo  
From: Bill Dyer  
CC: Joel Jenkinson  
Date: August 14, 2009  
Re: Requested Consideration and Consent for a Proposed Non-Exclusive Landside Ingress/Egress Easement for the Benefit of PlaneSmart! Properties, LLC

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PlaneSmart Properties, LLC is requesting the Town of Addison to consider and consent to the creation and execution of a non-exclusive landside easement for the purpose of vehicle and pedestrian ingress and egress from Addison Road to the PlaneSmart! ground lease demised premises to be substantially in the form as given in Exhibit "A" attached hereto.

Airport Management has reviewed the request and recommends the Town to consent to the request and authorize the City Manager to execute the proposed easement on behalf of the Town of Addison. The City Attorney has reviewed the document and finds it is acceptable for the Town's purpose.

**Background Information:** The Town of Addison consented to the sale and assignment of the Victory Jet, Inc. ground lease to PlaneSmart! Properties, LLC (formally the Henley property) as recent as last month. In the course of finalizing the transactions, the title company concluded that although the lack of a bona-fide easement to the ground lease did not create an exception to title, they are not able to insure access to the demised premises under their policy. PlaneSmart! and their lender asked if the Town would consider granting such an easement.

**Recommendation and Conclusion:** Airport Management has considered PlaneSmart's request and recommend the Town give its consent and authorize the City Manager to execute the proposed Easement Agreement on behalf of the Town of Addison. The City Attorney has reviewed the Agreement and find it acceptable for the Town's purpose.

**Exhibit "A"**

Proposed Easement Agreement

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS       §

**EASEMENT AGREEMENT**

This Easement Agreement ("Agreement") is made this the \_\_\_\_ day of August, 2009 (the "Effective Date") by and between the Town of Addison, Texas ("Grantor") and PlaneSmart! Properties, LLC, a Texas limited liability company ("Grantee"), whose address is 15841 Addison Road, Addison, Texas 75001.

**WITNESSETH:**

**WHEREAS**, Grantor is the owner of the Addison Airport (the "Airport"), which Airport is managed and operated by Washington Staubach Addison Airport Venture ("WSAAV"; WSAAV and any successor entity or entities thereto which may serve as an operator or manager of the Airport or any part or function thereof being, whether one or more, the "Airport Manager"); and

**WHEREAS**, Grantee, by way of assignment as reflected in that Memorandum of Assignment and Amendment of Ground Lease and Hangar Lease filed as a matter of public record as Instrument #200900232052 in the Official Public Records of Dallas County, Texas, is as of the Effective Date the tenant under a Ground Lease dated April 1, 1978 by and between the Grantor and Addison Airport of Texas, Inc., as landlord, and Charles E. Wagley as the original tenant, a true and correct copy of which Ground Lease, together with all amendments thereto (the "Ground Lease") is on file in the office of the Airport Manager;

**WHEREAS**, pursuant to the Ground Lease Grantee leases from Grantor certain property located within the Airport and described in the Ground Lease and in Exhibit A attached hereto and incorporated herein and comprising approximately 1.309 acres of land (the "Demised Premises"); and

**WHEREAS**, while Grantee and its predecessors in interest under the Ground Lease have had access to the Demised Premises since the inception of the Ground Lease, Grantee has requested that Grantor specifically delineate an easement area (the "Easement Area," the description of which is set forth in Exhibit B attached hereto and incorporated herein) to provide pedestrian and motor vehicle (other than aircraft) access to the Demised Premises.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee agree as follows:

- 1. Incorporation of Premises.** The above and foregoing premises are true and correct and are incorporated herein and made a part of this Agreement.
- 2. Grant of Easement.** Subject to the terms and conditions set forth in this Agreement, Grantor hereby grants to Grantee a non-exclusive and limited easement across the surface of the Easement Area for the Easement Purpose (hereinafter specified) and for the benefit

of the Demised Premises, subject, however, to any and all liens, easements, rights-of-way, restrictions, reservations, covenants, conditions, leases, licenses, agreements, instruments, and other matters affecting the Easement Property, whether of record or not and whether or not visible or apparent, and all laws, constitutions, statutes, codes, ordinances, rules, regulations, standards, policies, plans, directives, orders, grant agreements, grant assurances, any grant, loan, or agreement under Section 22.055 of the Tex. Transp. Code, and interpretations of the foregoing, of or by any federal, state or local governmental or quasi-governmental entity, agency, body, commission, council, and/or authority (including the Federal Aviation Administration (“FAA”), the Texas Department of Transportation (“TxDOT”), and the Town of Addison, Texas), and including the Charter of the Town of Addison and all laws, ordinances, regulations, standards, policies, orders, directives, grant assurances and grant agreements affecting the Airport and/or the Easement Area (the “Easement”). The Easement is appurtenant to the Demised Premises for the benefit of Grantee, and shall be used exclusively and solely for the Easement Purpose.

**3. Purpose and Terms of Easement: Relocation of Easement.**

(a) The Easement and Easement Area may be used by Grantee solely for the purpose of providing pedestrian and motor vehicular (excluding aircraft) ingress and egress between Addison Road, a nearby public street located adjacent to the Airport, and the Demised Premises (the “Easement Purpose”).

(b) Notwithstanding any other provision of this Agreement, Grantor has and reserves the right to modify, amend, change, adjust, move, and/or relocate the Easement Area in its sole and absolute discretion (and, accordingly, to modify, amend, change, adjust, move, and or relocate the point or location of access to a public street or public right-of-way from the Demised Premises). In the event that Grantor determines or elects to make any such modification, amendment, change, adjustment, move or relocation, Grantee agrees to and shall execute any and all documents or instruments requested by Grantor in connection with the same, including an amendment to this Agreement. In the event Grantee fails or refuses to execute any such document or instrument, Grantor may terminate this Agreement.

**4. Duration of Easement; Termination.**

(a) Subject to the terms and conditions hereof, this Agreement shall remain in effect for such period of time as the Ground Lease remains in effect. Upon the expiration or termination of the Ground Lease, this Agreement and the Easement shall immediately terminate, without notice to Grantee. In addition to and notwithstanding the foregoing, this Agreement shall terminate (i) when the purpose of the Easement as described herein ceases to exist, is abandoned or released by Grantee, or becomes impossible of performance, or (ii) upon notice of such termination by Grantor to Grantee, where Grantee has failed to comply with any of the terms and conditions of this Agreement.

(b) Without limiting the foregoing, in the event that Grantee shall have the right to an alternative means of ingress and egress to the Demised Premises by either a publicly dedicated easement or right-of-way or a private easement, then this Agreement shall automatically terminate without further action by either party hereto.



(c) Upon the request of Grantor, after the expiration or termination of the Easement and this Agreement, Grantee shall execute and deliver to Grantor a release or termination of the Easement and/or this Agreement, in recordable form reasonably acceptable to Grantor, and this obligation shall survive such expiration or termination.

**5. Non-exclusiveness of Easement.** The Easement Area has been used and may, in the Town of Addison's sole discretion, continue to be used as a common area of the Airport. The Easement, rights and privileges granted by this Agreement are non-exclusive, and Grantor has and reserves and retains the right to provide for the use of the Easement Area by such other persons as Grantor in its sole discretion may deem proper.

**6. Assignment.** Grantee shall not, and shall have no power to, assign, transfer, sell, pledge, or otherwise convey this Agreement or any of its rights, duties or obligations under this Agreement without the prior written consent of Grantor.

**7. Maintenance; Improvements.** Subject to the provisions of this Agreement, Grantor will maintain the Easement Area. Furthermore, Grantee shall not cause, permit or allow liens of any kind or nature to be recorded against the Easement Area, or any other property owned by Grantor. Grantee shall not construct, place, locate, or erect any buildings, facilities, or other improvements or any equipment of any kind or nature whatsoever upon or within the Easement Area, or obstruct the Easement Area in any way whatsoever.

**8. Insurance.** During the term hereof, Grantee shall maintain at Grantee's sole cost and expense insurance relating to the Easement Area as follows:

(a) Commercial General Liability insurance against claims for bodily injury, death or property damage or destruction occurring on, in or about the Easement Area, with limits of liability of not less than \$1,000,000.00 for each occurrence, \$1,000,000.00 general aggregate. Coverage must include contractual liability.

(b) Comprehensive automobile liability insurance with limits not less than \$1,000,000 each occurrence combined single limit bodily injury and property damage, including owned, non-owned and hired auto coverage, as applicable.

(c) Grantee 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 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 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) Grantee 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 policies 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, Grantee 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 adjust coverages and limits when deemed necessary and prudent by Landlord.

## **9. GRANTEE INDEMNITY OBLIGATION.**

**Grantee 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, liens, 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 or the Easement Area, 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 Easement Area caused in whole or in part by Grantee or by any of Grantee's owners, directors, shareholders, partners, managers, officers, employees, agents, representatives, engineers, consultants, contractors, subcontractors, Grantees, licensees, invitees, patrons, concessionaires, or any other person or entity for whom Grantee is legally responsible, and their respective owners, directors, shareholders, partners, officers, managers, employees, agents, representatives, engineers, consultants, contractors, subcontractors, Grantees, licensees, invitees, patrons, and concessionaires, or any other person acting by or under the authority or with the permission of Grantee, Grantee's Grantees, or any other person entering the Easement Area under express or implied invitation of Grantee or licensee during the term of this Agreement (individually, including Grantee, a "Grantee Person", and collectively, including Grantee, the "Grantee Persons"), (ii) representations or warranties by Grantee under this Lease, and/or (iii) any act or omission of or by Grantee or any Grantee Person under, in connection with, or related to, this Agreement. **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 OR GROSS 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.** However, Grantee's liability under this clause shall be reduced by that portion of the total amount of the Damages (excluding defense fees and costs) equal to the Addison Person or Addison Persons', or Manager Person or Manager Persons', (as the case may be) proportionate share of the negligence, or conduct that would give rise to strict liability of any kind, that caused the loss. Likewise, Grantee's liability for any Addison Person's or any Manager Person's defense costs and attorneys' fees shall be reduced by that portion of the defense costs and attorneys' fees equal to Addison Person or Addison Persons', or Manager Person or Manager Persons', (as the case may be) proportionate share of the negligence, gross negligence, or conduct that would give rise to strict liability of any kind, that caused the loss.

Grantee shall promptly advise Grantor in writing of any claim or demand against Town of Addison, Texas, any Addison Person, Manager Person, or Grantee or any Grantee Person related to or arising out of Grantee's activities under or in connection with this Agreement and shall see to the investigation and defense of such claim or demand at Grantee'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 Grantee of any of its obligations hereunder.

The provisions of this Paragraph 9 shall survive the expiration or termination of this Agreement.

**10. Rights Reserved.** Grantor hereby reserves the right to make, construct, erect, locate, and place improvements over, across, upon and under, and alterations to, the Easement Area, as Grantor, in its sole and absolute discretion, may elect; provided, however, any such improvements or alterations hereafter made or constructed upon, over, across or under the Easement Area shall not unreasonably interfere with, or unreasonably restrict the use of, the Easement by Grantee. Grantor also retains, reserves, and shall continue to enjoy the use of the surface or subsurface under and air space over the Easement Area for any and all purposes which do not unreasonably interfere with or prevent the reasonable use by Grantee of the Easement for the purposes herein provided and for the duration of said Easement.

**11. Entire Agreement; Choice of Law; Venue.** This Agreement contains the entire agreement of the parties relating to its subject matter. The parties agree that there are no oral agreements, representations or warranties that are not expressly set forth in this Agreement. Any subsequent amendment or modification of or to this Agreement must be in writing and agreed to by both parties, save and except as authorized or provided for herein, including any amendment pursuant to paragraph 3(b) hereinabove regarding the location of the Easement Area, which must be in writing and executed by the Grantor only. This Agreement will be construed under the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. Venue for any action or proceeding under or in connection with this Agreement lies exclusively in Dallas County, Texas.

**12. Waiver of Default.** It is not a waiver of or consent to default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any rights or remedies set forth in this Agreement does not preclude pursuit of other rights or remedies in this Agreement or provided by law, in equity, or otherwise.

**13. Construction.** If any provision in this Agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this Agreement will be construed as if the unenforceable provision had never been a part of the Agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this Agreement are for reference only and are not intended to restrict or define the test of any section. This Agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language. For purposes of this Agreement, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

**14. No Third Party Beneficiaries.** This Agreement is solely for the benefit of the parties hereto and does not and is not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

**15. Laws, Rules, and Regulations.** In connection with Grantee's use of the Easement and the Easement Area, Grantee agrees and obligates itself to abide by, and this Agreement is subject to, all laws, constitutions, statutes, codes, ordinances, rules, regulations, standards, policies, plans, directives, orders, grant agreements, grant assurances, any grant, loan, or agreement under Section 22.055 of the Tex. Transp. Code, and interpretations of the

foregoing, of or by any federal, state or local governmental or quasi-governmental entity, agency, body, commission, council, and/or authority (including the FAA, TxDOT, and the Town of Addison, Texas), and including the Charter of the Town of Addison and all laws, ordinances, regulations, standards, policies, orders, directives, grant assurances and grant agreements affecting the Airport and/or the Easement Area. This Agreement shall be subject to and conform and comply with any existing or future grant agreements, grant assurances, and any grant, loan, or agreement under Section 22.055 of the Tex. Transp. Code, at or regarding the Airport, and is subject to any necessary or required approval by the FAA, the TxDOT, or any other governmental authority.

**16. Notice.** Any notice or instrument to be delivered or given hereunder shall be in writing, addressed as provided hereinafter to the party to whom the notice or instrument is delivered or given, and shall be (i) delivered in person, (ii) sent by United States certified mail, postage prepaid, return receipt requested, or (iii) placed in the custody of Federal Express Corporation or other nationally recognized carrier to be delivered overnight. A notice or an instrument shall be deemed delivered or given: when received if delivered personally; forty-eight (48) hours after deposit if sent by United States certified mail; and twenty-four (24) hours after deposit if sent by Federal Express or other nationally recognized carrier. Addresses are as follows:

To Grantor:

Town of Addison, Texas  
c/o Washington Staubach Addison Airport  
Venture  
16051 Addison Road, #222  
Addison, Texas 75001  
Attn: Real Estate Manager

To Grantee:

\_\_\_\_\_  
\_\_\_\_\_

From time to time either party may designate another address within the 48 contiguous states of the United States of America for purposes of this Agreement by giving the other party not less than ten (10) days advance notice of such change of address in accordance with the provisions hereof.

**17. Time.** Time is of the essence. Unless otherwise specified, all references to "days" mean calendar days. Business days exclude Saturdays, Sundays, and legal public holidays. If the date for performance of any obligation falls on a Saturday, Sunday, or legal public holiday, the date for performance will be the next following regular business day.

**18. Binding Effect.** This Agreement shall bind and inure to the benefit of the respective parties, their personal representatives, successors, and permitted assigns.

IN WITNESS WHEREOF, the undersigned parties execute this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2009

**GRANTOR:**

**GRANTEE:**

**TOWN OF ADDISON, TEXAS**

\_\_\_\_\_

By: \_\_\_\_\_  
Ron Whitehead, City Manager

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

Name (*Print*): \_\_\_\_\_

Its: (*Title*): \_\_\_\_\_

**ACKNOWLEDGMENT**

**STATE OF TEXAS           §**

**COUNTY OF DALLAS       §**

Before me, the undersigned authority, on this day personally appeared Ron Whitehead, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

[SEAL]           Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_  
Notary Public, State of Texas

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

My commission expires: \_\_\_\_\_

**STATE OF TEXAS           §**

**COUNTY OF DALLAS       §**

Before me, the undersigned authority, on this day personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

[SEAL]           Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_  
Notary Public, State of Texas

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

My commission expires: \_\_\_\_\_

# **Exhibit "A"**

## **Survey of Demised Premises**





# **Exhibit "B"**

Description of Easement Area





15841 Addison Road

Airport Parkway

Easement Area

Addison Road

© 2009 Tele Atlas

Google

lat: 32.955629 lon: -96.830258

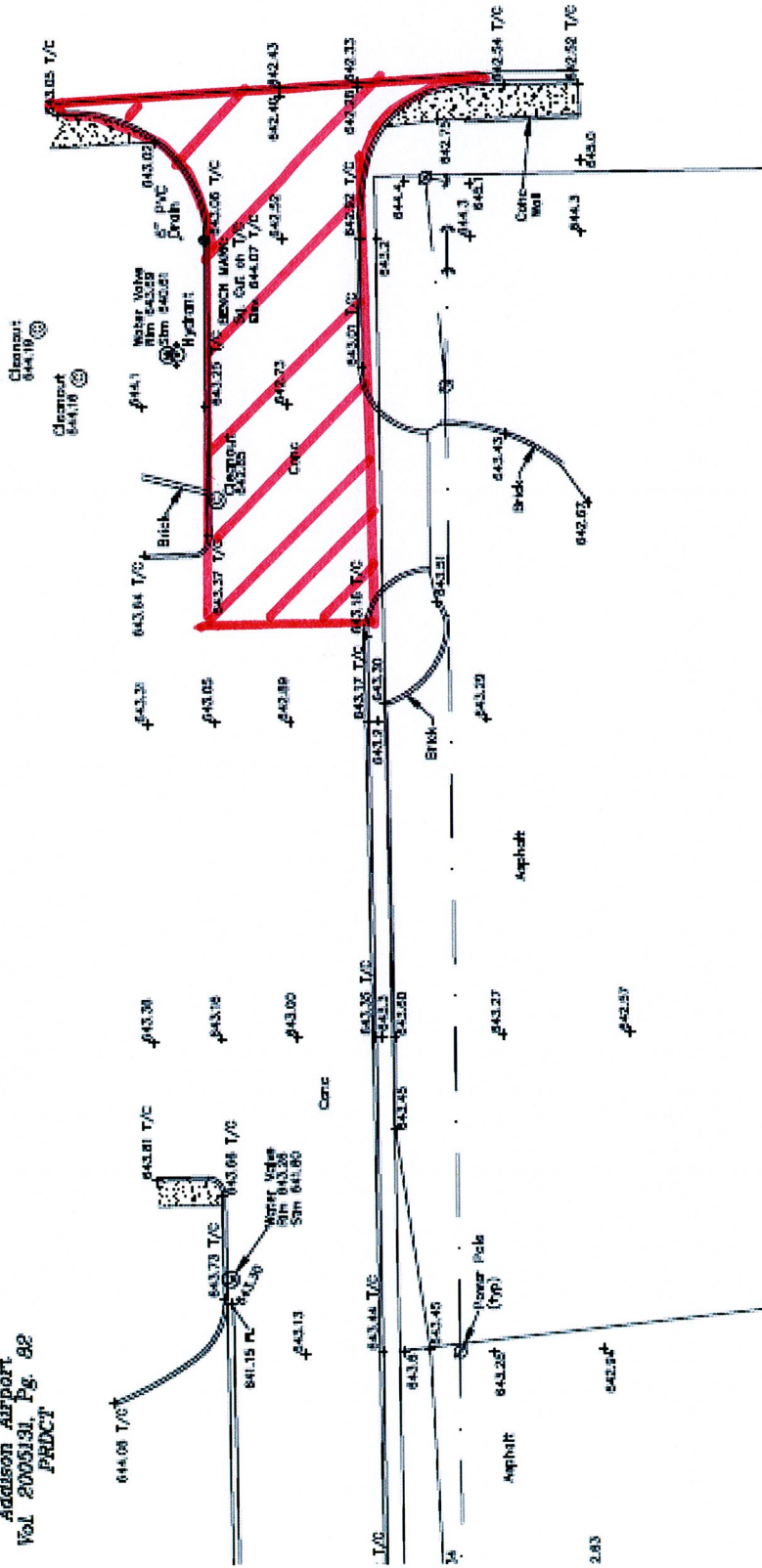
Oct 26, 2007

Eye alt: 544 ft



# Exhibit "B" Proximity of Easement Area

Addison Airport  
Vol 2005131, Pg. 82  
PRDCT

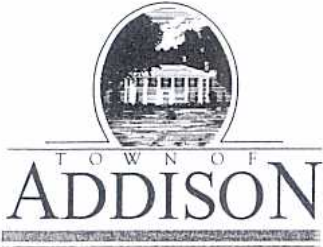


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16801 Westgrove

Post Office Box 9010 Addison, Texas 75001-9010

August 20, 2009

**STAFF REPORT**

**RE:** Case 1585-SUP/Volos Mediterranean Taverna

**LOCATION:** 5000 Belt Line Road, Suite 300

**REQUEST:** Approval of an amendment to an existing Special Use Permit for a restaurant, and an amendment to an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption.

**APPLICANT:** Volos Mediterranean Taverna,  
Represented by Mr. Costa Arabatzis

**DISCUSSION:**

Background. This lease space is located in the Plaza at the Quorum Shopping Center. The original Special Use Permit on the space was originally issued to Baker Bros. Deli through ordinance 004-034, which was approved by the City Council on August 10, 2004. Baker Bros. closed earlier this year.

At this point, Mr. Arabatzis wants to remodel the space to open a Volos Mediterranean Taverna. Mr. Arabatzis owns other Mediterranean restaurants in the Dallas area including a Ziziki's in the Knox-Henderson area and a Ziziki's in Plano in the Lakeside Shopping Center at Preston Road and Spring Creek Parkway.

Proposed Plan. The floor plan shows a 2,938 square foot restaurant. The restaurant proposes a bar with 14 stools, free-standing tables in the middle, and a long bench down the west side of the space that provides seating for additional tables. He is also expanding the kitchen from the original Baker Bros. kitchen by taking in the southeast corner of the space as kitchen area.

Patio. The applicant is planning to tear out the front part of the building and "patio in." Twin Peaks and Dodie's recently adopted the same idea and converted indoor space to outdoor space by removing outside walls. The applicant must convert indoor space to outdoor space because the parking is limited in the center and does not provide for a net addition of square footage for a patio. The applicant plans to increase patio area

within the existing floor plate of the restaurant and also take in a small plaza that is in front of this space. Baker Bros. had approval for a small patio, so parking has been accounted for it, but it Baker Bros. never utilized the space. The plaza is shown on the attached photos. In order to fence in the plaza, the applicant will have to remove a stair that goes down into the plaza. The staff will allow the stair to be removed because there is a handicapped ramp that provides access around the plaza on the public sidewalk.

Parking. Restaurant uses in this center have a parking ratio of one space per 180 square feet. This restaurant and patio will require 17 spaces. The site will provide sufficient parking. However, the shopping center owner should be aware that there is a limit to the amount of restaurant space that can be added to the center.

Landscaping. The landscaping in this center is good condition and is generally well-maintained. Slade Strickland notes that there is a small triangular-shaped bed in the area where the patio will be added, and it, along with the Crape Myrtle tree planted in it, will need to remain.

Food Service Code. The applicant should be advised that the restaurant will be subject to all regulations contained in the Addison Food Service Ordinance.

Signage. The applicant showed standard "tenant" signs on the elevations. The applicant should be aware that signs cannot be approved through this process. All signs for the restaurant must comply with the requirements of the Addison Sign Ordinance.

The applicant should also be aware that the Town has a policy against allowing any exterior signs, which contain the words "taverna", "bar", or any terms, or graphic depictions, which relate to alcoholic beverages on exterior signs for the restaurant.

#### RECOMMENDATION:

Staff recommends approval of the amendment to an existing Special Use Permit for a restaurant, and an amendment to an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, subject to the following conditions:

- the landscaping contained within the proposed patio area shall remain.
- the applicant shall not use any terms, including the term "taverna", or "bar," or any graphic depictions that denote alcoholic beverages in exterior signs.

Respectfully submitted,

  
Carmen Moran  
Director of Development Services



Case 1585-SUP/Volos Mediterranean Taverna  
August 31, 2009

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on August 27, 2009, voted to recommend approval of the amendment to an existing Special Use Permit for a restaurant, and an amendment to an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption, subject to the following conditions:

-the landscaping contained within the proposed patio area shall remain.

The Commission considered an additional condition proposed by the staff which read:

-the applicant shall not use any terms, including the term "taverna", or "bar," or any graphic depictions that denote alcoholic beverages in exterior signs.

However, upon hearing evidence from the applicant that "taverna" meant small restaurant in Greek, and not "tavern" the Commission deleted the condition regarding terms used in exterior signs. The staff has attached a definition from Dictionary.com of both the terms "taverna" and "cantina".

Voting Aye: DeFrancisco, Doherty, Gaines, Hewitt, Wheeler

Voting Nay: none

Absent: Resnik, Wood





taverna

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**ta·ver·na** [tuh-vur-nuh, -vair-; Gk. tah-ver-nah] Show IPA

-noun

a small, unpretentious café or restaurant in Greece.

Origin:

1945-50; < ModGk *tabérna* (pron. *taverna*), MGk, LGk < L. See TAVERN

Dictionary.com Unabridged

Based on the Random House Dictionary. © Random House, Inc. 2009.

Cite This Source | Link To taverna

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**ta-ver-na** (tə-vûr'nə, tǎ-vě'r'nǎ) ?  
n. A café or small restaurant in Greece.

[Modern Greek *taverna*, from Medieval Greek *tabernā*, from Late Greek, from Latin *taberna*; see **tavern**.]

The American Heritage® Dictionary of the English Language, Fourth Edition

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Cite This Source



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cantina

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- cantillon
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**can·ti·na** [kan-tee-nuh; Sp. kahn-tee-nah] [Show IPA](#)  
-noun, plural **-nas** [-nuhz; Sp. -nahs] [Show IPA](#) .  
*Southwestern U.S.*  
a saloon; bar.

**Origin:**  
1835-45, *Americanism*; < Sp < It; see CANTEEN

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**can-ti-na** (kahn-tee'na) [Show IPA](#)  
n. *Southwestern U.S.*  
A bar that serves liquor.  
[Spanish, *canteen*, from Italian, *wine cellar*.]

[Unscramble a synonym of cantina](#)

### Word Origin & History

**cantina**  
"bar room, saloon," 1892, U.S. southwest dialect, from Sp. and It. form of *canteen*.

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AMERICAN DENT**

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NAILS & SPA**

PERMITS  
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WAXER

115-335











## Memorandum

Date: August 18, 2009  
To: Carmen Moran, Director of Development Services  
From: Slade Strickland, Director of Parks and Recreation  
Subject: **Case 1585-SUP/Volos Mediterranean Taverna**

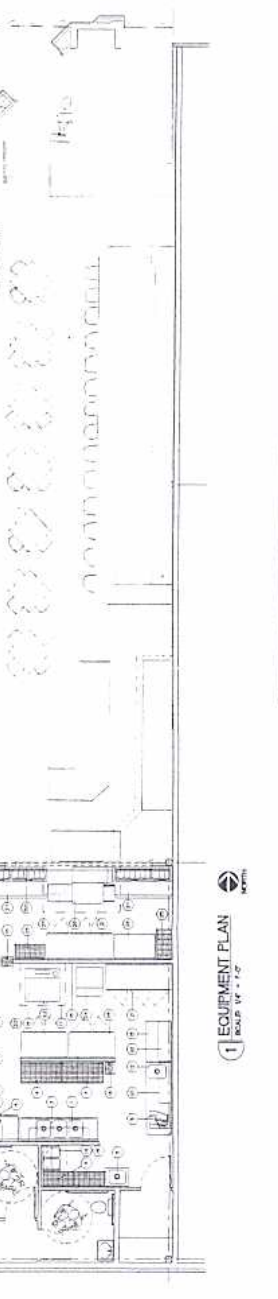
There is a small landscape area where the patio is shown on the proposed plan which will need to remain.

**2** EQUIPMENT SCHEDULE

NO.	DESCRIPTION	QTY	UNIT	MANUFACTURER	MODEL	DATE	REVISION
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**2** EQUIPMENT SCHEDULE

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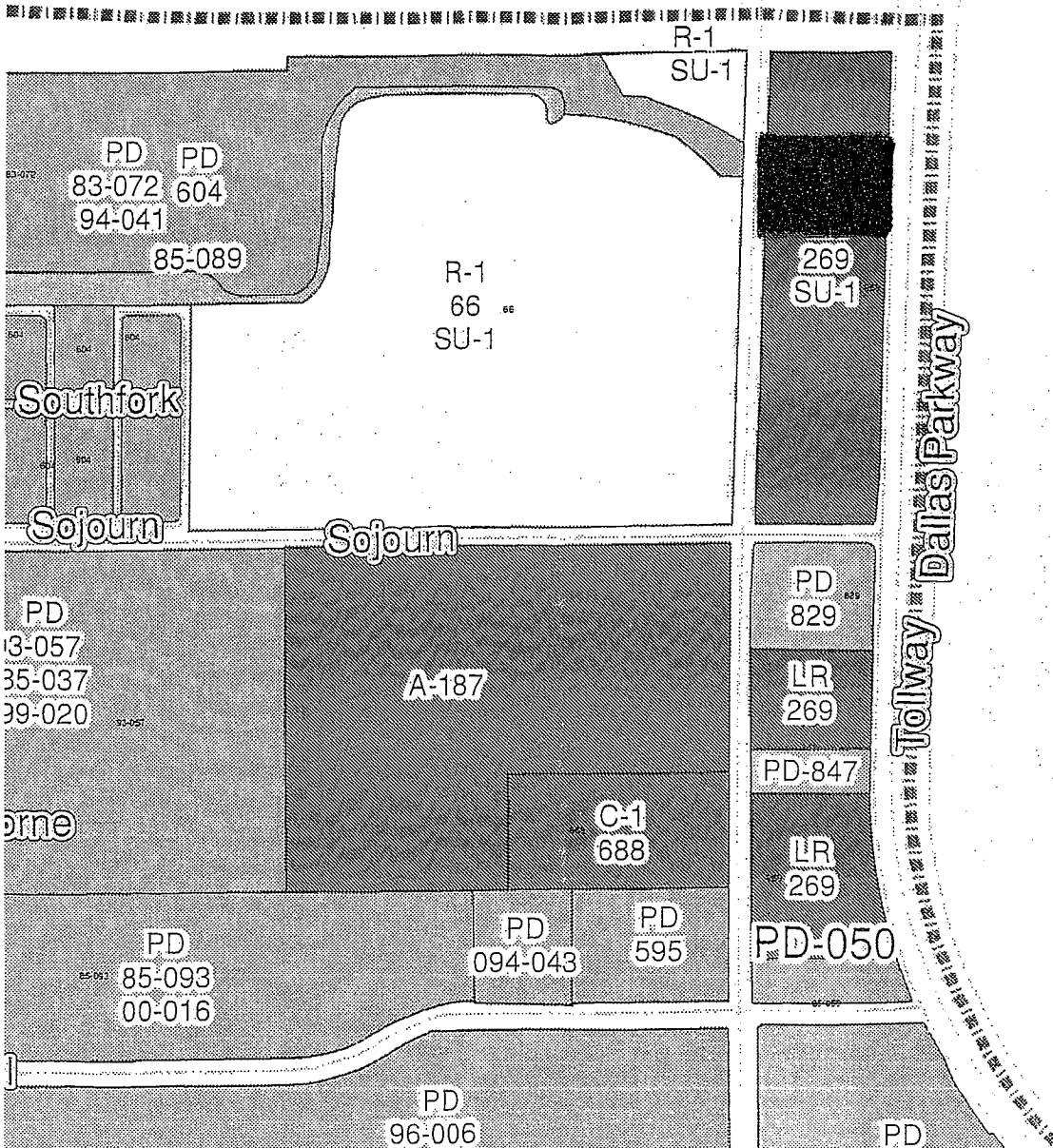
**1** EQUIPMENT PLAN  
SCALE: 1/4" = 1'-0"

**2** GENERAL NOTES

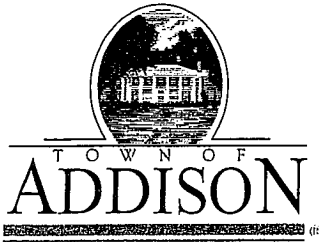
1. ALL EQUIPMENT IS TO BE INSTALLED IN ACCORDANCE WITH THE MANUFACTURER'S RECOMMENDATIONS.
2. ALL EQUIPMENT IS TO BE INSTALLED IN ACCORDANCE WITH THE NATIONAL ELECTRICAL CODE (NEC) AND LOCAL CODES.
3. ALL EQUIPMENT IS TO BE INSTALLED IN ACCORDANCE WITH THE NATIONAL FIRE PROTECTION ASSOCIATION (NFPA) 70B RECOMMENDATIONS.
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11. ALL EQUIPMENT IS TO BE INSTALLED IN ACCORDANCE WITH THE NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH (NIOSH)

# 1584-SUP

**PUBLIC HEARING** Case 1584-SUP/Los Cabos Mexican Grill. Requesting approval of an ordinance amending an existing Special Use Permit for a restaurant and an existing Special Use Permit for the sale of alcoholic beverages for on-premises-consumption-only, located at 17225 Dallas Parkway, on application from Two Rows, Inc, represented by Mr. Mike Brotzman.







DEVELOPMENT SERVICES

(972) 450-2880 Fax: (972) 450-2837

16801 Westgrove

Post Office Box 9010 Addison, Texas 75001-9010

August 20, 2009

STAFF REPORT

RE: Case 1585-SUP/Los Cabos Mexican Grill and Cantina

LOCATION: 17225 Dallas Parkway

REQUEST: Approval of an amendment to an existing Special Use Permit for a restaurant, a an existing Special Use Permit for the sale of alcoholic Beverages for on-premises consumption,

APPLICANT: Two Rows Inc., represented by Mr. Mike Brotzman

DISCUSSION:

Background. This site was originally developed (and still operates) as a Two Rows Restaurant and Brewery. The Special Use Permit for Two Rows was approved by the City Council on November 12, 2002 through Ordinance 003-044. Two Rows also had a Special Use Permit for a brewpub. Two Rows has been operating at this location with a burgers/pizza/sandwich menu and has brewed beer on-site. At this point, the owners would like to remodel the restaurant and convert it to a new concept, a Mexican restaurant to be called Los Cabos Mexican Grill and Cantina.

Proposed Plan. The plans show a 7,966 square foot restaurant with a 1,856 square foot patio (9,822 square feet total). The restaurant has separate dining and bar areas, although food is served in the bar. The expanded patio features a small stage in the southeast corner of the space. The existing wrought-iron fence around the patio will be replaced with an 8-foot tall solid CMU (concrete masonry unit) privacy wall. The new patio will feel more like an outdoor courtyard than the former open patio.

Facade. The facades will retain the existing combination of brick, stone, and EIFS (Engineered Insulating Finish System). The gabled portions of the roof will change from standing-seam metal to clay tile in keeping with the Mexican theme. The windows will be changed out to better match the theme, and the inside will be remodeled to a coastal Mexican theme, including fountains and stone pilasters.

Parking. The restaurant requires one space per 70 square feet of floor area. The restaurant is 9,822 square feet, which requires 140 spaces. The restaurant provides 141 spaces, which is one over the number required.

Landscaping. The Parks Department has reviewed the plans and notes that some landscaping will be removed to expand the patio. A landscape plan will need to be submitted showing the existing landscape percentage, and the proposed area to be removed to make sure the site meets the overall 20 percent landscape requirement.

Signs. The applicant showed signs on the exterior elevations. The applicant should be aware that all signs must be permitted under the requirements of the Addison Sign ordinance, and cannot be approved through this process. The applicant should also be aware that the Town has a policy against the use of any terms, such as "bar", "tavern" or "cantina" or any graphic depictions that denote alcoholic beverages in exterior signs

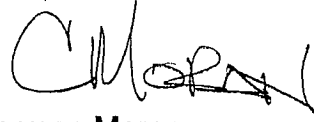
**RECOMMENDATION:**

Staff recommends approval of the request for the amendment to an existing Special Use Permit for a restaurant, a an amendment to an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption, and a Special Use Permit for a brewpub:

-The applicant shall submit a landscape plan showing the existing landscape percentage, and the proposed area to be removed to make sure the site meets the overall 20 percent landscape requirement.

-The applicant/operator shall not use any terms (such as "bar", "cantina" etc.) or graphic depictions which relate to alcoholic beverages in any exterior signs.

Respectfully submitted,



Carmen Moran  
Director of Development Services

## Memorandum

Date: August 18, 2009  
To: Carmen Moran, Director of Development Services  
From: Slade Strickland, Director of Parks and Recreation  
Subject: **Case 1584-SUP/Los Cabos Mexican Grill**

The plans submitted by the applicant shows an outdoor patio that will involve removing some landscaping. A landscape plan will need to be submitted showing the existing landscape percentage, and the proposed area to be removed to make sure the site meets the overall 20 percent landscape requirement.

Case 1585-SUP/Los Cabos Mexican Grill  
August 31, 2009

Commission Findings:

The Addison Planning and Zoning Commission, meeting in regular session on August 27, 2009, voted to recommend approval of the amendment to an existing Special Use Permit for a restaurant and an amendment to an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption, subject to the following conditions:

-The applicant shall submit a landscape plan showing the existing landscape percentage, and the proposed area to be removed to make sure the site meets the overall 20 percent landscape requirement.

-The applicant/operator shall not use any terms (such as "bar", "cantina" etc.) or graphic depictions which relate to alcoholic beverages in any exterior signs.

There was some discussion on case 1585-SUP regarding the use of the term "taverna." The Commission decided to delete the condition prohibiting the use of the term "taverna." There was not a discussion of the term "cantina" during this case. However, the staff has attached the definitions from Dictionary.com for both "taverna" and "cantina."

Voting Aye: DeFrancisco, Doherty, Gaines, Hewitt, Wheeler

Voting Nay: none

Absent: Resnik, Wood

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can·ti·na [kan-tee-nuh; Sp. kah-n-tee-nah] Show IPA

-noun, plural -nas [-nuhz; Sp. -nahs] Show IPA .  
Southwestern U.S.  
a saloon; bar.

Origin:  
1835-45, Americanism; < Sp < It; see CANTEEN



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Nearby Words

- cantillation
- cantillon
- cantily
- cantina**
- cantine
- cantiness
- cantinesses

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Sponsored Result

can·ti·na (kahn-tē'na)   
n. Southwestern U.S.  
A bar that serves liquor.

[Spanish, canteen, from Italian, wine cellar.]

Unscramble a synonym of cantina

Word Origin & History

cantina  
"bar room, saloon," 1892, U.S. southwest dialect, from Sp. and It. form of canteen.

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taverna

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- Opa taverna
- Tyson's galleria
- Marc antony's wife
- Desert passage
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- Pointe orlando

taverna - 2 dictionary results

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Nearby Words

- tavern nuts
- tavern nutses
- tavern table
- taverna**
- taverner
- taverner, john
- tavernless

**ta·ver·na** *tāv*, [tuh-vur-nuh, -vair-; Gk. tah-ver-nah] *!*? Show  
IPA

**-noun**  
a small, unpretentious café or restaurant in Greece.

**Origin:**  
1945-50; < ModGk *tabérna* (pron. *taverna*), MGk, LGk < L. See TAVERN

Dictionary.com Unabridged  
Based on the Random House Dictionary. © Random House, Inc. 2006.  
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Sponsored Result

**ta·ver·na** *tāv*, (tā-vŭr'nā, tā-vĕr'nā) *!*?  
n. A café or small restaurant in Greece.

[Modern Greek *taverna*, from Medieval Greek *tabernā*, from Late Greek, from Latin *taberna*; see *tavern*.]

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**MERITORIOUS EXCEPTION TO THE ADDISON SIGN ORDINANCE  
STAFF REPORT  
ME 2009-6**

Date: August 28, 2009

Location of Request: 17225 Dallas Pkwy

Business: Two Rows Restaurant & Brewery

Ordinance Requirement

Sec. 62-163. Area.

(5) Maximum letter/logo height of attached signs shall not exceed twice the allowable effective area as specified in subsections (1) and (2) of this section. Maximum letter/logo height of attached signs shall be determined by the following schedule:

Sign Height (feet)	Maximum Letter/Logo Height (inches)
0 - 36	16
37 - 48	36
49 - 100	48
101 - 150	60
151 and up	7

a. Letter heights in excess of 72 inches must be approved by the city council.  
b. Not more than 50% of the letters in each individual sign height category may be 25% taller than the specified maximum letter/logo height.

Request

The applicant is requesting:  
1. An attached building sign with an area of approximately 45 sq. ft. and letters 30" in height to be located on the southeast façade.

Variance

The ordinance allows 50% of the letters to be a maximum of 20 inches in height and the remaining 50% a maximum of 16 inches in height.

Two Rows was granted an exception in Aug. 2003 for an attached sign with letters 30" in height on the southeast façade.  
ORD NO. 003-021

#R12

STAFF RECOMMENDATION: The attached building sign will be located approximately 120' from Dallas Pkwy. Therefore due to the setback of the building sign from Dallas Pkwy staff recommends approval of the sign as requested.

STAFF:

*Lynn O. Chandler*  
Lynn Chandler, Building Official

# Addison!

BUILDING INSPECTION DEPARTMENT 16801 Westgrove Dr Addison Texas 75001 972/450-2881 fax: 972/450-2837

## Application for Meritorious Exception to the Town of Addison Sign Ordinance

Application Date: 8-6-09 Filing Fee: \$200.00

Applicant: TWO ROWS ADDISON LP

Address: 17304 PRESTON Rd Suite#: 800

DALLAS TX 75252 Phone#: 214-438-3726  
City State Zip

Fax#: 214-438-3727

Status of Applicant: Owner  Tenant  Agent

Location where exception is requested:  
17225 NORTH DALLAS PKWY, ADDISON, TX 75013

Reasons for Meritorious Exception:  
TO REPLACE EXISTING SIGNAGE WITH SIGNAGE OF THE SAME SIZE & DIMENSION

### YOU MUST SUBMIT THE FOLLOWING:

12 COPIES OF THE PROPOSED SIGN SHOWING:

- |                                   |   |
|-----------------------------------|---|
| 1. Lot Lines                      | 5. Proposed Signs                                     |
| 2. Names of Adjacent Streets      | 6. Sketch of Sign with Scale and Dimensions Indicated |
| 3. Location of Existing Buildings | (8.5 x 11 PLEASE)                                     |
| 4. Existing Signs                 |   |

Date Fees Paid \_\_\_\_\_ Check # \_\_\_\_\_ Receipt # \_\_\_\_\_



213.16 in

# LOS CABOS

30.00 in

SCALE: 1/4" = 1'-0"

**A** LETTER DETAILS (OPTION 1)

(1) SET REQUIRED - MANUFACTURE & INSTALL -  
"LOS CABOS" TO BE FACE-LIT CHANNEL LETTERS -  
PALM TREE TO BE NON-ILLUMINATED F.C.O. GRAPHIC

113.83 in

# LOS CABOS

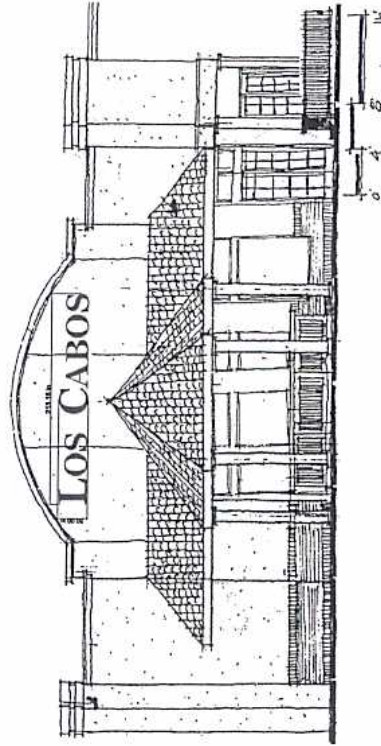
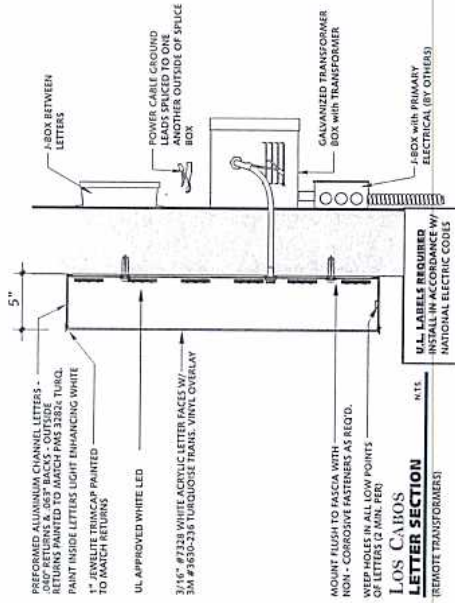
1.88 in

FLAT CUT-OUT ALUMINUM  
BACKGROUND PAINTED WHITE -  
W/ 1ST SURFACE 3M #3630-156  
VIVID GREEN VINYL OVERLAY -  
PEG MOUNTED 5" OFF FASCIA

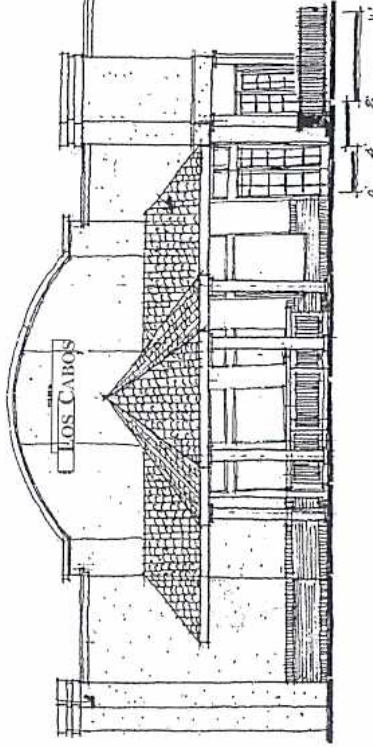
SCALE: 1/4" = 1'-0"

**A** LETTER DETAILS (OPTION 2)

(1) SET REQUIRED - MANUFACTURE & INSTALL -  
"LOS CABOS" TO BE FACE-LIT CHANNEL LETTERS -  
PALM TREE TO BE NON-ILLUMINATED F.C.O. GRAPHIC



**A** FRONT ELEVATION (OPTION 1)



**A** FRONT ELEVATION (OPTION 2)

SCALE: 3/32" = 1'-0"

Customer:

Company:

Address:

City:

State/Zip:

Date:

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# SIGN CENTER

OF DALLAS

www.signcenterdallas.com

**KEYED NOTES** *Access Improvements*

- ① 24 FOOT MUTUAL ACCESS EASEMENT.
- ② 12 FOOT WIDE DECELERATION LANE.

**GENERAL NOTES**

1. REFER TO THE CONSTRUCTION DRAWINGS PREPARED BY WD PARTNERS FOR FURTHER INFORMATION AND DETAILS ON THE ACCESS DRIVE AND TURN LANE CONSTRUCTION.

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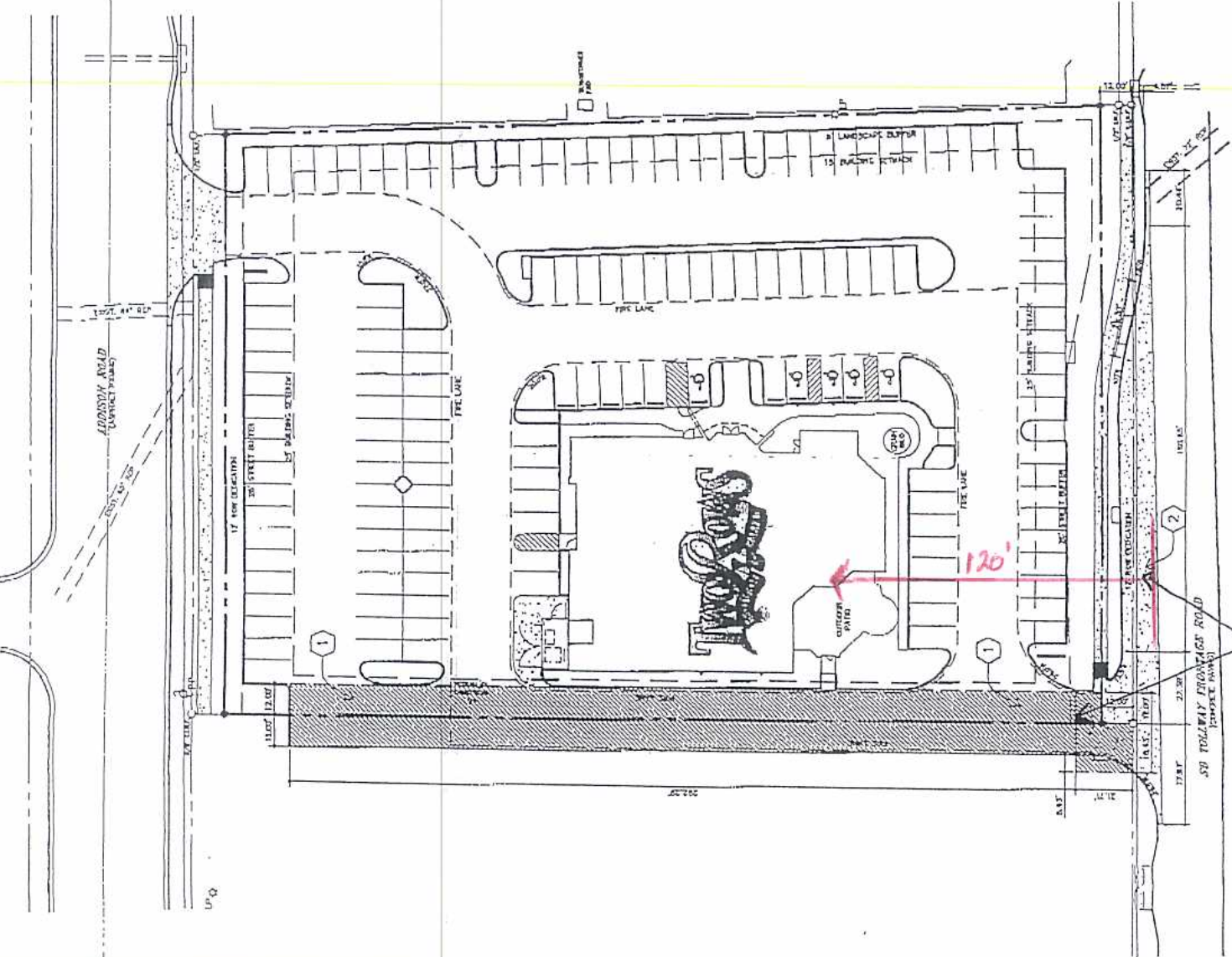
**REVISIONS**

- ①
- ②
- ③
- ④
- ⑤
- ⑥
- ⑦
- ⑧
- ⑨
- ⑩
- ⑪
- ⑫
- ⑬
- ⑭
- ⑮
- ⑯
- ⑰
- ⑱
- ⑲

PROTOTYPE  
 STORE NUMBER  
 WD PROJECT NUMBER  
 9003.631-00

**RE1.0**

**EXHIBIT A**



0 10 20 30 60  
 SCALE: 1" = 60.00'

*Access Improvements*