



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

---

## AGENDA

### REGULAR MEETING OF THE CITY COUNCIL

AND / OR

### WORK SESSION OF THE CITY COUNCIL

3:00 PM

AUGUST 24, 2010

TOWN HALL

**WORK SESSION BEGINS AT 3:00 PM, REGULAR MEETING  
AT 7:30 PM, 5300 BELT LINE ROAD, DALLAS, TX 75254**

---

### WORK SESSION

---

Item            Discussion regarding Proposed Town of Addison 2010-  
#WS1 -            2011 Budget and additional projects and choices:

During the Regular Meeting, discussion regarding this  
Work Session Item may be continued.

Attachment(s):

1. List of Initiatives
-

## REGULAR MEETING

---

### **Pledge of Allegiance**

Item #R1- Consideration of Old Business

Introduction of Employees

Discussion of Events/Meetings

---

Item #R2- Consent Agenda.

---

#2a- Approval of the Minutes for:

7/13/2010 Regular City Council Meeting and Work Session  
and 8/10/2010 Regular City Council Meeting and Work  
Session

---

#2b- Approval of the award of a bid totaling \$88,200.00 to  
American Landscape Systems for annual landscape and  
irrigation maintenance in the Addison Circle District and  
Addison Circle Park.

---

#2c- Approval of amendments and modifications to certain  
ground leases at Addison Airport between the Town, as  
landlord, and RR Investments, Inc. (d.b.a. Million Air FBO,  
Dallas), as tenant, including amendments related to  
proposed building improvements, subject to final review  
and approval by the City Manager and the City Attorney.

---

#2d- Approval of an estoppel letter agreement from F&M Bank &  
Trust Company regarding certain financing provided by  
F&M Bank & Trust Company to Key Development, LLC.,  
Tenant under a certain Ground Lease at Addison Airport in  
which the Town of Addison is the Landlord, the leased  
premises under the Ground Lease being certain property

located at the Airport at 4500 Westgrove Drive (formerly 4444 Westgrove Drive).

---

#2e- Approval of an amendment to 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 increasing the monthly fee for single family residential garbage and recycling collection from \$11.11 to \$11.42.

---

#2f- Approval of a resolution authorizing the City Manager to enter into a Federal Aviation Administration Grant Agreement administered by the Texas Department of Transportation, to make airport improvements.

---

#2g- Approval of a Supplemental Agreement to the Agreement for Professional Services with Halff Associates, Inc., in the amount not to exceed \$28,900.00 for the Spring Valley Road project.

---

Item #R3 PUBLIC HEARING on a proposal to increase total tax revenues from properties on the tax roll in the preceding tax year by 3.7 percent (percentage by which proposed tax rate exceeds lower of rollback tax rate or effective tax calculated under Chapter 26, Tax Code).

---

Item #R4 PUBLIC HEARING, presentation, discussion and consideration of approval of an ordinance (and a corresponding resolution) order and calling for a special election to be held on November 2, 2010 for the purpose of submitting to the qualified voters of the Town amendments to the existing Charter of the Town of Addison.

AUDIENCIA PÚBLICA, presentación, discusión y consideración de la aprobación de una ordenanza (y la resolución correspondiente) orden y convocó a elecciones especiales que se llevaran a cabo el 02 de noviembre 2010 con el propósito de someter a los votantes calificados de la Ciudad las enmiendas a las actuales Carta de la Ciudad de Addison.

Attachment(s):

1. Ordinance Calling for Special Election

---

Item #R5 Presentation, discussion and consideration of approval of a resolution to enter into a joint election agreement in an anticipated amount not to exceed \$15,000.00 with Dallas County to conduct a special election to be held on November 2, 2010.

(Aprobación de una resolución para entrar en un acuerdo de elección conjunta por una cantidad de aproximadamente de \$15,000.00 con el Condado de Dallas para llevar a cabo las elecciones municipales de Addison el 2 de Noviembre de 2010.)

Attachment(s):

1. Resolution for joint election agreement

---

Item #R6 Presentation, discussion and consideration of approval of a Second 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 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.

Attachment(s):

1. Memo from John Hill
2. Final Second Modification to Master Facilities Agreement

Recommendation:

Staff recommends approval.

---

Item #R7 Presentation, discussion and consideration of approval of  
- award of a bid in the amount of \$147,295.00 to Highland Builders, Inc., for remodeling of Suite 430 at 5100 Belt Line Road for Visitor Services offices.

Attachment(s):

1. Bid Tabulation/Bid Cost Summary

Recommendation:

Staff recommends approval.

---

Item #R8 Presentation, discussion and consideration of approval of  
- the award of a contract to Interprise Design for professional services including design, architecture, and engineering for completion of construction drawings for Suite 400 at 5100 Belt Line Road.

Recommendation:

Staff recommends approval.

---

Item #R9 Presentation of the proposed Town of Addison 2010-2011  
- Airport Fund Budget.

---

Item #R10 - Presentation of the proposed Town of Addison 2010-2011  
Utility Fund Budget.

---

Item            Presentation of the Financial Quarterly Report for the  
#R11 -            period ending June 30, 2010.

---

Adjourn Meeting

---

Posted:  
Lea Dunn, 3PM, 8/20/2010

**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

**AGENDA CAPTION:**

Discussion regarding Proposed Town of Addison 2010-2011 Budget and additional projects and choices:

During the Regular Meeting, discussion regarding this Work Session Item may be continued.

**FINANCIAL IMPACT:**

N/A

**BACKGROUND:**

N/A

**RECOMMENDATION:**

N/A

**COUNCIL GOALS:**

N/A

**ATTACHMENTS:**

Description:

[List of Initiatives](#)

Type:

Backup Material

## Strategy/Initiative Prioritization

### Value Proposition – Best Product (Innovation, Creativity)

#### Vision –

- Addison will continue to be a thriving community that provides a consistent, high-quality, welcoming experience to residents, businesses, visitors, and other stakeholders
- Our leaders will promote creativity, innovation, and a culture of excellence that will drive a clearly articulated “Addison” brand

#### Values –

- The Town of Addison values:
  - Honesty
  - Integrity
  - Respect for others
  - Diversity
  - Kindness
  - Openness
  - Trust
  - Relationships
  - Fun

#### Goals –

- **Increase Revenues** - Increase and diversify revenue Streams, Maximize Existing Revenue Streams, Attract and Retain Quality Users of Space, Attract Visitors and Promote Tourism, Develop a Nationally Recognized General Aviation Airport
- **To Be Good Financial Stewards** - Maintain Reserves, Efficient Operations, Financial Transparency
- **Deliver a Consistent "Addison Experience"** - Airport, Transportation Alternatives, Redevelopment of Aging Infrastructure and Assets, Define and Develop Addison's niche for Arts and Entertainment, Safety, Diversity of Options, Promote "Green"-ness
- **Promote a Standard of Excellence** - promote a standard of excellence within the organization and throughout the community

#### The “Addison Experience” –

- Addison consistently offers a unique, innovative, high-quality, vibrant, and fun experience
- Addison offers a variety of options with a welcoming personal touch in a safe, convenient, and environmentally responsible community

#### Tasks:

1. Determine which initiatives need to be addressed/initiated in the next 12 months (short-term critical success factors)
2. Rank the short-term critical success factors in order of importance
3. Determine which initiatives need to be addressed/initiated in the next three years (medium-term critical success factors)
4. Rank the medium-term critical success factors in order of importance
5. Determine which initiatives need to be addressed/initiated in the next five years (long-term critical success factors)
6. Rank the long-term critical success factors in order of importance

#### Factors to consider in ranking of initiatives:

- How does the initiative fit with the Value Proposition?
- Does the initiative enable us to fulfill the vision?
- Does the initiative support our values?
- Does the initiative support the Addison Experience?
- Initial Strategy Evaluation ranking (1, 4, 7 exercise)

## Consensus Short-term Critical Success Factors

Rank	Initiative	Rating
1	Strategic Thinking Effort	196
2	Airport Development	196
3	Economic Development Program and Funding	193
4	Budget - Cost and Revenues	187
5	Addison Brand	181
6	Marketing Plan	181
7	Airport Improvements	181
8	Retail Strategy	181
9	Vitruvian Infrastructure - Parks/Bridge	175
10	Hospital Construction	172
11	Succession Planning	169
12	Airport Contract	169
13	Hospital	166
14	Hotel Business Support/Development	160
15	Charter Review	160
16	Visitor Center	160
17	Board Governance Model	145
18	Police/Fire ICMA Study and Implementation	145
19	Volunteers - Advocates	142
20	Crowne Plaza Development	139
21	Social Networking Process	136
22	Liaison Assignments (Process)	127
23	Elevated Storage Tank	124
24	DISD School	118
25	Redding Trail - Greenhill/Bush School	118

**May Be Short-term Critical Success Factors  
Need More Information**

<b>Rank</b>	<b>Initiative</b>	<b>Rating</b>
1	Belt Line Redevelopment Process	172
2	Employee Training Programs	160
3	Cotton Belt Rail Corridor	151
4	Addison Hotel Expansion Policy	142
5	DART Participation	136

**Consensus Not-short-term Critical Success Factors  
Medium- or Long-term**

<b>Rank</b>	<b>Initiative</b>	<b>Rating</b>
1	Re-evaluation of Emergency Management Plan	154
2	Addison Community Foundation	154
3	Revision Next Great Ideas	151
4	South Quorum Lighting	142
5	Elevated Storage Tank Demonstration Garden	142
6	Redevelopment of Inwood Road	136
7	WaterTower Theatre Development Plan	136
8	Cavanaugh Flight Museum Strategy	133
9	Residential Lighting Projects	127
10	TMRS	127
11	Commercial Recycling	127
12	Zip Code	124
13	Sustainability Program	121
14	North Dallas Chamber Board	100

## Council Agenda Item: #R 2a

**AGENDA CAPTION:**

Approval of the Minutes for:

7/13/2010 Regular City Council Meeting and Work Session and  
8/10/2010 Regular City Council Meeting and Work Session

**FINANCIAL IMPACT:**

N/A

**BACKGROUND:**

N/A

**RECOMMENDATION:**

Staff recommends approval.

**COUNCIL GOALS:**

N/A

**ATTACHMENTS:**

Description:

[7/13/2010 Minutes for Regular City Council Meeting and Work Session](#)

[8/10/2010 Minutes for Regular City Council Meeting and Work Session](#)

Type:

Backup Material

Backup Material

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

July 13, 2010  
5:00 PM - Town Hall  
5300 Belt Line Road, Dallas, TX 75254  
Upstairs Conference Room

Council Members Present:

Chow, Clemens, Daseke, Lay, Mellow, Noble

Absent:

Resnik

Work Session

Item #WS1 - Discussion regarding Leadership Metrocrest.

There was no action taken.

Item #WS2 - Discussion regarding Tri-cities Public Safety Radio System.

There was no action taken.

Item #WS3 - Discussion regarding various marketing, special event and sponsorship topics.

There was no action taken.

---

Mayor-Joe Chow

Attest:

---

City Secretary-Lea Dunn

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

July 13, 2010  
5:00 PM - Town Hall  
5300 Belt Line Road, Dallas, TX 75254

The Work Session convened at 5:00 PM, Council Meeting at 7:30 PM, Executive Session convened at 8:32PM and ended at 9:02PM. Posted: 07/9/2010, Lea Dunn, 5:00PM.

Council Members Present:

Chow, Clemens, Daseke, Lay, Mellow, Noble

Absent:

Resnik

**REGULAR MEETING**

Item #R1 - Consideration of Old Business

The following employees were introduced:

Tony Bagley with the Police Department and Reagan Randall with the Fire Department.

There was no action taken.

Item #R2 - Consent Agenda

#2a - Approval of the Minutes for: 5/11/2010 Regular City Council Meeting and Work Session 5/25/2010 Regular City Council Meeting and Work Session 6/8/2010 Regular City Council Meeting and Work Session

A motion to Approve was made by Councilmember Blake Clemens.

The motion was seconded by Councilmember Kimberly Lay.

The motion result was: Passed

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

Voting Nay: None

Absent: Resnik

#2b - Approval of an interlocal agreement with North Central Texas Council of Governments (NCTCOG) for the most current digital aerial photography.

A motion to Approve was made by Councilmember Blake Clemens.  
The motion was seconded by Councilmember Kimberly Lay.  
The motion result was: Passed  
Voting Aye: Chow, Clemens, Daseke, Lay, Mellow, Noble  
Voting Nay: None

Absent: Resnik

#2c - Approval of Change Order No. 1 in the amount of \$32,600.50 to install additional traffic signal equipment at several signalized traffic intersections as part of the Town Wide Signal Upgrade Project and approving final payment to Durable Specialties, Inc. in the amount of \$44,441.77 for the traffic signal upgrade project.

A motion to Approve was made by Councilmember Blake Clemens.  
The motion was seconded by Councilmember Kimberly Lay.  
The motion result was: Passed  
Voting Aye: Chow, Clemens, Daseke, Lay, Mellow, Noble  
Voting Nay: None

Absent: Resnik

#2d - Approval of a contract with RCC Consultants, Inc., to study public safety communications system for Addison, Farmers Branch and Carrollton.

Resolution R10-015 approved.

A motion to Approve was made by Councilmember Blake Clemens.  
The motion was seconded by Councilmember Kimberly Lay.  
The motion result was: Passed  
Voting Aye: Chow, Clemens, Daseke, Lay, Mellow, Noble  
Voting Nay: None

Absent: Resnik

#2e - Approval of a resolution authorizing the City Manager to enter into an interlocal agreement with the cities of Carrollton and Farmers Branch for the reimbursement of a proportionate share of the cost of the radio communications needs assessment agreement with RCC Consultants, Inc.

Resolution R10-016 approved.

A motion to Approve was made by Councilmember Blake Clemens.  
The motion was seconded by Councilmember Kimberly Lay.  
The motion result was: Passed  
Voting Aye: Chow, Clemens, Daseke, Lay, Mellow, Noble  
Voting Nay: None

Absent: Resnik

#2f - Approval of a resolution confirming and ratifying the execution by the City Manager and Deputy City Manager of an "Application for Amendment to a Water Right" filed with the Texas Commission on Environmental Quality in November 2009.

Resolution R10-017 approved.

A motion to Approve was made by Councilmember Blake Clemens.

The motion was seconded by Councilmember Kimberly Lay.

The motion result was: Passed

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

Voting Nay: None

Absent: Resnik

Item #R3 - PUBLIC HEARING on the Town of Addison's Annual Budget for the Fiscal Year ending September 30, 2011.

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 - PUBLIC HEARING regarding possible changes to the Town Charter as recommended by the Charter Review Commission.

Mayor Chow opened the Meeting as a Public Hearing:

The following people spoke:

Robin Moss - Resident - 3918 Dome

Glen Agritelley - Resident - 14904 Lake Forest

Gary Huddleston with The Kroger Company

Bernard Shaw with Cencor Realty

Joe Lipuma with DRA Advisors

Darrel Hernandez with U.C. Realty

The Mayor closed the Meeting as a Public Hearing.

There was no action taken.

Item #R5 - Presentation of the 2011 calendar concept.

Chris Terry introduced Jim Krause with Krause Advertising who presented the 2011 calendar concept.

There was no action taken.

Item #R6 - Presentation, discussion and consideration of approval of an ordinance amending Chapter 62, Signs, of the Code of Ordinances, of the Town of Addison by providing for a Meritorious Exception to Division 4, Detached Signs, Section 62-186, Monument Signs, in order to provide for a monument sign that exceeds the height and area requirements for a monument sign, located at 13900 block of Marsh Lane/3700 block of Vitruvian Way, on application from UDR, represented by Mr. Tom Lamberth.

Ordinance 010-018 was approved.

A motion to Approve was made by Councilmember Blake Clemens.

The motion was seconded by Councilmember Don Daseke.

The motion result was: Passed

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

Voting Nay: None

Absent: Resnik

Item #R7 - Presentation, discussion and consideration of approval of an ordinance amending Chapter 62, Signs, of the Code of Ordinances of the Town of Addison by providing for a Meritorious Exception to Division 4, Detached Signs, Sections 62-182, Premises signs, and Section 62-186, Monument Signs, in order to provide for an off-premises monument sign that exceeds the height and area requirements for monument signs, located at 3700-3800 Belt Line Road, on application from the Addison Town Center shopping center, represented by Mr. Bernard Shaw of Cencor Realty.

Ordinance 010-019 was approved.

Council approved the Staff recommendation for the off-premises, multi-tenant monument sign on the Ashton Woods property.

A motion to Approve was made by Councilmember Kimberly Lay.

The motion was seconded by Councilmember Don Daseke.

The motion result was: Passed

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

Voting Nay: None

Absent: Resnik

Item #R8 - Presentation, discussion and consideration of approval of an ordinance amending Chapter 62, Signs, of the Code of Ordinances, of the Town of Addison by providing for a Meritorious Exception to Division 4, Detached Signs, Section 62-185,

Specifications, in order to provide for 63 additional square feet of sign area to an existing pole sign located at 3700-3800 Belt Line Road, on application from the Addison Town Center shopping center, represented by Mr. Bernard Shaw of Cencor Realty.

Ordinance 010-020 was approved.

A motion to Approve was made by Councilmember Blake Clemens.

The motion was seconded by Councilmember Kimberly Lay.

The motion result was: Passed

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

Voting Nay: None

Absent: Resnik

Item #R9 - PUBLIC HEARING Case 1601-SUP/ONCOR Electric Delivery Company. Public hearing, presentation, discussion and consideration of approval of an ordinance approving a Special Use Permit for an installation of a public utility (electric substation), either privately or publicly owned, located on .4388 acres of land just east of Inwood Road and south of Landmark Boulevard on application from ONCOR Electric Delivery Company, represented by Mr. Mark Housewright of Masterplan.

COMMISSION FINDINGS: The Addison Planning and Zoning Commission, meeting in regular session on June 24, 2010, voted to recommend approval of a Special Use Permit for an installation of a public utility, either privately or publicly owned, located on .4388 acres of land just east of Inwood Road and south of Landmark Boulevard., on application from ONCOR Electric Delivery Company represented by Mr. Mark Housewright of Masterplan, subject to no conditions.

Voting Aye: Arfsten, DeFrancisco, Doherty, Hewitt, Oliver, Wheeler, Wood

Voting Nay: none

Absent: none

This Item was tabled and will be on a future Council Meeting.

There was no action taken.

Item #R10 – Presentation, discussion and consideration of approval of amendments and modifications to certain ground leases at Addison Airport between the Town, as landlord, and RR Investments, Inc. (d.b.a. Million Air FBO, Dallas), as tenant, including amendments related to proposed building improvements.

This Item was tabled and will be on a future Council Meeting.

There was no action taken.

Item #R11 - Presentation, discussion and consideration of approval of a Professional Services Agreement with Freese & Nichols, Inc., in an amount not to exceed \$97,500.00 for design services on the proposed 1.5 Million Gallon Elevated Storage Tank.

A motion to Approve was made by Councilmember Don Daseke.

The motion was seconded by Councilmember Bianca Noble.

The motion result was: Passed

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

Voting Nay: None

Absent: Resnik

Item #ES1 - Closed (Executive) session of the Addison City Council pursuant to Section 551.072, Tex. Gov. Code, to deliberate the leases of certain real properties located within the Town at Addison Airport, and pursuant to Section 551.087, Texas Government Code, to deliberate the offer of a financial or other incentive to a business prospect or business prospects that the City Council seeks to have locate, stay or expand in the territory of the Town of Addison and with which the City Council is conducting economic development negotiations.

Item #R12 - Consideration of any action regarding leases of certain real properties located within the Town at Addison Airport, and/or the offer of a financial or other incentive to a business prospect or business prospects that the City Council seeks to have locate, stay or expand in the territory of the Town of Addison and with which the City Council is conducting economic development negotiations.

There was no action taken.

---

Mayor-Joe Chow

Attest:

---

City Secretary-Lea Dunn

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

August 10, 2010  
6:00 PM - Town Hall  
5300 Belt Line Road, Addison, TX 75001  
Upstairs Conference Room

Council Members Present:

Chow, Clemens, Daseke, Lay, Noble, Resnik

Absent:

Mellow

Work Session

Item #WS1 - Discussion regarding ground leases at Addison Airport for R&R Investments, Inc.

There was no action taken.

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

Attest:

\_\_\_\_\_  
City Secretary-Lea Dunn

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

August 10, 2010

6:00 PM - Town Hall

5300 Belt Line Road, Addison, TX 75001

The Work Session convened at 6:00 PM, Council Meeting at 7:30 PM.

Posted: Lea Dunn, 5PM, 8/5/2010

Council Members Present:

Chow, Clemens, Daseke, Lay, Noble, Resnik

Absent:

Mellow

**REGULAR MEETING**

Item #R1 - Consideration of Old Business

The following employees were introduced:

Stephen Colvin with the Parks & Recreation Department and Joshua Bethel with the Fire Department.

There was no action taken.

Item #R2 - Consent Agenda

#2a - Approval of Minutes for: 06-22-2010 Regular Meeting and Work Session of the City Council

A motion to Approve was made by Councilmember Blake Clemens.

The motion was seconded by Councilmember Kimberly Lay.

The motion result was: Passed

Voting Aye: Chow, Clemens, Daseke, Lay, Noble, Resnik

Voting Nay: None

Absent: Mellow

#2b - FINAL PLAT/MHS Addition, Lot 1 and Lot 2, Block A. Approval of a final plat for two lots totaling 7.401 acres, located at the northeast corner of the intersection of Addison Road and Sojourn Drive, on application from MHSS Addison, LP, represented by Mr. David Kochalka of Kimley-Horn and Associates, Inc.

COMMISSION FINDINGS: The Addison Planning and Zoning Commission, meeting in

regular session on August 3, 2010, voted to recommend approval of the request for Final Plat approval for MHS Addition, Lot 1 and Lot 2, Block A, subject to no conditions. Voting Aye: Arfsten, DeFrancisco, Doherty, Oliver, Wood Voting Nay: none Absent: Wheeler, Hewitt

A motion to Approve was made by Councilmember Blake Clemens.  
The motion was seconded by Councilmember Kimberly Lay.  
The motion result was: Passed  
Voting Aye: Chow, Clemens, Daseke, Lay, Noble, Resnik  
Voting Nay: None

Absent: Mellow

#2c - Approval of a Resolution in support of the Vitruvian Park Trail Infrastructure Project and regarding acceptance of a grant of funds from the North Central Texas Council of Governments.

Resolution R10-018 was approved.

A motion to Approve was made by Councilmember Blake Clemens.  
The motion was seconded by Councilmember Kimberly Lay.  
The motion result was: Passed  
Voting Aye: Chow, Clemens, Daseke, Lay, Noble, Resnik  
Voting Nay: None

Absent: Mellow

#2d - Approval of award of a bid in the amount of \$51,963.00 to Sweeping Services of Texas - Operating, L.P., for citywide street sweeping.

A motion to Approve was made by Councilmember Blake Clemens.  
The motion was seconded by Councilmember Kimberly Lay.  
The motion result was: Passed  
Voting Aye: Chow, Clemens, Daseke, Lay, Noble, Resnik  
Voting Nay: None

Absent: Mellow

#2e - Approval of Change Order No. 2 and Change Order No. 3 with North Texas Contracting, Inc., in the amount of \$423,725.76 and an extension of zero (0) calendar days for the construction of certain public infrastructure (including park, streetscape and other public infrastructure improvements) within that area of the Town generally known as Vitruvian Park (Vitruvian Park Public Infrastructure, Phase 1C).

A motion to Approve was made by Councilmember Blake Clemens.  
The motion was seconded by Councilmember Kimberly Lay.

The motion result was: Passed

Voting Aye: Chow, Clemens, Daseke, Lay, Noble, Resnik

Voting Nay: None

Absent: Mellow

#2f - Approval of final payment to North Texas Contracting, Inc., in the amount of \$455,094.68 for the completion of construction of certain public infrastructure (including streets, water and sanitary sewer lines, and other public infrastructure improvements) within that area of the Town generally known as Vitruvian Park (Vitruvian Park Public Infrastructure, Phase 1B).

A motion to Approve was made by Councilmember Blake Clemens.

The motion was seconded by Councilmember Kimberly Lay.

The motion result was: Passed

Voting Aye: Chow, Clemens, Daseke, Lay, Noble, Resnik

Voting Nay: None

Absent: Mellow

#2g - Approval of final payment to UDR, Inc., in the amount of \$68,768.72 for the completion of management of the construction of certain public infrastructure (including streets, water and sanitary sewer lines, and other public infrastructure improvements) within that area of the Town generally known as Vitruvian Park (Vitruvian Park Public Infrastructure, Phase 1B).

A motion to Approve was made by Councilmember Blake Clemens.

The motion was seconded by Councilmember Kimberly Lay.

The motion result was: Passed

Voting Aye: Chow, Clemens, Daseke, Lay, Noble, Resnik

Voting Nay: None

Absent: Mellow

#2h - Approval of a Professional Services Agreement with Grantham and Associates, Inc., in an amount not to exceed \$100,000.00 for professional design review services on miscellaneous projects.

A motion to Approve was made by Councilmember Blake Clemens.

The motion was seconded by Councilmember Kimberly Lay.

The motion result was: Passed

Voting Aye: Chow, Clemens, Daseke, Lay, Noble, Resnik

Voting Nay: None

Absent: Mellow

#2i - Approval of award of bid in the amount of \$125,519.00 to Estrada Concrete Company for Airport Taxiway Improvements at Addison Airport.

A motion to Approve was made by Councilmember Blake Clemens.

The motion was seconded by Councilmember Kimberly Lay.

The motion result was: Passed

Voting Aye: Chow, Clemens, Daseke, Lay, Noble, Resnik

Voting Nay: None

Absent: Mellow

#2j - Approval of a resolution approving a Second Modification to the Master Facilities Agreement between the Town of Addison and UDR and certain property owners to recognize DCO Savoye 2 LLC as an affiliate and a property owner, and approval of an Estoppel Certificate related thereto, subject to the final approval of the City Manager and the City Attorney.

Resolution R10-019 was approved.

A motion to Approve was made by Councilmember Blake Clemens.

The motion was seconded by Councilmember Kimberly Lay.

The motion result was: Passed

Voting Aye: Chow, Clemens, Daseke, Lay, Noble, Resnik

Voting Nay: None

Absent: Mellow

Item #R3 - PUBLIC HEARING, discussion and consideration of approval regarding an ordinance ordaining the Town's participation in the Texas Enterprise Zone Program and nominating Mary Kay Inc., as an Enterprise Project.

The Mayor opened the Meeting as a Public Hearing.

No one spoke.

The Mayor closed the Meeting as a Public Hearing.

Ordinance 010-021 was approved.

A motion to Approve was made by Councilmember Kimberly Lay.

The motion was seconded by Councilmember Blake Clemens.

The motion result was: Passed

Voting Aye: Chow, Clemens, Daseke, Lay, Noble, Resnik

Voting Nay: None

Absent: Mellow

Item #R4 - PUBLIC HEARING regarding possible changes to the Town Charter as recommended by the Charter Review Commission.

The Mayor opened the Meeting as a Public Hearing.

The following people spoke:

Bob Barrett - Resident - 14637 Lexus  
Glen Agritelley - Resident - 14904 Lake Forest  
Gary Huddleston with The Kroger Company  
Ginger Morgan - Resident - 15730 Seabolt Place  
John Estrada with Sam's Club  
Bernard Shaw with Cencor Realty

The Mayor closed the Meeting as a Public Hearing.

There was no action taken.

Item #R5 - PUBLIC HEARING Case 1602-SUP/Elite Cigar Café. Presentation, discussion and consideration of approval of an ordinance approving a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 4291 Belt Line Road, on application from Elite Cigars and Accessories, represented by Mr. Kent Pennington.

COMMISSION FINDINGS: The Addison Planning and Zoning Commission, meeting in regular session on July 23, 2010, voted to recommend approval of a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, subject to the following conditions: -Any dead or missing landscaping on the site shall be replaced prior to the issuance of a Certificate of Occupancy. Voting Aye: Arfsten, Doherty, Hewitt, Oliver, Wheeler, Wood Voting Nay: none Absent: DeFrancisco

The Mayor opened the Meeting as a Public Hearing.

No one spoke.

The Mayor closed the Meeting as a Public Hearing.

Ordinance 010-022 was approved.

A motion to Approve w/ Conditions was made by Councilmember Don Daseke. The motion was seconded by Councilmember Kimberly Lay. The motion result was: Passed  
Voting Aye: Chow, Clemens, Daseke, Lay, Noble, Resnik

Voting Nay: None

Absent: Mellow

Item #R6 - PUBLIC HEARING Case 1603/Arthur's Restaurant. Presentation, discussion and consideration of approval of an ordinance approving an amendment to 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, in order to add a patio, located at 15175 Quorum Drive, on application from Mr. Mohsen Heidari.

COMMISSION FINDINGS: The Addison Planning and Zoning Commission, meeting in regular session on July 23, 2010, voted to recommend 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 only, subject to no conditions. Voting Aye: Arfsten, Doherty, Hewitt, Oliver, Wheeler, Wood Voting Nay: none Absent: DeFrancisco

The Mayor opened the Meeting as a Public Hearing.

No one spoke.

The Mayor closed the Meeting as a Public Hearing.

Ordinance 010-023 approved.

A motion to Approve was made by Councilmember Kimberly Lay.

The motion was seconded by Councilmember Don Daseke.

The motion result was: Passed

Voting Aye: Chow, Clemens, Daseke, Lay, Noble, Resnik

Voting Nay: None

Absent: Mellow

Item #R7 - PUBLIC HEARING Case 1604-SUP/BJ's Restaurant. Presentation, discussion and consideration of approval of an ordinance approving an amendment to an existing Special Use Permit for a restaurant and an existing Special Use Permit for the sale of alcoholic beverages for on-presmises consumption only, in order to add a patio, located at 4901 Belt Line Road, on application from BJ's Restaurant, represented by Mr. Quang Nguyen, of Q3, Inc.

COMMISSION FINDINGS: The Addison Planning and Zoning Commission, meeting in regular session on July 23, 2010, voted to recommend 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 only, subject to no conditions. Voting Aye: Arfsten, Doherty, Hewitt, Oliver, Wheeler,

Wood Voting Nay: none Absent: DeFrancisco

The Mayor opened the Meeting as a Public Hearing.

No one spoke.

The Mayor closed the Meeting as a Public Hearing.

A motion to Approve was made by Councilmember Kimberly Lay.

The motion was seconded by Councilmember Don Daseke.

The motion result was: Passed

Voting Aye: Chow, Clemens, Daseke, Lay, Noble, Resnik

Voting Nay: None

Absent: Mellow

Item #R8 - Presentation of a final economic development strategic plan by representatives of TIP Strategies.

Representatives from TIP Strategies made the final economic development strategic plan presentation.

There was no action taken.

Item #R9 - Presentation and discussion of the City Manager's 2010-2011 Fiscal Year Proposed General Fund Budget.

Randy Moravec made the presentation for the City Manager's 2010-2011 Fiscal Year Proposed General Fund Budget.

There was no action taken.

Item #R10 - PUBLIC HEARING regarding the Town of Addison's Annual Budget for the Fiscal Year ending September 30, 2011.

The Mayor opened the Meeting as a Public Hearing.

No one spoke.

The Mayor closed the Meeting as a Public Hearing.

There was no action taken.

Item #R11 - Presentation, discussion and consideration of approval of a Resolution of the City Council proposing a property tax rate of \$0.5523 per \$100.00 assessed value (or such other amount as the City Council may determine) for the City's fiscal year beginning October 1, 2010 and ending September 30, 2011, and designating dates for

the holding of a public hearing regarding, and a date for the adoption of, the property tax rate for the said 2010/2011 budget year.

A tax rate of \$0.5700 per \$100.00 assessed value for the City's fiscal year beginning October 1, 2010 and ending September 30, 2011 was approved.

Resolution R10-020 was approved.

A motion to Approve was made by Councilmember Neil Resnik.

The motion was seconded by Councilmember Kimberly Lay.

The motion result was: Passed

Voting Aye: Clemens, Lay, Noble, Resnik

Voting Nay: Chow, Daseke

Absent: Mellow

Item #R12 - Presentation of a conceptual design plan by TBG Partners landscape architects for the George H.W. Bush K-5 Elementary School landscaping, playgrounds, learning garden and the Redding Trail extension.

Slade Strickland introduced Mark Meyer with TBG Partners who made the presentation for the George H.W. Bush K-5 Elementary School landscaping, playgrounds, learning garden and the Redding Trail extension.

There was no action taken.

---

Mayor-Joe Chow

Attest:

---

City Secretary-Lea Dunn

## **Council Agenda Item: #R 2b**

### **AGENDA CAPTION:**

Approval of the award of a bid totaling \$88,200.00 to American Landscape Systems for annual landscape and irrigation maintenance in the Addison Circle District and Addison Circle Park.

### **FINANCIAL IMPACT:**

This is a budgeted item split between the General Fund-Parks Operations Budget and the Hotel Fund- Special Events Budget. Out of the total bid of \$88,200.00, \$52,920.00 will go towards the maintenance of all Addison Circle District landscaped areas. The remaining \$35,280.00 will fund the maintenance for Addison Circle Park only, which will come out of the Hotel Fund -Special Events Budget.

This is an annual renewable contract that can be extended for five (5) twelve-month periods. The first contract period is October 1, 2010 to September 30, 2011.

The following is a summary comparing the previous contract cost to the new contract cost:

Current Cost of Contract	\$103,611.48
New Cost of Contract	<u>\$88,200.00</u>
Annual Savings 2011	<b>\$15,411.48</b>

### **BACKGROUND:**

American Landscape Systems held this contract for the last five years, and it will expire in September 2010. The scope of work involved under this contract includes turnkey landscape and irrigation maintenance. The Addison Circle District areas consist of all street trees and tree well planters, Addison Circle Park, Spruill Park, Bosque Park, Beckert Park, Parkview Park, Blueprints Roundabout area and the landscaping around the Addison Conference and Theatre Centre parking lot on Morris Avenue.

### **RECOMMENDATION:**

Staff recommends approval.

**COUNCIL GOALS:**

Continue to Attract Visitors, Take actions to make Addison a leader in sustainable development and operations that protect and enhance the Town's quality of life

**ATTACHMENTS:**

Description:

[Bid Tabulation Form](#)

Type:

Backup Material

**Landscape Maintenance - Addison Circle**

**BID NO 10-21**

**DUE: August 9, 2010**

**10:00 AM**

<b>BIDDER</b>	<b>Signed</b>	<b>Bid Bond</b>	<b>Bid Total</b>
Good Earth Corporation	Y	N	\$ 101,868.00
Yellow Rose	Y	Y	\$ 98,820.00
True Green	Y	Y	\$ 143,926.20
LMI	Y	Y	\$ 199,971.19
Weisz Selection	Y	Y	\$ 102,000.00
American Landscape Systems	Y	Y	\$ 88,200.00
Valley Crest	Y	Y	\$ 89,382.96
Greener Pastures	Y	Y	\$ 137,600.18
Jordan Maintenance Services	Y	Y	\$ 100,320.00

*Matthew McCombs*

\_\_\_\_\_  
Matt McCombs, Management Analyst

*Slade Strickland*

\_\_\_\_\_  
Witness

## **Council Agenda Item: #R 2c**

### **AGENDA CAPTION:**

Approval of amendments and modifications to certain ground leases at Addison Airport between the Town, as landlord, and RR Investments, Inc. (d.b.a. Million Air FBO, Dallas), as tenant, including amendments related to proposed building improvements, subject to final review and approval by the City Manager and the City Attorney.

### **FINANCIAL IMPACT:**

N/A

### **BACKGROUND:**

RR Investment, Inc. is proposing to construct approximately \$3.5M in new building improvements (40,000 SF new hangar with charter terminal, pilot lounge, limited office space, parking and aircraft ramp) on airport land currently leased by RR Investment, which are to be operated in connection with their Million Air Dallas FBO and charter operations.

In consideration of these and other improvements recently made to their existing facilities Airport Management is requesting the Town Council to consider and give its consent to the following actions:

1. Consent to the site plan and proposed building improvements (subject to permitting and final review by Town staff) which RR Investments intends to construct on their leased premises located 4350 Westgrove Rd (attached as Exhibit 1).

2. Early terminate RR Investment Ground Lease GL #070A-6001 pursuant to the proposed Ground Lease Early Termination Agreement (attached hereto as Exhibit 2) and; by way of amendment (as described below) simultaneously merge the land comprising its demised premise into the adjacent ground lease known as GL #070A-5601 (a.k.a 4350 Westgrove Rd)

3. Amend the terms and conditions of the three remaining RR Investment ground leases:

Second Amendment to Ground Lease for GL #070A-5601

(attached hereto as Exhibit 3);

Second Amendment to Ground Lease for GL #070A-5201  
(attached hereto as Exhibit 4)

Second Amendment to Ground Lease for GL#0690-5901  
(attached hereto as Exhibit 5).

The terms and conditions to each of these amendments include but are not limited to:

Provided the building improvements are constructed as agreed, each of the three RR Investment lease terms are to be extended to a forty-year term from the date of substantial completion of the building improvements. If the new improvements are not completed as agreed the term extension does not take effect and each will expire at the end of their existing term;

The rental rate for each lease will be adjusted equal the annual rate of \$.5451/SF times the respective land area. This rate is intended to equal the current average rate for all their leases combined;

Next CPI rental adjustment to be effective 12/31/2013 and every two years thereafter using the amended annual rental as the base rent for adjustment;

Bring other terms and conditions up to date with the Town's current standard language including but not limited to the permitted use of the demised premises, securing governmental approvals and complying with law, limitations to the assignment and subletting of the leasehold interests, insurance requirements, property taxes, airport rules and regulations, indemnity, exculpations and release and, environmental compliance

Additionally, the Second Amendment to Ground Lease for GL #070A-5601 further provides:

1. that the description of the leased premises is to be modified to include the demised premises from Ground Lease GL #070A-6001;

2. if the construction of the proposed building improvements do not commence before 12/31/2013, the Town has the right to early terminate GL# 070A-5601 (the vacant lot at 4850);

3. incorporate the proposed building improvements to be included as part of the permitted use of the demised premises.

**RECOMMENDATION:**

Staff recommends approval.

**COUNCIL GOALS:**

Develop and utilize the Addison Airport as an engine to drive economic growth in the community

**ATTACHMENTS:**

Description:

[Airport Management Recommendation](#)

Type:

Backup Material



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

## - M E M O R A N D U M -

To: Mark Acevedo, Director of General Services  
From: Bill Dyer, Real Estate Manager  
cc: Joel Jenkinson, Airport Director  
Date: July 6, 2010  
Re: Requested Consideration and Consent by the Town Council Relating to  
RR Investments, Inc.'s (RR Investments) Proposed Ground Lease Development

---

RR Investments is proposing to construct approximately \$3.5M in new building improvements on airport land currently leased by RR Investments, which improvements are to be operated in connection with their Million Air Dallas FBO and charter operations. The proposed improvements include nearly 40,000 square feet of new corporate hangar space, an exclusive charter terminal, pilot lounge, limited office space, parking and dedicated aircraft ramp.

In consideration of these and other improvements recently made to their existing facilities, Airport Management is requesting the Town Council to consider and give its consent to the following actions:

1. Consent to the site plan and proposed building improvements which RR Investments intends to construct on their leased premises located 4350 Westgrove Drive (see Exhibit 1);
2. Early terminate RR Investments' Ground Lease GL #070A-6001 pursuant to the proposed Ground Lease Early Termination Agreement (to be substantially in the form of Exhibit 2 attached hereto) and, by way of amendment (as described below), simultaneously merge the land comprising its demised premises into the adjacent ground lease known as GL #070A-5601 (also referred to as 4350 Westgrove Drive);
3. Amend the terms and conditions of the three remaining RR Investments ground leases:

- Second Amendment to Ground Lease GL #070A-5601 (to be substantially in the form of Exhibit 3 attached hereto);
- Second Amendment to Ground Lease GL #070A-5201 (to be substantially in the form of Exhibit 4 attached hereto); and
- Second Amendment to Ground Lease GL #0690-5901 (to be substantially in the form of Exhibit 5 attached hereto).

The terms and conditions of each of these amendments include but are not limited to:

- Provided the building improvements are constructed as agreed to, the terms of each of the three underlying ground leases are to be extended to forty (40) years from the date substantial completion of the proposed building improvements is achieved. If the new improvements are not completed as agreed to, the term extension does not take effect and each lease will expire at the end of its existing term;
- The rental rate for each lease will be adjusted to equal the annual rate of \$.5451 per square gross square foot of the respective demised premises land area. This rate is intended to equal the current average rate per gross square foot of land area for all RR Investments' leases combined;
- The next CPI rental adjustment for each lease is to be 12/31/2013 and every two years thereafter using the amended annual rental as the base rent for adjustment;
- Modify other various terms and conditions of each lease to be consistent with the Town's current lease standards including, but not limited to:
  - description of the permitted use of the demised premises;
  - securing governmental approvals and complying with law;
  - limitations to the assignment and subletting of the leasehold interests;
  - insurance requirements;
  - property taxes;
  - airport rules and regulations;
  - indemnity, exculpations and release; and
  - environmental compliance

Additionally, the Second Amendment to Ground Lease GL #070A-5601 further provides:

1. that the description of the leased premises is to be modified to include the demised premises from Ground Lease GL #070A-6001;
2. if the construction of the proposed building improvements does not commence before 12/31/2013, the Town has the right to early terminate GL# 070A-5601 (being the unimproved lot at 4350 Westgrove Drive); and
3. incorporate the proposed building improvements as part of the permitted use of the demised premises.

Airport Management recommends the Town Council give its consent to the proposed actions, authorizing the City Manager to execute on behalf of the Town the proposed amendments and termination agreement subject to the City Attorney's final review and approval of same.

**Background Information:**

RR Investments, Inc. is a Texas corporation wholly owned by Richard Rogers, the Executive Chairman of Addison-based Mary Kay, Inc. RR Investments was founded in 1984 for the purpose of doing business as Million Air Dallas, one of the first upscale, full-service fixed-base operations of its kind. In addition to its FBO operations, Million Air Dallas is widely recognized for its exclusive charter services, aircraft management, aircraft sales and acquisition services. It is also widely recognized as a leader within its industry having received the FAA Diamond Award for Excellence for the fourth consecutive year, WyVern's Wingman Status and is continually rated Platinum by Aviation Research Group (ARG)/US.

RR Investments entered into its first ground lease with the Town in 1983 which called for the construction of what now serves as Million Air Dallas' main facility at 4300 Westgrove Drive. Between 1994 and 1997, RR Investments acquired and took assignment of three existing ground leases situated adjacent to their main facility that currently make up their nearly 11.5 acres of ground leased holdings at Addison Airport (see Figure 1 - Aerial View of Ground Leases).

	070A-5201 4300 Westgrove	0690-5901 4310 Amelia Earhart	070A-5601 4350 Westgrove	070A-6001 4375 Westgrove	Totals
Original Tenant	RR Investments, Inc.	Pharris – Miller, Inc.	Personal Way Aviation	16300 Addison Joint Venture	
Assignment Date	NA	3/19/1997	12/15/1994	12/15/1994	
Land Area	158,109	183,509	100,006	58,009	499,633 11.47 Acs.
Bldg. Area	50,800	55,772	NA	NA	106,572
Ramp Area	61,150	102,705	NA	NA	163,855
Year Built	1983	1985	NA	NA	
Lease Start	12/1/1983	6/1/1984	4/1/1984	10/1/1984	
Lease Expire	11/30/2023	5/31/2024	3/31/2024	9/30/2024	
Years Remain	13.64	14.15	13.98	14.48	14.6 yrs (average)
Monthly Rent	\$6,935.95	\$7,986.63	\$5,207.21	\$2,557.46	\$22,687
Annual Rent	\$83,231.40	\$95,839.56	\$62,486.52	\$30,689.52	\$272,247
Rent /SFL	\$.53	\$.52	\$.62	\$.53	\$.545 (average)

Of the three ground leases acquired, only the leased premises at 4310 Amelia Earhart had building improvements already made to the site (the building is currently occupied primarily by Flex Jet). Although the other two ground leases called for the construction of certain building improvements, the leases failed to specify a “drop-dead” completion date. These two sites have remained vacant and unimproved since the inception of the leases.

RR Investments currently operates over 106,000 square feet of hangar and office space facilities in connection with their fixed-base operations. Although their facilities were constructed in the mid-1980s, they have been very well maintained over the years. In fact, since 2004, RR Investments has expended over \$2.5 million on roof and window replacements, renovations to their main lobby, ramp repairs and replacement, and the installation of a security video system.

As the flagship operator for Addison Airport, RR Investments pays over \$270,000 in annual ground rent. As a holder of a public fuel permit, Million Air Dallas has averaged over 4.2 million gallons of fuel received over the past four years representing 62% of the Airport's total volume, yielding the Airport nearly \$550,000 in fuel flowage and licensing fees each year. In addition, Million Air Dallas subleases several mid-size hangars at the Airport from other ground tenants. All considered, RR Investments and its Million Air Dallas operations account for nearly 20% of the Airport's total annual revenue.

**Requested Action:**

Proposed Improvements: RR Investments, Inc. is seeking the Town's consent to their proposal to construct a high-end aircraft charter terminal and hangar facility on what is the remaining portion of their ground leasehold that is presently vacant and unimproved. As represented in Exhibit 1, the company proposes to construct a 40,000 square foot conventional hangar with 28' high clear-span space designed to accommodate most Group 3 aircraft. Adjacent to the hangar - and almost a mirror image of the existing terminal building - they propose to construct an exclusive charter terminal building with a drive-up entrance with porte-cochere, lobby with concierge desk, multi-level lounges, glass vestibule and see-through curtain wall, offices, conference room and restroom facilities. All to be carefully appointed with stone, metal and wood veneer finishes. The hangar's exterior façade will be of architectural metal clad over a massive structural frame accented with stone and stucco to complement both Million Air Dallas' main building as well as the Mission Air building just to the east (4400 Westgrove Drive). Additionally, the site plan calls for 78,000 square feet of dedicated aircraft ramp constructed of 8" reinforced concrete with a full connection to Taxiway Victor. There is to be sufficient off-street parking provided to meet or exceed ordinance requirements. The estimated \$3.5 million project conveys the company's commitment toward quality, luxury, exclusivity and excellence in customer service, all being trademarks of Million Air Dallas.

RR Investments' development team includes Ron Fredrick, President of the Mission Companies, as developer/contractor and Bill Leggett, President of William Leggett Associates, as architect and interior designer. Ron Fredrick is also a principal of Mission Air IV, LP (ground tenant of 4600 Claire Chennault) and Mission Air V, LP (ground tenant of 4400 Westgrove). William Leggett Associates' offices are located at Addison Airport and they have been instrumental in the development and redevelopment of various properties, most recently the PlaneSmart! Properties, LLC redevelopment on 15841 Addison Rd.

Termination of Ground Lease 070A-6001: In order to best facilitate RR Investments' request, Airport Management is proposing that the Town and tenant agree to early terminate Ground Lease 070A-6001 and merge the underlying land into adjacent Ground Lease 070A-5601. Since the building improvements will straddle the demised premises for the two leases, this action will likely avoid unwanted administrative and title problems over the term and will facilitate the eventual disposition of the property at some later date.

Modification and Amendments to the Surviving Leases: In consideration of the proposed improvements and other modifications and amendments to the leases outlined below, Airport Management is recommending the Town agree to extend the lease term for each of the remaining ground leases to the statutory limit of forty (40) years, provided RR Investments completes the proposed building improvements as agreed. Once RR Investments achieves substantial completion (or the issuance of a certificate of occupancy), the Town and tenant will execute and publicly record a Memorandum of Lease memorializing the extended term. However, should RR Investments fail to complete the building improvements as agreed, the respective term for each lease will remain the same prior to the amendments.



**Figure 1: Aerial View of Ground Leases**

Additionally, at the request of RR Investments for administrative purposes, the tenant desires the lease rate and the date of all future adjustment to be the same for each lease. Therefore, it is recommended each lease be amended to make the rental rate equal the annual rate of \$.545 per square gross square foot of the respective leased area. This rate

equals the current average rate per gross square foot of land area for all RR Investments leases combined (\$272,247/499,633 SFL = \$.545/SFL). All subsequent biennial adjustments shall be made effective January 1, every other year beginning in 2013.

Other Modifications Consistent with the Town's Current Lease Standards: It is further recommended that each lease be amended to bring various other terms and conditions contained therein up-to-date and consistent with the Town's current lease standards including, but not limited to:

- description of the permitted use of the demised premises;
- securing governmental approvals and complying with law;
- limitations to the assignment and subletting of the leasehold interests;
- insurance requirements;
- property taxes;
- airport rules and regulations;
- indemnity, exculpations and release; and
- environmental compliance

The Second Amendment to Ground Lease GL #070A-5601 requires some additional provisions to provide for and to take into consideration the proposed building improvements and the merging of the land from Ground Lease GL#070A-6001:

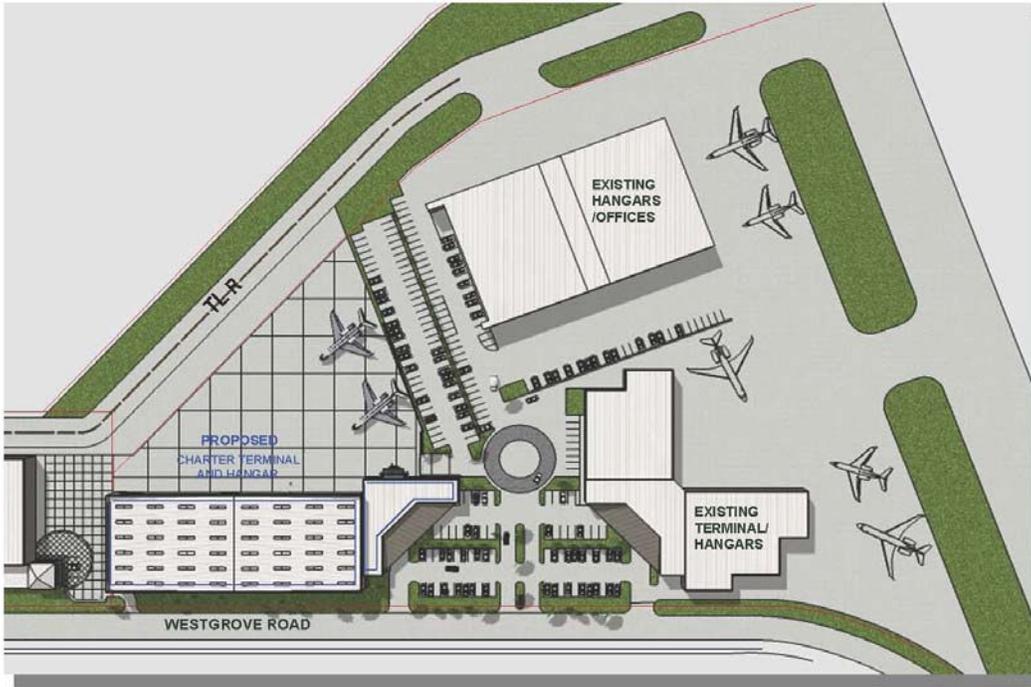
- the description of the leased premises is to be modified to include the demised premises under Ground Lease GL #070A-6001;
- if the construction of the proposed building improvements does not commence before 12/31/2013, the Town has the right to early terminate GL #070A-5601 (being the unimproved lot at 4350 Westgrove Drive);
- incorporate the proposed building improvements to be a part of the permitted use of the demised premises.

**Recommendation and Justification:**

Airport Management is recommending the Town give its consent to RR Investments, Inc.'s proposed building improvements and amendments to each of the respective ground leases as outlined above, authorizing the City Manager to execute on behalf of the Town the proposed amendments subject to the City Attorney's review.

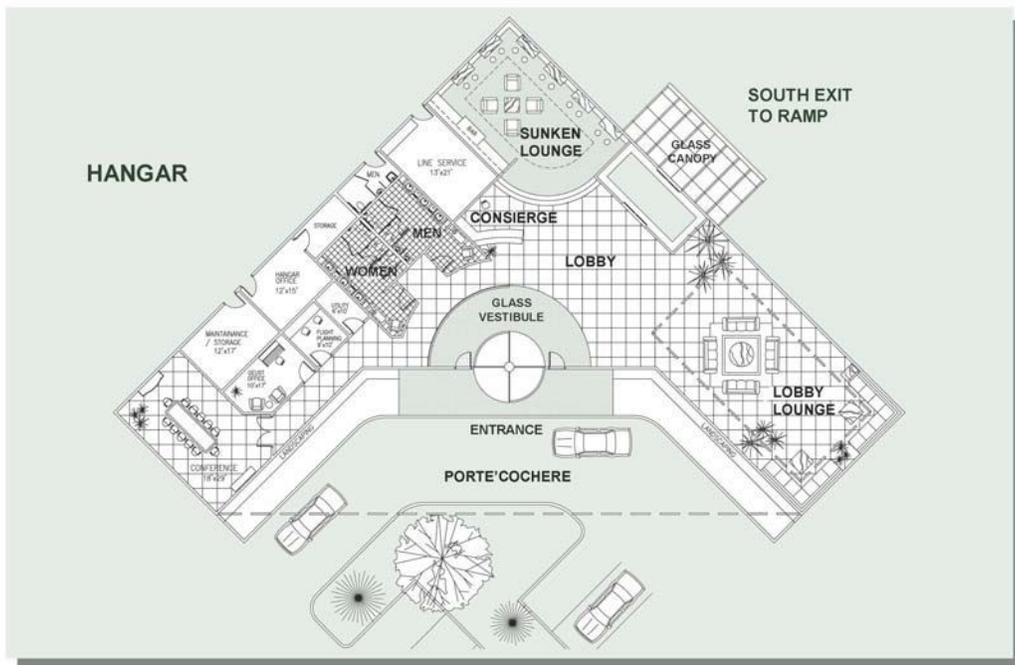
RR Investments is the flagship operator for Addison Airport. Its operations account for nearly 20% of the Airport's total annual revenue. Although the proposal does not represent any direct financial increase or benefit for the Airport, it does include the construction of nearly \$3.5 million in state-of-the-art, high-end quality aeronautical facilities on land that has been generally non-productive for the past 25 years. The proposed improvements will provide continue growth and support for Million Air Dallas' commitment to quality and excellence in customer service and will be highly regarded nationwide.

# Exhibit 1



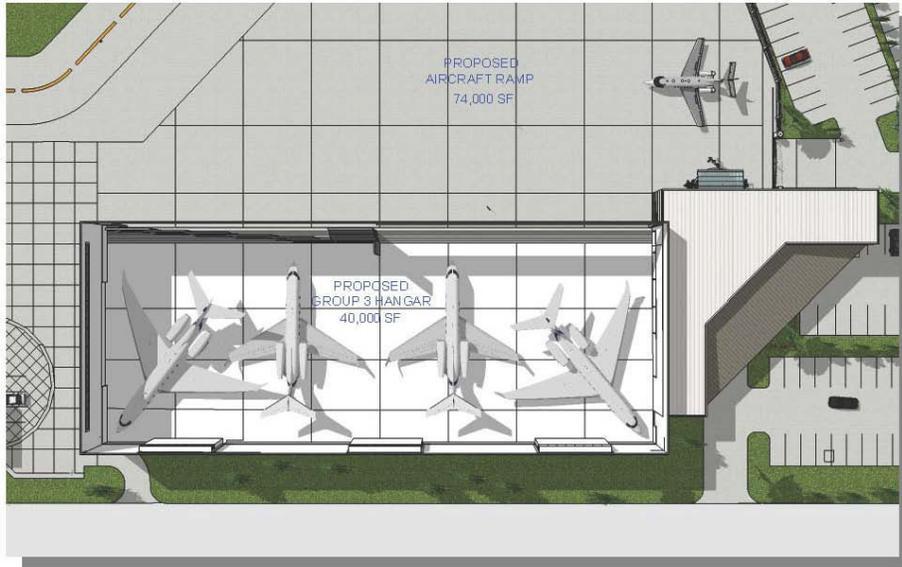
MASTER SITE PLAN

Existing and Proposed



CHARTER TERMINAL

Arrangement Plan



**PROPOSED HANGAR**

*Aerial View*



**WESTGROVE ELEVATION**

*View east*



**BOULEVARD ENTRY**

*View east*

**EXHIBIT 2 TO RECOMMENDATION**

**STATE OF TEXAS           §**  
**§ GROUND LEASE EARLY TERMINATION AGREEMENT**  
**COUNTY OF DALLAS       §**

This Ground Lease Early Termination Agreement (hereinafter referred to as the “Agreement”) is entered into and made effective on \_\_\_\_\_, 2010 (the “Effective Date”) between the Town of Addison, Texas (hereinafter referred to as the “City” or “Landlord”); a Texas home-rule municipality, and RR Investments, Inc. dba Million Air Dallas, a Texas corporation (hereinafter referred to as “Tenant”) (Landlord and Tenant are sometimes referred to together herein as the “parties” and individually as the “party”).

**Recitals:**

**WHEREAS**, a Ground Lease was executed on November 4, 1983, between the City of Addison, Texas and Addison Airport of Texas, Inc., as Landlord, and 16300 Addison Joint Venture, as tenant (identified as Ground Lease #070A-6001 or Ground Lease #60 in the administrative archives and records of the City), by the terms of which certain unimproved real property as described in the Ground Lease (referred to herein as the “#70A-6001 Demised Premises”) located on Addison Airport, within the Town of Addison, Texas and owned by the City was leased to 16300 Addison Joint Venture; and

**WHEREAS**, the interests of the Tenant under such Ground Lease were assigned under Assignment of Lease dated May 6, 1985 from 16300 Addison Joint Venture as assignor to Amrecorp Realty, Inc, as assignee; and

**WHEREAS**, the said Ground Lease was then assigned by Amrecorp Realty, Inc. to Personal Way Aviation, Inc. by that certain Assignment of Leases and Assumption Agreement dated March 15, 1986; and

**WHEREAS**, the said Ground Lease was then assigned by Personal Way Aviation, Inc. to HI Service Enterprises, Inc. by that Assignment of Lease dated May 6, 1992 (filed as a matter of public record in Book 93183, Page 1651, Instrument #199301835241 of the Official Public Records of Dallas County) (the “OPR”); and

**WHEREAS**, the said Ground Lease was then assigned by Carter-Crowley Properties, Inc., successor by merger to HI Service Enterprises, Inc., to Personal Way Aviation, Inc. by that Assignment of Leases and Assumption Agreement dated February 28, 1993 (filed as a matter of public record in Book 93207, Page 3142, Instrument #199302074590 of the OPR); and

**WHEREAS**, the said Ground Lease was then assigned by Personal Way Aviation, Inc. to RR Investments, Inc. d/b/a Million Air Dallas by Assignment of Lease dated December 15, 1994; and

## EXHIBIT 2 TO RECOMMENDATION

**WHEREAS**, a true and correct copy of the said Ground Lease, together with all amendments and modifications thereto, is attached to this Ground Lease Early Termination Agreement as Exhibit “A” (and is referred to herein as the “Ground Lease”, “Ground Lease #070A-6001”, or “Ground Lease #60”); and

**WHEREAS**, by virtue of such assignments, RR Investments, Inc. d/b/a/ Million Air Dallas is the current Tenant under the Ground Lease; and

**WHEREAS**, on February 20, 1984, another, separate ground lease affecting unimproved real property located adjacent to the #70A-6001 Demised Premises and including similar terms and conditions as the Ground Lease (save and except, among other things, the legal description of the demised premises and the respective rental) was executed between the City of Addison, Texas and Addison Airport of Texas, Inc., as Landlord, and Personal Way Aviation, Inc., as Tenant (identified as “Ground Lease #070A-5601” or “Ground Lease #56” in the administrative archives and records of the City), by the terms of which certain unimproved real property as described in Ground Lease #56 (referred to herein as the “#70A-5601 Demised Premises”) located on Addison Airport, within the Town of Addison, Texas and owned by the City was leased to Personal Way Aviation, Inc; and

**WHEREAS**, Ground Lease #56 was then amended by that Amendment to Ground Lease dated August 15, 1990 wherein (i) the description of the #70A-5601 Demised Premises was modified to contain a certain 2.2958 acres as described as “Tract 4” in Exhibit “C” of said Amendment, and (ii) the monthly rental was increased to Two Thousand Nine Hundred Twenty-Seven and 19/100 (\$2,927.19) (subject to adjustment as provided for in Ground Lease #56), and, (iii) all other terms and conditions of Ground Lease #56 remained in full force and effect; and

**WHEREAS**, Ground Lease #56 was thereafter assigned by that certain Assignment of Leases and Assumption Agreement dated May 6, 1992 from Personal Way Aviation, Inc., as assignor, to HI Services Enterprises, Inc., a Texas corporation as assignee (as recorded in Book and Volume 93183, Page 1651, Instrument # 199301835241 of the OPR); and

**WHEREAS**, HI Services Enterprises, Inc. thereafter merged into Carter-Crowley Properties, Inc, a Texas corporation, and by way of that certain Guaranty and Assumption of Lease Agreement dated November 2, 1992, Carter-Crowley assumed and guaranteed the performance of HI Services Enterprises, Inc.'s obligations under Ground Lease #56; and

**WHEREAS**, said Ground Lease #56 was then assigned by Carter-Crowley Properties, Inc. (the successor by merger to HI Services Enterprises, Inc.) to Personal Way Aviation, Inc. by that Assignment of Leases and Assumption Agreement made and entered into February 28, 1993, a Texas corporation as recorded in Book and Volume 93207, Page 3142, Instrument #199302074590 of the OPR; and

**WHEREAS**, Ground Lease #56 was then assigned by Personal Way Aviation, Inc. to RR Investments, Inc. dba Million Air Dallas by that certain Assignment of Lease dated December 15, 1994 and, by virtue of all such assignments pertaining to Ground Lease #56, RR Investments, Inc. dba Million Air Dallas is the current Tenant under Ground Lease #56; and

## EXHIBIT 2 TO RECOMMENDATION

**WHEREAS**, a true and correct copy of the said Ground Lease #56, together with all amendments and modifications thereto, is attached to this Agreement as Exhibit "B" (and is referred to herein as the "Ground Lease #56" or "Ground Lease #070A-5601"); and

**WHEREAS**, Ground Lease #60 and Ground Lease #56 (collectively hereinafter referred as the "Ground Leases") provide that, upon the expiration or termination of that certain agreement referred to and defined in the Ground Leases 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 Leases; and

**WHEREAS**, the said Base Lease has expired and the City is the Landlord under the Ground Leases; and

**WHEREAS**, Tenant has proposed to construct certain building improvements on, that will extend across the boundary lines of the #70A-6001 Demised Premises and the #70A-5601 Demised Premises, and in order to best facilitate these new building improvements, Landlord and Tenant mutually desire by this instrument to provide for the early termination of Ground Lease #60, and by separate instrument entitled "Second Amendment to Ground Lease" to amend Ground Lease #56 to, among other things, combine the #70A-6001 Demised Premises with the #70A-5601 Demised Premises.

**NOW, THEREFORE**, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

### **AGREEMENT**

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

**Section 2. Termination.** Landlord and Tenant agree that, subject to the parties entering into and executing that instrument entitled "Second Amendment to Ground Lease" for Ground Lease #56 (the "Second Amendment") as may be mutually agreed to by the parties, Ground Lease #60 shall terminate as of the effective date of the Second Amendment (the "Termination Date") as if such date was the stated expiration date of Ground Lease #60. In accordance therewith, the Termination Date is \_\_\_\_\_ (*to be completed upon execution of the Second Amendment to Ground Lease #56*). In the event the Second Amendment is not agreed to and executed by the authorized representatives of both parties on or before \_\_\_\_\_, 2010, this Ground Lease Early Termination Agreement shall be null and void ab initio, shall have no force or effect whatsoever, and Ground Lease #60 shall be and remain in full force and effect. The early termination of Ground Lease #60 shall not release Tenant from any of its obligations, duties, liabilities or responsibilities that Tenant would otherwise have if Ground Lease #60 had expired in accordance with its terms and provisions.

**EXHIBIT 2 TO RECOMMENDATION**

**Section 3. Continued Performance.** Landlord and Tenant agree that each shall continue to perform their respective obligations contained in Ground Lease #60 including, but not limited to, Tenant’s obligation to pay rent, through the Termination Date. If the Termination Date is other than the last day of the month, then the parties agree that the rent attributable to that part of the month through the Termination Date shall be prorated on a per diem basis.

**Section 4. Binding Effect.** This Agreement shall be for the benefit of, and shall be binding upon, the parties hereto and their respective heirs, executors, administrators, successors, and assigns (as the same may be permitted by Ground Lease #60).

**Section 5. Applicable Law; Venue; Recording.** The Agreement shall be construed under and governed by the laws of the State of Texas, without regard to choice of law rules, and all obligations of the parties created by this Agreement are performable in Dallas County, Texas. Venue for any action under this Agreement shall lie exclusively in Dallas County, Texas. Landlord may record this Agreement or a memorandum hereof in the real property records of Dallas County, Texas.

**Section 6. Final Agreement; No Other Amendments.** This Agreement shall constitute the final agreement and understanding of the parties on the subject matter hereof and can only be modified by further written instrument signed and executed by both parties. Except to the extent modified or amended herein, all other terms, conditions, standards, and obligations of Ground Lease #60 shall remain unchanged and in full force and effect.

**Section 7. 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 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 WITNESS WHEREOF,** the undersigned parties have executed this Agreement as of the Effective Date first given above.

**LANDLORD:**

**TENANT:**

**TOWN OF ADDISON, TEXAS**

**RR INVESTMENTS, INC. dba  
MILLION AIR DALLAS**

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

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

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

EXHIBIT 2 TO RECOMMENDATION

THE STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS           §

This instrument was acknowledged before me, the undersigned authority, on \_\_\_\_\_, 2010 by Ron Whitehead, City Manager for the Town of Addison, Dallas County, Texas, a Texas municipal corporation, on behalf of the said municipal corporation.

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

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
(Printed Name of Notary)

THE STATE OF TEXAS       §  
                                      §  
COUNTY OF DALLAS       §

This instrument was acknowledged before me, the undersigned authority, on \_\_\_\_\_, 2010 by \_\_\_\_\_, \_\_\_\_\_ of RR Investments, Inc. dba Million Air Dallas, a Texas corporation, on behalf of said corporation.

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

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
(Printed Name of Notary)

## EXHIBIT 2 TO RECOMMENDATION

### **Exhibit "A"**

a true and correct copy of the Ground Lease #070A-6001 as amended and modified

## EXHIBIT 2 TO RECOMMENDATION

### **Exhibit "B"**

a true and correct copy of the Ground Lease #070A-5601 as amended and modified

**EXHIBIT 3 TO RECOMMENDATION**

56

**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 \_\_\_\_\_, 2010 (the "Effective Date"), between the Town of Addison, Texas, a home-rule municipality (hereinafter sometimes referred to as the "Landlord" or the "City"), and RR Investments, Inc. d/b/a Million Air Dallas, a Texas corporation ("Tenant").

**WHEREAS**, a Ground Lease was executed on February 20, 1984 between the City of Addison (the same being the Town of Addison, Texas) and Addison Airport of Texas, Inc., as Landlord, and Personal Way Aviation, Inc., as tenant (identified as Ground Lease #070A-5601 or Ground Lease #56 in the administrative archives and records of the City), by the terms of which certain real property commonly known to be located at 4350 Westgrove Drive, Addison, Texas 75001 (the "Demised Premises" and as more fully described in the said Ground Lease) in the Addison Airport (the "Airport") within the Town of Addison, Texas (the "City") and owned by the City was leased to Personal Way Aviation, Inc.; and

**WHEREAS**, the Ground Lease was thereafter amended by that Amendment to Ground Lease dated August 15, 1990 wherein (i) the description of the Demised Premises was modified to contain a certain 2.2958 acres of land described as "Tract 4" in Exhibit "C" of said amendment, and; (ii) the monthly rental was increased to Two Thousand Nine Hundred Twenty-Seven and 19/100 (\$2,927.19) (subject to adjustment as provided for in the Ground Lease), and; (iii) all other terms and conditions of the Ground Lease remained in full force and effect; and

**WHEREAS**, the Ground Lease was thereafter assigned by that certain Assignment of Leases and Assumption Agreement dated May 6, 1992 from Personal Way Aviation, Inc., as assignor, to Hi Services Enterprises, Inc., a Texas corporation as assignee (the assignment being recorded in Book and Volume 93183, Page 1651, Instrument # 199301835241 of the Official Public Records of Dallas County, Texas (the "OPR")); and

**WHEREAS**, Hi Services Enterprises, Inc. thereafter merged into Carter-Crowley Properties, Inc, a Texas corporation ("Carter-Crowley"), and by way of that certain Guaranty and Assumption of Lease Agreement dated November 2, 1992, Carter-Crowley assumed and guaranteed the performance of Hi Services Enterprises, Inc.'s obligations under the Ground Lease; and

**WHEREAS**, the said Ground Lease was thereafter assigned by Carter-Crowley (the successor by merger to Hi Services Enterprises, Inc.) to Personal Way Aviation, Inc. by that Assignment of Leases and Assumption Agreement made and entered into February 28, 1993, a Texas corporation as recorded in Book and Volume 93207, Page 3142 Instrument #199302074590 of the OPR; and

**WHEREAS**, the Ground Lease was thereafter assigned by Personal Way Aviation, Inc. to RR Investments, Inc. d/b/a/ Million Air Dallas by that certain Assignment of Lease dated

## EXHIBIT 3 TO RECOMMENDATION

December 15, 1994 and by virtue of said assignment the Tenant is the current tenant under the Ground Lease; 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**, 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", the "Lease" or "Ground Lease #070A-5601"), and

**WHEREAS**, Tenant is also the tenant under another ground lease at the Airport that is identified in the administrative archives and records of the City as Ground Lease #070A-6001, in which ground lease Tenant leases from the City certain land that abuts the Demised Premises (the "#070A-6001 Premises"); and

**WHEREAS**, Landlord and Tenant desire by this Second Amendment to, among other things, amend the Demised Premises to add thereto the #070A-6001 Premises, and in connection therewith and as a result of such addition, Landlord and Tenant have agreed to terminate Ground Lease #070A-6001 as reflected in that instrument entitled "Termination of Ground Lease Agreement" of even date herewith.

**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 RR Investments, Inc. d/b/a Million Air Dallas, 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 Ground 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 Description of Demised Premises.

## EXHIBIT 3 TO RECOMMENDATION

1. The description of the Demised Premises leased to Tenant as set forth in the Ground Lease is hereby amended so that the Demised Premises shall hereafter comprise the land described in **Exhibit B** attached to this Second Amendment and incorporated herein (the “Demised Premises”); provided, however, the said Demised Premises described in the attached **Exhibit B** and the lease thereof are subject to any and all (i) federal, state, and local laws, statutes, constitutional provisions, charters, ordinances, codes, rules, regulations, directives, policies, permits, standards, and orders (including, without limitation, court orders) of any governmental authority, entity, or agency (including, without limitation, the Town of Addison, Texas, the State of Texas, the Federal Aviation Administration, and the Texas Department of Transportation), whether in existence or hereafter enacted, adopted or imposed, and including, without limitation, any and all grant agreements or grant assurances now existing or as hereafter agreed to, adopted or imposed, (ii) restrictive covenants, mortgages, taxes, easements, licenses, encroachments, leases, deeds of trust, liens, mortgages, restrictions, and all other encumbrances or title exceptions, whether of record or not, and including, without limitation, items or matters which are visible or apparent from an inspection, which affect the Demised Premises.

B. Term Adjustment. Section 3 of the Ground Lease is modified in accordance with the following:

1. The term of this Lease is currently scheduled to and shall end on March 31, 2024, subject, however, to the termination provisions of the Lease, including, without limitation, the termination provisions set forth in this Second Amendment, and all other terms, conditions, and provisions of this Lease. However, if Tenant satisfies and completes to Landlord's reasonable satisfaction all of the terms, conditions, and provisions of this Lease, as amended, regarding construction of the Building Improvements (as defined and described herein) set forth in the amendments to Section 6 of this Lease (which amendments are included in Section 2.E. of this Second Amendment, below) (including, without limitation, satisfaction of the time period for achievement of Substantial Completion and Final Completion (as such terms are defined herein) of the Building Improvements); the Construction Costs Evidence (as defined herein) is timely submitted by Tenant to Landlord and the same equals or exceeds the Construction Cost Value (as defined herein); and Tenant is not in default of any provision of this Lease, then the Term hereof shall be extended so that it shall end four hundred and eighty (480) full calendar months following the date of Substantial Completion (as defined herein) (the "Lease Extension Period"), but subject, however, to the termination provisions and all other terms, conditions, and provisions of the Lease. Example: If the date of Substantial Completion of the Building Improvements is April 15, 2014, the Lease Extension Period will end at the end of May, 2054.

2. Notwithstanding the foregoing or any other provision of this Lease, it is the intent of the parties that the remaining Term, as may be extended, shall not at any time exceed forty (40) years in duration.

3. Within fifteen (15) calendar days after Final Completion of the Building Improvements is achieved by Tenant as defined in Section 6, Landlord and Tenant agree

## EXHIBIT 3 TO RECOMMENDATION

to execute a Memorandum of Lease, in substantially the form attached hereto as Exhibit D, which Memorandum may be publicly recorded by either party in the Official Public Records of Dallas County, Texas evidencing this Lease and its Term reflecting the Lease Extension Period.

C. Amendment to Rental. Section 4 of the Ground Lease is modified in accordance with the following:

1. Rent for the Demised Premises as amended hereby shall be in an annual amount equal to the product of the number of gross square feet of the Demised Premises (the number of gross square feet of the Demised Premises as set forth in Exhibit B to this Second Amendment being 157,866 square feet) multiplied by \$0.5451 per gross square foot (157,866 square feet times \$0.5451 per gross square foot equals annual rent amount of \$86,052.76) (the "Rent" or "Annual Rent"), which Rent is subject to adjustment as set forth in the Ground Lease. Without offset or deduction, Rent shall be paid in advance in monthly installments on or before the first day of each calendar month, each such installment determined by dividing the Annual Rent amount by twelve (12), with the first such installment due on or before the first day of the first calendar month following the Effective Date of this Second Amendment. Landlord and Tenant agree that the Rent rate of \$0.5451 per gross square foot is that Rent rate as adjusted in accordance with the Ground Lease and amendment since the commencement of the Ground Lease and is subject to further and future adjustment as set forth in the Ground Lease.

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

**Adjustment of Rental:** Commencing on January 1, 2013 and on every second anniversary thereafter (hereinafter referred to as the "Adjustment Date"), the Annual Rent due under Section 4, as amended herein, shall be adjusted as follows:

A. Annual 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 on the Effective Date of this Amendment. The current index ("Current Index") is the Consumer Price Index on the first day of the calendar month preceding the then applicable Adjustment Date.

B. Beginning with the first full month following the then applicable Adjustment Date, the Annual Rent shall be adjusted so that it equals the product of the Annual Rent amount during the first year of this Second Amendment (such amount being \$86,052.76) 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 Annual Rent ever be decreased below the Annual Rent set forth in Section 4., as amended (such Annual Rent being \$86,052.76). Without offset or deduction, Annual Rent shall be paid in advance in monthly installments on or before the first day of each calendar month, determined by

## EXHIBIT 3 TO RECOMMENDATION

dividing the Annual Rental amount by twelve (12), with the first such installment due on or before the first day of the first calendar month following the Adjustment Date

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.

E. Amendment to Use of Demised Premises and Construction of Improvements.  
Section 6 of the Ground Lease is amended in its entirety to read as follows:

**A. Use of the Demised Premises:**

1. The Demised Premises shall be used and occupied by Tenant only for the following purposes: sale of aircraft and aircraft parts; aircraft maintenance and repair, aircraft storage; aircraft training, aircraft charter; aircraft rentals; Fixed Base Operations: hangars, shops, aircraft ramps and vehicle parking; the sale of aircraft services to the public, including dispensing fuel in accordance with and subject to the authority issued by and ordinances, rules, standards and regulations of the City; and not otherwise without the prior written consent of Landlord.

2. The Demised Premises shall not be used for any purpose or activity that (i) constitutes a violation of any federal, state, or local laws, ordinances, orders, directives, charters, rules, regulations, standards or policies), (ii) in Landlord's opinion, creates or would create a nuisance or waste, or unreasonably disturb, annoy or interfere with other tenants or users of the Airport, or (iii) increases insurance costs for Landlord.

3. Tenant shall not at any time leave the Demised Premises vacant, but shall in good faith continuously throughout the term of this Lease conduct and carry on in the entire Demised Premises the type of operations or use for which the Demised Premises are leased, except during periods in which the Demised Premises may not be occupied as a result of fire or other casualty, or during any commercially reasonable period necessary for making repairs and alterations, all such repairs and alterations to be diligently pursued to completion.

4. Tenant acknowledges that Landlord is bound by, and this Ground Lease is subject to, 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, including, without limitation, 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. Tenant agrees not to act or fail to act in any way or manner that would cause Landlord to be in violation of any of the foregoing.

5. Tenant for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that

## EXHIBIT 3 TO RECOMMENDATION

(i) no person on the grounds of race, creed, color, national origin, sex, age or handicap shall be excluded from participation in, denied the benefits of or be otherwise subjected to discrimination in the use of the Demised Premises; (ii) that in the construction of any improvements on, over or under the Demised Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, national origin, sex, age, or handicap shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination; (iii) that the Tenant shall use the Demised Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 and as said Regulations may be amended.

6. Tenant agrees to furnish service on a fair, equal, and not unjustly discriminatory basis to all users thereof and to charge fair, reasonable, and not unjustly discriminatory prices for each unit or service, provided that the Tenant may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

### **B. Construction of Improvements.**

1. In connection with the use and occupancy of the Demised Premises by Tenant, Tenant shall cause to be constructed on the Demised Premises buildings and other improvements (together, the "Building Improvements"), at Tenant's sole cost, expense and risk (except as may be otherwise agreed to between Landlord and Tenant), in accordance with plans and specifications which shall be submitted to and subject to the approval of Landlord. The term "Building Improvements" shall mean those improvements described in Exhibit C attached hereto and incorporated herein. Except as provided for in this Agreement, Tenant may not construct, locate, install, place or erect any other improvements upon the Demised Premises without the prior written consent of Landlord. The construction cost (separate and apart from the cost of design and any other costs or expenses (including, without limitation, those costs sometimes referred to as "soft costs") of the Building Improvements shall exceed three million dollars (\$3,000,000) (the "Construction Cost"), and Tenant shall submit to Landlord evidence of such Construction Cost (the "Construction Cost Evidence"); such Construction Cost Evidence shall include true and correct copies of all receipts or other documents or records indicating the nature of the construction work performed, the cost thereof, the amount paid for the construction work and the Building Improvements, and such other records or information as Landlord may request to substantiate the Construction Cost.

2. Except with regard to Building Improvements now existing, the Building Improvements shall be constructed on the Demised Premises in accordance with plans and specifications prepared by an architect and/or engineer selected and retained by Tenant (the "Design Plan"), which shall be submitted to Landlord for Landlord's consideration of approval (which approval, if any, shall be in writing).

## EXHIBIT 3 TO RECOMMENDATION

Any architect or engineer shall be duly licensed and authorized as may be required by law to practice architecture or engineering, as the case may be, in the State of Texas. Such construction shall be performed in a first class, workmanlike manner and in compliance with all applicable building codes, standards and ordinances, as set out in more detail, below. Tenant agrees to promptly pay and discharge all costs, expenses, claims for damages (including, without limitation, consequential damages) or injury (including, without limitation, claims for personal injury or death, or property damage or destruction, or economic loss), liens and any and all other liabilities and obligations which arise in connection with such construction, and **TENANT SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS LANDLORD AND MANAGER, AND THEIR RESPECTIVE OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS (IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES) FROM AND AGAINST ANY AND ALL SUCH COSTS, EXPENSES, CLAIMS, DAMAGES, PENALTIES, FINES, LIENS LIABILITIES, AND OBLIGATIONS, INCLUDING SUCH COSTS, EXPENSES, CLAIMS, DAMAGES, PENALTIES, FINES, LIENS LIABILITIES, AND OBLIGATIONS WHICH ARE CAUSED BY OR RESULT FROM, IN WHOLE OR IN PART, THE NEGLIGENCE OF LANDLORD OR MANAGER (OR THEIR RESPECTIVE OFFICIALS, OFFICER, EMPLOYEES, AND AGENTS).** It is expressly understood and agreed that Tenant's construction of the Building Improvements shall include the finish-out of such building and improvements in accordance with the plans and specifications for the finish-out of the Building Improvements as submitted by Tenant to Landlord and approved in writing by Landlord.

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

4. If construction of the Building Improvements has not commenced before December 31, 2013, Landlord may terminate this Ground Lease or terminate Tenant's right to possession of the Demised Premises (without terminating this Ground Lease) by written notice to Tenant.

5. For purposes hereof, construction of Building Improvements 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 Demised Premises, (iii) Tenant shall have received (and shall have provided a true and correct copy to Landlord of) the Federal Aviation Administration's ("FAA's") determination to Tenant's filing of Form 7460 Notice of Proposed Construction or Alteration, (iv) execution of a contract to perform the work set forth in the Design Plan with a qualified general contractor, (v) proof of

## EXHIBIT 3 TO RECOMMENDATION

required Builder's Risk Insurance Policy and Payment Bond and Performance Bond required under Section 13 herein, and (vi) the initiation of actual mobilization of construction equipment on the Demised Premises (to perform the initial steps of construction of the Building Improvements, such as excavation for a foundation).

6. 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 reasonable approval of Landlord. If (i) construction of the Building Improvements is not Substantially Complete ("Substantial Completion" being defined in subsection 10 of this Section 6.B) on or before July 31, 2013, and Final Completion ("Final Completion" being defined in subsection 10 of this Section 6.B) achieved no later than ninety (90) days after the date of Substantial Completion, and if (ii) the Construction Costs of the Building Improvements do not exceed the Construction Cost as established by the Construction Costs Evidence which Tenant shall submit to Landlord on or before the Final Completion date, such failure and/or omission constitutes a default or breach of this Agreement for which Landlord may pursue all rights and remedies available to Landlord under this Ground Lease or at law, in equity or otherwise (including, without limitation, termination of this Ground Lease and/or Tenant's right to possession of the Demised Premises). If Landlord terminates this Lease, Tenant shall at Landlord's request remove any portion of the Building Improvements requested by Landlord and leave the Demised Premises in a good condition.

7. Tenant agrees that any construction or modification of the Building Improvements or any other improvements (authorized to be constructed in writing by Landlord) on the Demised Premises shall comply with all standards, codes, and rules reasonably adopted by Landlord or Manager, including, but not limited to, any rules relating to construction and maintenance standards and specifications, will comply with the Town of Addison, Texas building code and zoning requirements, and will meet or exceed all applicable State and Federal standards (including, without limitation, Title III of the Americans With Disabilities Act of 1990, any state laws governing handicapped access or architectural barriers, and all rules, regulations, and guidelines promulgated under such laws, as amended from time to time). Tenant recognizes that such construction/maintenance standards and specifications, Town of Addison building code and zoning requirements, and all applicable State and Federal standards, and other applicable standards, codes, and rules 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.

8. Tenant will properly and timely submit to the Federal Aviation Administration (FAA), the Texas Department of Transportation (TxDOT), and any other governmental entity or agency having jurisdiction regarding Addison Airport, a Notice of Proposed Construction or Alteration (FAA Form 7460-1), a

## EXHIBIT 3 TO RECOMMENDATION

TxDOT Airport Construction Emission Inventory, and such other forms and information as may be required by the FAA, TxDOT, or other governmental entity or agency having jurisdiction over Addison Airport.

9. 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, Substantial Completion, 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.

10. “Substantial Completion” of the construction of the Building Improvements shall be deemed to have occurred upon (i) the issuance of a written certification by Tenant's architect (or other authorized design professional) who designed the Building Improvements in writing to Landlord that said Building Improvements are complete in accordance with the Design Plan (e.g., a certificate of substantial completion), and (ii) the issuance by the Town of Addison, Texas of a final, unconditional certificate of occupancy for said Building Improvements. “Final Completion” of the construction of the Building Improvements shall be deemed to occur upon the issuance by Tenant's architect (or other authorized design professional) who designed the Building Improvements of such documentation as may be necessary to establish the final completion (closeout) of the construction of the Building Improvements, the delivery of a true and correct copy of such documentation to Landlord, and the delivery by Tenant to Landlord of comprehensive As-Built drawings and documentation reviewed by Tenant's architect (or other authorized design professional) reflecting all approved changes and modifications to the originally approved Design Plan.

11. Failure of Tenant to observe and comply with the requirements of this Section shall be an Event of Default.

F. 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 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 DEMISED PREMISES FOR ANY PURPOSE WHATSOEVER,**

## EXHIBIT 3 TO RECOMMENDATION

**INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION REGARDING SOIL CONDITIONS, AVAILABILITY 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 DEMISED PREMISES, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO SOIL CONDITIONS, AVAILABILITY 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 SECTION 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 SECTION. 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 LEASED 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. TENANT, AT ITS COST, SHALL BE ENTITLED TO PERFORM A PHASE I ENVIRONMENTAL STUDY, PROVIDING A COPY OF THE RESULTS TO LANDLORD, ALL AS SPECIFIED IN MORE DETAIL IN SECTION 21.1 BELOW 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.**

In accepting the Demised Premises, Tenant acknowledges that this Lease shall be construed to provide Rent to Landlord on a Net Return Basis, as set out in Section 30, below.

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

## EXHIBIT 3 TO RECOMMENDATION

### 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" or "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

## EXHIBIT 3 TO RECOMMENDATION

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.

H. 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. 1. 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, (i) assign, sell, pledge, encumber, mortgage, license, transfer, or otherwise convey (each being referred to herein as "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 (ii) 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 Section 22 of this Lease.

2. Notwithstanding the foregoing, Landlord hereby acknowledges and consents to Tenant's subletting of the Leased Premises for the purpose of renting aircraft storage and office space only, provided that each sublease is evidenced by written agreement (to be made available for Landlord's review and inspection upon Landlord's written request within 3 business days), signed and executed by Tenant and sublessee and fairly states:

- (i) each sublessee agrees to be bound by the terms and provisions of this Ground Lease, including, without limitation, the provisions of Section 6 pertaining to the use of the Demised Premises, and in the event of any conflict between the terms of the Ground Lease and the terms of the sublease, the terms of the Ground Lease shall control;
- (ii) no such subletting shall constitute a novation;
- (iii) in the event of occurrence of an event of default while the Demised Premises are assigned or sublet, Landlord, in addition to any other rights or remedies provided herein or by law, in equity, or otherwise, may at Landlord's option, collect

## EXHIBIT 3 TO RECOMMENDATION

- directly from such assignee or subtenant all rents becoming due under such subletting and apply such rent against any sums due to Landlord hereunder;
- (iv) sublessee shall be obligated to obtain Landlord's consent to any action as to which Tenant is obligated to obtain such consent under the Ground Lease;
  - (v) any such sublease is to automatically terminate upon termination of the Ground Lease notwithstanding any other provision of the sublease to the contrary;
  - (vi) Landlord shall have no responsibility or obligation for the performance by Tenant of its obligations under the sublease;
  - (vii) neither this consent, the exercise by Landlord of its rights hereunder, nor the sublease or any other instrument shall give sublessee any rights directly or indirectly against Landlord or create or impose any obligation, duty, responsibility, or liability of Landlord in favor of or for the benefit of sublessee.

Furthermore, Tenant agrees that in no way does any sublease release Tenant from any of its covenants, agreements, liabilities and duties under the Ground lease; that this consent does not constitute approval by Landlord of the terms of any such sublease; that nothing herein contained shall be deemed a waiver or release of any of the Landlord's rights under the Ground Lease; that Tenant shall remain fully liable for the performance of each and every term, provision, covenant, duty and obligation of the Tenant under the Ground Lease, including, without limitation, the duty to make any and all payments of rent; that any violation of any terms and conditions of the Ground Lease by a sublessee will constitute a default under the Ground Lease. Landlord hereby ratifies and approves all currently existing subleases, and, such sublease shall not be required to be amended to specifically comply with the terms of this Section 9.A.2.

3. If consent by Landlord to an assignment is required hereunder, Tenant shall request, in writing, Landlord's consent to a proposed assignment and such request must include: (i) the name of the proposed assignee; (ii) the nature and character of the assignee's business; (iii) all material terms of the proposed assignment; and (iv) audited financial statements or other evidence of the proposed assignee's creditworthiness and ability to assume Tenant's obligations.

For the purposes hereof and any applicable law, and without limitation as to other grounds for Landlord withholding consent, Landlord may, in Landlord's sole discretion, withhold its consent when any one or more of the following apply:

- (i) 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 reasonably determined by Landlord;
- (ii) the proposed assignee has not demonstrated sufficient financial responsibility or creditworthiness to the satisfaction of Landlord in light of the duties, obligations, and responsibilities of the Tenant under this Lease at the time when the consent is requested;

## EXHIBIT 3 TO RECOMMENDATION

- (iii) the proposed assignee's intended use of the Leased Premises is inconsistent with the Lease;
- (iv) 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);
- (v) if at any time consent is requested or at any time prior to the granting of consent, Tenant is in default under the Lease or would be in default under the Lease but for the pendency of a grace or cure period; or
- (vi) the proposed assignee does not intend to occupy the entire Demised Premises as described in the Lease and conduct its business there from for a substantial portion of the then remaining term of the 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 this Second Amendment to Ground Lease cease to own or have control of more than 50% of Tenant at any time during the Term; provided that any such person shall have the unencumbered right to make from time to time gifts, sales or other transfers, upon death and/or *inter vivos*, of part or all of his or its ownership interest in the Tenant to a Permitted Transferee. A "Permitted Transferee" for purposes of this Lease, shall mean: (i) a person who is a parent or descendant of the transferor; (ii) a trust, the primary beneficiaries of which are relatives of the transferor as described in (i) above; (iii) an entity, the voting or financial control of which is owned by the transferor and/or his relatives as described in (i) above; and (iv) a trust, the primary beneficiary of which is such transferor; and such transfer shall not be considered an event deemed to be an "assignment" hereunder. 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 subletting shall be expressly subject to all the terms and provisions of this Lease, including, without limitation, the provisions of Section 6 pertaining to the use of the Demised Premises. Tenant shall not assign this Lease or any right, duty, liability, or obligation of Tenant hereunder, or sublet the Demised Premises or any portion of the Demised Premises, without first obtaining a written agreement from each such assignee or sublessee whereby each such assignee or sublessee agrees to and shall be bound by and comply with all of the terms and provisions of this Lease (and Tenant shall provide a copy of such written agreement to Landlord). No 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

## EXHIBIT 3 TO RECOMMENDATION

the payment or performance of Tenant's obligations hereunder. of the extent not collected.

Upon written request, Tenant shall promptly provide to Landlord the names and addresses of any subtenants and the make, model, aircraft type and "N" number of any aircraft stored, located or generally regarded to be "based" 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 Building Improvements described in Section 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 Section 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

## EXHIBIT 3 TO RECOMMENDATION

subordinate Landlord's interest in the Demised Premises to the mortgagee of such proposed leasehold mortgage.

I. 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 Section 37 of the Ground Lease shall be paid by Tenant on demand.

If any buildings or other improvements located upon the Demised Premises are determined to be subject to property taxation by the Dallas Central Appraisal District (or any successor entity or agency thereto or other agency with the authority to make such determination) ("DCAD"), Tenant specifically reserves the right to contest the valuation of such buildings and/or improvements, but agrees not to contest the determination that the buildings and/or improvements are subject to taxation. Notwithstanding the foregoing 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.

J. 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; Bonds.

A. 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

## EXHIBIT 3 TO RECOMMENDATION

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

## EXHIBIT 3 TO RECOMMENDATION

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.

## EXHIBIT 3 TO RECOMMENDATION

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.

B. In connection with any construction on the Demised Premises, Tenant shall obtain and keep in full force and effect at its sole cost and expense a Performance Bond and a Payment Bond guaranteeing, respectively, the faithful performance of all construction work and the payment of all obligations arising during the construction (including, without limitation, the payment of all persons performing labor or providing materials under or in connection with the Building Improvements), in the penal sum of one-hundred percent (100%) of the Construction Costs. Tenant shall pay or cause to have paid the premiums for such bonds. Bonds shall be issued by a surety company satisfactory to the Landlord, licensed by the State of Texas to act as a Surety, and listed on the current U.S. Treasury Listing of Approved Sureties. All forms shall be made on a form complying with the requirements of the laws of the State of Texas and satisfactory to Landlord. Such bonds shall be in conformance with the provisions of Chapter 2253, Tex. Gov. Code, and any successor statute thereto.

K. 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.

L. 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**

## EXHIBIT 3 TO RECOMMENDATION

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 Persons or any other person entering the Demised Premises under express or implied invitation of Tenant or any Tenant Persons, or arising out of the use or occupation of the Demised Premises by Tenant or by any Tenant Persons, in the performance of Tenant's obligations hereunder.

**B. TENANT'S INDEMNITY OBLIGATION.** Tenant agrees to and shall fully DEFEND (with counsel reasonably acceptable to Landlord), INDEMNIFY AND HOLD HARMLESS (i) the Town of Addison, Texas, and the elected officials, the officers, employees, agents, 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 agents 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,

## EXHIBIT 3 TO RECOMMENDATION

**BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF THE TOWN OF ADDISON, TEXAS, ANY OTHER ADDISON PERSON, THE AIRPORT MANAGER, OR ANY OTHER MANAGER PERSON, OR BY ANY ACT OR OMISSION BY THE TOWN OF ADDISON, TEXAS, ANY OTHER ADDISON PERSON, THE AIRPORT MANAGER, OR ANY OTHER 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) 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.

M. 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,

## EXHIBIT 3 TO RECOMMENDATION

consultants, contractors, subcontractors, tenants, licensees, invitees, patrons, and concessionaires) on the Demised Premises or any portion of the common facilities (described in Section 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

## EXHIBIT 3 TO RECOMMENDATION

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 agrees to and shall fully DEFEND (with counsel reasonably acceptable to Landlord), INDEMNIFY 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, all other 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, fees, charges, expenses, actions, causes of action, judgments, liabilities, suits, proceedings, harm, and losses of whatever kind or 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, under, above, or to the Demised Premises and/or any portion of the common facilities or any portion of the Airport or adjacent properties 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 OTHER ADDISON PERSONS, THE AIRPORT MANAGER OR ANY OTHER MANAGER PERSONS, OR BY ANY ACT OR OMISSION OF OR BY THE TOWN OF ADDISON, TEXAS, ANY OTHER ADDISON PERSONS, THE AIRPORT MANAGER OR ANY OTHER MANAGER PERSONS THAT WOULD GIVE 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 or any portion of the Airport or adjacent properties, 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

## EXHIBIT 3 TO RECOMMENDATION

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 Section 21.1 shall survive the expiration or earlier termination of this Lease.

N. 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; Other Provisions.** 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. For purposes hereof 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.

**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 the Ground Lease and each of their provisions are solely for the benefit of the parties hereto and are not

**EXHIBIT 3 TO RECOMMENDATION**

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 \_\_\_\_\_, 2010

**LANDLORD:**

**TENANT:**

**TOWN OF ADDISON, TEXAS**

**RR INVESTMENTS, INC. D/B/A/  
MILLION AIR DALLAS**

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

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

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

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

EXHIBIT 3 TO RECOMMENDATION

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 \_\_\_\_\_, 2010.

\_\_\_\_\_  
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 \_\_\_\_\_, 2010.

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

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

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

EXHIBIT 3 TO RECOMMENDATION

**EXHIBIT A**

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

EXHIBIT 3 TO RECOMMENDATION

**EXHIBIT B**

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

# EXHIBIT 3 TO RECOMMENDATION

## **EXHIBIT C**

### **Description of the Building Improvements**

To include and incorporate herein the Design Plan approved by Landlord

# EXHIBIT 3 TO RECOMMENDATION

## EXHIBIT D

### MEMORANDUM OF LEASE

This Memorandum of Lease is dated as of \_\_\_\_\_, 20\_\_\_, and executed by and between the Town of Addison, Texas (“Landlord” or “City”) and RR Investments, Inc., a Texas corporation d/b/a/ Million Air Dallas (“Tenant”).

A Ground Lease was entered into as of February 20, 1984 between the Town (City) of Addison, Texas, as landlord, and Personal Way Aviation, Inc., as tenant (identified as Ground Lease #070A-5601 or Ground Lease #56 in the administrative archives and records of the City) in which certain real property commonly known as 4350 Westgrove Drive, Addison, Texas 75001 (“Demised Premises” and as more fully described in the said Ground Lease) within the Addison Airport (the “Airport”) was leased by Landlord to Personal Way Aviation, Inc. The said Ground Lease was thereafter:

- amended by that Amendment to Ground Lease dated August 15, 1990; and thereafter
- assigned as of May 6, 1992 by Personal Way Aviation, Inc. to Hi Services Enterprises, Inc., a Texas corporation (such assignment being filed of record in Book and Volume 93183, Page 1651, Instrument # 199301835241 of the Official Public Records of Dallas County, Texas (the "OPR")); and thereafter
- assumed and guaranteed as of November 2, 1992 by Carter-Crowley Properties, Inc, a Texas corporation, successor to Hi Services Enterprises, Inc.; and thereafter
- assigned as of February 28, 1993 by Carter-Crowley Properties, Inc. to Personal Way Aviation, Inc. (such assignment being filed of record in Book and Volume 93207, Page 3142 Instrument #199302074590 of the OPR); and thereafter
- assigned as of December 15, 1994 by Personal Way Aviation, Inc. to RR Investments, Inc. d/b/a/ Million Air Dallas,

so that RR Investments, Inc. d/b/a/ Million Air Dallas is the current tenant under the Ground Lease.

Now let it be known, the said Ground Lease is further amended by that Second Amendment to Ground Lease, entered into and made effective \_\_\_\_\_. 2010, which, among other things, amends the description of the Demised Premises so that the Demised Premises shall thereafter comprise the land described in Exhibit A attached hereto, and amends the term of the Ground Lease so that it shall end on \_\_\_\_\_, 20\_\_\_, subject, however, to the termination and all other provisions of the Ground Lease.

This Memorandum of Lease is solely for recording and notice purposes and shall not be construed to alter, modify, expand, diminish or supplement the provisions of the Ground Lease, as amended. In the event of any inconsistency between the provisions of this Memorandum of Lease and the provisions of the Ground Lease (as amended), the provisions of the Ground Lease,

**EXHIBIT 3 TO RECOMMENDATION**

as amended, shall govern. Reference should be made to the Ground Lease (and all amendments thereto) for the full description of the rights and duties of Landlord and Tenant thereunder, and this Memorandum of Lease shall in no way affect the terms and conditions of the Ground Lease (including all amendments thereto) or the interpretation of the rights and duties of Landlord and Tenant thereunder.

Upon the expiration or earlier termination of the Ground Lease, Landlord and Tenant agree that they shall execute and record a termination of this Memorandum of Lease.

**IN WITNESS WHEREOF**, the undersigned parties execute this Memorandum of Lease this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**LANDLORD:**

**TENANT:**

**TOWN OF ADDISON, TEXAS**

**RR INVESTMENTS, INC.**

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

By: \_\_\_\_\_  
Typed name: \_\_\_\_\_  
'Title: \_\_\_\_\_

EXHIBIT 3 TO RECOMMENDATION

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 (s)he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[SEAL]

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

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 (s)he executed the same for the purposes and consideration therein expressed.

[SEAL]

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

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

## EXHIBIT 3 TO RECOMMENDATION

### **EXHIBIT A to Memorandum of Lease**

*[Insert description of Demised Premises]*

**EXHIBIT 4 TO RECOMMENDATION**

52

**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 \_\_\_\_\_, 2010 (the "Effective Date"), between the Town of Addison, Texas, a home-rule municipality (hereinafter sometimes referred to as the "Landlord" or the "City"), and RR Investments, Inc., a Texas corporation ("Tenant").

**WHEREAS**, a Ground Lease was executed on April 6, 1983 between the City of Addison (the same being the Town of Addison, Texas) and Addison Airport of Texas, Inc., as Landlord, and RR Investments, Inc., as tenant (identified as Ground Lease #070A-5201 or Ground Lease #52 in the administrative archives and records of the City), by the terms of which certain real property commonly known to be located at 4300 Westgrove Drive, Addison, Texas 75001 (the "Demised Premises" and as more fully described in the said Ground Lease) in the Addison Airport (the "Airport") within the Town of Addison, Texas (the "City") and owned by the City was leased to RR Investments, Inc.; and

**WHEREAS**, the Ground Lease was then amended by that Amendment to Ground Lease dated April 1, 1984 (the "1984 Amendment") wherein (i) the description of the Demised Premises was modified to contain a certain 3.627 acres of land as described in Exhibit "A-1" of said amendment (being a copy of the property survey prepared by Ginn, Inc. entitled "3.627 Acres Air Fleet-Dallas Addison Municipal Airport" revised 5/1/1984), and (ii) the monthly rental was increased to Three Thousand Six Hundred Sixty and 79/100 Dollars (\$3,660.79) (subject to adjustment as provided for in the Ground Lease), and (iii) all other terms and conditions of the Ground Lease remained in full force and effect; 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**, a true and correct copy of the said Ground Lease, together with the 1984 Amendment, is attached to this Second Amendment as Exhibit "A" (and is referred to herein as the "Ground Lease", the "Lease" or "Ground Lease #070A-5201"), and

**WHEREAS**, Tenant is also the tenant under three other ground leases at the Airport that are identified in the administrative archives and records of the City as:

- Ground Lease #0690-5901, in which Tenant leases from the City approximately 4.2128 acres of land commonly known as 4310 Amelia Earhart (the "#0690-5901 Premises"),

## EXHIBIT 4 TO RECOMMENDATION

- Ground Lease #070A-5601, in which Tenant leases from the City approximately 3.6241 acres of land commonly known as 4350 Westgrove (the “#070A-5601 Premises”), and
- Ground Lease #070A-6001, in which Tenant leases from the City approximately 1.33 acres of land commonly known as 4375 Westgrove (the “#070A-6001 Premises”)); and

**WHEREAS**, with respect to Ground Lease #070A-5601, Landlord and Tenant have entered into an amendment thereto entitled “Second Amendment to Ground Lease” of even date herewith (the “#070A-5601 Second Amendment”), which, among other things, (i) amends the demised premises described therein to include both the #070A-5601 Premises and the #070A-6001 Premises (together, the “Amended #070A-5601 Premises”), and (ii) provides for the construction by Tenant of certain building and related improvements upon the Amended #070A-5601 Premises; and

**WHEREAS**, with the addition of the #070A-6001 Premises to Ground Lease #070A-5601, Landlord and Tenant have agreed to terminate Ground Lease #070A-6001 as reflected in that instrument entitled “Termination of Ground Lease Agreement” of even date herewith and

**WHEREAS**, Landlord and Tenant desire and mutually agree to amend the Ground Lease to modify the provisions affecting the Term and other terms and conditions of the Ground Lease as set forth herein.

**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 RR Investments, Inc., 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 of this Second Amendment for all purposes.

In connection with the Ground 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:

## EXHIBIT 4 TO RECOMMENDATION

A. Term Adjustment. Section 3 of the Ground Lease is modified in accordance with the following:

(1) The term of this Lease is currently scheduled to and shall end on November 30, 2023, subject, however, to the termination provisions of the Lease, including, without limitation, the termination provisions set forth in this Second Amendment, and all other terms, conditions, and provisions of this Lease. However, if Tenant timely satisfies and completes to Landlord's reasonable satisfaction all of the terms, conditions, obligations, and provisions of the #070A-5601 Second Amendment regarding the construction of those improvements described in the #070A-5601 Second Amendment as "Building Improvements" (and so called herein) (which terms, conditions, obligations, and provisions are set forth in Section 2.E. of the #070A-5601 Second Amendment, the same including an amendment to Section 6.B. of Ground Lease #070A-5601 (and including, without limitation, satisfaction of the time period for achievement of "Substantial Completion" and "Final Completion" (as such terms are defined in the #070A-5601 Second Amendment) of the Building Improvements)), so that the lease extension period described in Section 2.B. of the #070A-5601 Second Amendment becomes effective (e.g., so that the term of Ground Lease #070A-5601 is extended as described in Section 2.B. of the #070A-5601 Second Amendment), then the Term of this Ground Lease shall be extended to end four hundred and eighty (480) full calendar months following the date of Substantial Completion of the Building Improvements (the "Lease Extension Period"), but subject, however, to the termination provisions and all other terms, conditions, and provisions of the Lease. Example: If the date of Substantial Completion of the Building Improvements is April 15, 2014, the Lease Extension Period will end at the end of May, 2054.

2. Notwithstanding the foregoing or any other provision of this Lease, it is the intent of the parties that the remaining Term, as may be extended, shall not at any time exceed forty (40) years in duration.

3. Within fifteen (15) calendar days after Final Completion of the Building Improvements is achieved by Tenant as defined in the #070A-5601 Second Amendment, Landlord and Tenant agree to execute a Memorandum of Lease, in substantially the form attached to hereto as Exhibit C, which Memorandum may be publicly recorded by either party in the Official Public Records of Dallas County, Texas evidencing this Lease and its Term reflecting the Lease Extension Period.

B. Amendment to Rental. Section 4 of the Ground Lease is modified in accordance with the following:

1. Rent for the Demised Premises as amended hereby shall be in an annual amount equal to the product of the number of gross square feet of the Demised Premises (the number of gross square feet of the demised premises as set forth in Exhibit B to this

## EXHIBIT 4 TO RECOMMENDATION

Second Amendment being 158,020 square feet) multiplied by **\$0.5451** per gross square foot (158,020 square feet times \$0.5451 per gross square foot equals annual rent amount of \$86,136.70) (the "Rent" or "Annual Rent"), which Rent is subject to adjustment as set forth in the Ground Lease. Without offset or deduction, Rent shall be paid in advance in monthly installments on or before the first day of each calendar month, each such installment determined by dividing the annual rental amount by twelve (12), with the first such installment due on or before the first day of the first calendar month following the Effective Date of this Second Amendment. Landlord and Tenant agree that the Rent rate of \$0.5451 per gross square foot is that Rent rate as adjusted in accordance with the Ground Lease and by amendment since the commencement of the Ground Lease and is subject to further and future adjustment as set forth in the Ground Lease.

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

**Adjustment of Rental:** Commencing on January 1, 2013 and on every second anniversary thereafter (hereinafter referred to as the "Adjustment Date"), the Annual Rent due under Section 4, as amended herein, shall be adjusted as follows:

A. Annual 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 on the Effective Date of this Amendment. The current index ("Current Index") is the Consumer Price Index on the first day of the calendar month preceding the then applicable Adjustment Date.

B. Beginning with the first full month following the then applicable Adjustment Date, the Annual Rent shall be adjusted so that it equals the product of the Annual Rent amount during the first year of this Second Amendment (such amount being \$86,136.70) 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 Annual Rent ever be decreased below the Annual Rent set forth in Section 4., as amended (such Annual Rent being \$86,136.70). Without offset or deduction, Annual Rent shall be paid in advance in monthly installments on or before the first day of each calendar month, determined by dividing the Annual Rental amount by twelve (12), with the first such installment due on or before the first day of the first calendar month following the Adjustment Date

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.

## EXHIBIT 4 TO RECOMMENDATION

D. Amendment to Use of Demised Premises and Construction of Improvements.  
Section 6 of the Ground Lease is amended in its entirety to read as follows:

**A. Use of the Demised Premises:**

1. The Demised Premises shall be used and occupied by Tenant only for the following purposes: sale of aircraft and aircraft parts; aircraft maintenance and repair, aircraft storage; aircraft training, aircraft charter; aircraft rentals; certain Fixed Base operations, as follows: hangars, shops, aircraft ramps, and vehicle parking, and the sale of aircraft services to the public, including dispensing fuel in accordance with and subject to the authority issued by and ordinances, rules, standards and regulations of the City; and not otherwise without the prior written consent of Landlord.

2. The Demised Premises shall not be used for any purpose or activity that (i) constitutes a violation of any federal, state, or local laws, ordinances, orders, directives, charters, rules, regulations, standards or policies), (ii) in Landlord's opinion, creates or would create a nuisance or waste, or unreasonably disturb, annoy or interfere with other tenants or users of the Airport, or (iii) increases insurance costs for Landlord.

3. Tenant shall not at any time leave the Demised Premises vacant, but shall in good faith continuously throughout the term of this Lease conduct and carry on in the entire Demised Premises the type of operations or use for which the Demised Premises are leased, except during periods in which the Demised Premises may not be occupied as a result of fire or other casualty, or during any commercially reasonable period necessary for making repairs and alterations, all such repairs and alterations to be diligently pursued to completion.

4. Tenant acknowledges that Landlord is bound by, and this Ground Lease is subject to, 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, including, without limitation, any grant, loan, regulation, or agreement under Section 22.055 if the Texas Transportation Code, as amended or superseded, whether now existing or made in the future. Tenant agrees not to act or fail to act in any way or manner that would cause Landlord to be in violation of any of the foregoing.

5. Tenant for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (i) no person on the grounds of race, creed, color, national origin, sex, age or handicap shall be excluded from participation in, denied the benefits of or be otherwise subjected to discrimination in the use of the Demised Premises; (ii) that in the construction of any improvements on, over or under the Demised Premises

## EXHIBIT 4 TO RECOMMENDATION

and the furnishing of services thereon, no person on the grounds of race, creed, color, national origin, sex, age, or handicap shall be excluded from participation in , denied the benefits of or otherwise be subjected to discrimination; (iii) that the Tenant shall use the Demised Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 and as said Regulations may be amended.

6. The Tenant agrees to furnish service on a fair, equal, and not unjustly discriminatory basis to all users thereof and to charge fair, reasonable, and not unjustly discriminatory prices for each unit or service, provided that the Tenant may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

### **B. Construction of Improvements.**

1. In connection with the use and occupancy of the Demised Premises by Tenant, Tenant shall cause to be constructed on the Demised Premises buildings and other improvements (together, the “Building Improvements”), at Tenant’s sole cost, expense and risk (except as may be otherwise agreed to between Landlord and Tenant), in accordance with plans and specifications which shall be submitted to and subject to the approval of Landlord. The term “Building Improvements” shall mean those real property and structural improvements having been made and now exist as of the Effective Date of this Second Amendment or, any other such real property and structural improvements made to the Demised Premises any time during the Term. Except as provided for in this Agreement, Tenant may not construct, locate, install, place or erect any other improvements upon the Demised Premises without the prior written consent of Landlord.

2. Except with regard to Building Improvements now existing, the Building Improvements shall be constructed on the Demised Premises in accordance with plans and specifications prepared by an architect and/or engineer selected and retained by Tenant (the “Design Plan”), which shall be submitted to Landlord for Landlord's consideration of approval (which approval, if any, shall be in writing). Any architect or engineer shall be duly licensed and authorized as may be required by law to practice architecture or engineering, as the case may be, in the State of Texas. Such construction shall be performed in a first class, workmanlike manner and in compliance with all applicable building codes, standards and ordinances, as set out in more detail, below. Tenant agrees to promptly pay and discharge all costs, expenses, claims for damages (including, without limitation, consequential damages) or injury (including, without limitation, claims for personal injury or death, or property damage or destruction, or economic loss),

## EXHIBIT 4 TO RECOMMENDATION

liens and any and all other liabilities and obligations which arise in connection with such construction, and **TENANT SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS LANDLORD AND MANAGER, AND THEIR RESPECTIVE OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS (IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES) FROM AND AGAINST ANY AND ALL SUCH COSTS, EXPENSES, CLAIMS, DAMAGES, PENALTIES, FINES, LIENS LIABILITIES, AND OBLIGATIONS, INCLUDING SUCH COSTS, EXPENSES, CLAIMS, DAMAGES, PENALTIES, FINES, LIENS LIABILITIES, AND OBLIGATIONS WHICH ARE CAUSED BY OR RESULT FROM, IN WHOLE OR IN PART, THE NEGLIGENCE OF LANDLORD OR MANAGER (OR THEIR RESPECTIVE OFFICIALS, OFFICER, EMPLOYEES, AND AGENTS).** It is expressly understood and agreed that Tenant's construction of the Building Improvements shall include the finish-out of such building and improvements in accordance with the plans and specifications for the finish-out of the Building Improvements as submitted by Tenant to Landlord and approved in writing by Landlord.

After commencement of construction, Tenant shall complete construction of any 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 reasonable approval of Landlord.

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

4. Tenant agrees that any construction or modification of the Building Improvements or any other improvements (authorized to be constructed in writing by Landlord) on the Demised Premises shall comply with all standards, codes, and rules reasonably adopted by Landlord or Manager, including, but not limited to, any rules relating to construction and maintenance standards and specifications, will comply with the Town of Addison, Texas building code and zoning requirements, and will meet or exceed all applicable State and Federal standards (including, without limitation, Title III of the Americans With Disabilities Act of 1990, any state laws governing handicapped access or architectural barriers, and all rules, regulations, and guidelines promulgated under such laws, as amended from time to time). Tenant recognizes that such construction/maintenance standards and specifications, Town of Addison building code and zoning requirements, and all applicable State and Federal standards, and

## EXHIBIT 4 TO RECOMMENDATION

other applicable standards, codes, and rules 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.

5. Tenant will properly and timely submit to the Federal Aviation Administration (FAA), the Texas Department of Transportation (TxDOT), and any other governmental entity or agency having jurisdiction regarding Addison Airport, a Notice of Proposed Construction or Alteration (FAA Form 7460-1), a TxDOT Airport Construction Emission Inventory, and such other forms and information as may be required by the FAA, TxDOT, or other governmental entity or agency having jurisdiction over Addison Airport.

6. 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, substantial completion, 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.

7. Failure of Tenant to observe and comply with the requirements of this Section shall be an Event of Default.

E. 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 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 DEMISED PREMISES FOR ANY PURPOSE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION REGARDING SOIL CONDITIONS, AVAILABILITY OF UTILITIES, DRAINAGE, ZONING LAWS, ENVIRONMENTAL LAWS, OR ANY OTHER FEDERAL, STATE OR LOCAL STATUTES, CODES, REGULATIONS OR ORDINANCES. TENANT ALSO**

## EXHIBIT 4 TO RECOMMENDATION

**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 DEMISED PREMISES, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO SOIL CONDITIONS, AVAILABILITY 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 SECTION 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 SECTION. 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 LEASED 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. TENANT, AT ITS COST, SHALL BE ENTITLED TO PERFORM A PHASE I ENVIRONMENTAL STUDY, PROVIDING A COPY OF THE RESULTS TO LANDLORD. 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.**

In accepting the Demised Premises, Tenant acknowledges that this Lease shall be construed to provide Rent to Landlord on a Net Return Basis, as set out in Section 30, below.

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.

## EXHIBIT 4 TO RECOMMENDATION

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" or "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

## EXHIBIT 4 TO RECOMMENDATION

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. 1. 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, (i) assign, sell, pledge, encumber, mortgage, license, transfer, or otherwise convey (each being referred to herein as "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 (ii) 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 Section 22 of this Lease.

2. Notwithstanding the foregoing, Landlord hereby acknowledges and consents to Tenant's subletting of the Leased Premises for the purpose of renting aircraft storage and office space only, provided that each sublease is evidenced by written agreement (to be made available for Landlord's review and inspection upon Landlord's written request within 3 business days), signed and executed by Tenant and sublessee and fairly states:

- (i) each sublessee agrees to be bound by the terms and provisions of this Ground Lease, including, without limitation, the provisions of Section 6 pertaining to the use of the Demised Premises, and in the event of any conflict between the terms of the Ground Lease and the terms of the sublease, the terms of the Ground Lease shall control;
- (ii) no such subletting shall constitute a novation.

## EXHIBIT 4 TO RECOMMENDATION

- (iii) in the event of occurrence of an event of default while the Demised Premises are assigned or sublet, Landlord, in addition to any other rights or 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 subletting and apply such rent against any sums due to Landlord hereunder;
- (iv) sublessee shall be obligated to obtain Landlord's consent to any action as to which Tenant is obligated to obtain such consent under the Ground Lease;
- (v) any such sublease is to automatically terminate upon termination of the Ground Lease notwithstanding any other provision of the sublease to the contrary;
- (vi) Landlord shall have no responsibility or obligation for the performance by Tenant of its obligations under the sublease;
- (vii) neither this consent, the exercise by Landlord of its rights hereunder, nor the sublease or any other instrument shall give sublessee any rights directly or indirectly against Landlord or create or impose any obligation, duty, responsibility, or liability of Landlord in favor of or for the benefit of sublessee.

Furthermore, Tenant agrees that in no way does any sublease release Tenant from any of its covenants, agreements, liabilities and duties under the Ground lease; that this consent does not constitute approval by Landlord of the terms of any such sublease; that nothing herein contained shall be deemed a waiver or release of any of the Landlord's rights under the Ground Lease; that Tenant shall remain fully liable for the performance of each and every term, provision, covenant, duty and obligation of the Tenant under the Ground Lease, including, without limitation, the duty to make any and all payments of rent; that any violation of any terms and conditions of the Ground Lease by a sublessee will constitute a default under the Ground Lease. Landlord hereby ratifies and approves all currently existing subleases, and, such sublease shall not be required to be amended to specifically comply with the terms of this Section 9.A.2.

3. If consent by Landlord to an assignment is required hereunder, Tenant shall request, in writing, Landlord's consent to a proposed assignment and such request must include: (i) the name of the proposed assignee; (ii) the nature and character of the assignee's business; (iii) all material terms of the proposed assignment; and (iv) audited financial statements or other evidence of the proposed assignee's creditworthiness and ability to assume Tenant's obligations.

For the purposes hereof and any applicable law, and without limitation as to other grounds for Landlord withholding consent, Landlord may, in Landlord's sole discretion, withhold its consent when any one or more of the following apply:

- (i) 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 reasonably determined by Landlord;

## EXHIBIT 4 TO RECOMMENDATION

- (ii) the proposed assignee has not demonstrated sufficient financial responsibility or creditworthiness to the satisfaction of Landlord in light of the duties, obligations, and responsibilities of the Tenant under this Lease at the time when the consent is requested;
- (iii) the proposed assignee's intended use of the Leased Premises is inconsistent with the Lease;
- (iv) 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);
- (v) if at any time consent is requested or at any time prior to the granting of consent, Tenant is in default under the Lease or would be in default under the Lease but for the pendency of a grace or cure period; or
- (vi) the proposed assignee does not intend to occupy the entire Demised Premises as described in the Lease and conduct its business there from for a substantial portion of the then remaining term of the 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 this Second Amendment to Ground Lease cease to own or have control of more than 50% of Tenant at any time during the Term; provided that any such person shall have the unencumbered right to make from time to time gifts, sales or other transfers, upon death and/or *inter vivos*, of part or all of his or its ownership interest in the Tenant to a Permitted Transferee. A "Permitted Transferee" for purposes of this Lease, shall mean: (i) a person who is a parent or descendant of the transferor; (ii) a trust, the primary beneficiaries of which are relatives of the transferor as described in (i) above; (iii) an entity, the voting or financial control of which is owned by the transferor and/or his relatives as described in (i) above; and (iv) a trust, the primary beneficiary of which is such transferor; and such transfer shall not be considered an event deemed to be an "assignment" hereunder. 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 subletting shall be expressly subject to all the terms and provisions of this Lease, including, without limitation, the provisions of Section 6 pertaining to the use of the Demised Premises. Tenant shall not assign this Lease or any right, duty, liability, or obligation of Tenant hereunder, or sublet the Demised Premises or any portion of the Demised Premises, without first obtaining a written agreement from each such assignee or sublessee whereby each such assignee or sublessee agrees to and shall be bound by and comply with all of the terms and provisions of this Lease (and Tenant shall provide a

## EXHIBIT 4 TO RECOMMENDATION

copy of such written agreement to Landlord). No 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, of the extent not collected.

Upon written request, Tenant shall promptly provide to Landlord the names and addresses of any subtenants and the make, model, aircraft type and "N" number of any aircraft stored, located or generally regarded to be "based" 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 Section 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

## EXHIBIT 4 TO RECOMMENDATION

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 Section 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 Section 37 of the Ground Lease shall be paid by Tenant on demand.

If any buildings or other improvements located upon the Demised Premises are determined to be subject to property taxation by the Dallas Central Appraisal District (or any successor entity or agency thereto or other agency with the authority to make such determination) ("DCAD"), Tenant specifically reserves the right to contest the valuation of such buildings and/or improvements, but agrees not to contest the determination that the buildings and/or improvements are subject to taxation. Notwithstanding the foregoing, 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

## EXHIBIT 4 TO RECOMMENDATION

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; Bonds.

A. 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.

## EXHIBIT 4 TO RECOMMENDATION

(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;

## EXHIBIT 4 TO RECOMMENDATION

(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.

B. In connection with any construction on the Demised Premises, Tenant shall obtain and keep in full force and effect at its sole cost and expense a Performance Bond and a Payment Bond guaranteeing, respectively, the faithful performance of all construction work and the payment of all obligations arising during the construction (including, without limitation, the payment of all persons performing labor or providing materials under or in connection with the Building Improvements), in the penal sum of one-hundred percent (100%) of the Construction Costs. Tenant shall pay or cause to have paid the premiums for such bonds. Bonds shall be issued by a surety company satisfactory to the Landlord, licensed by the State of Texas to act as a Surety, and listed on the current U.S. Treasury Listing of Approved Sureties. All forms shall be made on a form complying with the requirements of the laws of the State of Texas and satisfactory to Landlord. Such bonds shall be in conformance with the provisions of Chapter 2253, Tex. Gov. Code, and any successor statute thereto.

## EXHIBIT 4 TO RECOMMENDATION

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 Persons or any other person entering the Demised Premises under express or implied invitation of Tenant or any Tenant Persons, or arising out of the use or occupation of the Demised Premises by Tenant or by any Tenant Persons, in the performance of Tenant’s obligations hereunder.**

B. **TENANT’S INDEMNITY OBLIGATION.** **Tenant agrees to and shall fully DEFEND (with counsel reasonably acceptable to Landlord), INDEMNIFY AND HOLD HARMLESS (i) the Town of Addison, Texas, and the elected officials, the officers, employees, agents, 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**

## EXHIBIT 4 TO RECOMMENDATION

and Airport Manager's owners, officers, employees and agents 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 OTHER ADDISON PERSON, THE AIRPORT MANAGER, OR ANY OTHER MANAGER PERSON, OR BY ANY ACT OR OMISSION BY THE TOWN OF ADDISON, TEXAS, ANY OTHER ADDISON PERSON, THE AIRPORT MANAGER, OR ANY OTHER 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

## EXHIBIT 4 TO RECOMMENDATION

**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) 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 Section 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

## EXHIBIT 4 TO RECOMMENDATION

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 agrees to and shall fully DEFEND (with counsel reasonably acceptable to Landlord), INDEMNIFY, AND HOLD HARMLESS the Town of Addison, Texas and all other**

## EXHIBIT 4 TO RECOMMENDATION

**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, all other 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, fees, charges, expenses, actions, causes of action, judgments, liabilities, suits, proceedings, harm, and losses of whatever kind or 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, under, above, or to the Demised Premises and/or any portion of the common facilities or any portion of the Airport or adjacent properties 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 OTHER ADDISON PERSONS, THE AIRPORT MANAGER OR ANY OTHER MANAGER PERSONS, OR BY ANY ACT OR OMISSION OF OR BY THE TOWN OF ADDISON, TEXAS, ANY OTHER ADDISON PERSONS, THE AIRPORT MANAGER OR ANY OTHER MANAGER PERSONS THAT WOULD GIVE 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 or any portion of the Airport or adjacent properties, 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.

## EXHIBIT 4 TO RECOMMENDATION

D. Tenant's obligations and liability pursuant to the terms of this Section 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; Other Provisions.** 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. For purposes hereof 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.

**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 the Ground Lease and each of their provisions are solely for the benefit of the parties hereto and are not

**EXHIBIT 4 TO RECOMMENDATION**

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 \_\_\_\_\_, 2010

**LANDLORD:**

**TENANT:**

**TOWN OF ADDISON, TEXAS**

**RR INVESTMENTS, INC.**

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

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

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

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

EXHIBIT 4 TO RECOMMENDATION

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 \_\_\_\_\_, 2010.

\_\_\_\_\_  
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 \_\_\_\_\_, 2010.

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

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

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

EXHIBIT 4 TO RECOMMENDATION

**EXHIBIT A**

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

EXHIBIT 4 TO RECOMMENDATION

**EXHIBIT B**

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

**EXHIBIT 4 TO RECOMMENDATION**

**EXHIBIT C**

**MEMORANDUM OF LEASE**

This Memorandum of Lease is dated as of \_\_\_\_\_, 20\_\_, and executed by and between the Town of Addison, Texas (“Landlord” or “City”) and RR Investments, Inc., a Texas corporation d/b/a/ Million Air Dallas (“Tenant”).

A Ground Lease was entered into as of April 6, 1983 between the Town (City) of Addison, Texas, as landlord, and RR Investments, Inc., as tenant (identified as Ground Lease #070A-5201 or Ground Lease #52 in the administrative archives and records of the City) in which certain real property commonly known as 4300 Westgrove Drive, Addison, Texas 75001 (“Demised Premises” and as more fully described in the said Ground Lease) within the Addison Airport (the “Airport”) was leased by Landlord to RR Investments, Inc. The said Ground Lease was thereafter amended by that Amendment to Ground Lease dated April 1, 1984

Now let it be known, the said Ground Lease is further amended by that Second Amendment to Ground Lease, entered into and made effective \_\_\_\_\_. 2010, which, among other things, amends the term of the Ground Lease so that it shall end on \_\_\_\_\_, 20\_\_, subject, however, to the termination and all other provisions of the Ground Lease.

This Memorandum of Lease is solely for recording and notice purposes and shall not be construed to alter, modify, expand, diminish or supplement the provisions of the Ground Lease, as amended. In the event of any inconsistency between the provisions of this Memorandum of Lease and the provisions of the Ground Lease (as amended), the provisions of the Ground Lease, as amended, shall govern. Reference should be made to the Ground Lease (and all amendments thereto) for the full description of the rights and duties of Landlord and Tenant thereunder, and this Memorandum of Lease shall in no way affect the terms and conditions of the Ground Lease (including all amendments thereto) or the interpretation of the rights and duties of Landlord and Tenant thereunder.

Upon the expiration or earlier termination of the Ground Lease, Landlord and Tenant agree that they shall execute and record a termination of this Memorandum of Lease.

**IN WITNESS WHEREOF**, the undersigned parties execute this Memorandum of Lease this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**LANDLORD:**

**TENANT:**

**TOWN OF ADDISON, TEXAS**

**RR INVESTMENTS, INC.**

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

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

Typed name: \_\_\_\_\_

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

EXHIBIT 4 TO RECOMMENDATION

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 (s)he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[SEAL]

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

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 (s)he executed the same for the purposes and consideration therein expressed.

[SEAL]

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

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

## EXHIBIT 4 TO RECOMMENDATION

### **EXHIBIT A to Memorandum of Lease**

*[Insert description of Demised Premises]*

EXHIBIT 5 TO RECOMMENDATION

59

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 \_\_\_\_\_, 2010 (the "Effective Date"), between the Town of Addison, Texas, a home-rule municipality (hereinafter sometimes referred to as the "Landlord" or the "City"), and RR Investments, Inc. d/b/a Million Air Dallas, a Texas corporation ("Tenant").

**WHEREAS**, a Ground Lease was executed on November 11, 1983 between the City of Addison (the same being the Town of Addison, Texas) and Addison Airport of Texas, Inc., as Landlord, and Pharris-Miller, Inc., as tenant (identified as Ground Lease #0690-5901 or Ground Lease #59 in the administrative archives and records of the City and recorded in Book and Volume 84139, Page 1651, Instrument #198401390487 of the Official Public Records of Dallas County, Texas (the "OPR")), by the terms of which certain real property commonly known to be located at 4310 Amelia Earhart, Addison, Texas 75001 (the "Demised Premises" and as more fully described in the said Ground Lease) in the Addison Airport (the "Airport") within the Town of Addison, Texas (the "City") and owned by the City was leased to Personal Way Aviation, Inc.; and

**WHEREAS**, the Ground Lease was thereafter assigned by that certain Assignment of Leases dated July 12, 1984 with Pharris-Miller, Inc., as assignor, to Addison Air Terminal, a Texas general partnership as assignee; and

**WHEREAS**, Bright Banc Savings Association acquired the interest of the Lease from Addison Air Terminal pursuant to a foreclosure sale on or about March 4, 1986; and

**WHEREAS**, the Ground Lease was thereafter assigned by Bright Bank Savings Association, successor in interest to Pharris-Miller, Inc. by that Assignment of Lease dated August 30<sup>th</sup>, 1989 to Service Industries Property Management, Inc., a Texas corporation; and

**WHEREAS**, the Ground Lease was thereafter amended by that Amendment to Ground Lease dated August 15, 1990 wherein (i) the description of the Demised Premises was modified to contain a certain 4.2128 acres of land (183,508 square feet) as described in "Tract 3" in Exhibit "C" of said amendment, and; (ii) the monthly rental was increased to Five Thousand Sixty-Nine and 34/100 Dollars (\$5,069.34) (subject to adjustment as provided for in the Ground Lease), and; (iii) all other terms and conditions of the Ground Lease remained in full force and effect; and

**WHEREAS**, on January 7, 1992 Service Property Industries Property Management, Inc filed its Articles of Amendment with the Secretary of State of Texas, changing its name, among other things, to Carter-Crowley Properties, Inc., a Texas corporation; and

## EXHIBIT 5 TO RECOMMENDATION

**WHEREAS**, the Ground Lease was thereafter assigned by that certain Assignment of Leases and Assumption Agreement dated February 28, 1983 from Carter-Crowley Properties, Inc., as assignor, to Metroport Realty Corporation, a Texas corporation, as assignee; and

**WHEREAS**, the Ground Lease was thereafter assigned by Metroport Realty Corporation to RR Investments, Inc. d/b/a/ Million Air Dallas by that certain Assignment of Lease and Assumption Agreement dated March 19, 1997 and, by virtue of said assignment the assignee is the Tenant; 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**, 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", the "Lease" or "Ground Lease #0690-5901"), and

**WHEREAS**, Tenant is also the tenant under three other ground leases at the Airport that are identified in the administrative archives and records of the City as:

- Ground Lease #070A-5201, in which Tenant leases from the City approximately 4.2128 acres of land commonly known as 4300 Westgrove Drive (the "#70A-5201 Premises"),
- ,
- Ground Lease #070A-5601, in which Tenant leases from the City approximately 3.6241 acres of land commonly known as 4350 Westgrove (the "#070A-5601 Premises"), and
- Ground Lease #070A-6001, in which Tenant leases from the City approximately 1.33 acres of land commonly known as 4375 Westgrove (the "#070A-6001 Premises"); and

**WHEREAS**, with respect to Ground Lease #070A-5601, Landlord and Tenant have entered into an amendment thereto entitled "Second Amendment to Ground Lease" of even date herewith (the "#070A-5601 Second Amendment"), which, among other things, (i) amends the demised premises described therein to include both the #070A-5601 Premises and the #070A-6001 Premises (together, the "Amended #070A-5601 Premises"), and (ii) provides for the construction by Tenant of certain building and related improvements upon the Amended #070A-5601 Premises; and

**WHEREAS**, with the addition of the #070A-6001 Premises to Ground Lease #070A-5601, Landlord and Tenant have agreed to terminate Ground Lease #070A-6001 as reflected in that instrument entitled "Termination of Ground Lease Agreement" of even date herewith; and

## EXHIBIT 5 TO RECOMMENDATION

**WHEREAS**, Landlord and Tenant desire and mutually agree to amend this Ground Lease 0690-5901 to modify the provisions affecting the Term and other terms and conditions of the Ground Lease as set forth herein.

**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 RR Investments, Inc. d/b/a Million Air Dallas, 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 of this Second Amendment for all purposes.

In connection with the Ground 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. **Term Adjustment.** Section 3 of the Ground Lease is modified in accordance with the following:

1. The term of this Lease is currently scheduled to and shall end on May 31, 2024, subject, however, to the termination provisions of the Lease, including, without limitation, the termination provisions set forth in this Second Amendment, and all other terms, conditions, and provisions of this Lease. However, if Tenant timely satisfies and completes to Landlord's reasonable satisfaction all of the terms, conditions, obligations, and provisions of the #070A-5601 Second Amendment regarding the construction of those improvements described in the #070A-5601 Second Amendment as "Building Improvements" (and so called herein) (which terms, conditions, obligations, and provisions are set forth in Section 2.E. of the #070A-5601 Second Amendment, the same including an amendment to Section 6.B. of Ground Lease #070A-5601 (and including, without limitation, satisfaction of the time period for achievement of "Substantial Completion" and "Final Completion" (as such terms are defined in the #070A-5601 Second Amendment) of the Building Improvements)); so that the lease extension period described in Section 2.B. of the #070A-5601 Second Amendment becomes effective (e.g., so that the term of Ground Lease #070A-5601 is extended as described in Section 2.B. of the #070A-5601 Second Amendment),

## EXHIBIT 5 TO RECOMMENDATION

then the Term of this Ground Lease shall be extended to end four hundred and eighty (480) full calendar months following the date of Substantial Completion of the Building Improvements (the "Lease Extension Period"), but subject, however, to the termination provisions and all other terms, conditions, and provisions of the Lease. Example: If the date of Substantial Completion of the Building Improvements is April 15, 2014, the Lease Extension Period will end at the end of May, 2054.

2. Notwithstanding the foregoing or any other provision of this Lease, it is the intent of the parties that the remaining Term, as may be extended, at any time shall not at any time exceed forty (40) years in duration.

3. Within fifteen (15) calendar days after Final Completion of the Building Improvements is achieved by Tenant as defined in the #070A-5601 Second Amendment, Landlord and Tenant agree to execute a Memorandum of Lease, in substantially the form attached to hereto as Exhibit C, which Memorandum may be publicly recorded by either party in the Official Public Records of Dallas County, Texas evidencing this Lease and its Term reflecting the Lease Extension Period.

B. Amendment to Rental. Section 4 of the Ground Lease is modified in accordance with the following:

1. Rent for the Demised Premises as amended hereby shall be in an annual amount equal to the product of the number of gross square feet of the Demised Premises (the number of gross square feet of the demised premises as set forth in Exhibit B to this Second Amendment being 183,509 square feet) multiplied by \$0.5451 per gross square foot (183,509 square feet times \$0.5451 per gross square foot equals annual rent amount of \$100,030.76) (the "Rent" or "Annual Rent"), which Rent is subject to adjustment as set forth in the Ground Lease. Without offset or deduction, Rent shall be paid in advance in monthly installments on or before the first day of each calendar month, each such installment determined by dividing the Annual Rental amount by twelve (12), with the first such installment due on or before the first day of the first calendar month following the Effective Date of this Second Amendment. Landlord and Tenant agree that the Rent rate of \$0.5451 per gross square foot is that Rent rate as adjusted in accordance with the Ground Lease and by amendment since the commencement of the Ground Lease and is subject to further and future adjustment as set forth in the Ground Lease.

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

**Adjustment of Rental:** Commencing on January 1, 2013 and on every second anniversary thereafter (hereinafter referred to as the "Adjustment Date"), the Annual Rent due under Section 4, as amended herein, shall be adjusted as follows:

A. Annual 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.

## EXHIBIT 5 TO RECOMMENDATION

Department of Labor, Bureau of Labor Statistics. The basic index (“Basic Index”) is the Consumer Price Index existing on the Effective Date of this Amendment. The current index (“Current Index”) is the Consumer Price Index on the first day of the calendar month preceding the then applicable Adjustment Date.

**B.** Beginning with the first full month following the then applicable Adjustment Date, the Annual Rent shall be adjusted so that it equals the product of the Annual Rent amount during the first year of this Second Amendment (such amount being \$100,030.76) 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 Annual Rent ever be decreased below the Annual Rent set forth in Section 4., as amended (such Annual Rent being \$100,030.76). Without offset or deduction, Annual Rent shall be paid in advance in monthly installments on or before the first day of each calendar month, determined by dividing the Annual Rental amount by twelve (12), with the first such installment due on or before the first day of the first calendar month following the Adjustment Date

**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 Use of Demised Premises and Construction of Improvements. Section 6 of the Ground Lease is amended in its entirety to read as follows:

**A. Use of the Demised Premises:**

1. The Demised Premises shall be used and occupied by Tenant only for the following purposes: sale of aircraft and aircraft parts; aircraft maintenance and repair, aircraft storage; aircraft training, aircraft charter; aircraft rentals; certain Fixed Base operations, as follows: hangars, shops, aircraft ramps, and vehicle parking, and the sale of aircraft services to the public, including dispensing fuel in accordance with and subject to the authority issued by and ordinances, rules, standards and regulations of the City; and not otherwise without the prior written consent of Landlord.

2. The Demised Premises shall not be used for any purpose or activity that (i) constitutes a violation of any federal, state, or local laws, ordinances, orders, directives, charters, rules, regulations, standards or policies), (ii) in Landlord’s opinion, creates or would create a nuisance or waste, or unreasonably disturb, annoy or interfere with other tenants or users of the Airport, or (iii) increases insurance costs for Landlord.

3. Tenant shall not at any time leave the Demised Premises vacant, but shall in good faith continuously throughout the term of this Lease conduct and carry on in the entire Demised Premises the type of operations or use for which the Demised Premises are leased, except during periods in which the Demised

## EXHIBIT 5 TO RECOMMENDATION

Premises may not be occupied as a result of fire or other casualty, or during any commercially reasonable period necessary for making repairs and alterations, all such repairs and alterations to be diligently pursued to completion.

4. Tenant acknowledges that Landlord is bound by, and this Ground Lease is subject to, 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, including, without limitation, 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. Tenant agrees not to act or fail to act in any way or manner that would cause Landlord to be in violation of any of the foregoing.

5. The Tenant for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (i) no person on the grounds of race, creed, color, national origin, sex, age or handicap shall be excluded from participation in, denied the benefits of or be otherwise subjected to discrimination in the use of the Demised Premises; (ii) that in the construction of any improvements on, over or under the Demised Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, national origin, sex, age, or handicap shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination; (iii) that the Tenant shall use the Demised Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 and as said Regulations may be amended.

6. The Tenant agrees to furnish service on a fair, equal, and not unjustly discriminatory basis to all users thereof and to charge fair, reasonable, and not unjustly discriminatory prices for each unit or service, provided that the Tenant may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

### **B. Construction of Improvements.**

1. In connection with the use and occupancy of the Demised Premises by Tenant, Tenant shall cause to be constructed on the Demised Premises buildings and other improvements (together, the "Building Improvements"), at Tenant's sole cost, expense and risk (except as may be otherwise agreed to between Landlord and Tenant), in accordance with plans and specifications which shall be submitted to and subject to the approval of Landlord. The term "Building Improvements" shall mean those real property and structural improvements having been made and now exist as of the Effective Date of this Second Amendment or, any other such real property and structural improvements made to the Demised Premises any time during the Term. Except as provided for in this Agreement, Tenant may not construct, locate, install, place or erect any other

## EXHIBIT 5 TO RECOMMENDATION

improvements upon the Demised Premises without the prior written consent of Landlord.

2. Except with regard to Building Improvements now existing, the Building Improvements shall be constructed on the Demised Premises in accordance with plans and specifications prepared by an architect and/or engineer selected and retained by Tenant (the "Design Plan"), which shall be submitted to Landlord for Landlord's consideration of approval (which approval, if any, shall be in writing). Any architect or engineer shall be duly licensed and authorized as may be required by law to practice architecture or engineering, as the case may be, in the State of Texas. Such construction shall be performed in a first class, workmanlike manner and in compliance with all applicable building codes, standards and ordinances, as set out in more detail, below. Tenant agrees to promptly pay and discharge all costs, expenses, claims for damages (including, without limitation, consequential damages) or injury (including, without limitation, claims for personal injury or death, or property damage or destruction, or economic loss), liens and any and all other liabilities and obligations which arise in connection with such construction, and **TENANT SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS LANDLORD AND MANAGER, AND THEIR RESPECTIVE OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS (IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES) FROM AND AGAINST ANY AND ALL SUCH COSTS, EXPENSES, CLAIMS, DAMAGES, PENALTIES, FINES, LIENS LIABILITIES, AND OBLIGATIONS, INCLUDING SUCH COSTS, EXPENSES, CLAIMS, DAMAGES, PENALTIES, FINES, LIENS LIABILITIES, AND OBLIGATIONS WHICH ARE CAUSED BY OR RESULT FROM, IN WHOLE OR IN PART, THE NEGLIGENCE OF LANDLORD OR MANAGER (OR THEIR RESPECTIVE OFFICIALS, OFFICER, EMPLOYEES, AND AGENTS).** It is expressly understood and agreed that Tenant's construction of the Building Improvements shall include the finish-out of such building and improvements in accordance with the plans and specifications for the finish-out of the Building Improvements as submitted by Tenant to Landlord and approved in writing by Landlord.

After commencement of construction, Tenant shall complete construction of any 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 reasonable approval of Landlord.

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

## EXHIBIT 5 TO RECOMMENDATION

4. For purposes hereof, construction of Building Improvements 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 Demised Premises, (iii) Tenant shall have received (and shall have provided a true and correct copy to Landlord of) the Federal Aviation Administration's ("FAA's") determination to Tenant's filing of Form 7460 Notice of Proposed Construction or Alteration, (iv) execution of a contract to perform the work set forth in the Design Plan with a qualified general contractor, (v) proof of required Builder's Risk Insurance Policy and Payment Bond and Performance Bond required under Section 13 herein, and (vi) the initiation of actual mobilization of construction equipment on the Demised Premises (to perform the initial steps of construction of the Building Improvements, such as excavation for a foundation).

5. Tenant agrees that any construction or modification of the Building Improvements or any other improvements (authorized to be constructed in writing by Landlord) on the Demised Premises shall comply with all standards, codes, and rules reasonably adopted by Landlord or Manager, including, but not limited to, any rules relating to construction and maintenance standards and specifications, will comply with the Town of Addison, Texas building code and zoning requirements, and will meet or exceed all applicable State and Federal standards (including, without limitation, Title III of the Americans With Disabilities Act of 1990, any state laws governing handicapped access or architectural barriers, and all rules, regulations, and guidelines promulgated under such laws, as amended from time to time). Tenant recognizes that such construction/maintenance standards and specifications, Town of Addison building code and zoning requirements, and all applicable State and Federal standards, and other applicable standards, codes, and rules 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.

6. Tenant will properly and timely submit to the Federal Aviation Administration (FAA), the Texas Department of Transportation (TxDOT), and any other governmental entity or agency having jurisdiction regarding Addison Airport, a Notice of Proposed Construction or Alteration (FAA Form 7460-1), a TxDOT Airport Construction Emission Inventory, and such other forms and information as may be required by the FAA, TxDOT, or other governmental entity or agency having jurisdiction over Addison Airport.

7. 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, substantial completion, 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.

## EXHIBIT 5 TO RECOMMENDATION

8. “Substantial Completion” of the construction of the Building Improvements shall be deemed to have occurred upon (i) the issuance of a written certification by Tenant's architect (or other authorized design professional) who designed the Building Improvements in writing to Landlord that said Building Improvements are complete in accordance with the Design Plan (e.g., a certificate of substantial completion), and (ii) the issuance by the Town of Addison, Texas of a final, unconditional certificate of occupancy for said Building Improvements. “Final Completion” of the construction of the Building Improvements shall be deemed to occur upon the issuance by Tenant's architect (or other authorized design professional) who designed the Building Improvements of such documentation as may be necessary to establish the final completion (closeout) of the construction of the Building Improvements, the delivery of a true and correct copy of such documentation to Landlord, and the delivery by Tenant to Landlord of comprehensive As-Built drawings and documentation reviewed by Tenant's architect (or other authorized design professional) reflecting all approved changes and modifications to the originally approved Design Plans.

9. Failure of Tenant to observe and comply with the requirements of this Section shall be an Event of Default.

E. 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 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 DEMISED PREMISES FOR ANY PURPOSE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION REGARDING SOIL CONDITIONS, AVAILABILITY 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 DEMISED PREMISES, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO SOIL CONDITIONS,**

## EXHIBIT 5 TO RECOMMENDATION

**AVAILABILITY 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 SECTION 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 SECTION. 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 LEASED 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. TENANT, AT ITS COST, SHALL BE ENTITLED TO PERFORM A PHASE I ENVIRONMENTAL STUDY, PROVIDING A COPY OF THE RESULTS TO LANDLORD, ALL AS SPECIFIED IN MORE DETAIL IN SECTION 21.1 BELOW 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.**

In accepting the Demised Premises, Tenant acknowledges that this Lease shall be construed to provide Rent to Landlord on a Net Return Basis, as set out in Section 30, below.

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

## EXHIBIT 5 TO RECOMMENDATION

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" or "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.

## EXHIBIT 5 TO RECOMMENDATION

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. 1. 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, (i) assign, sell, pledge, encumber, mortgage, license, transfer, or otherwise convey (each being referred to herein as "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 (ii) 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 Section 22 of this Lease.

2. Notwithstanding the foregoing, Landlord hereby acknowledges and consents to Tenant's subletting of the Leased Premises for the purpose of renting aircraft storage and office space only, provided that each sublease is evidenced by written agreement (to be made available for Landlord's review and inspection upon Landlord's written request within 3 business days), signed and executed by Tenant and sublessee and fairly states:

- (i) each sublessee agrees to be bound by the terms and provisions of this Ground Lease, including, without limitation, the provisions of Section 6 pertaining to the use of the Demised Premises, and in the event of any conflict between the terms of the Ground Lease and the terms of the sublease, the terms of the Ground Lease shall control;
- (ii) no such subletting shall constitute a novation.
- (iii) in the event of occurrence of an event of default while the Demised Premises are assigned or sublet, Landlord, in addition to any other rights or 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;
- (iv) sublessee shall be obligated to obtain Landlord's consent to any action as to which Tenant is obligated to obtain such consent under the Ground Lease;
- (v) any such sublease is to automatically terminate upon termination of the Ground Lease notwithstanding any other provision of the sublease to the contrary;
- (vi) Landlord shall have no responsibility or obligation for the performance by Tenant of its obligations under the sublease;

## EXHIBIT 5 TO RECOMMENDATION

- (vii) neither this consent, the exercise by Landlord of its rights hereunder, nor the sublease or any other instrument shall give sublessee any rights directly or indirectly against Landlord or create or impose any obligation, duty, responsibility, or liability of Landlord in favor of or for the benefit of sublessee.

Furthermore, Tenant agrees that in no way does any sublease release Tenant from any of its covenants, agreements, liabilities and duties under the Ground lease; that this consent does not constitute approval by Landlord of the terms of any such sublease; that nothing herein contained shall be deemed a waiver or release of any of the Landlord's rights under the Ground Lease; that Tenant shall remain fully liable for the performance of each and every term, provision, covenant, duty and obligation of the Tenant under the Ground Lease, including, without limitation, the duty to make any and all payments of rent; that any violation of any terms and conditions of the Ground Lease by a sublessee will constitute a default under the Ground Lease. Landlord hereby ratifies and approves all currently existing subleases, and, such sublease shall not be required to be amended to specifically comply with the terms of this Section 9.A.2.

3. If consent by Landlord to an assignment is required hereunder, Tenant shall request, in writing, Landlord's consent to a proposed assignment and such request must include: (i) the name of the proposed assignee; (ii) the nature and character of the assignee's business; (iii) all material terms of the proposed assignment; and (iv) audited financial statements or other evidence of the proposed assignee's creditworthiness and ability to assume Tenant's obligations.

For the purposes hereof and any applicable law, and without limitation as to other grounds for Landlord withholding consent, Landlord may, in Landlord's sole discretion, withhold its consent when any one or more of the following apply:

- (i) 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 reasonably determined by Landlord;
- (ii) the proposed assignee has not demonstrated sufficient financial responsibility or creditworthiness to the satisfaction of Landlord in light of the duties, obligations, and responsibilities of the Tenant under this Lease at the time when the consent is requested;
- (iii) the proposed assignee's intended use of the Leased Premises is inconsistent with the Lease;
- (iv) 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);
- (v) if at any time consent is requested or at any time prior to the granting of consent, Tenant is in default under the Lease or would be in default under the Lease but for the pendency of a grace or cure period; or

## EXHIBIT 5 TO RECOMMENDATION

- (vi) the proposed assignee does not intend to occupy the entire Demised Premises as described in the Lease and conduct its business there from for a substantial portion of the then remaining term of the 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 this Second Amendment to Ground Lease cease to own or have control of more than 50% of Tenant at any time during the Term; provided that any such person shall have the unencumbered right to make from time to time gifts, sales or other transfers, upon death and/or *inter vivos*, of part or all of his or its ownership interest in the Tenant to a Permitted Transferee. A "Permitted Transferee" for purposes of this Lease, shall mean: (i) a person who is a parent or descendant of the transferor; (ii) a trust, the primary beneficiaries of which are relatives of the transferor as described in (i) above; (iii) an entity, the voting or financial control of which is owned by the transferor and/or his relatives as described in (i) above; and (iv) a trust, the primary beneficiary of which is such transferor; and such transfer shall not be considered an event deemed to be an "assignment" hereunder. 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 subletting shall be expressly subject to all the terms and provisions of this Lease, including, without limitation, the provisions of Section 6 pertaining to the use of the Demised Premises. Tenant shall not assign this Lease or any right, duty, liability, or obligation of Tenant hereunder, or sublet the Demised Premises or any portion of the Demised Premises, without first obtaining a written agreement from each such assignee or sublessee whereby each such assignee or sublessee agrees to and shall be bound by and comply with all of the terms and provisions of this Lease (and Tenant shall provide a copy of such written agreement to Landlord). No 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, of the extent not collected.

Upon written request, Tenant shall promptly provide to Landlord the names and addresses of any subtenants and the make, model, aircraft type and "N" number of any aircraft stored, located or generally regarded to be "based" 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

## EXHIBIT 5 TO RECOMMENDATION

for the construction of the improvements described in Section 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 Section 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

## EXHIBIT 5 TO RECOMMENDATION

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 Section 37 of the Ground Lease shall be paid by Tenant on demand.

If any buildings or other improvements located upon the Demised Premises are determined to be subject to property taxation by the Dallas Central Appraisal District (or any successor entity or agency thereto or other agency with the authority to make such determination) (“DCAD”), Tenant specifically reserves the right to contest the valuation of such buildings and/or improvements, but agrees not to contest the determination that the buildings and/or improvements are subject to taxation. Notwithstanding the foregoing, 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; Bonds.

A. 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,

## EXHIBIT 5 TO RECOMMENDATION

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;

## EXHIBIT 5 TO RECOMMENDATION

(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.

B. In connection with any construction on the Demised Premises, Tenant shall obtain and keep in full force and effect at its sole cost and expense a Performance Bond and a Payment Bond guaranteeing, respectively, the faithful performance of all construction work and the payment of all obligations arising during the construction (including,

## EXHIBIT 5 TO RECOMMENDATION

without limitation, the payment of all persons performing labor or providing materials under or in connection with the Building Improvements), in the penal sum of one-hundred percent (100%) of the Construction Costs. Tenant shall pay or cause to have paid the premiums for such bonds. Bonds shall be issued by a surety company satisfactory to the Landlord, licensed by the State of Texas to act as a Surety, and listed on the current U.S. Treasury Listing of Approved Sureties. All forms shall be made on a form complying with the requirements of the laws of the State of Texas and satisfactory to Landlord. Such bonds shall be in conformance with the provisions of Chapter 2253, Tex. Gov. Code, and any successor statute thereto.

## EXHIBIT 5 TO RECOMMENDATION

J. Amendment to Section 18 of the Ground Lease. Section 18 of the Ground Lease is amended in 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 Persons or any other person entering the Demised Premises under express or implied invitation of Tenant or any Tenant Persons, or arising out of the use or occupation of the Demised Premises by Tenant or by any Tenant Persons, in the performance of Tenant’s obligations hereunder.**

B. TENANT’S INDEMNITY OBLIGATION. **Tenant agrees to and shall fully DEFEND (with counsel reasonably acceptable to Landlord), INDEMNIFY AND HOLD HARMLESS (i) the Town of Addison, Texas, and the elected officials, the officers, employees, agents, 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 agents each being a “Manager Person” and collectively the “Manager Persons”), from and against any**

## EXHIBIT 5 TO RECOMMENDATION

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 OTHER ADDISON PERSON, THE AIRPORT MANAGER, OR ANY OTHER MANAGER PERSON, OR BY ANY ACT OR OMISSION BY THE TOWN OF ADDISON, TEXAS, ANY OTHER ADDISON PERSON, THE AIRPORT MANAGER, OR ANY OTHER 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

## EXHIBIT 5 TO RECOMMENDATION

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 Section 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,

## EXHIBIT 5 TO RECOMMENDATION

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 agrees to and shall fully DEFEND (with counsel reasonably acceptable to Landlord), INDEMNIFY, 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, all other 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, fees, charges, expenses, actions, causes of action, judgments, liabilities, suits, proceedings, harm, and losses of whatever kind or 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, under, above, or to the**

## EXHIBIT 5 TO RECOMMENDATION

**Demised Premises and/or any portion of the common facilities or any portion of the Airport or adjacent properties 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 OTHER ADDISON PERSONS, THE AIRPORT MANAGER OR ANY OTHER MANAGER PERSONS, OR BY ANY ACT OR OMISSION BY THE TOWN OF ADDISON, TEXAS, ANY OTHER ADDISON PERSONS, THE AIRPORT MANAGER OR ANY OTHER MANAGER PERSONS THAT WOULD GIVE 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 or any portion of the Airport or adjacent properties, 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 Section 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

## EXHIBIT 5 TO RECOMMENDATION

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; Other Provisions.** 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. For purposes hereof 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.

**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 the Ground Lease and each of their 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.

**EXHIBIT 5 TO RECOMMENDATION**

**IN WITNESS WHEREOF**, the undersigned parties execute this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2010

**LANDLORD:**

**TENANT:**

**TOWN OF ADDISON, TEXAS**

**RR INVESTMENTS, INC. D/B/A/  
MILLION AIR DALLAS**

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

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

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

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

EXHIBIT 5 TO RECOMMENDATION

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 \_\_\_\_\_, 2010.

\_\_\_\_\_  
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 \_\_\_\_\_, 2010.

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

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

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

EXHIBIT 5 TO RECOMMENDATION

**EXHIBIT A**

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

EXHIBIT 5 TO RECOMMENDATION

**EXHIBIT B**

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

# EXHIBIT 5 TO RECOMMENDATION

## EXHIBIT C

### MEMORANDUM OF LEASE

This Memorandum of Lease is dated as of \_\_\_\_\_, 20\_\_\_\_, and executed by and between the Town of Addison, Texas (“Landlord” or “City”) and RR Investments, Inc., a Texas corporation d/b/a/ Million Air Dallas (“Tenant”).

A Ground Lease was entered into as of November 11, 1983 between the Town (City) of Addison, Texas, as landlord, and Pharris-Miller, Inc., as tenant (identified as Ground Lease ##0690-5901 or Ground Lease #59 in the administrative archives and records of the City) in which certain real property commonly known as 4310 Amelia Earhart, Addison, Texas 75001 (“Demised Premises” and as more fully described in the said Ground Lease) within the Addison Airport (the “Airport”) was leased by Landlord to Pharris-Miller, Inc., The said Ground Lease was thereafter:

- assigned as of July 12, 1984 by Pharris-Miller, Inc. to Addison Air Terminal, a Texas general partnership; and thereafter
- on or about March 4, 1986, Bright Banc Savings Association acquired the interest of the Lease from Addison Air Terminal pursuant to a foreclosure sale; and thereafter
- assigned as of August 30, 1989 by Bright Banc Savings Association to Service Industries Property Management, Inc., a Texas corporation; and thereafter
- amended by that Amendment to Ground Lease dated August 15, 1990; and thereafter
- on January 7, 1992 Service Property Industries Property Management, Inc filed its Articles of Amendment with the Secretary of State of Texas, changing its name, among other things, to Carter-Crowley Properties, Inc., a Texas corporation; and thereafter
- assigned as of February 28, 19\_\_\_\_ from Carter-Crowley Properties, Inc. to Metroport Realty Corporation, a Texas corporation; and thereafter
- assigned as of March 19, 1997 by Metroport Realty Corporation to RR Investments, Inc. d/b/a/ Million Air Dallas,

so that RR Investments, Inc. d/b/a/ Million Air Dallas is the current tenant under the Ground Lease.

Now let it be known, the said Ground Lease is further amended by that Second Amendment to Ground Lease, entered into and made effective \_\_\_\_\_. 2010, which, among other things, amends the description of the Demised Premises so that the Demised Premises shall thereafter comprise the land described in Exhibit A attached hereto, and amends the term of the Ground Lease so that it shall end on \_\_\_\_\_, 20\_\_\_\_, subject, however, to the termination and all other provisions of the Ground Lease.

This Memorandum of Lease is solely for recording and notice purposes and shall not be construed to alter, modify, expand, diminish or supplement the provisions of the Ground Lease,

**EXHIBIT 5 TO RECOMMENDATION**

as amended. In the event of any inconsistency between the provisions of this Memorandum of Lease and the provisions of the Ground Lease (as amended), the provisions of the Ground Lease, as amended, shall govern. Reference should be made to the Ground Lease (and all amendments thereto) for the full description of the rights and duties of Landlord and Tenant thereunder, and this Memorandum of Lease shall in no way affect the terms and conditions of the Ground Lease (including all amendments thereto) or the interpretation of the rights and duties of Landlord and Tenant thereunder.

Upon the expiration or earlier termination of the Ground Lease, Landlord and Tenant agree that they shall execute and record a termination of this Memorandum of Lease.

**IN WITNESS WHEREOF**, the undersigned parties execute this Memorandum of Lease this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**LANDLORD:**

**TENANT:**

**TOWN OF ADDISON, TEXAS**

**RR INVESTMENTS, INC.**

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

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

Typed name: \_\_\_\_\_

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

EXHIBIT 5 TO RECOMMENDATION

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 (s)he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[SEAL]

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

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 (s)he executed the same for the purposes and consideration therein expressed.

[SEAL]

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

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

# EXHIBIT 5 TO RECOMMENDATION

## **EXHIBIT A to Memorandum of Lease**

*[Insert description of Demised Premises]*

## **Council Agenda Item: #R 2d**

### **AGENDA CAPTION:**

Approval of an estoppel letter agreement from F&M Bank & Trust Company regarding certain financing provided by F&M Bank & Trust Company to Key Development, LLC., Tenant under a certain Ground Lease at Addison Airport in which the Town of Addison is the Landlord, the leased premises under the Ground Lease being certain property located at the Airport at 4500 Westgrove Drive (formerly 4444 Westgrove Drive).

### **FINANCIAL IMPACT:**

N/A

### **BACKGROUND:**

Key Development, LLC, the ground tenant to the above referenced leased premises, is requesting the Town's consideration and consent for the creation of a leasehold mortgage in favor of F&M Bank & Trust Company (the Bank) securing a loan in the amount of \$1,158,940.22.

In so doing, the Bank is requesting the Town to execute an estoppel letter agreement substantially in the form found attached hereto as Exhibit "A," wherein the Town agrees to, among other things, recognize the Bank's leasehold deed of trust and subordinate lien; and grant the Bank certain rights and remedies in the event Key Development should default on the loan or ground lease.

Section 9 of the Ground Lease (as amended) allows for the creation of a leasehold mortgages for (i) obtaining the funds for the construction of the improvements on the leased premises; or (ii) other purposes which may be approved by Landlord in writing. The tenant has represented the proposed leasehold mortgage is to refinance the building and to fund tenant finish-out improvements and other similar operating costs.

### **RECOMMENDATION:**

Staff and Airport management recommend approval.

The City Attorney has reviewed the bank's proposed estoppel letter and has found it acceptable for the Town's use. With Key Development currently being in good standing under the Ground Lease, Airport Management recommends the Town give its consent and authorize the City Manager to execute the estoppel letter in favor of F&M Bank as requested.

**COUNCIL GOALS:**

N/A, Develop and utilize the Addison Airport as an engine to drive economic growth in the community

**ATTACHMENTS:**

Description:

[Key Development](#)

Type:

Backup Material



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  
Director of General Services  
Town of Addison

FROM: Bill Dyer, Real Estate Manager

Cc: Joel Jenkinson, Airport Director

DATE: August 16, 2010

SUBJECT: Requested Action by the Town of Addison  
Key Development, LLC., Tenant - Ground Lease #071-5502;  
4500 Westgrove Drive (formerly 4444 Westgrove Drive)

### **Requested Action and Recommendation by Airport Operator**

Key Development, LLC, the ground tenant to the above referenced leased premises, is requesting the Town's consideration and consent for the creation of a leasehold mortgage in favor of F&M Bank & Trust Company (the Bank) securing a loan in the amount of \$1,158,940.22. In so doing, the Bank is requesting the Town to execute an estoppel letter agreement substantially in the form found attached hereto as Exhibit "A," wherein the Town agrees to, among other things, recognize the Bank's leasehold deed of trust and subordinate lien; and grant the Bank certain rights and remedies in the event Key Development should default on the loan or ground lease.

### **Background Information**

The underlying ground lease commenced in 1984 and was acquired by way of assignment by Key Development in September 2006, which at that time Key Development also assumed an existing \$1.4M leasehold mortgage previously consented

to by the Town, and entered into the First Amendment. to Ground Lease that, among other things, extended the lease term an additional 15 years to March 31, 2039.

The leased premises are located at 4500 Westgrove Drive (formerly 4444 Westgrove Drive) and consists of approximately 1.55 acres. The leasehold improvements include a three-story 29,626 square-foot multi-tenant office building and a 10,000 square-foot attached executive hangar. The office and covered parking are 100% sprinklered and have emergency fire alarms.

**Current Status**

Key Development has been operating this multi-tenant office hangar facility since September 2006. They are currently in good standing with the Town of Addison and Addison Airport. Key Development paid off the \$1.4M leasehold mortgage and the lien was released in April 2009. There are no other known encumbrances to its title.

Tenant:	Key Development, LLC
Property Address:	4500 Westgrove Drive, Addison, TX
Land Area:	67,686 SF
Building Area:	29,296 Office / 10,000 Hangar
Year Built:	1985
Lease Commenced:	3/2/1984
Leased Expiration:	3/31/2039
Years Remaining:	28.99
Current Rent:	\$4,369.71/ Mo. / \$52,436.52 Annual (\$ .77/SFL)
Next CPI Adjustment	4/1/2012
DCAD Valuation of Improvements:	\$2,000,000

**Conclusion and Recommendation of Airport Operator**

Section 9 of the Ground Lease (as amended) allows for the creation of a leasehold mortgages for (i) obtaining the funds for the construction of the improvements on the leased premises; or (ii) other purposes which may be approved by Landlord in writing. The tenant has represented the proposed leasehold mortgage is to refinance the building and to fund tenant finish-out improvements and other similar operating costs.

Key Development, LLC, the ground tenant to the referenced leased premises, is requesting the Town's consideration and consent for the creation of a leasehold mortgage in favor of F&M Bank & Trust Company (the Bank) securing a loan in the amount of \$1,158,940.22. In so doing, the Bank is requesting the Town to execute an estoppel letter agreement substantially in the form found attached as Exhibit "A," wherein the Town agrees to, among other things, recognize the Bank's leasehold deed of trust and subordinate lien; and grant the Bank certain rights and remedies in the event Key Development should default on the loan or ground lease.

The Town's Attorney has reviewed the bank's proposed estoppel letter and has found it acceptable for the Town's use. With Key Development currently being in good standing under the Ground Lease, Airport Management recommends the Town give its consent and authorize the City Manager to execute the estoppel letter in favor of F&M Bank as requested.

## **Exhibit "A"**

## TO BE ON BANK LETTERHEAD

July 27, 2010

Town of Addison  
5300 Belt Line Road  
Dallas, Texas 75254

RE: Ground Lease dated March 2, 1984 by and among the City of Addison, Texas, a municipality (the "City," the same being the Town of Addison, Texas) and Addison Airport of Texas, Inc., a Texas corporation, as Landlord (the City now being the sole Landlord under the Ground Lease, the "Base Lease" [as defined in the Ground Lease] having expired, and the City alone being referred to herein as the "Landlord") and Lawson Ridgeway, as tenant; by the terms of which certain real property commonly known to be located at 4500 Westgrove (formerly known to be 4444 Westgrove) Addison, Texas 75001 and being approximately 1.55 acres [67,685.79 square feet] in size (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 and owned by the City was leased to Lawson Ridgeway (the said Ground Lease being filed of record in Volume 86022, Page 124 of the Official Public Records of Dallas County, Texas), and thereafter the said Ground Lease:

1. was assigned to Great Southwest Homes, Inc. by that Assignment of Lease dated March 2, 1984; and
2. was then assigned to Tarfive, Inc. by that Assignment of Lease dated May 31, 1988; and
3. was then assigned to MCORP Management Solutions, Inc. by that Substitute Trustee's Deed dated September 7, 1988; and
4. was then assigned to Realty Alliance of Texas, Ltd. by that Assignment of Lease dated September 8, 1988; and
5. was then assigned to Italix Acquisition Corporation by that Assignment of Ground Lease dated March 15, 1990; and

6. was then assigned to AIR 276 I, L.P. by that Assignment of Ground Lease dated March 31, 1999; and

7. was then assigned to ADS AIR 2000, L.P. by that Assignment of Ground Lease dated July 7, 2000; and

8. was then assigned to Key Development, LLC, a Texas limited liability company ("Key Development"), by that Assignment of Ground Lease dated September 15, 2006; and

9. was then amended by that First Amendment to Ground Lease dated September 15, 2006, which First Amendment, among other things, extended the term of the Ground Lease to March 31, 2039; and

by virtue of such assignments, Key Development ("Tenant") is now the Tenant under the said Ground Lease (the said Ground Lease, as amended, being herein referred to as the "Ground Lease").

Gentlemen:

The F&M Bank & Trust Company (the "Bank"), a bank organized under the laws of the State of Oklahoma, intends to make a loan to Tenant, which loan (the "Loan") will be evidenced by a promissory note in the amount of One Million One Hundred Fifty Eight Thousand Nine Hundred Forty and 22/100 Dollars (\$1,158,940.22) and will be secured by, among other things, a lien solely 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, as grantor, in favor of Neal Tomlins, 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 all 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.

Bank has advised Tenant that Bank requires the written acknowledgment of Landlord to the execution by Tenant of the Leasehold Deed of Trust and the written acknowledgment 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 as follows (and notwithstanding any statement or provision hereof, Landlord's statements herein do not constitute approval by or consent of Landlord of the Leasehold Deed of Trust or of any of the terms and conditions set forth therein, and nothing herein contained shall be deemed a waiver or release of any of the Landlord's rights under the Ground Lease or otherwise):

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 as set forth in the Ground Lease.
2. To the actual knowledge of Landlord, there presently exists no default by Tenant under the Ground Lease.
3. The Ground Lease has not been modified, altered or amended to the best of Landlord's actual knowledge, except as described herein.
4. Landlord has no actual knowledge of the existence of any lien against the Demised Premises other than that created by the Ground Lease and any lien for taxes as may be provided by law.
5. Landlord shall give to Bank, at the address of Bank specified in this letter or at such other address as Bank may hereafter designate in writing to the Landlord, prompt written notice of any default by Tenant under the Ground Lease simultaneously with the giving of such notice to Tenant, and Bank shall have the right, for a period of fifteen (15) days after its receipt of such notice or within any longer period of time specified in such notice, to take such action or to make such payment as may be necessary or appropriate to cure any such default so specified, the intent being that Landlord shall not exercise Landlord's right to terminate the Ground Lease without first giving Bank the notice provided for herein and affording Bank the right to cure such default as provided for herein.
6. For the purposes of this letter, any notice to Bank shall be effective upon Bank's receipt of the notice. Any such notice may be by (a) hand-delivery, (b) United States mail, certified, return receipt requested, (c) nationally recognized carrier (such as Federal Express), or (d) via confirmed telecopy or facsimile (fax) transmission. The Bank's address for any notice sent by (a), (b), or (c) of this paragraph is as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. If Bank 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 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 as the tenant under the Ground Lease and Landlord shall, subject to the terms and conditions of the Ground Lease, continue to perform all of its obligations under the Ground Lease so long as Bank performs all of the obligations of tenant under the Ground Lease. Bank may thereafter, with the written consent of the Landlord, which consent shall not be unreasonably withheld, assign its leasehold right, title and interest in and to the Ground Lease. For purposes hereof and any applicable law, and without limitation as to other grounds for Landlord withholding consent, it shall be deemed to be reasonable for Landlord to withhold its consent when any one or more of the following apply:

- (a) the proposed assignee is of a character or of a reputation or is engaged in a business which is not consistent with the master or strategic plan of Addison Airport as determined by Landlord;
- (b) the proposed assignee has not demonstrated sufficient financial responsibility or creditworthiness to the satisfaction of Landlord in light of the duties, obligations, and responsibilities of the tenant under the 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; or
- (f) the proposed assignee does not intend to occupy the entire Demised Premises as described in the Ground Lease and conduct its business therefrom for a substantial portion of the then remaining term of the Ground Lease.

Very truly yours,  
THE F&M BANK & TRUST COMPANY

---

Aimee Nelson, Senior Vice President

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

TOWN OF ADDISON, TEXAS

\_\_\_\_\_  
by: **Ron Whitehead, City Manager**

\_\_\_\_\_  
by: **Lea Dunn, City Secretary**

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

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**First Amendment to Deed of Trust**

This First Amendment to Deed of Trust (this "Amendment") is made this \_\_\_ day of August 2010, by **Key Development, LLC**, a Texas limited liability company (hereinafter referred to as "Grantor") and **The F&M Bank & Trust Company** ("Beneficiary").

**WITNESSETH:**

**A.** On or about July 7, 2010, Grantor executed that certain Deed of Trust to Neal Tomlins, Trustee for the benefit of Beneficiary recorded under **Instrument No. 201000177670** of the Real Property Records of Dallas County, Texas (the "Deed of Trust"), and encumbering the leasehold estate more particularly described on Exhibit "A" attached hereto (the "Property").

**B.** Grantor and Beneficiary desire to amend the Deed of Trust and the legal description of the Property to clarify that the (i) Deed of Trust is a Leasehold Deed of Trust, (ii) Deed of Trust only encumbers Grantor's leasehold interest as tenant in the Ground Lease (defined below), and (iii) rights, titles, interests and liens created for the benefit of Beneficiary in the Deed of Trust are subject and subordinate to the Landlord's rights under the Ground Lease.

**DEFINITION OF GROUND LEASE**

As used herein, the term "Ground Lease" means that certain Ground Lease dated March 2, 1984 by and among the City of Addison, Texas, a municipality (the "City", the same being the Town of Addison, Texas) and Addison Airport of Texas, Inc., a Texas corporation, as Landlord (the City now being the sole Landlord under the Ground Lease, the "Base Lease" [as defined in the Ground Lease] having expired, and the City alone being referred to herein as the "Landlord") and Lawson Ridgeway, as tenant; by the terms of which certain real property commonly known to be located at 4500 Westgrove (formerly known to be 4444 Westgrove) Addison, Texas 75001 and being approximately 1.56 acres [67,873 square feet] in size (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 and owned by the City was leased to Lawson Ridgeway (the same being recorded as of January 31, 1986 in Volume 86022, Page 124 of the Real Property Records of Dallas County, Texas). Thereafter the said Ground Lease:

1. Was assigned to Great Southwest Homes, Inc. by that Assignment of Lease dated March 2, 1984; and
2. Was then assigned to Tarfive, Inc. by that Assignment of Lease dated May 31, 1988; and

3. Was then assigned to MCORP Management Solutions, Inc. by that Substitute Trustee's Deed dated September 7, 1988; and
4. Was then assigned to Realty Alliance of Texas, Ltd. by that Assignment of Lease dated September 8, 1988; and
5. Was then assigned to Italix Acquisition Corporation by that Assignment of Ground Lease dated March 15, 1990; and
6. Was then assigned to AIR 276 I, L.P. by that Assignment of Ground Lease dated March 31, 1999; and
7. Was then assigned to ADS AIR 2000, L.P. by that Assignment of Ground Lease dated July 7, 2000; and
8. Was then assigned to Key Development, LLC, a Texas limited liability company ("Key Development"), by that Assignment of Ground Lease dated September 15, 2006; and
9. Was then amended by that First Amendment to Ground Lease dated September 15, 2006, which First Amendment, among other things, extended the term of the Ground Lease to March 31, 2039; and

by virtue of such assignments, Key Development is now the Tenant under the said Ground Lease (the term "Ground Lease" as used herein includes all amendments thereto and assignments thereof).

#### **AMENDMENTS:**

Now, Therefore, for the consideration recited in the Deed of Trust and other good and valuable consideration, the Grantor and Beneficiary agree that the Deed of Trust shall be amended and further agree, as follows:

1. **Leasehold Deed of Trust.** The Deed of Trust encumbers only Grantor's leasehold interest as created by the Ground Lease. Accordingly, the title to the Deed of Trust and references therein to "Deed of Trust" shall be amended to be "Leasehold Deed of Trust".

2. **Amendment of Legal Description.** To reflect that the Deed of Trust only encumbers Grantor's leasehold interest in the Ground Lease, Grantor and Beneficiary agree that the legal description of the "Real Property" as described on Exhibit "A" to the Deed of Trust shall be amended to reflect that it encumbers only all of Grantor's right, title and leasehold interest as Tenant under the Ground Lease.

3. **Subordination.** Grantor and Beneficiary agree that the Deed of Trust and Beneficiary's (and the Trustee's (as defined in the Deed of Trust)) rights thereunder are subject and subordinate to the Landlord's rights under the Ground Lease.

4. **Defined Terms.** Unless otherwise defined herein capitalized terms shall have the same meaning as set forth in the Deed of Trust.

5. **Effect of Amendment.** If any term or provision of this Amendment shall conflict with any term or provision of the Deed of Trust, then the terms and provisions of this Amendment shall control.

Executed as of the day and year first above written.

**Grantor:**

Key Development, LLC, a Texas limited liability company

By: Key Development Management, Inc., its Manager

By: \_\_\_\_\_  
James W. Keyes, President

**Beneficiary:**

The F&M Bank & Trust Company

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name and Title)

THE STATE OF TEXAS            §  
  §  
COUNTY OF DALLAS           §

This instrument was acknowledged before me on the \_\_\_\_\_ day of August, 2010, by James W. Keyes, President of Key Development Management, Inc., a Texas corporation, the Manager of Key Development, LLC, a Texas limited liability company, on behalf of such corporation and company.

(Seal)

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

THE STATE OF TEXAS            §  
  §  
COUNTY OF DALLAS           §

This instrument was acknowledged before me on the \_\_\_\_\_ day of August, 2010, by \_\_\_\_\_, \_\_\_\_\_ of The F&M Bank & Trust Company, on behalf of such bank and trust company.

(Seal)

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

**After Recording, Return To:**  
The F&M Bank & Trust Company  
1330 S. Harvard Ave.  
(P.O. Box 4500-74159)  
Tulsa, Oklahoma 74112



201000177670

DT 1/9

RECORDATION REQUESTED BY:  
THE F&M BANK & TRUST COMPANY  
1330 S. Harvard Ave.  
(P.O. Box 4500 - 74159)  
Tulsa, OK 74112

Return to: **10291350 WRL**  
**Republic Title of Texas, Inc.**  
**2626 Howell Street, 10th Floor**  
**Dallas TX 75204**

WHEN RECORDED MAIL TO:  
THE F&M BANK & TRUST COMPANY  
1330 S. Harvard Ave.  
(P.O. Box 4500 - 74159)  
Tulsa, OK 74112

SEND TAX NOTICES TO:  
Key Development LLC  
4500 Westgrove, Suite 222  
Addison, TX Dallas

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY



**F&M BANK**

**DEED OF TRUST**

THIS DEED OF TRUST is dated July 7, 2010, among Key Development LLC; a Texas Limited Liability Company ("Grantor"); THE F&M BANK & TRUST COMPANY, whose address is 1330 S. Harvard Ave., (P.O. Box 4500 - 74159), Tulsa, OK 74112 (referred to below sometimes as "Beneficiary"); and Neal Tomlins, whose address is 1330 S Harvard Ave, Tulsa, OK 74112 (referred to below as "Trustee").

CONVEYANCE AND GRANT. For valuable consideration, Grantor conveys to Trustee in trust, with power of sale, for the benefit of Lender as Beneficiary, the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; and all easements, rights of way, and appurtenances; all water and water rights; and all other rights, royalties, and profits relating to the real property, including without limitation such rights as Grantor may have in all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in Dallas County, State of Texas:

See EXHIBIT "A", which is attached to this Deed of Trust and made a part of this Deed of Trust as if fully set forth herein.

The Real Property or its address is commonly known as 4500 Westgrove Drive Ste 2222, Addison, TX 75001.

FUTURE ADVANCES. In addition to the Note, this Deed of Trust secures all future advances made by Lender to Grantor whether or not the advances are made pursuant to a commitment. Specifically, without limitation, this Deed of Trust secures, in addition to the amounts specified in the Note, all future amounts Lender in its discretion may loan to Grantor, together with all interest thereon.

Grantor hereby absolutely assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Deed of Trust, Grantor shall pay to Lender all amounts secured by this Deed of Trust as they become due, and shall strictly and in a timely manner perform all of Grantor's obligations under the Note, this Deed of Trust, and the Related Documents.

PURPOSE OF LOAN. The Note in the amount of \$1,158,940.22 represents, in part or in whole, cash or other financial accommodations advanced or committed by Lender to Grantor on July 7, 2010 at Grantor's request, of which Grantor hereby acknowledges receipt.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

Duty to Maintain. Grantor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance With Environmental Laws. Grantor represents and warrants to Lender that: (1) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the

**DEED OF TRUST  
(Continued)**

Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Deed of Trust, including the obligation to indemnify and defend, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

**Nuisance, Waste.** Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent. This restriction will not apply to rights and easements (such as gas and oil) not owned by Grantor and of which Grantor has informed Lender in writing prior to Grantor's signing of this Deed of Trust.

**Removal of Improvements.** Grantor shall not demolish or remove any improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such improvements with improvements of at least equal value.

**Lender's Right to Enter.** Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Deed of Trust.

**Compliance with Governmental Requirements.** Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

**Duty to Protect.** Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

**DUE ON SALE - CONSENT BY LENDER.** Lender may, at Lender's option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Texas law.

**TAXES AND LIENS.** The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

**Payment.** Grantor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due and except as otherwise provided in this Deed of Trust.

**Right to Contest.** Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and Lender's reasonable attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

**Evidence of Payment.** Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

**Notice of Construction.** Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials and the cost exceeds \$5,000.00. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

**PROPERTY DAMAGE INSURANCE.** The following provisions relating to insuring the Property are a part of this Deed of Trust.

**Maintenance of Insurance.** Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a fair value basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Trustee and Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption, and boiler

**DEED OF TRUST  
(Continued)**

insurance, as Lender may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender, with losses made payable to Lender. GRANTOR MAY FURNISH THE REQUIRED INSURANCE WHETHER THROUGH EXISTING POLICIES OWNED OR CONTROLLED BY GRANTOR OR THROUGH EQUIVALENT INSURANCE FROM ANY INSURANCE COMPANY AUTHORIZED TO TRANSACT BUSINESS IN THE STATE OF TEXAS. If Grantor fails to provide any required insurance or fails to continue such insurance in force, Lender may, but shall not be required to, do so at Grantor's expense, and the cost of the insurance will be added to the Indebtedness. If any such insurance is procured by Lender, Grantor will be so notified, and Grantor will have the option of furnishing equivalent insurance through any insurer authorized to transact business in Texas. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

**Application of Proceeds.** Grantor shall promptly notify Lender of any loss or damage to the Property if the estimated cost of repair or replacement exceeds \$5,000.00. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the Indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

**Grantor's Report on Insurance.** Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, and the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Grantor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

**LENDER'S EXPENDITURES.** If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Deed of Trust or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Deed of Trust or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note or at the highest rate authorized by law, from the date incurred or paid by Lender to the date of repayment by Grantor. To the extent permitted by applicable law, all such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Deed of Trust also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

**WARRANTY; DEFENSE OF TITLE.** The following provisions relating to ownership of the Property are a part of this Deed of Trust:

**Title.** Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Deed of Trust; and (b) Grantor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

**Defense of Title.** Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Trustee or Lender under this Deed of Trust, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

**Compliance With Laws.** Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

**Survival of Representations and Warranties.** All representations, warranties, and agreements made by Grantor in this Deed of Trust shall survive the execution and delivery of this Deed of Trust, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's Indebtedness shall be paid in full.

**CONDEMNATION, JUDGMENTS AND AWARDS.** The following provisions relating to condemnation proceedings, judgments, decrees and awards for injury to the Property are a part of this Deed of Trust:

**Proceedings.** If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

**Application of Net Proceeds.** To the extent permitted by applicable law, all judgments, decrees and awards for injury or damage to the Property, or any part of the Property, and awards pursuant to proceedings for condemnation of the Property, are hereby absolutely assigned to Lender, and if all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the Indebtedness or the repair or restoration of the Property. The net proceeds of the award, judgment or decree shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Trustee or Lender in connection with the condemnation.

**SECURITY AGREEMENT; FINANCING STATEMENTS.** The following provisions relating to this Deed of Trust as a security agreement are a part of

**DEED OF TRUST  
(Continued)**

this Deed of Trust:

**Security Agreement.** This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

**Security Interest.** Upon request by Lender, Grantor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

**Addresses.** The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Deed of Trust.

**FURTHER ASSURANCES; ATTORNEY-IN-FACT.** The following provisions relating to further assurances and attorney-in-fact are a part of this Deed of Trust:

**Further Assurances.** At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Grantor's obligations under the Note, this Deed of Trust, and the Related Documents, and (2) the liens and security interests created by this Deed of Trust as first and prior liens on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

**Attorney-In-Fact.** If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

**FULL PERFORMANCE.** If Grantor pays all the indebtedness, including without limitation all future advances, when due, and otherwise performs all the obligations imposed upon Grantor under this Deed of Trust, Lender shall execute and deliver to Grantor a release of this Deed of Trust lien and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. However, it is agreed that the payment of all the indebtedness and performance of such obligations shall not terminate this Deed of Trust unless the liens and interests created hereby are released by Lender by a proper recordable instrument. Any filing fees required by law shall be paid by Grantor, if permitted by applicable law.

**EVENTS OF DEFAULT.** Each of the following, at Lender's option, shall constitute an Event of Default under this Deed of Trust:

**Payment Default.** Grantor fails to make any payment when due under the indebtedness.

**Other Defaults.** Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Deed of Trust or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

**Compliance Default.** Failure to comply with any other term, obligation, covenant or condition contained in this Deed of Trust, the Note or in any of the Related Documents.

**Default on Other Payments.** Failure of Grantor within the time required by this Deed of Trust to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Deed of Trust or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Defective Collateralization.** This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

**Death or Insolvency.** The dissolution of Grantor's (regardless of whether election to continue is made), any member withdraws from the limited liability company, or any other termination of Grantor's existence as a going business or the death of any member, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any property securing the indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Breach of Other Agreement.** Any breach by Grantor under the terms of any other agreement between Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Grantor to Lender, whether existing now or later.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the indebtedness.

**Adverse Change.** A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the indebtedness is impaired.

**DEED OF TRUST  
(Continued)**

**Insecurity.** Lender in good faith believes itself insecure.

**RIGHTS AND REMEDIES ON DEFAULT.** If an Event of Default occurs under this Deed of Trust, at any time thereafter, Trustee or Lender may exercise any one or more of the following rights and remedies:

**Election of Remedies.** Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Deed of Trust, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

**Accelerate Indebtedness.** Lender may declare the unpaid principal balance of the Indebtedness due and payable. In no event will Grantor be required to pay any unearned interest.

**Foreclosure.** If Lender invokes the power of sale, Trustee, at the request of Lender, may sell all or any portion of the Property at public auction to the highest bidder for cash at the location within the courthouse designated by the County Commissioners Court, or if no such area has been designated, at the area designated in the notice of sale within the courthouse, between the hours of 10:00 A.M. and 4:00 P.M. on the first Tuesday of any month, after the Trustee or its agent has given notice of the time and place of sale and of the property to be sold as required by the Texas Property Code, as then amended.

**UCC Remedies.** With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

**Collect Rents.** As additional security for the payment of the Indebtedness, Grantor hereby absolutely assigns to Lender all Rents as defined in the Definitions section of this Deed of Trust. Until the occurrence of an Event of Default, Grantor is granted a license to collect and retain the Rents; however, upon receipt from Lender of a notice that an Event of Default exists under this Deed of Trust, Lender may terminate Grantor's license, and then Lender, as Grantor's agent, may collect the Rents. In addition, if the Property is vacant, Lender may rent or lease the Property. Lender shall not be liable for its failure to rent the Property, to collect any Rents, or to exercise diligence in any matter relating to the Rents; Lender shall be accountable only for Rents actually received. Lender neither has nor assumes any obligation as lessor or landlord with respect to any occupant of the Property. Rents so received shall be applied by Lender first to the remaining unpaid balance of the Indebtedness, in such order or manner as Lender shall elect, and the residue, if any, shall be paid to the person or persons legally entitled to the residue.

**Trustee's Powers.** Grantor hereby jointly and severally authorizes and empowers Trustee to sell all or any portion of the Property together or in lots or parcels, as Trustee may deem expedient, and to execute and deliver to the purchaser or purchasers of such Property good and sufficient deeds of conveyance of fee simple title, or of lesser estates, and bills of sale and assignments, with covenants of general warranty made on Grantor's behalf. In no event shall Trustee be required to exhibit, present or display at any such sale any of the Property to be sold at such sale. The Trustee making such sale shall receive the proceeds of the sale and shall apply the same as provided below. Payment of the purchase price to Trustee shall satisfy the liability of the purchaser at any such sale of the Property, and such person shall not be bound to look after the application of the proceeds.

**Appoint Receiver.** Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

**Tenancy at Sufferance.** If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, (2) vacate the Property immediately upon the demand of Lender, or (3) if such tenants refuse to surrender possession of the Property upon demand, the purchaser shall be entitled to institute and maintain the statutory action of forcible entry and detainer and procure a writ of possession thereunder, and Grantor expressly waives all damages sustained by reason thereof.

**Other Remedies.** Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or the Note or available at law or in equity.

**Sale of the Property.** To the extent permitted by applicable law, Grantor hereby waives any and all rights to have the Property marshalled. In exercising its rights and remedies, the Trustee or Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property. Trustee may convey all or any part of the Property to the highest bidder for cash with a general warranty binding Grantor, subject to prior liens and to other exceptions to conveyance and warranty. Grantor waives all requirements of appraisal, if any. The affidavit of any person having knowledge of the facts to the effect that proper notice as required by the Texas Property Code was given shall be prima facie evidence of the fact that such notice was in fact given. Recitals and statements of fact in any notice or in any conveyance to the purchaser or purchasers of the Property in any foreclosure sale under this Deed of Trust shall be prima facie evidence of the truth of such facts, and all prerequisites and requirements necessary to the validity of any such sale shall be presumed to have been performed. Any sale under the powers granted by this Deed of Trust shall be a perpetual bar against Grantor, Grantor's heirs, successors, assigns and legal representatives.

**Proceeds.** Trustee shall pay the proceeds of any sale of the Property (a) first, to the expenses of foreclosure, including reasonable fees or charges paid to the Trustee, including but not limited to fees for enforcing the lien, posting for sale, selling, or releasing the Property, (b) then to Lender the full amount of the Indebtedness, (c) then to any amount required by law to be paid before payment to Grantor, and (d) the balance, if any, to Grantor.

**Attorneys' Fees; Expenses.** If Lender institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as Lender's attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including Lender's reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law. In the event of foreclosure of this Deed of Trust, Lender shall be entitled to recover from Grantor Lender's reasonable attorneys' fees and actual disbursements that Lender necessarily incurs in pursuing such foreclosure.

**DEED OF TRUST  
(Continued)**

Page 6

**POWERS AND OBLIGATIONS OF TRUSTEE.** The following provisions relating to the powers and obligations of Trustee are part of this Deed of Trust:

**Powers of Trustee.** In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the written request of Lender and Grantor: (a) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Real Property; and (c) join in any subordination or other agreement affecting this Deed of Trust or the interest of Lender under this Deed of Trust.

**Obligations to Notify.** Trustee shall not be obligated to notify any other lienholder of the Property of the commencement of a foreclosure proceeding or of the commencement of any other action to which Lender may avail itself as a remedy, except to the extent required by applicable law or by written agreement.

**Trustee.** In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

**Substitute Trustee.** Lender, at Lender's option, from time to time, and more than once, may appoint in writing a successor or substitute trustee, with or without cause, including the resignation, absence, death, inability, refusal or failure to act of the Trustee. The successor or substitute trustee may be appointed without ever requiring the resignation of the former trustee and without any formality except for the execution and acknowledgment of the appointment by the beneficiary of this Deed of Trust. The successor or substitute trustee shall then succeed to all rights, obligations, and duties of the Trustee. This appointment may be made on Lender's behalf by the President, any Vice President, Secretary, or Cashier of Lender.

**NOTICES.** Any notice required to be given under this Deed of Trust, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Deed of Trust. Any party may change its address for notices under this Deed of Trust by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Deed of Trust:

**Amendments.** This Deed of Trust, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration of or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Annual Reports.** If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

**Caption Headings.** Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

**Merger.** There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

**Governing Law.** With respect to procedural matters related to the perfection and enforcement of Lender's rights against the Property, this Deed of Trust will be governed by federal law applicable to Lender and to the extent not preempted by federal law, the laws of the State of Texas. In all other respects, this Deed of Trust will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Oklahoma without regard to its conflicts of law provisions. However, if there ever is a question about whether any provision of this Deed of Trust is valid or enforceable, the provision that is questioned will be governed by whichever state or federal law would find the provision to be valid and enforceable. The loan transaction that is evidenced by the Note and this Deed of Trust has been applied for, considered, approved and made, and all necessary loan documents have been accepted by Lender in the State of Oklahoma.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Deed of Trust unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Deed of Trust shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Deed of Trust. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**Severability.** If a court of competent jurisdiction finds any provision of this Deed of Trust to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Deed of Trust. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Deed of Trust shall not affect the legality, validity or enforceability of any other provision of this Deed of Trust.

**Successors and Assigns.** Subject to any limitations stated in this Deed of Trust on transfer of Grantor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Deed of Trust and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Deed of Trust or liability under the indebtedness.

**Time Is of the Essence.** Time is of the essence in the performance of this Deed of Trust.

**Waive Jury.** All parties to this Deed of Trust hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Deed of Trust. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in

**DEED OF TRUST  
(Continued)**

Page 7

the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code:

**Beneficiary.** The word "Beneficiary" means THE F&M BANK & TRUST COMPANY, and its successors and assigns.

**Borrower.** The word "Borrower" means Key Development LLC and includes all co-signers and co-makers signing the Note and all their successors and assigns.

**Deed of Trust.** The words "Deed of Trust" mean this Deed of Trust among Grantor, Lender, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Rents.

**Default.** The word "Default" means the Default set forth in this Deed of Trust in the section titled "Default".

**Environmental Laws.** The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

**Event of Default.** The words "Event of Default" mean any of the events of default set forth in this Deed of Trust in the events of default section of this Deed of Trust.

**Grantor.** The word "Grantor" means Key Development LLC.

**Guarantor.** The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness.

**Guaranty.** The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

**Hazardous Substances.** The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

**Improvements.** The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

**Indebtedness.** The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Trustee or Lender to enforce Grantor's obligations under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust. Specifically, without limitation, Indebtedness includes the future advances set forth in the Future Advances provision of this Deed of Trust, together with all interest thereon.

**Lender.** The word "Lender" means THE F&M BANK & TRUST COMPANY, its successors and assigns.

**Note.** The word "Note" means the promissory note dated July 7, 2010, in the original principal amount of \$1,158,940.22 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. The maturity date of the Note is July 7, 2015.

**Personal Property.** The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

**Property.** The word "Property" means collectively the Real Property and the Personal Property.

**Real Property.** The words "Real Property" mean the real property, interests and rights, as further described in this Deed of Trust.

**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

**Rents.** The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

**Trustee.** The word "Trustee" means Neal Tomlins, whose address is 1330 S Harvard Ave, Tulsa, OK 74112 and any substitute or successor trustees.

**GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND GRANTOR AGREES TO ITS TERMS.**

DEED OF TRUST  
(Continued)

GRANTOR:

KEY DEVELOPMENT LLC

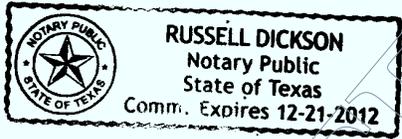
KEY DEVELOPMENT MANAGEMENT INC, Manager of Key Development LLC

By: [Signature]  
James W Keyes, President of Key Development  
Management Inc

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF TEXAS )  
 ) SS  
COUNTY OF DALLAS )

This instrument was acknowledged before me on July 12, 2010 by James W Keyes, President of Key Development Management Inc, Manager of Key Development LLC, a member on behalf of Key Development LLC, a limited liability company.



[Signature]  
Notary Public, State of Texas

**Exhibit "A"**  
**Property Description**

Being a Leasehold Estate in and to a 1.5538 acre tract of land in the Town of Addison, Texas, in the William Lomax Survey, Abstract No. 792, in Dallas County, Texas and being located in Addison Municipal Airport, Addison, Texas, same being part of Addison Airport, Town of Addison Addition, according to the Plat thereof recorded in Volume 2005131, Page 0082, Deed Records, Dallas County, Texas and being more particularly described by metes and bounds a follows:

BEGINNING at a 1/2 inch iron rod found with yellow plastic cap stamped "Powell & Powell" at the intersection of the South right-of-way line of Westgrove Road, (60 foot right-of-way) and the West right-of-way line of Claire Chennault, (a 60 foot ingress and egress easement recorded in said Volume 2005131, Page 0082, Deed Records, Dallas County, Texas;

THENCE South 00 degrees 41 minutes 28 seconds East, along said Claire Chennault West right-of-way line, a distance of 260.10 feet to a 1/2 inch iron rod found with yellow plastic cap stamped "Powell & Powell";

THENCE South 89 degrees 27 minutes 43 seconds West, a distance of 260.60 feet to an "x" found;

THENCE North 00 degrees 33 minutes 43 seconds West, a distance of 259.96 feet to a 1/2 inch iron rod found with yellow plastic cap stamped "Powell & Powell" on aforementioned Westgrove Road South right-of-way line;

THENCE North 89 degrees 25 minutes 55 seconds East, along said Westgrove Road South right-of-way line, a distance of 260.01 feet to the POINT OF BEGINNING and containing 67,685.79 square feet or 1.5538 acres of land, more or less.

Filed and Recorded  
Official Public Records  
John F. Warren, County Clerk  
Dallas County, TEXAS  
07/13/2010 03:48:24 PM  
\$48.00



A handwritten signature in black ink, appearing to be "JFW".

201000177670

## **Council Agenda Item: #R 2e**

### **AGENDA CAPTION:**

Approval of an amendment to 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 increasing the monthly fee for single family residential garbage and recycling collection from \$11.11 to \$11.42.

### **FINANCIAL IMPACT:**

There is no impact to the Street Department operations budget.

Project Manager: Robin Jones

### **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 in October 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 increased by 2.8%. A 2.8% increase will increase the monthly garbage/recycling rate from its current \$11.11 per home, per month, to \$11.42. This increase will take effect October 1, 2010 and be reflected on the November water bill.

### **RECOMMENDATION:**

Staff recommends approval.

### **COUNCIL GOALS:**

# Conduct the Business of the Town in a Fiscally Responsible Manner

## ATTACHMENTS:

Description:

- [Waste Management](#)
- [CTDALLAS](#)

Type:

- Cover Memo
- Cover Memo



August 12, 2010

Mr. Robin Jones  
Town of Addison  
16801 Westgrove  
Addison, Texas 75001

Dear Robin:

Waste Management values its relationship with the Town of Addison, and will continue to provide you with an outstanding combination of pricing, service, and community support.

As you know, our contract provides for annual adjustment of prices based upon the Producer Price Index (PPI). Your Finance Department staff has advised of an upward change of 2.8% over the past twelve months. We concur with this assessment, and therefore, are sending this notice of a change in the residential rates. Effective October 1, 2010, the rate will increase from \$11.11 per home, per month to \$11.42 per home, per month. We ask that the Town make this adjustment with the utility bills that will be mailed in November of 2010.

We thank you for your continued confidence in Waste Management, and please contact me if we can be of service in the future.

Sincerely,

John L. Klaiber  
Manager – Public Sector Services

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 ADJUSTING THE MANDATORY MONTHLY FEE FOR GARBAGE COLLECTION, HAULING AND DISPOSAL (CURBSIDE PICKUP) FROM EACH SINGLE DWELLING UNIT WITHIN THE CITY FROM \$11.11 TO \$11.42; PROVIDING THAT SUCH INCREASED RATE SHALL TAKE EFFECT ON OCTOBER 1, 2010; 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 . . . \$11.42~~\$11.11~~.

**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, 2010.

**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 \_\_\_\_\_, 2010.

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

ATTEST:

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

APPROVED AS TO FORM:

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

## Council Agenda Item: #R 2f

### **AGENDA CAPTION:**

Approval of a resolution authorizing the City Manager to enter into a Federal Aviation Administration Grant Agreement administered by the Texas Department of Transportation, to make airport improvements.

### **FINANCIAL IMPACT:**

Funds available in the Airport Fund.

### **BACKGROUND:**

The Town of Addison is scheduled to receive two FAA grants. One project is estimated to cost a total of \$7,290,000 and the other project \$100,000. Through FAA grants administered by the Texas Department of Transportation, Aviation Department under the State Block Grant program, the first project will consist of design and construction of Taxiway "A" Alpha, Fuel Farm pavement area improvements, and Taxiway "T" Tango (1118ADDSN). The second project is for the Feasibility Study of the Engineered Material Arresting System (EMAS – 1118ADDON) at the south end of the airport.

The project designs are to be accomplished in FY 2011 and the construction in FY 2012. The grant will require a ten percent local contribution with the FAA paying the remaining ninety percent.

Funds required for the Town's share of \$729,000 and \$10,000 are available in the Airport fund.

### **RECOMMENDATION:**

Staff recommends approval.

### **COUNCIL GOALS:**

Develop and utilize the Addison Airport as an engine to drive economic growth in the community

### **ATTACHMENTS:**

Description:

[TxDOT Grant Resolution](#)

Type:

Resolution Letter

**TOWN OF ADDISON, TEXAS**

**RESOLUTION NO. \_\_\_\_\_**

**Airport Grant Agreement For Federal & State Funding (TxDOT acting as Agent)**

WHEREAS, the Town of Addison intends to make certain improvements to the Addison Municipal Airport; and

WHEREAS, the general description of the projects are described as: design and construction of Taxiway “A”, Fuel Farm, and Taxiway “T” (1118ADDSN); and the Engineered Material Arresting System (EMAS – 1118ADDON); and

WHEREAS, the Town of Addison intends to request financial assistance from the Texas Department of Transportation for these improvements; and

WHEREAS, total project costs for 1118ADDSN are estimated to be \$7,290,000, and the Town of Addison will be responsible for 10% of the total project costs currently estimated to be \$729,000; and

WHEREAS, total project costs for 1118ADDON are estimated to be \$100,000, and the Town of Addison will be responsible for 10% of the total project costs currently estimated to be \$10,000; and

WHEREAS, the Town of Addison names the Texas Department of Transportation as its agent for the purposes of applying for, receiving and disbursing all funds for these improvements and for the administration of contracts necessary for the implementation of these improvements.

NOW, THEREFORE, BE IT RESOLVED, that the Town of Addison hereby directs Ron Whitehead, City Manager to execute on behalf of the Town of Addison, at the appropriate time, and with the appropriate authorizations of this governing body, all contracts and agreements with the State of Texas, represented by the Texas Department of Transportation, and such other parties as shall be necessary and appropriate for the implementation of the improvements to the Addison Municipal Airport.

**DULY PASSED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, this the 24<sup>th</sup> day of August, 2010.**

\_\_\_\_\_  
Joe Chow – Mayor

ATTEST:

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

OFFICE OF THE CITY SECRETARY

RESOLUTION NO. \_\_\_\_\_

## **Council Agenda Item: #R 2g**

### **AGENDA CAPTION:**

Approval of a Supplemental Agreement to the Agreement for Professional Services with Halff Associates, Inc., in the amount not to exceed \$28,900.00 for the Spring Valley Road project.

### **FINANCIAL IMPACT:**

Current Design Contract Amount: \$159,780.00

Additional Design Services: \$28,900.00

Source of Funds: Capital Improvements Fund, 2008 Certificates of Obligation.

Project Manager: Nancy S. Cline, P.E.

### **BACKGROUND:**

The Agreement for Professional Services for the Spring Valley Road was authorized by the City Council on May 25, 2010 and included design services for the widening of the road, storm drainage facilities, traffic signal construction at the intersection, traffic control, landscape design and construction phase services. Since the design began, staff has identified three additional elements to be included in the professional services.

Halff Associates has submitted the following description and fees:

1. Plans and details for new 12' water line, including new connections and abandoning portions of an existing 8 " water line - \$3,500
2. Plans, profiles and details for underground ONCOR duct bank - \$20,400
3. Metes and bounds surveys for two ROW parcels - \$5,000

The previous not to exceed amount for the professional services for Spring Valley Road was \$159,780 and with the additional professional services of \$28,900 will now total \$188,680. The

project is on schedule to begin construction in the fall of 2010 and be completed in time for the opening of the new G.H.W. Bush DISD elementary school on Spring Valley Road.

**RECOMMENDATION:**

Staff recommends approval.

**COUNCIL GOALS:**

Promote Quality Transportation Services

**ATTACHMENTS:**

Description:

Type:

No Attachments Available

## Council Agenda Item: #R3

**AGENDA CAPTION:**

PUBLIC HEARING on a proposal to increase total tax revenues from properties on the tax roll in the preceding tax year by 3.7 percent (percentage by which proposed tax rate exceeds lower of rollback tax rate or effective tax calculated under Chapter 26, Tax Code).

**FINANCIAL IMPACT:**

N/A

**BACKGROUND:**

N/A

**RECOMMENDATION:**

N/A

**COUNCIL GOALS:**

N/A

**ATTACHMENTS:**

Description:

Type:

No Attachments Available

## Council Agenda Item: #R4

**AGENDA CAPTION:**

PUBLIC HEARING, presentation, discussion and consideration of approval of an ordinance (and a corresponding resolution) order and calling for a special election to be held on November 2, 2010 for the purpose of submitting to the qualified voters of the Town amendments to the existing Charter of the Town of Addison.

AUDIENCIA PÚBLICA, presentación, discusión y consideración de la aprobación de una ordenanza (y la resolución correspondiente) orden y convocó a elecciones especiales que se llevaran a cabo el 02 de noviembre 2010 con el propósito de someter a los votantes calificados de la Ciudad las enmiendas a las actuales Carta de la Ciudad de Addison.

**FINANCIAL IMPACT:**

Anticipated not to exceed \$15,000.00.

**BACKGROUND:**

Please see proposed attached Ordinance.

**RECOMMENDATION:**

**COUNCIL GOALS:**

N/A

**ATTACHMENTS:**

Description:

[Ordinance Calling for Special Election](#)

Type:

Ordinance

**TOWN OF ADDISON, TEXAS**

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

**AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS ORDERING A SPECIAL ELECTION OF THE TOWN TO BE HELD ON NOVEMBER 2, 2010 FOR THE PURPOSE OF SUBMITTING TO THE QUALIFIED VOTERS OF THE TOWN THREE (3) AMENDMENTS TO THE EXISTING CHARTER OF THE TOWN, CONCERNING THE SALE OF ALCOHOLIC BEVERAGES (BEER AND WINE) FOR OFF-PREMISES CONSUMPTION, THE NUMBER OF TERMS OF OFFICE OF MEMBERS OF THE COUNCIL, AND MAKING NON-SUBSTANTIVE MODIFICATIONS TO THE CHARTER; PROVIDING FOR THE FORM OF THE BALLOT PROPOSITIONS FOR THE ELECTION; DESIGNATING THE PLACES AT WHICH THE ELECTION WILL BE CONDUCTED AND SETTING FORTH THE ELECTION PRECINCTS; DESIGNATING THE DALLAS COUNTY ELECTIONS ADMINISTRATOR TO ADMINISTER THE ELECTION; ESTABLISHING PROCEDURES FOR EARLY VOTING; ESTABLISHING OTHER MATTERS AND PROCEDURES FOR CONDUCTING THE ELECTION; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Section 11.28 of the City Charter (the “Charter”) of the Town of Addison, Texas (the “City”) provides that amendment to the Charter may be formulated and submitted to the voters of the City in the manner provided by Chapter 9 of the Texas Local Government Code (the “Code”), and pursuant to Section 9.004(a) of the Code, the City Council of the City is authorized to submit a proposed Charter amendment to the to the City’s qualified voters for their approval at an election; and

**WHEREAS**, Section 9.004(b) of the Code provides that the ordinance ordering the election shall provide for the election to be held on the first authorized uniform election date prescribed by the Election Code or on the earlier of the date of the next municipal general election or presidential general election, and Section 41.001 of the Election Code provides that each general or special election in the state shall be held on the second Saturday in May or on the first Tuesday after the first Monday in November, with certain exceptions not applicable here, and November 2, 2010 is the date of the next authorized uniform election date prescribed by the Election Code; and

**WHEREAS**, City Council desires to submit to the qualified voters of the City at a special election to be held on November 2, 2010 the proposed amendments to the Charter set forth herein, and the City Council has determined that the City shall conduct such election in conjunction with Dallas County, Texas and other Dallas County jurisdictions.

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

Section 1. Incorporation of Premises. That the above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. Election Ordered. A special election ("Election") is hereby ordered to and shall be held in and throughout the Town of Addison, Texas ("City") on Tuesday, November 2, 2010, for the purpose of submitting to the qualified voters of the City certain amendments to the existing City Charter of the Town of Addison, as set forth in Section 3 of this Ordinance (the "Proposed Amendments"). The Proposed Amendments shall be put forth to the qualified voters of the City in the form of ballot propositions as set forth in Section 4 of this Ordinance.

Section 3. Proposed Amendments to the City Charter. The Proposed Amendments to the City Charter are as follows, and at the Election the same shall be submitted to the qualified voters of the City in the form of ballot propositions as set forth in Section 4 of this Ordinance (proposed additions to the Charter are underlined; proposed deletions to the Charter are ~~struck through~~):

**Amendment No. 1** - Shall Section 11.04 of the City Charter, relating to a restriction on the location of the sale of alcoholic beverages for off-premises consumption, be amended to read as follows:

**Section 11.04. Restriction of sale of alcoholic beverages.**

Sale of alcoholic beverages for off-premises consumption is hereby restricted and limited to the existing west side of Inwood Road between the southern corporate limits and the southern right-of-way of Belt Line Road and such area being more specifically described as follows:

Commencing at a point on the south right-of-way of Belt Line Road (a 100-foot R.O.W.) and the west right-of-way of St. Louis Southwestern Railway Company (a 100-foot R.O.W.);

Thence, in a westerly direction along the south right-of-way of Belt Line Road, a distance of 93.02 feet, more or less, to the point of beginning, said point being the most northerly point of a corner clip;

Thence, continue westerly along said south R.O.W. a distance of 159.5 feet, more or less, to a point;

Thence, in a southerly direction along the common property line (plat bearing south 0 degrees 26 minutes east), a distance of 2,601.27 feet, more or less, to a point on the Addison/Farmers Branch town limits;

Thence, in an easterly direction along said town limits line (plat bearing north 88 degrees 58 minutes 14 seconds west), a distance of 971.37 feet, more or less, to a point on the west right-of-way of Inwood Road;

Thence, northwesterly along said west right-of-way of Inwood Road, a distance of 2,676.56 feet, more or less, to a point, being the most southerly of a corner clip;

Thence, in a northwesterly direction along said corner clip, a distance of 48.31 feet, more or less, to said point of beginning;

except that the sale of beer and wine for off-premises consumption is not restricted or limited by and is not subject to the foregoing provision.

**Amendment No. 2** - Shall Section 8.04 of the City Charter, relating to the number, selection, and term of members of the City Council, be amended to read as follows:

**Section 8.04. Number, selection, and term of Council.**

The Council shall be composed of a Mayor and six (6) council members who shall be elected and serve in the following manner subject to the adopting of this Charter:

- a. The Mayor and Councilmen in office at the time of the adoption of this Charter shall continue to serve as Mayor and Councilmen under this Charter until the expiration of their present terms of office, or until their successors have been elected or selected and duly qualified under this Charter.
- b. In each odd-numbered year three (3) council members and a Mayor shall be elected and in each even-numbered year three (3) council members shall be elected.
- c. The Mayor and other members of the Council shall be elected from the Town at large, for a term of two (2) years.
- d. The candidate for Mayor who receives the highest number of valid votes by qualified electors voting at the election shall be declared elected.
- e. The candidates for election to the places of Councilmen, equal in number to the number of vacancies to be filled, who receive the highest number of valid votes cast by qualified electors voting at the election, shall be declared elected.
- f. In case of a tie vote as to any two (2) or more candidates, the Council shall order a special election within not less than thirty (30) days nor more than forty (40) days after the regular election to resolve the tie vote as between such candidates.
- g. All elections shall be held in accordance with the election laws of the State of Texas and the provisions of this Charter.
- h. No person shall serve as Mayor for more than ~~four~~three (43) successive terms of office, and no person shall serve as a council member for more than ~~four~~three (43) successive terms of office. For purposes of this section, the phrase "terms of office" shall not include any unexpired portion of any two-year term. The current term of office, and any prior successive term or terms of office directly related thereto, served by persons who are serving as the mayor or a council member as of August 1,

2010 shall count toward the maximum number of successive terms permitted, except that any person serving in their third successive term of office as of August 1, 2010 shall not be eligible to serve in that same office for a fourth consecutive term.

**Amendment No. 3** - Shall various sections of the City Charter be amended throughout to correct non-substantive errors such as misspellings, punctuation, grammar and sentence structure, to make non-substantive changes to clarify meanings of terms and use consistent terminology, outline paragraph numbering, conform to requirements and/or provisions of State and/or federal law and/or Town ordinances, and revise references to repealed or obsolete provisions of Texas law?

Section 4. Official Ballot Propositions. The Proposed Amendments shall be submitted to the qualified voters of the City on a ballot substantially in the form of propositions set forth below:

**Proposition No. 1:**

- YES      Shall Section 11.04 of the Charter of the Town of Addison be amended to provide that the restriction and limitation on the location of the sale of alcoholic beverages for off-premises consumption does not restrict or limit the location of the sale of beer and wine for off-premises consumption?
- NO

**Proposition No. 2:**

- YES      Shall Section 8.04 of the Charter of the Town of Addison be amended to provide that no person shall serve as Mayor or as a Council member for more than four (4) successive terms of office?
- NO

**Proposition No. 3:**

- YES      Shall the Charter of the Town of Addison be amended throughout to correct non-substantive errors such as misspellings, punctuation, grammar and sentence structure, to make non-substantive changes to clarify meanings of terms and use consistent terminology, outline paragraph numbering, conform to requirements and/or provisions of State and/or federal law and/or Town ordinances, and revise references to repealed or obsolete provisions of Texas law?
- NO

Section 5. Election Precinct; Polling Place; Election Hours. The City election precincts for the Election shall consist of the territory located within the corporate limits of the

City bearing the following numbers (and corresponding to the Dallas County election precincts located within the corporate limits of the City as shown below), and the polling places at the Election shall be as follows:

<u>City Precinct No.</u>	<u>County Election Precincts</u>	<u>Polling Place</u>
1		Country Place Elementary School, 2115 Raintree, Carrollton, Texas 75006
2		Addison Fire Station No. 1, 4798 Airport Parkway, Addison, Texas 75001
3		Addison Fire Station No. 2 (3950 Beltway Drive, Addison, Texas 75001
4		

Election polls shall be open from 7:00 a.m. until 7:00 p.m. on the date of the Election.

Section 6. Joint Election; Designation of Dallas County Elections Administrator; Appointment of a Presiding Election Judge and Alternate Presiding Election Judge. The Election shall be held as a joint election with Dallas County and various other jurisdictions within Dallas County, pursuant to a Joint Election Agreement with Dallas County, and the Dallas County Elections Administrator shall administer the Election pursuant to the said Agreement. Pursuant to the said Agreement, Dallas County shall be responsible for appointing all election judges and clerks, and shall be responsible for their compensation.

Section 7. Voting System. Voting on the date of the Election, and early voting for the Election, shall be by the use of a lawfully approved voting system, which shall be an optical scan voting system. The preparation of the voting equipment to be used in connection with such voting system and the official ballots for the Election shall conform to the Texas Election Code (the "Election Code"), as amended, so as to permit the voters to vote "Yes" or "No" on each individual proposition. The said ballots shall have printed thereon such provisions, markings and language as may be required by law, and the propositions shall be set forth on said ballots in substantially the form as set forth in Section 4 of this Ordinance.

Section 8. Early Voting. Early voting shall be conducted by the Dallas County Elections Administrator ("Administrator"), Bruce Sherbet, who is hereby appointed as the Early Voting Clerk, and Charlene Farquhar, Early Voting Manager of the Dallas County Elections Department is hereby appointed s the Chief Deputy Early Voting Clerk. Early voting by personal appearance within the Town will be conducted at Addison Fire Station No. 1, 4798 Airport Parkway, Addison, Texas 75001 and at Addison Fire Station No. 2, 3950 Beltway Drive, Addison, Texas 75001, and early voting by personal appearance will be conducted at all other locations within Dallas County as designated by the Administrator as shown on Exhibit A attached hereto (such locations being subject to change in accordance with law).

Early voting by personal appearance will be conducted on weekdays beginning Monday, October 18, 2010 through Friday, October 22, 2010, 8:00 a.m. to 5:00 p.m.; Saturday, October 23, 2010, 7:00 a.m. to 7:00 p.m.; Sunday, October 24, 2010, 1:00 p.m. to 6:00 p.m.; Monday, October 25, 2010 through Friday, October 29, 2010, 7:00 a.m. to 7:00 p.m.

Applications for ballot by mail shall be requested from and mailed to the Dallas County Elections Department, 2377 N. Stemmons Fwy., Suite 820, Dallas, Texas 75207, and such applications must be received by no later than close of business on \_\_\_\_\_, 2010.

Section 9. Governing Law; Qualified Voters. The Election shall be held in accordance with applicable federal, state, and local law. Without limitation, notice of the Election shall be posted and published in accordance with applicable law. All resident qualified voters of the City shall be eligible to vote at the Election.

Section 10. Necessary Actions. The Mayor, City Manager and the City Secretary of the City, in consultation with the City Attorney, are hereby authorized and directed to take any and all actions necessary to comply with the provisions of the Code and other application law in carrying out and conducting the Election, whether or not expressly authorized herein.

Section 11. Severability. The provisions of this Ordinance are severable, and if any section or provision of this Ordinance or the application of any section or provision is for any reason adjudged invalid or unconstitutional by a court of competent jurisdiction, the same shall not affect the validity of any other section or provision of this Ordinance or the application of any other section or provision, and the City Council declares that it would have adopted the valid portions of this Ordinance adopted herein without the invalid or unconstitutional parts and to this end the provisions of this Ordinance adopted herein shall remain in full force and effect.

Section 12. Effective Date. This Ordinance shall take effect upon its passage and approval and publication as required by the City Charter and applicable law.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

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

ATTEST:

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

APPROVED AS TO FORM:

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

## **Council Agenda Item: #R5**

### **AGENDA CAPTION:**

Presentation, discussion and consideration of approval of a resolution to enter into a joint election agreement in an anticipated amount not to exceed \$15,000.00 with Dallas County to conduct a special election to be held on November 2, 2010.

(Aprobación de una resolución para entrar en un acuerdo de elección conjunta por una cantidad de aproximadamente de \$15,000.00 con el Condado de Dallas para llevar a cabo las elecciones municipales de Addison el 2 de Noviembre de 2010.)

### **FINANCIAL IMPACT:**

On August 24, 2010, the Council is considering the approval of an ordinance calling for a special Charter amendment election to be held on November 2, 2010. Staff is recommending that the Town contract with Dallas County Elections to hold the election. Dallas County will supply a draft of the contract. Because it is a joint election, Dallas County cannot give us the final cost until all cities that are going to participate have committed.

It is anticipated that the cost of the election will not exceed \$15,000, with the cost being dependent upon the number of jurisdictions in Dallas County conducting an election on November 2, 2010 and participating in a joint election agreement, and the number of items to include on the ballot. We will not know the exact amount until after the election is over and all costs are determined. Staff would like to continue using the Dallas County Elections Division to conduct the special election. We have been very pleased with the service Dallas County has provided to us for our last elections, and the countywide election system provides more opportunities for our residents to vote during early voting.

### **BACKGROUND:**

Less than \$15,000.00.

### **RECOMMENDATION:**

Staff recommends approval subject to final approval by the City

Attorney.

**COUNCIL GOALS:**

N/A

**ATTACHMENTS:**

Description:

[Resolution for joint election agreement](#)

Type:

Cover Memo

**TOWN OF ADDISON, TEXAS**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE TOWN OF ADDISON, TEXAS ORDERING A SPECIAL ELECTION OF THE TOWN TO BE HELD ON NOVEMBER 2, 2010 FOR THE PURPOSE OF SUBMITTING TO THE QUALIFIED VOTERS OF THE TOWN THREE (3) AMENDMENTS TO THE EXISTING CHARTER OF THE TOWN, CONCERNING THE SALE OF ALCOHOLIC BEVERAGES (BEER AND WINE) FOR OFF-PREMISES CONSUMPTION, THE NUMBER OF TERMS OF OFFICE OF MEMBERS OF THE COUNCIL, AND MAKING NON-SUBSTANTIVE MODIFICATIONS TO THE CHARTER; PROVIDING THAT SUCH ELECTION SHALL BE CONDUCTED AND HELD AS SET FORTH IN ORDINANCE NO. \_\_\_\_\_ OF THE TOWN; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, Section 8.01 of the existing Charter (the "Charter") of the Town of Addison, Texas (the "City") provides in part that the City Council may, by Resolution, order a special election, fix the time and place for holding such election and provide all means for holding such special election; and

**WHEREAS**, Section 11.28 of the Charter provides that amendment to the Charter may be formulated and submitted to the voters of the City in the manner provided by Chapter 9 of the Texas Local Government Code (the "Code"), and Section 9.004(a) of the Code references an ordinance ordering the election; and

**WHEREAS**, in order to comply with the provisions of the said Chapter 9, the City Council has adopted Ordinance No. \_\_\_\_\_ ordering a special election to be held on November 2, 2010 to submit to the qualified voters of the City certain amendments to the Charter, and the Council desires to comply with the provisions of Section 8.01 of the Charter by adopting this corresponding Resolution ordering a special election on the same date, for the same purposes, and according to the same processes, procedures, and provisions as set forth in the said Ordinance.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:**

Section 1. Incorporation of Premises. That the above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. Election Ordered. A special election ("Election") is hereby ordered to and shall be held in and throughout the Town of Addison, Texas ("City") on Tuesday, November 2, 2010, for the purpose of submitting to the qualified voters of the City certain amendments to the existing City Charter of the Town of Addison, as set forth in Ordinance No. \_\_\_\_\_ of the Town of Addison. The Election shall be conducted and held in accordance with all of the provisions, processes, and procedures as set forth in the said Ordinance.

Section 3. Effective Date. This Resolution shall take effect upon its passage and approval.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this  
\_\_\_\_\_ day of \_\_\_\_\_, 2010.

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

ATTEST:

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

APPROVED AS TO FORM:

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

## Council Agenda Item: #R6

**AGENDA CAPTION:**

Presentation, discussion and consideration of approval of a Second 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 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.

**FINANCIAL IMPACT:**

NA

**BACKGROUND:**

NA

**RECOMMENDATION:**

Staff recommends approval.

**COUNCIL GOALS:**

N/A

**ATTACHMENTS:**

Description:

- [Memo from John Hill](#)
- [Final Second Modification to Master Facilities Agreement](#)

Type:

- Cover Memo
- Backup Material

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

### **Agenda Caption:**

Discussion and consideration of approval of a Second 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 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.

### **Financial Impact:**

N/A.

### **Background:**

In connection with the development of the Vitruvian property, UDR and the various property owners are proposing that one of the owners of a portion of the Vitruvian property, DCO Greenhaven LP, convey a portion of the property (Lot 1, Block B, of the Vitruvian Park Addison) to DCO Savoye 2 LLC, a Delaware limited liability company. That conveyance is in connection with a construction loan to DCO Savoye 2 by Union Bank for the construction of Phase II of the private development of the property.

Regarding the loan, UDR has asked the Town to approve a Second Modification to Master Facilities Agreement (attached) and an Estoppel Certificate. Those items were on the consent agenda at the August 10 Council meeting, subject to the final review of the City Manager and City Attorney. The form of Estoppel Certificate was acceptable, with a couple of minor modifications that have been agreed to. The Second Modification, however, includes some language proposed by the Bank that the Council should consider. That language is the mortgage protection language in paragraph 3 of the attached (the attached copy of the Second Modification has been revised from the version that was included in the Council's August 10 agenda packet).

The Master Facilities Agreement provides that UDR and the property owners are responsible for various matters, including payment of amounts where the cost to design and construct the public improvements exceeds the amount allocated by the Town. Each of the individual property owners are therefore responsible for those amounts, and the MFA does not expressly limit the responsibility to the extent of ownership in a particular tract of land. The Bank would like to change that as to Savoye 2, such that if the Bank were to acquire ownership of the Savoye 2 property, the Bank's (and its successors' and assigns') obligations under the Agreement would be solely as those obligations apply to the Savoye 2 property (see paragraph 3 of the Second Modification). However, the Second Modification doesn't address how that limitation would work, such as whether or not it would be based on the size the Savoye 2 property bears to all of the property in the development.

### **Recommendation:**

It is recommended that the City Council consider approval of the attached Second Modification to Master Facilities Agreement.

## SECOND MODIFICATION TO MASTER FACILITIES AGREEMENT

**THIS SECOND MODIFICATION TO MASTER FACILITIES AGREEMENT** (the "Modification") is made as of this \_\_\_ day of August, 2010, by and among the **TOWN OF ADDISON, TEXAS** (the "City"), **UDR, INC.**, a Maryland corporation ("UDR") and **DCO BROOKS APARTMENTS LP**, a Delaware limited partnership, **DCO GREENBROOK APARTMENTS LP**, a Delaware limited partnership, **DCO TALISKER LP**, a Delaware limited partnership, **DCO GARDEN OAKS LP**, a Delaware limited partnership, **DCO GLENWOOD APARTMENTS LP**, a Delaware limited partnership, **DCO CLIPPER POINTE LP**, a Delaware limited partnership, **DCO SPRINGHAVEN LP**, a Delaware limited partnership, **DCO ADDISON AT BROOKHAVEN LP**, a Delaware limited partnership, **DCO GREENHAVEN LP**, a Delaware limited partnership (collectively, the "Original Property Owners"), **DCO SAVOYE LLC**, a Delaware limited liability company ("DCO Savoye"), and **DCO SAVOYE 2 LLC**, a Delaware limited liability company ("DCO Savoye 2").

This Modification is made with respect to the following facts and circumstances:

WHEREAS, the City, UDR and the Original Property Owners entered into that certain Master Facilities Agreement dated March 11, 2008 ("Master Facilities Agreement"; capitalized terms used and not defined herein are used with the meanings set forth in the Master Facilities Agreement.) in connection with redevelopment of the Property located in the City.

WHEREAS, DCO Savoye was added as a Property Owner and Developer to the Master Facilities Agreement pursuant to that certain Modification to Master Facilities Agreement dated as of August 28, 2009.

WHEREAS, DCO Greenhaven LP has conveyed that portion of the Property described on Exhibit A hereto to DCO Savoye 2 (the "Savoye 2 Property").

WHEREAS, DCO Savoye 2 is an Affiliate of UDR.

The parties hereto desire to modify the Master Facilities Agreement as and to the extent set forth herein.

**NOW, THEREFORE**, for and in consideration of the above and foregoing recitals and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. **Addition of DCO Savoye 2; Representations.** DCO Savoye 2 is added as a Property Owner and Developer to the Master Facilities Agreement and, as such, assumes the benefits and burdens under the Master Facilities Agreement as they relate to the Savoye 2 Property and agrees to observe and perform all of the duties and obligations of UDR and the Property Owners as contained in the Master Facilities Agreement, or as it may be amended or revised, as such duties and obligations pertain to the Savoye 2 Property and be bound by the terms and provisions of the Master Facilities Agreement. DCO Savoye 2 acknowledges that it is assuming the applicable possible reimbursement obligation regarding Funding No. 2, as stated in Section 7.F of the Master Facilities Agreement.

In connection herewith, UDR, the Original Property Owners, DCO Savoye, and DCO Savoye 2 represent that: (a) the sole member of DCO Savoye 2 is DCO Realty Inc., a Delaware corporation ("DCO Realty"), (b) DCO Realty has and possesses the power and authority to control DCO Savoye 2, and is an Affiliate of UDR, and that (c) UDR has direct or indirect ownership of and controls each of the Original

Property Owners, DCO Realty, DCO Savoye 2. For purposes hereof, the term “control” has the meaning set forth in the Master Facilities Agreement.

2. **Reaffirmation.** Except as expressly set forth in this Modification, the terms, conditions and covenants of the Master Facilities Agreement shall remain unmodified and in full force and effect. Nothing in this Modification shall relieve UDR or the Original Property Owners of or from their duties or obligations pursuant to the Master Facilities Agreement.

3. **Mortgage Protection.** Notwithstanding anything to the contrary set forth in this Modification or in the Master Facilities Agreement, in the event that the holder of a deed of trust encumbering the Savoye 2 Property shall ever acquire title thereto in the exercise of its remedies under such deed of trust following the occurrence of an event of default thereunder, whether such acquisition occurs through foreclosure of such deed of trust or the acceptance of a deed to the Savoye 2 Property in lieu of foreclosure, or otherwise, then such holder and its successors and assigns shall be obligated to perform the obligations of a Property Owner under the Master Facilities Agreement, including without limitation the reimbursement obligation as stated in Section 7.4 of the Master Facilities Agreement, solely as such obligations pertain to the Savoye 2 Property.

4. **Execution in Counterparts.** This Modification may be executed in one or more counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

5. **Binding Effect.** This Modification shall be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, this Modification is effective as of the date set forth above.

**TOWN OF ADDISON, TEXAS**

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

ATTEST:

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

*Signatures of UDR and Property Owners Follow*

UDR, INC., a Maryland corporation

By: \_\_\_\_\_  
W. Mark Wallis, Senior Executive  
Vice President

DCO BROOKS APARTMENTS LP, a Delaware  
limited partnership

By: DCO REALTY, INC., a Delaware corporation,  
its General Partner

By: \_\_\_\_\_  
W. Mark Wallis, President

DCO GREENBROOK APARTMENTS LP, a  
Delaware limited partnership

By: DCO REALTY, INC., a Delaware corporation,  
its General Partner

By: \_\_\_\_\_  
W. Mark Wallis, President

DCO TALISKER LP, a Delaware limited  
partnership

By: DCO REALTY, INC., a Delaware corporation,  
its General Partner

By: \_\_\_\_\_  
W. Mark Wallis, President

DCO GARDEN OAKS LP, a Delaware limited partnership

By: DCO REALTY, INC., a Delaware corporation, its General Partner

By: \_\_\_\_\_  
W. Mark Wallis, President

DCO GLENWOOD APARTMENTS LP, a Delaware limited partnership

By: DCO Glenwood Apartments GP LLC, a Delaware limited liability company, its General Partner

By: DCO Realty, Inc., a Delaware corporation, its Sole Member

By: \_\_\_\_\_  
W. Mark Wallis, President

DCO CLIPPER POINTE LP, a Delaware limited partnership

By: DCO REALTY, INC., a Delaware corporation, its General Partner

By: \_\_\_\_\_  
W. Mark Wallis, President

DCO SPRINGHAVEN LP, a Delaware limited partnership

By: DCO REALTY, INC., a Delaware corporation, its General Partner

By: \_\_\_\_\_  
W. Mark Wallis, President

DCO ADDISON AT BROOKHAVEN LP, a  
Delaware limited partnership

By: DCO REALTY, INC., a Delaware corporation,  
its General Partner

By: \_\_\_\_\_  
W. Mark Wallis, President

DCO GREENHAVEN LP, a Delaware limited  
partnership

By: DCO REALTY, INC., a Delaware corporation,  
its General Partner

By: \_\_\_\_\_  
W. Mark Wallis, President

DCO SAVOYE LLC, a Delaware limited liability  
company

By: DCO REALTY, INC., a Delaware corporation,  
its Sole Member

By: \_\_\_\_\_  
W. Mark Wallis, President

DCO SAVOYE 2 LLC a Delaware limited liability  
company

By: DCO REALTY, INC., a Delaware corporation,  
its Sole Member

By: \_\_\_\_\_  
W. Mark Wallis, President

**EXHIBIT A**

**SAVOYE 2 PROPERTY**

Lot 1, in Block B, of Vitruvian Park Addition, an addition to the City of Addison, Dallas County, Texas, according to the Map or Plat thereof recorded in Clerks File No. 2010-123804, Plat Records, Dallas County, Texas

## Council Agenda Item: #R7

**AGENDA CAPTION:**

Presentation, discussion and consideration of approval of award of a bid in the amount of \$147,295.00 to Highland Builders, Inc., for remodeling of Suite 430 at 5100 Belt Line Road for Visitor Services offices.

**FINANCIAL IMPACT:**

This was a budgeted item.

**BACKGROUND:**

This project will remodel the 6,600 square foot office space that will house the Addison Visitor Services Department and the Metrocrest Chamber of Commerce.

**RECOMMENDATION:**

Staff recommends approval.

**COUNCIL GOALS:**

Continue to Attract Visitors

**ATTACHMENTS:**

Description:

[Bid Tabulation/Bid Cost Summary](#)

Type:

Backup Material

Addison Visitor Center

BID NO 10-23

DUE: August 13, 2010

10:00 AM

BIDDER	Signed	Bid Bond	Bid Total
H-B Construction, Inc	Y	Y	\$ 162,500.00
Highland Builders	Y	Y	\$ 147,295.00
Concrete & Greenriches Const. LLC	Y	Y	\$ 336,120.00
RJM Contractors	Y	Y	\$ 248,263.00
Light and Wooten Construction	Y	Y	\$ 203,466.00
Brown Custom Building	Y	Y	\$ 186,413.64
ScoBilt Contractors, Inc	Y	Y	\$ 199,600.00
EEReed Construction, LP	Y	Y	\$ 179,396.00
DMG Commercial Construction Svcs	Y	Y	\$ 219,890.00
Hagler Construction Co, Inc	Y	Y	\$ 161,482.00

*Matthew McCombs*

\_\_\_\_\_  
 Matt McCombs, Management Analyst

*Whitney Traylor*

\_\_\_\_\_  
 Witness

# HIGHLAND BUILDERS, INC.

Commercial General Contractor

## PROJECT COST SUMMARY

Tenant: Addison Visitor Center  
Bldg.:  
Suite No.: 430  
Address: 5100 Belt Line Rd.  
City: Addison  
Zip: 75254

Client: Town of Addison  
Contact: Matthew McCombs  
Architect: Interprise  
Contact: Carolyn Norman  
Engineer:  
Contract:

Date: 08.13.10  
R. S. F: 6458  
U. S. F: 6458  
Sales Tax:

Section	Description	Amount
01000	General Conditions	4,734.55
01060	Building Permit & C. of O.	1,353.00
01255	Final Clean, Construction Clean, Dumpster	1,445.80
02050	Demolition	2,500.00
03000	Concrete	800.00
04000	Masonry	
05000	Structural & Ornamental Metals	
06000	Millwork & Rough Carpentry	11,690.00
07000	Thermal & Moisture Protection	
08200	Doors, Frames & Hardware	1,028.38
08800	Glass & Glazing	1,519.00
09200	Drywall Partitions	3,183.00
09500	Acoustical Ceilings	
09640	Wood Flooring	
09300	Marble & Granite	3,780.00
09600	Resilient Flooring & Base	
09680	Carpet & Pad	25,000.00
09700	Wall Finishes	14,900.00
10000	Specialties	4,630.00
11000	Equipment & Appliances	7,034.09
12490	Window Treatments	7,118.00
15300	Fire Protection	
15400	Plumbing	8,700.00
15700	Mechanical	2,995.00
15950	Air Balance	1,800.00
16000	Electrical	9,625.00
16720	Fire Alarm	
16790	Security	
01065	TESTING	
00000	Tel Data	958.00
01061	BONDS	2,927.08
	Subtotal	117,720.89
	Overhead @	
	Subtotal	117,720.89
	Fee @ 5%	5,879.11
	Subtotal	123,600.00
	No Tax New Construction	
	<b>TOTAL</b>	<b>123,600.00</b>



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

### **AGENDA CAPTION:**

Presentation, discussion and consideration of approval of the award of a contract to Interprise Design for professional services including design, architecture, and engineering for completion of construction drawings for Suite 400 at 5100 Belt Line Road.

### **FINANCIAL IMPACT:**

The amount and the contract of the professional services will be forwarded to Council on Friday August 20, 2010.

### **BACKGROUND:**

This is the construction document phase of the Visitor Center/Craft Guild space at Village on the Parkway.

### **RECOMMENDATION:**

Staff recommends approval.

### **COUNCIL GOALS:**

Continue to Attract Visitors

### **ATTACHMENTS:**

Description:

Type:

No Attachments Available

## Council Agenda Item: #R9

**AGENDA CAPTION:**

Presentation of the proposed Town of Addison 2010-2011 Airport Fund Budget.

**FINANCIAL IMPACT:**

N/A

**BACKGROUND:**

N/A

**RECOMMENDATION:**

N/A

**COUNCIL GOALS:**

N/A

**ATTACHMENTS:**

Description:

Type:

No Attachments Available

## Council Agenda Item: #R10

**AGENDA CAPTION:**

Presentation of the proposed Town of Addison 2010-2011 Utility Fund Budget.

**FINANCIAL IMPACT:**

N/A

**BACKGROUND:**

N/A

**RECOMMENDATION:**

N/A

**COUNCIL GOALS:**

N/A

**ATTACHMENTS:**

Description:

Type:

No Attachments Available

## **Council Agenda Item: #R11**

**AGENDA CAPTION:**

Presentation of the Financial Quarterly Report for the period ending June 30, 2010.

**FINANCIAL IMPACT:**

N/A

**BACKGROUND:**

N/A

**RECOMMENDATION:**

N/A

**COUNCIL GOALS:**

N/A

**ATTACHMENTS:**

Description:

Type:

No Attachments Available