

#### **REGULAR WORK SESSION & MEETING OF THE CITY COUNCIL**

# **August 9, 2016**

## **ADDISON TOWN HALL**

5300 BELT LINE RD., DALLAS, TX 75254

# 5:30 PM DINNER & EXECUTIVE SESSION 6:00 PM WORK SESSION 7:30 PM REGULAR MEETING

#### **Executive Session**

1. Closed (executive) session of the Addison City Council pursuant to:

Section 551.071, Tex. Gov. Code, to conduct a private consultation with its attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551, Tex. Gov. Code, pertaining to

- The ponds or lakes at Vitruvian Park located within the vicinity and east of the intersection of Vitruvian Way and Ponte Ave., and Farmers Branch Creek
- Project Riviera
- DART

2. **RECONVENE INTO REGULAR SESSION:** In accordance with Texas Government Code, Chapter 551, the City Council will reconvene into Regular Session to consider action, if any, on matter discussed in Executive Session.

## **WORK SESSION**

- 3. Discuss <u>Amending The Town Of Addison's Public Information</u>
  Policy.
- 4. Presentation On <u>Future Of Cotton Belt Corridor Development As It</u>
  Relates To Rail Transit In The Town Of Addison.

#### REGULAR MEETING

# Pledge of Allegiance

Announcements and Acknowledgements regarding Town and Council Events and Activities

Discussion of Events/Meetings

Public Comment.

The City Council invites citizens to address the City Council on any topic not on this agenda. Please fill out a **City Council Appearance Card** and submit it to a city staff member prior to Public Participation. Speakers are allowed **up to three (3) minutes per speaker** with **fifteen (15) total minutes** on items of interest or concern and not on items that are on the current agenda. In accordance with the Texas Open Meetings Act, the City Council cannot take action on items not listed on the agenda. The Council may choose to place the item on a future agenda.

## Consent Agenda:

All items listed under the Consent Agenda are considered routine by the City Council and will be enacted by one motion with no individual consideration. If individual consideration of an item is requested, it will be pulled from the Consent Agenda and discussed separately.

- 6. Consider Approval Of The July 12, 2016 Regular Meeting Minutes.
- 7. Consider Approval Of Resolutions Consenting To The
  Simultaneous Conveyance Of A Total Of Approximately .04 Acres
  Of The Town's Real Property Located At 4551, 4553, And 4555
  Glenn Curtiss Drive At Addison Airport, In Exchange For
  Approximately .14 Acres Of Fee Simple Land Located At 4485
  Glenn Curtiss Drive
- 8. Consider Approval Of A Resolution Authorizing The City Manager
  To Enter Into A License Agreement With TN Management, LLC,
  For The Use Of A Portion Of The Public Sidewalk Within The
  Public Right-Of-Way Adjacent To The Astoria Caffe, Located At
  15701 Quorum Drive, On The Corner Of Morris Avenue And
  Quorum Drive, For An Outdoor Dining Area.
- 9. Consider A Resolution Consenting To The Renewal Of
  Conventional Hangar Leases #0220-0101 (4666 Jimmy Doolittle
  Drive) And #0390-1103 (4540 Glenn Curtiss Drive) With Mercury
  Air Center Addison DBA Atlantic Aviation For Three-Year Terms
  Ending On September 30, 2019.

# Regular Items

- 10. Hold A Public Hearing, Discussion And Consider Action On An Ordinance Rezoning Approximately 18.2 Acres Of Land Located At 14345 Dallas Parkway, The Former Site Of The Ewing Auto Dealership, From I-1, Industrial-1, To A Planned Development District Allowing For Office And Other Commercial Uses And Establishing Development Standards Including A Minimum Building Height. Case 1737-Z/14345 Dallas Parkway.
- 11. Hold A Public Hearing, Discussion And Consider Approval Of An Ordinance That Rezones Approximately 39.4 Acres Of Property

  Located At Trinity Christian Academy At 17001 Addison Road,

  Which Is Currently Zoned R-1, Residential-1, With A Special Use

  Permit For A Private School And Approximately 1.74 Acres Of

  Property Located At The Northwest Corner Of Addison Road And

Sojourn Drive, Also Known As 4350 Sojourn Drive, Which Is
Currently Zoned PD, Planned Development, In Order To Create A
New Planned Development District Allowing A Private School
and Approving A Concept Plan and Development Standards, On
Application From Trinity Christian Academy. Case 1738/Z/Trinity
Christian Academy.

- 12. Hold A Public Hearing, Discuss And Consider Approval of An Ordinance Rezoning The Property Located At 5290 Belt Line Road, Suite 114 In The Prestonwood Place Shopping Center On The Southeast Corner Of Belt Line Road And Montfort Drive, Which Is Currently Zoned LR, Local Retail, By Approving A New Special Use Permit For A Restaurant And A New Special Use Permit For The Sale Of Alcoholic Beverages For On-Premises Consumption Only. Case 1743-SUP/Pho Bowl.
- 13. Consider Approval of A Resolution For The Appointments To The Inwood Road Corridor Special Area Study Advisory Committee.
- 14. Present, Discuss, And Consider An Ordinance <u>Granting A</u>
  <u>Meritorious Exception For A Vehicular Sign Located At Misfit Industries At 4122 Billy Mitchell Drive.</u>
- 15. Present, Discuss, And Consider A Resolution <u>Establishing A</u>

  <u>Potential Maximum Property Tax Rate Of 0.59 Cents Per \$100 Of Property Valuation For The Town's Fiscal Year Beginning October 1, 2016 And Ending September 30, 2017, And Designating Dates For Public Hearings Regarding The Proposed Budget And Proposed Tax Rate For The 2016-2017 Fiscal Year.</u>
- 16. Discuss And Consider Action Regarding Sponsorship Of Addison Residents And/Or Employees For The 28th Class Of Leadership Metrocrest.
- 17. Discuss And Consider Action Related To The <u>Function And Purpose</u> <u>Of The Finance Committee.</u>

- 18. Discussion And Consider Action Related To The <u>Mayor's Private</u> <u>Use Of The Town Newsletter Email Distribution List</u>.
- 19. Discuss And Consider Action Related To The Mayor's Request To
  Provide A Link And/Or Directions In The Staff-Produced Weekly
  Town Newsletter To The Mayor-Produced Weekly Mayor's
  Newsletter; To Receive An Updated Email Subscription List From
  The Town On A Weekly Basis; And To Access Other Town
  Databases For The Purpose Of Distributing The Mayor's Weekly
  Newsletter.

## Adjourn Meeting

NOTE: The City Council reserves the right to meet in Executive Session closed to the public at any time in the course of this meeting to discuss matters listed on the agenda, as authorized by the Texas Open Meetings Act, Texas Government Code, Chapter 551, including §551.071 (private consultation with the attorney for the City); §551.072 (purchase, exchange, lease or value of real property); §551.074 (personnel or to hear complaints against personnel); §551.076 (deployment, or specific occasions for implementation of security personnel or devices); and §551.087 (economic development negotiations). Any decision held on such matters will be taken or conducted in Open Session following the conclusion of the Executive Session.

Posted:

Laura Bell, 08/05/2016, 5:00 pm

THE TOWN OF ADDISON IS ACCESSIBLE TO PERSONS WITH DISABILITIES.
PLEASE CALL (972) 450-7017 AT LEAST
48 HOURS IN ADVANCE IF YOU NEED ASSISTANCE.

AI-1815 1.

**Work Session and Regular Meeting** 

**Meeting Date:** 08/09/2016 **Department:** City Manager

#### **AGENDA CAPTION:**

Closed (executive) session of the Addison City Council pursuant to:

Section 551.071, Tex. Gov. Code, to conduct a private consultation with its attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551, Tex. Gov. Code, pertaining to

- The ponds or lakes at Vitruvian Park located within the vicinity and east of the intersection of Vitruvian Way and Ponte Ave., and Farmers Branch Creek
- Project Riviera
- DART

**BACKGROUND:** 

N/A

**RECOMMENDATION:** 

N/A

AI-1816 2.

**Work Session and Regular Meeting** 

**Meeting Date:** 08/09/2016 **Department:** City Manager

#### **AGENDA CAPTION:**

**RECONVENE INTO REGULAR SESSION:** In accordance with Texas Government Code, Chapter 551, the City Council will reconvene into Regular Session to consider action, if any, on matter discussed in Executive Session.

## **BACKGROUND:**

N/A

#### **RECOMMENDATION:**

N/A

Al-1783 3.

**Work Session and Regular Meeting** 

**Meeting Date:** 08/09/2016 **Department:** City Manager

#### **AGENDA CAPTION:**

Discuss **Amending The Town Of Addison's Public Information Policy**.

#### **BACKGROUND:**

On February 23, 2016, the Addison City Council adopted a Public Information Policy. This policy adopted the deadlines and guidelines as stated in the Public Information Act. The policy allows staff to work within the guidelines and respond to requests from the public in a timely manner. The policy is being amended to clarify roles as it pertains to who makes decisions about the release of information requested through open records requests.

On June 28, 2016, Council asked that this item be brought back for further discussion regarding the process and duties of staff.

#### **RECOMMENDATION:**

Direction requested from Council.

#### **Attachments**

Resolution

Policy with redline edits

#### TOWN OF ADDISON, TEXAS

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS AMENDING THE OPEN RECORDS POLICY ADOPTED FEBRUARY 23, 2016 TO CLARIFY ROLES AS IT PERTAINS TO DECISIONS REGARDING RELEASE OF INFORMATION AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the City Council, by Resolution R16-009 dated February 23, 2016, adopted an Open Records Policy (the "Policy") for the city; and

**WHEREAS**, the City Council desires to amend certain portions of the Policy pertaining to the roles of the City Secretary and City Attorney.

# NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FO THE TOWN OF ADDISON, TEXAS:

**Section 1:** The Open Records Policy adopted by Resolution No. R16-009, is hereby amended to revise the roles of the City Secretary and the City Attorney as provided in the amended policy attached hereto and incorporated herein as **Exhibit A**.

**Section 2:** This Resolution shall take effect from and after its date of adoption.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this 28<sup>th</sup> day of June, 2016.

	Todd Meier, Mayor
ATTEST:	
By:	
Laura Bell, City Secretary	
APPROVED AS TO FORM:	
By:	
Brenda N. McDonald, City Attorney	



# TOWN OF ADDISON OPEN RECORDS POLICY

#### <u>PURPOSE</u>

The purpose of this policy is to establish internal guidelines in accordance with Texas Government Code 552.001, et seq., as amended, (the Texas Public Information Act) (the "Act"), to ensure that all records in the possession of and pertaining to the operation of the Town of Addison, Texas ("City") are available to the public through a systematic and centralized process and as required by law.

#### **DEFINITIONS**

- <u>City Secretary's Office</u>- The office of the City Secretary of the Town of Addison, Texas, which shall include the City Secretary and any employees within this office.
- Department- The department(s) to whom a public information request is forwarded or the department(s) that has information responsive to a request for public information. The term department shall refer to the liaison(s) as defined in this policy, and any other employee so designated or responsible for responding to public information requests.
- Department Head- The individual in charge of a department within the City as determined by the City Manager.
- <u>Liaison</u>- The person(s) in each department designated by the department head as responsible for responding to, processing and filling requests for public information.
- <u>Manipulation</u>- The process of modifying, reordering, or decoding information with human intervention.
- Public Information- the definition of "public information" as set forth in the Act, as amended.
- <u>Public Information Requests</u>- All written Requests for public information fall under the provisions of the Act. This includes any correspondence, standard form document, facsimile, email communication, or other writing that requests

information. The City has a portal that can be used to Request public information, but USAGE OF THE PORTAL IS NOT REQUIRED. It is the City's policy to request that a Requestor submit a Request for public information in writing via the City's designated portal on the City's website.

- Requestor- any person, group, association, corporation or other assembly of individuals who make a request for public information pursuant to the Act.
- Requests- All requests for information, as defined under the Act, with the exception of open record requests that are received by the Police Department, Fire Department and/or Municipal Court. In the event a request overlaps between departments (ie. City Secretary and Fire Department), the City Secretary shall assume the leadership of accepting and responding to the request.
- Standard/ Nonstandard Copies-
  - Standard Copies- Printed impressions on paper that measures up to 8 ½ by 14 inches. Each side of a piece of paper on which an impress is made is counted as a copy.
  - Nonstandard Copies- Copies of information made available to a Requestor in any format other than a standard copy. This includes, but is not limited to, microfiches, microfilm, diskettes, magnetic tapes, videocassettes, and paper copies larger 8 ½ by 14 inches.

#### **GENERAL**

The City regularly receives Requests for access to public information. The City shall evaluate each Request in accordance with the requirements set forth in the Act. The timeline for the release of information is dependent upon the information requested, and whether or not it falls within a mandatory or permissive exception provided by the Act. The purpose of this policy is to provide general guidance on the open records process in the Town.

In handling Requests for public information, the City must comply with the requirements of the Act. Any written Request for public information in the state of Texas, routine or otherwise, must be handled in accordance with the Act and other state and federal statutes. Charges associated with the copying of information fall under the provisions of the Act, specifically those sections of the Code that set maximum charges for the copying of information, and the Texas Administrative Code. These charges must be used in assessing fees for compiling and copying public information, except to the extent that other law provides for charges for specific kinds of public information.

The fee schedule provided in the Texas Administrative Code must be followed when responding to a Requestor and assessing costs.

The Act does not require the creation of new information. Departments should only provide information that responds to the Request and that exists at the time the Request

is received. If a Department does not have information that responds to a Request, the Department shall notify the City Secretary's Office, which shall notify the Requestor, in writing.

The Act prohibits the City from inquiring why a Requestor is requesting certain information or how the information will be used. City staff may only make inquiries to a Requestor for the following reasons:

- 1. To establish proper identification, if needed;
- 2. To clarify a Request that is unclear; and/or
- 3. In cases where a large amount of information has been requested, to discuss how the scope of a Request may be narrowed.

#### **CITY SECRETARY**

The City Charter designates the City Secretary as the Town Records Management Officer for the City and all Requests for public records should be addressed to the City Secretary. The City Secretary shall be the City's authority for releasing records in accordance with the Act, with the exception of Fire Department, Municipal Court and Police Records.

The Request must sufficiently identify the record desired by name (if known) of record, date of record, and address/location of record. The City, however, must make a good faith effort to advise the Requestor of the kinds of records available to assist him in clarifying his Request. Should the type of record being requested not be a record maintained by the City, the City has no obligation to create a record or records to satisfy the request.

#### DEPARTMENT RESPONSIBILITY

The City Secretary's Office is the point of contact and the distribution point for all Requests. Departments shall forward all Requests received to the City Secretary's office within twenty-four (24) hours of receipt.

The Department Head is responsible for providing coordination between the City Secretary's Office and staff in his or her office to ensure that provisions of this Policy are followed. Department Heads are responsible for responding as requested by the City Secretary's Office or City Attorney regarding Requests for departmental public information.

Department Heads shall appoint one (1) or more departmental liaison(s) that will be responsible for responding to, processing and fulfilling Requests, and working with the City Secretary's Office or City Attorney in handling Requests. The Department Head shall also ensure that if the departmental liaison(s) is unavailable, at least one (1) staff member with knowledge of the public information process and all Requests that are submitted to the Department, is available to process the Request and/or work with the City Secretary's Office and City Attorney in handling Requests.

Departments are responsible for organizing and maintaining both active and inactive information in a manner that maximizes the ready availability of the information in accordance with state laws.

Departments are responsible for providing all responsive documentation to the City Secretary's Office within four (4) days of the Request date, unless requested sooner. Revisions of this time period may be made by the City Secretary and/or City Attorney, upon Request and demonstration of necessity.

Departments are responsible for estimating, justifying, and reporting all charges associated with compiling and copying information.

Departments shall examine all information to determine which information is responsive to the Request and forward such information to the City Secretary's Office.

#### CITY SECRETARY'S OFFICE

The City Secretary's Office logs in and carries out the initial distribution of all Requests to relevant Department Heads and/or appointed liaisons and also forwards a copy to the City Attorney.

The City Secretary's Office is responsible for contacting the Requestor to confirm receipt and to indicate the initial status of distribution efforts, if known.

The City Secretary's Office will provide advice to Departments on costs associated with providing copies of, or access to, public information. The City Secretary's Office shall be responsible for drafting all cost estimate letters in association with Requests.

The City Secretary's Office will provide copies or access to public information in response to standard Requests in accordance with the Act.

The City Secretary's Office is responsible for advising and informing the City Manager's Office on Requests as requested by the City Manager.

The City Secretary's Office shall coordinate the response to all Requests, with the assistance of the City Attorney. The City Secretary's Office will provide access or copies to the Requestor pursuant to the Public Information Act. In accordance with the Act, the City Secretary will forward those requests that are required to be reviewed for release by the Attorney General to the City Attorney. The City Attorney will send a request for a ruling to the Texas Attorney General for those requests meeting the exception requirements.

#### CITY ATTORNEY

The City Attorney is responsible for assisting in the compliance of this policy, the Act and the direction of City Council.

The City Attorney reviews all Requests forwarded by the City Secretary's Office to determine whether any portion of the requested information may fall under an exception pursuant to the Act.

In order to determine whether information is confidential or excepted from disclosure under the law, the City Secretary's Office shall provide the City Attorney with a copy of the requested information before the information is released to the Requestor. The City Attorney shall notify the Requestor, relevant Departments, and the City Secretary's Office upon determination that the requested information is subject to exception from disclosure or release. The City Attorney shall oversee the redaction of information determined to be confidential or otherwise excepted from public disclosure.

In accordance with the Act and if necessary, the City Attorney will send a Request for a ruling to the Texas Attorney General. The City Secretary's Office will be copied on all correspondence with the Attorney General's Office.

#### **PRACTICE**

All Requests shall be submitted in writing regardless of the source, and shall be submitted to the City Secretary's Office. The Requestor may submit his Request in letter form, by electronic mail, by facsimile, or by completing the Request through the open records request online portal. All Requests that are not submitted through the online portal should be forwarded immediately to the City Secretary's Office for review and distribution.

The City Secretary's Office shall distribute the Request to the appropriate Departments, which shall confirm receipt of the Request within one (1) business day. A copy of the information responsive to the Request shall be provided to the City Secretary's Office within four (4) business days of receipt of the Request by the City, unless requested sooner.

All responsive information maintained by the City at the time of a Request must be provided to the City Secretary's Office. After review by the City Secretary's Office and the City Attorney, if applicable, all information, which is not otherwise excepted from required public disclosure, shall be released. The difficulty or inconvenience involved in making this information available is not a factor in determining whether or not information shall be released. The availability and volume of information requested, however, are highly relevant to what constitutes a reasonable period of time. For more voluminous Requests, the task of compilation may be greater.

Requests shall be handled promptly and timely, taking into account the order in which they are received and the information requested. When the time necessary for compilation or provision of requested information will exceed ten (10) business days from the date of the standard Request, the City Secretary's Office shall certify in writing to the Requestor the approximate date when the information will be available, copying the City Attorney and City Attorney's designee for Requests.

All original Requests for Disclosure of Public Records, along with any documentation and/or rulings, shall be maintained by the Department receiving the Request (City Secretary, Emergency Response, Fire, and Police) for file, records retention, and reference purposes in accordance with the Texas State Library and Archives Retention Schedule.

#### Electronic Data

If responsive information exists in an electronic or magnetic medium, the Requestor may Request a copy either on paper or in an electronic medium, such as on diskette or magnetic tape. City staff shall provide a suitable copy in the requested medium if:

- 1) the City has the technological ability to produce a copy of the requested information in the requested medium;
- 2) the City is not required to purchase any software or hardware to accommodate the Request; and
- 3) provision of a copy of the information in the requested medium will not violate the terms of any copyright agreement between the City and a third party.

If City staff is unable to comply with a Request to produce a copy of information in a requested medium for any of the reasons described above, City staff shall provide a paper copy of the requested information or a copy in another medium that is acceptable to the Requestor. City staff is not required to copy information to a diskette or other material provided by the Requestor, but may use City supplies and charge the Requestor.

#### Manipulation of Data

If City staff determines that responding to a Request will require programming or manipulation of data and that compliance with the Request is not feasible or will result in substantial interference with ongoing operations, the City Secretary's Office shall provide to the Requestor a written statement that must include:

- 1) a statement that the information is not available in the requested form;
- 2) a description of the form in which the information is available;
- a description of any contract or services that would be required to provide the information in the requested form;
- 4) a statement of the estimated cost of providing the information in the requested form, in accordance with charges outlined in the Act; and
- 5) a statement of the anticipated time required to provide the information in the

requested form.

The City Secretary's Office shall provide the written statement to the Requestor in accordance with the Act.

After providing the written statement to the Requestor, staff has no further obligation to provide the information in the requested form or in the form in which it is available unless, within thirty (30) days, the Requestor states in writing to the staff that the Requestor:

- wants staff to provide the information in the requested form according to the cost and time parameters set out in the statement or according to other terms to which the Requestor and staff agree; or
- 2) wants the information in the form in which it is available.

If the Requestor does not make a timely written statement as provided in this section, the Request is considered to be withdrawn.

The City Secretary's Office shall maintain a file containing all written statements issued under this section in a readily accessible location for one (1) year after a final decision on the Request has been made.

Staff shall consult with the Information Technology Department prior to providing the written statement described above, as well as a "suitable copy" described in Electronic Data, if Information Technology has service responsibility for the electronic records keeping systems from which the information is being requested.

#### Request for Inspection and Delivery

For both convenience and security, all information requested shall be located by Department staff, inspected by the Requestor, and copied by Department staff.

City staff shall not remove or allow to be removed from City offices any original copies of public information. Inspections of public information shall take place on-site in City facilities. Departments shall provide facilities and accommodations to accomplish such inspections.

Persons requesting access to public information must complete examination of the information within ten (10) business days from the date material is made available to them. This period may be extended an additional ten (10) business days provided the Requestor, during the initial period, files a written request for additional time. If the Requestor does not complete the examination within ten (10) business days after the information is made available, and does not file a Request for additional time, the Request is considered withdrawn. An additional ten (10) business days may be granted if, within the additional period, the Requestor files another written Request for additional time. This examination period may be interrupted if the information is needed for use by the City.

This period of interruption is not included in the time period during which persons may examine information.

Copies of materials requested will be sent to the Requestor in the manner in which it was received. It may be mailed to the Requestor by first class United States mail, provided that the Requestor has paid all costs associated with copying, as well as postage costs, in advance.

Destruction of public information shall take place on a regular and systematic basis according to approved records retention and disposition schedules, City Code provisions and state law. No information shall be destroyed, however, including information whose retention minimum has expired, after a Request for that information or notification of such a pending Request has been received.

#### Repetitious Requests

If City staff determines that a Requestor has made a duplicate Request (an identical Request to one that has previously been answered by the City), the City Secretary's Office shall certify to the Requestor that copies of all or part of the requested information were previously furnished or made available to the Requestor. The certification must include:

- a description of the information for which copies have been previously furnished or made available to the Requestor;
- 2) the date the governmental body received the Requestor's original Request for that information;
- 3) the date the governmental body previously furnished copies or made the information available to the Requestor;
- 4) a certification that no subsequent additions, deletions, or corrections have been made to that information; and
- 5) the name, title, and signature of the officer for public information or the officer's agent making the certification.

A charge may not be imposed for making a certification under this section.

This section does not apply to information that was not previously copied or made available to the Requestor upon payment, including information for which copies were not furnished or made available because the information was redacted from other information that was furnished or made available or because the information did not yet exist at the time of an earlier Request.

When mailing copies of sensitive information, certified mail should be used when an appropriate mailing address is provided.

#### **FEES**

Fees for disclosure of public records shall be determined as outlined by the guidelines established by the Texas Building and Procurement Commission (formerly General Services Commission (GSC)) rules (Texas Administrative Code, Sections 111.61 - 111.63) as summarized in Exhibit A.

Departments shall keep records of labor involved in compiling all Requests for information so that proper charges can be assessed.

The City Secretary should provide a Requestor with a written estimate of costs anticipated for information that will require manipulation, programming, personnel time, or other cost categories over and above simple paper copies.

As a general rule, there is no charge for inspection of public information if a copy is not requested. The following are exceptions to this rule, for which fees may be charged:

- In the case of paper records on which a page or pages contain confidential information that must be edited or redacted before the information can be made available, departments may charge only for the cost of a copy of the page from which information must be redacted.
- 2) In the case of information in an electronic medium that is not available directly online to a Requestor and that will require programming or manipulation of data to comply with a Request, departments may impose charges for access to the information. The City Secretary's Office shall provide an estimate of related charges to the Requestor before assembling the information.
- 3) In the case of information in an electronic form on a computer owned or leased by the City to which the public has direct access through a computer network or other means and that will require processing, programming, or manipulation on the Cityowned or leased computer before it can be electronically copied, departments may impose associated charges.

When mailing copies of material requested, fees charged shall be collected before materials are sent. The City Secretary's Office may notify Requestors of exact charges by telephone, correspondence, or by calculating charges on the Public Information Request form and forwarding it as an invoice. All facsimile and mailing costs, including certified mail charges, shall be included as part of total copying charges assessed.

When charges for copying are projected with certainty to exceed \$100, a deposit shall be charged, and a receipt for this amount shall be given when the deposit is received.

Sales tax may not be added to the charges for copying public information.

Mailing charges may be assessed.

#### **WAIVER**

The City reserves the right to waive fees for the cost of a copy or copies requested by a city official, city employee or other governing entities (local, state, or federal).

#### TRAINING

The City Secretary's Office, in conjunction with the City Attorney, shall provide training and guidance to all Departments and Liaisons on the legal requirements, costs, and procedures associated with responding to Requests for public information.

All staff members designated as a Liasion for public information, or a backup to the Liaison in his or her absence, shall be required to attend the training at least once within a two-year period. If a new staff member is designated as a Liaison, or the backup to the Liaison, that person shall attend the next available training session.

The City Secretary's Office is the official designee of the City to satisfy the training requirements of Section 552.012 of the Texas Government Code, as amended.

#### **REFERENCES**

- Public Information Act, Chapter 552, Texas Government Code, as amended.
- Cost Regulations, as set forth in § 552.261 .274, Texas Government Code and Texas Administrative Code, Chapter 70.
- Addison Code of Ordinances, Article V. Records Management.



# TOWN OF ADDISON OPEN RECORDS POLICY

#### **PURPOSE**

The purpose of this policy is to establish internal guidelines in accordance with Texas Government Code 552.001, et seq., as amended, (the Texas Public Information Act) (the "Act"), to ensure that all records in the possession of and pertaining to the operation of the Town of Addison, Texas ("City") are available to the public through a systematic and centralized process and as required by law.

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  - Nonstandard Copies- Copies of information made available to a Requestor in any format other than a standard copy. This includes, but is not limited to, microfiches, microfilm, diskettes, magnetic tapes, videocassettes, and paper copies larger 8 ½ by 14 inches.

#### **GENERAL**

The City regularly receives Requests for access to public information. The City shall evaluate each Request in accordance with the requirements set forth in the Act. The timeline for the release of information is dependent upon the information requested, and whether or not it falls within a mandatory or permissive exception provided by the Act. The purpose of this policy is to provide general guidance on the open records process in the Town.

In handling Requests for public information, the City must comply with the requirements of the Act. Any written Request for public information in the state of Texas, routine or otherwise, must be handled in accordance with the Act and other state and federal statutes. Charges associated with the copying of information fall under the provisions of the Act, specifically those sections of the Code that set maximum charges for the copying of information, and the Texas Administrative Code. These charges must be used in assessing fees for compiling and copying public information, except to the extent that other law provides for charges for specific kinds of public information.

The fee schedule provided in the Texas Administrative Code must be followed when responding to a Requestor and assessing costs.

The Act does not require the creation of new information. Departments should only

provide information that responds to the Request and that exists at the time the Request is received. If a Department does not have information that responds to a Request, the Department shall notify the City Secretary's Office, which shall notify the Requestor, in writing.

The Act prohibits the City from inquiring why a Requestor is requesting certain information or how the information will be used. City staff may only make inquiries to a Requestor for the following reasons:

- 1. To establish proper identification, if needed;
- 2. To clarify a Request that is unclear; and/or
- 3. In cases where a large amount of information has been requested, to discuss how the scope of a Request may be narrowed.

#### CITY SECRETARY

The City Charter designates the City Secretary as the Town Records Management Officer for the City and all Requests for public records should be addressed to the City Secretary. The City Secretary shall be the City's authority for releasing records in accordance with the Act, with the exception of Fire Department, Municipal Court and Police Records.

The Request must sufficiently identify the record desired by name (if known) of record, date of record, and address/location of record. The City, however, must make a good faith effort to advise the Requestor of the kinds of records available to assist him in clarifying his Request. Should the type of record being requested not be a record maintained by the City, the City has no obligation to create a record or records to satisfy the request.

#### DEPARTMENT RESPONSIBILITY

The City Secretary's Office is the point of contact and the distribution point for all Requests. Departments shall forward all Requests received to the City Secretary's office within twenty-four (24) hours of receipt.

The Department Head is responsible for providing coordination between the City Secretary's Office and staff in his or her office to ensure that provisions of this Policy are followed. Department Heads are responsible for responding as requested by the City Secretary's Office or City Attorney regarding Requests for departmental public information.

Department Heads shall appoint one (1) or more departmental liaison(s) that will be responsible for responding to, processing and fulfilling Requests, and working with the City Secretary's Office or City Attorney in handling Requests. The Department Head shall also ensure that if the departmental liaison(s) is unavailable, at least one (1) staff member with knowledge of the public information process and all Requests that are

submitted to the Department, is available to process the Request and/or work with the City Secretary's Office and City Attorney in handling Requests.

Departments are responsible for organizing and maintaining both active and inactive information in a manner that maximizes the ready availability of the information in accordance with state laws.

Departments are responsible for providing all responsive documentation to the City Secretary's Office within four (4) days of the Request date, unless requested sooner. Revisions of this time period may be made by the City Secretary and/or City Attorney, upon Request and demonstration of necessity.

Departments are responsible for estimating, justifying, and reporting all charges associated with compiling and copying information.

Departments shall examine all information to determine which information is responsive to the Request and forward such information to the City Secretary's Office.

#### CITY SECRETARY'S OFFICE

The City Secretary's Office logs in and carries out the initial distribution of all Requests to relevant Department Heads and/or appointed liaisons and also forwards a copy to the City Attorney.

The City Secretary's Office is responsible for contacting the Requestor to confirm receipt and to indicate the initial status of distribution efforts, if known.

The City Secretary's Office will provide advice to Departments on costs associated with providing copies of, or access to, public information. The City Secretary's Office shall be responsible for drafting all cost estimate letters in association with Requests.

The City Secretary's Office will provide copies or access to public information in response to standard Requests in accordance with the Act.

The City Secretary's Office is responsible for advising and informing the City Manager's Office on Requests as requested by the City Manager.

The City Secretary's Office shall coordinate the response to all Requests, with the assistance of the City Attorney. The City Secretary's Office willshall not provide access or copies to the Requestor\_pursuant to the Public Information Act. until the In accordance with the Act, the City Secretary will forward those requests that are required to be reviewed for release by the Attorney General to the City Attorney. The City Attorney will send a request for a ruling to the Texas Attorney General for those requests meeting the exception requirements. City Attorney has reviewed the information and determined if the information can be released.

#### CITY ATTORNEY

The City Attorney is responsible for assisting in the compliance of this policy, the Act and the direction of City Council.

The City Attorney reviews all Requests forwarded by the City Secretary's Office and other Departments to determine whether any portion of the requested information may fall under an exception pursuant to the Act.

In order to determine whether information is confidential or excepted from disclosure under the law, the City Secretary's Office shall provide the City Attorney with a copy of the requested information before the information is released to the Requestor. The City Attorney shall notify the Requestor, relevant Departments, and the City Secretary's Office upon determination that the requested information is subject to exception from disclosure or release. The City Attorney shall oversee the redaction of information determined to be confidential or otherwise excepted from public disclosure.

In accordance with the Act and if necessary, the City Attorney will send a Request for a ruling to the Texas Attorney General. The City Secretary's Office will be copied on all correspondence with the Attorney General's Office.

#### **PRACTICE**

All Requests shall be submitted in writing regardless of the source, and shall be submitted to the City Secretary's Office. The Requestor may submit his Request in letter form, by electronic mail, by facsimile, or by completing the Request through the open records request online portal. All Requests that are not submitted through the online portal should be forwarded immediately to the City Secretary's Office for review and distribution.

The City Secretary's Office shall distribute the Request to the appropriate Departments, which shall confirm receipt of the Request within one (1) business day. A copy of the information responsive to the Request shall be provided to the City Secretary's Office within four (4) business days of receipt of the Request by the City, unless requested sooner.

All responsive information maintained by the City at the time of a Request must be provided to the City Secretary's Office. After review by the City Secretary's Office and the City Attorney, if applicable, all information, which is not otherwise excepted from required public disclosure, shall be released. The difficulty or inconvenience involved in making this information available is not a factor in determining whether or not information shall be released. The availability and volume of information requested, however, are highly relevant to what constitutes a reasonable period of time. For more voluminous Requests, the task of compilation may be greater.

Requests shall be handled promptly and timely, taking into account the order in which

they are received and the information requested. When the time necessary for compilation or provision of requested information will exceed ten (10) business days from the date of the standard Request, the City Secretary's Office shall certify in writing to the Requestor the approximate date when the information will be available, copying the City Attorney and City Attorney's designee for Requests.

All original Requests for Disclosure of Public Records, along with any documentation and/or rulings, shall be maintained by the Department receiving the Request (City Secretary, Emergency Response, Fire, and Police) for file, records retention, and reference purposes in accordance with the Texas State Library and Archives Retention Schedule.

#### Electronic Data

If responsive information exists in an electronic or magnetic medium, the Requestor may Request a copy either on paper or in an electronic medium, such as on diskette or magnetic tape. City staff shall provide a suitable copy in the requested medium if:

- 1) the City has the technological ability to produce a copy of the requested information in the requested medium;
- 2) the City is not required to purchase any software or hardware to accommodate the Request; and
- 3) provision of a copy of the information in the requested medium will not violate the terms of any copyright agreement between the City and a third party.

If City staff is unable to comply with a Request to produce a copy of information in a requested medium for any of the reasons described above, City staff shall provide a paper copy of the requested information or a copy in another medium that is acceptable to the Requestor. City staff is not required to copy information to a diskette or other material provided by the Requestor, but may use City supplies and charge the Requestor.

#### Manipulation of Data

If City staff determines that responding to a Request will require programming or manipulation of data and that compliance with the Request is not feasible or will result in substantial interference with ongoing operations, the City Secretary's Office shall provide to the Requestor a written statement that must include:

- 1) a statement that the information is not available in the requested form;
- 2) a description of the form in which the information is available;
- 3) a description of any contract or services that would be required to provide the

information in the requested form;

- 4) a statement of the estimated cost of providing the information in the requested form, in accordance with charges outlined in the Act; and
- 5) a statement of the anticipated time required to provide the information in the requested form.

The City Secretary's Office shall provide the written statement to the Requestor in accordance with the Act.

After providing the written statement to the Requestor, staff has no further obligation to provide the information in the requested form or in the form in which it is available unless, within thirty (30) days, the Requestor states in writing to the staff that the Requestor:

- 1) wants staff to provide the information in the requested form according to the cost and time parameters set out in the statement or according to other terms to which the Requestor and staff agree; or
- 2) wants the information in the form in which it is available.

If the Requestor does not make a timely written statement as provided in this section, the Request is considered to be withdrawn.

The City Secretary's Office shall maintain a file containing all written statements issued under this section in a readily accessible location for one (1) year after a final decision on the Request has been made.

Staff shall consult with the Information Technology Department prior to providing the written statement described above, as well as a "suitable copy" described in Electronic Data, if Information Technology has service responsibility for the electronic records keeping systems from which the information is being requested.

#### Request for Inspection and Delivery

For both convenience and security, all information requested shall be located by Department staff, inspected by the Requestor, and copied by Department staff.

City staff shall not remove or allow to be removed from City offices any original copies of public information. Inspections of public information shall take place on-site in City facilities. Departments shall provide facilities and accommodations to accomplish such inspections.

Persons requesting access to public information must complete examination of the information within ten (10) business days from the date material is made available to

them. This period may be extended an additional ten (10) business days provided the Requestor, during the initial period, files a written request for additional time. If the Requestor does not complete the examination within ten (10) business days after the information is made available, and does not file a Request for additional time, the Request is considered withdrawn. An additional ten (10) business days may be granted if, within the additional period, the Requestor files another written Request for additional time. This examination period may be interrupted if the information is needed for use by the City. This period of interruption is not included in the time period during which persons may examine information.

Copies of materials requested will be sent to the Requestor in the manner in which it was received. It may be mailed to the Requestor by first class United States mail, provided that the Requestor has paid all costs associated with copying, as well as postage costs, in advance.

Destruction of public information shall take place on a regular and systematic basis according to approved records retention and disposition schedules, City Code provisions and state law. No information shall be destroyed, however, including information whose retention minimum has expired, after a Request for that information or notification of such a pending Request has been received.

#### Repetitious Requests

If City staff determines that a Requestor has made a duplicate Request (an identical Request to one that has previously been answered by the City), the City Secretary's Office shall certify to the Requestor that copies of all or part of the requested information were previously furnished or made available to the Requestor. The certification must include:

- 1) a description of the information for which copies have been previously furnished or made available to the Requestor;
- 2) the date the governmental body received the Requestor's original Request for that information;
- 3) the date the governmental body previously furnished copies or made the information available to the Requestor;
- 4) a certification that no subsequent additions, deletions, or corrections have been made to that information; and
- 5) the name, title, and signature of the officer for public information or the officer's agent making the certification.

A charge may not be imposed for making a certification under this section.

This section does not apply to information that was not previously copied or made available to the Requestor upon payment, including information for which copies were not furnished or made available because the information was redacted from other information that was furnished or made available or because the information did not yet exist at the time of an earlier Request.

When mailing copies of sensitive information, certified mail should be used when an appropriate mailing address is provided.

#### **FEES**

Fees for disclosure of public records shall be determined as outlined by the guidelines established by the Texas Building and Procurement Commission (formerly General Services Commission (GSC)) rules (Texas Administrative Code, Sections 111.61 - 111.63) as summarized in Exhibit A.

Departments shall keep records of labor involved in compiling all Requests for information so that proper charges can be assessed.

The City Secretary with the help of the City Attorney should provide a Requestor with a written estimate of costs anticipated for information that will require manipulation, programming, personnel time, or other cost categories over and above simple paper copies.

As a general rule, there is no charge for inspection of public information if a copy is not requested. The following are exceptions to this rule, for which fees may be charged:

- In the case of paper records on which a page or pages contain confidential information that must be edited or redacted before the information can be made available, departments may charge only for the cost of a copy of the page from which information must be redacted.
- 2) In the case of information in an electronic medium that is not available directly online to a Requestor and that will require programming or manipulation of data to comply with a Request, departments may impose charges for access to the information. The City Secretary's Office shall provide an estimate of related charges to the Requestor before assembling the information.
- 3) In the case of information in an electronic form on a computer owned or leased by the City to which the public has direct access through a computer network or other means and that will require processing, programming, or manipulation on the City-owned or leased computer before it can be electronically copied, departments may impose associated charges.

When mailing copies of material requested, fees charged shall be collected before materials are sent. The City Secretary's Office may notify Requestors of exact charges

by telephone, correspondence, or by calculating charges on the Public Information Request form and forwarding it as an invoice. All facsimile and mailing costs, including certified mail charges, shall be included as part of total copying charges assessed.

When charges for copying are projected with certainty to exceed \$100, a deposit shall be charged, and a receipt for this amount shall be given when the deposit is received.

Sales tax may not be added to the charges for copying public information.

Mailing charges may be assessed.

#### **WAIVER**

The City reserves the right to waive fees for the cost of a copy or copies requested by a city official, city employee or other governing entities (local, state, or federal).

#### TRAINING

The City Secretary's Office, in conjunction with the City Attorney, shall provide training and guidance to all Departments and Liaisons on the legal requirements, costs, and procedures associated with responding to Requests for public information.

All staff members designated as a Liasion for public information, or a backup to the Liaison in his or her absence, shall be required to attend the training at least once within a two-year period. If a new staff member is designated as a Liaison, or the backup to the Liaison, that person shall attend the next available training session.

The City Secretary's Office is the official designee of the City to satisfy the training requirements of Section 552.012 of the Texas Government Code, as amended.

#### REFERENCES

- Public Information Act, Chapter 552, Texas Government Code, as amended.
- Cost Regulations, as set forth in § 552.261 .274, Texas Government Code and Texas Administrative Code, Chapter 70.
- Addison Code of Ordinances, Article V. Records Management.

Al-1802 4.

**Work Session and Regular Meeting** 

**Meeting Date:** 08/09/2016 **Department:** City Manager

#### **AGENDA CAPTION:**

Presentation On <u>Future Of Cotton Belt Corridor Development As It Relates To Rail Transit In The Town Of Addison</u>.

#### **BACKGROUND:**

The Town of Addison has been an owner city in the Dallas Area regional transit (DART) system since its inception in 1983. The Town of Addison currently receives bus service and as an owner city, expects to receive light rail service with an accompanying light rail station.

The DART 2030 Transit System Plan (TSP) identified the Cotton Belt Corridor as a priority project with implementation in the year 2025-2030 timeframe. Based on the recession in 2008-2009 the project was deferred post-2030. In 2015, DART included the project within the DART 20-Year Financial Plan for implementation in year 2035, from Dallas-Fort Worth Airport to Shiloh Road in Plano.

The Town of Addison has begun to communicate its desire to review all of its options as it relates to its future membership in DART if the Cotton Belt project does not become a priority for DART in the immediate future. DART and regional stakeholders have discussed methods to accelerate or phase the project earlier than 2035 and recently DART has developed a proposal that could construct and make the project operational sometime between 2021-2023. This presentation is intended to provide the City Council with an update on the progress of this project.

#### **RECOMMENDATION:**

Informational only.

AI-1800 6.

**Work Session and Regular Meeting** 

**Meeting Date:** 08/09/2016 **Department:** City Secretary

#### **AGENDA CAPTION:**

Consider Approval Of The July 12, 2016 Regular Meeting Minutes.

#### **BACKGROUND:**

The City Secretary has prepared the minutes for approval.

#### **RECOMMENDATION:**

Administration recommends approval.

#### **Attachments**

# **Minutes**

# OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL WORK SESSION

July 12, 2016
Addison Town Hall, 5300 Belt Line Rd., Dallas, TX 75254
5:15 PM Dinner & Executive Session
6:00 PM Work Session
7:30 PM Regular Meeting

Present: Mayor Meier; Mayor Pro Tem Arfsten; Deputy Mayor Pro Tem Hughes; Councilmember Duffy; Councilmember Walden; Councilmember Wilcox

Absent: Councilmember Angell

#### **Executive Session**

1. Closed (executive) session of the Addison City Council pursuant to:

Section 551.071, Tex. Gov. Code, to conduct a private consultation with its attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551, Tex. Gov. Code, pertaining to

• The ponds or lakes at Vitruvian Park located within the vicinity and east of the intersection of Vitruvian Way and Ponte Ave., and Farmers Branch Creek

Section 551.087: To deliberate commercial or financial information that was received from a business prospect that seeks to locate, stay or expand in or near the territory of the governmental body, and with which the governmental body is conducting economic development negotiations.

Project Riviera

Council convened into Executive Session at 5:18 pm.

Reconvene from Executive Session

2. **RECONVENE INTO REGULAR SESSION:** In accordance with Texas Government Code, Chapter 551, the City Council will reconvene into Regular Session to consider action, if any, on matter discussed in Executive Session.

Council recessed from Executive Session at 6:48 pm.

No action taken.

#### **WORK SESSION**

3. Discuss <u>Amending The Town Of Addison's Public Information Policy.</u>

Due to time constraints, this item was tabled to the August 9, 2016 meeting.

4. Present An <u>Update On The Midway Road Reconstruction Project</u>.

Assistant Director Infrastructure Development, Jason Shroyer, presented the item to Council. He stated that the Midway Road project was included in the last Bond election. He stated that the initial amount budgeted and approved for the project was \$16 million. However, staff has worked the numbers for the project now and there is a gap in funding. The new amount needed to fund the project as expected is \$38 million. Staff stated that direction is now needed from Council as how to proceed with the project. A decision of whether the project is still viable and if so at what level will the project be able to be completed.

Council agreed that the news of the financial shortfall was overwhelming. Council agreed that further discussion is needed on this project. Council also agreed that the presentation needs to be done on camera for the public to see. Staff will bring the presentation back to Council for further discussion.

# **REGULAR MEETING**

# Pledge of Allegiance

Announcements and Acknowledgements regarding Town and Council Events and Activities

## Discussion of Events/Meetings

#### Public Comment.

The City Council invites citizens to address the City Council on any topic not on this agenda. Please fill out a **City Council Appearance Card** and submit it to a city staff member prior to Public Participation. Speakers are allowed **up to three (3) minutes per speaker** with **fifteen (15) total minutes** on items of interest or concern and not on items that are on the current agenda. In accordance with the Texas Open Meetings Act, the City Council cannot take action on items not listed on the agenda. The Council may choose to place the item on a future agenda.

Jerry Stephens, 4067 Beltway Drive #103, spoke about improvements made on Beltway and the stop signs proposed at Les Lacs and Beltway.

Calvin Gissendaner, 14609 Waterview Circle, spoke in opposition to the proposed stop sign at Les Lacs and Beltway.

Neil Hewitt, 3756 Park Place, spoke in opposition to the proposed stop sign at Les Lacs and Beltway.

Billy Dreis, 4025 Morman Lane, spoke regarding the traffic monitoring on Beltway and the proposed stop sign.

## Consent Agenda:

All items listed under the Consent Agenda are considered routine by the City Council and will be enacted by one motion with no individual consideration. If individual consideration of an item is requested, it will be pulled from the Consent Agenda and discussed separately.

Deputy Mayor Pro Tem Hughes asked that Item #6 be pulled for separate consideration.

Mayor Pro Tem Arfsten moved to approve Items 7 & 8 as submitted. Councilmember Walden seconded the motion. The vote was cast 6-0 in favor of the motion. Councilmember Angell was absent.

Item #6 should have the following changes implemented into the minutes:

List names of Public Comment speakers and move Phil Griggs under not in favor of Item # 12.

Deputy Mayor Pro Tem Hughes moved to approve Item #6 with amendments noted. Mayor Pro Tem Arfsten seconded the motion. The vote was cast 6-0 in favor of the motion. Councilmember Angell was absent.

- 6. Consider <u>Approval Of The June 28, 2016 Regular Meeting</u> Minutes.
- 7. Consider Approval of A Resolution Authorizing The City Manager
  To Enter Into A License Agreement With Appennino Dallas, LLC
  D/B/A Antonio Ristorante, For The Use Of A Portion Of The
  Public Sidewalk Within The Public Right-Of-Way Adjacent To
  4985 Addison Circle Drive For An Outdoor Dining Area.
- 8. Consider A Resolution Appointing A Voting Member Of The Advisory Committee For The Trinity River Authority Central Wastewater Treatment System.

## Regular Items

9. Present, Discuss And Consider Action Related To The <u>Town Ethics</u> <u>Ordinance And Council Rules of Procedure.</u>

City Attorney, Brenda McDonald, presented the item to Council. Council agreed the full presentation was not necessary. They wished to discuss the items below dealing with rules of procedure.

Agenda items released to public- Council agreed at this time the DRAFT agenda caption sheet being sent to Council has helped ensure that all members are aware of agenda items for the next meeting. This option will be continued at this time.

Using titles to endorse others- Council agreed that using an official title for Municipal elections is permissable.

Use of electronic devices during Council meetings- Council agreed that phones & text messages will be only used in unusual circumstances and Council should not be using the devices throughout the meeting to converse with others.

Council agreed that these items were to be brought back in revised

Council procedures to be reviewed and discussed at a future meeting.

# 10. Present, Review And Discuss <u>History Of Transparency For The</u> Town Of Addison.

Mayor Meier presented a timeline of growth of transparency for the Town. These items dealt with Council transparency, transparency through open records and communicating with the public.

Council agreed that some items concerning transparency needed to be discussed.

Filming worksession- Council would like to see the worksessions filmed and broadcast the same as the regular meetings. The City Manager will direct staff to start researching the implementation of this item.

Website navigation- Council agreed that the website needed to be more user-friendly. The City Manager will direct staff to look into revamping the website for more transparency and ease for citizens to find information.

Rotary Club meetings- because 4 members of the Council are members of the same Rotary club, the Mayor believed it would be prudent to start to post these meeting notices in case another Councilmember wanted to attend at any time. Council agreed that these meetings will be posted. The City Secretary will ensure that these meetings are posted weekly as quorum notices.

Councilmember Walden also discussed transparency through the release of documents previously kept private under the Attorney-Client privilege, those items that may have been kept private through an Attorney General opinion and the information included in release of information concerning the Kanter report.

Councilmember Walden agreed that he would like to look at information that was previously withheld. He would like to look at it to review to see if he believes the information should be released and bring that request back to Council. Councilmember Walden will coordinate a review of these documents with the City Manager, City Attorney and City Secretary.

Council agreed that transparency is an ongoing project and the Council and staff will always look at ways to make information accessible to citizens.

11. Discuss And Consider Action Related To The <u>Function And</u> <u>Purpose Of The Finance Committee.</u>

This item was tabled to the August 9, 2016 meeting.

12. Present, Discuss And Consider An <u>Ordinance Authorizing The City</u>
<u>Manager To Amend The Employee Handbook.</u>

City Manager, Wes Pierson, presented the item to Council. He stated this was a clean up item allowing the City Manager to make changes to the Employee Handbook without formal presentation to the Council. He stated that the Charter allowed him to make these changes presently. However, in the past these changes have been taken to Council for formal approval. This would eliminate that step and allow the changes to be made by the City Manager.

Mayor Pro Tempore Arfsten moved to approve the item as submitted. Councilmember Walden seconded the motion. The vote was cast 6-0. Councilmember Angell was absent.

13. Presentation And Discussion Of The <u>Town Of Addison Quarterly</u> <u>Financial Report For The Quarter Ended March 31, 2016</u>.

This item was tabled to a future meeting.

14. Discuss And Consider Approval Of A Resolution AdoptingThe Addison Airport Master Plan.

Frank McIllwain, the consultant for the project, presented the item to Council.He presented an abbreviated version of the full worksession item presented to Council previously.

Councilmember Wilcox moved to approve the item as submitted. Councilmember Duffy seconded the motion. The vote was cast 6-0 in favor of the motion. Councilmember Angell was absent.

15. Hold A Public Hearing, Discussion And Consider Action On An Ordinance Rezoning The Property Located At 14910 Midway Road, In The Former Snuffer's Restaurant, Just South Of The Intersection of Beltway Drive And Midway Road, Which Is Currently Zoned LR, Local Retail, By Approving A New Special Use Permit For

# <u>The Sale Of Alcoholic Beverages For On-Premises Consumption</u> <u>Only</u>. Case 1739-SUP/Zoli's NY Pizza.

Assistant Director of Development Services, Charles Goff, presented the item to Council.

Deputy Mayor Pro Tem Hughes moved to approve the item as recommended by staff. Councilmember Duffy seconded the motion. The vote was cast 6-0 in favor of the item. Councilmember Angell was absent.

16. Hold A Public Hearing, Discussion And Consider Approval Of An Ordinance That Rezones Approximately 39.4 Acres Of Property Located At 17001 Addison Road, Which Is Currently Zoned R-1, Residential-1, With A Special Use Permit For A Private School And Approximately 1.74 Acres Of Property Located At The Northwest Corner Of Addison Road And Sojourn Drive, Also Known As 4350 Sojourn Drive, Which Is Currently Zoned PD, Planned Development, In Order To Create A New Planned Development District Allowing A Private School and Approving A Concept Plan and Development Standards, On Application From Trinity Christian Academy. Case 1738/Z/Trinity Christian Academy.

Staff informed Council that the applicant was not ready for the item to be presented at this meeting.

Councilmember Duffy moved to table this item until the August 9, 2016 meeting. Councilmember Wilcox seconded the motion. The vote was cast 6-0 in favor of the motion. Councilmember Angell was absent.

17. Hold A Public Hearing, Discussion And Consider Action On An Ordinance Rezoning Approximately 18.2 Acres Of Land Located At 14345 Dallas Parkway, The Former Site Of The Ewing Auto Dealership, From I-1, Industrial-1, To A Planned Development District Allowing For Office And Other Commercial Uses And Establishing Development Standards Including A Minimum Building Height. Case 1737-Z/14345 Dallas Parkway.

Mayor Meier recused himself from this item.

Assistant Director Development Services, Charles Goff, presented the item to Council. He stated that due to the written opposition to the item from the land owner, the vote must be a Super Majority of Council. Due to the absence of Councilmember Angell and the Mayor recusing himself, the item would need to be tabled to another Council meeting to be voted upon.

Mr. Kirk Williams spoke stating he represented the land owner and voiced his opposition to this item.

Guillermo Quintanilla spoke in favor of this item.

Councilmember Walden moved to table this item to the August 9, 2016 meeting. Councilmember Wilcox seconded the motion. The vote was cast 5-0 in favor of the motion. Councilmember Angell was absent.

18. Hold A Public Hearing, Discussion And Consider Action On An Ordinance Rezoning The Property Located At The Astoria Caffe 15701 Quorum Drive, On The Northwest Corner Of Morris Avenue and Quorum Drive, Which Is Currently Zoned UC, Urban Center, By Amending An Existing Special Use Permit For A Restaurant And An Existing Special Use Permit For The Sale Of Alcoholic Beverages For On-Premises Consumption Only In Order to Approve A Revised Site Plan Including An Outdoor Patio. Case 1723-SUP/Astoria Caffe.

Assistant Director Development Services, Charles Goff, presented the item to Council. Mr. Goff stated that the Planning & Zoning Commission recommendation was different than the staff recommendation as stated in the agenda memo.

The applicant made a presentation to Council.

Mayor Meier opened the Public Hearing.

The following citizens spoke in favor of the item:

Eileen Cohen, Addison Circle Kevin Polston, on behalf of Post Properties

Mayor Meier closed the Public Hearing.

Deputy Mayor Pro Tem moved to approve the item as recommended from Planning & Zoning Commission. Mayor Pro

Tem Arfsten seconded the motion. The vote was cast 5-1 in favor of the motion. Mayor Meier voted against the motion. Councilmember Angell was absent.

# 19. Present, Discuss, and Consider <u>Action Regarding The Housing Policy And Residential Density For The Town Of Addison</u>.

Assistant Director Development Services, Charles Goff, presented the item to Council.

Council asked questions of staff in regards to the history of the policy, ability to modify the policy and general interest questions.

Council agreed that this item needed more in depth conversation. Due to the late hour of the meeting, this item will come back to Council with the information requested to be added by Council.

# Adjourn Meeting

NOTE: The City Council reserves the right to meet in Executive Session closed to the public at any time in the course of this meeting to discuss matters listed on the agenda, as authorized by the Texas Open Meetings Act, Texas Government Code, Chapter 551, including §551.071 (private consultation with the attorney for the City); §551.072 (purchase, exchange, lease or value of real property); §551.074 (personnel or to hear complaints against personnel); §551.076 (deployment, or specific occasions for implementation of security personnel or devices); and §551.087 (economic development negotiations). Any decision held on such matters will be taken or conducted in Open Session following the conclusion of the Executive Session.

	Mayor-Todd Meier
Attest:	
City Secretary-Laura Bell	

Al-1788 7.

Work Session and Regular Meeting

**Meeting Date:** 08/09/2016

**Department:** Infrastructure- Development Services

# **AGENDA CAPTION:**

Consider Approval Of Resolutions Consenting To The Simultaneous Conveyance
Of A Total Of Approximately .04 Acres Of The Town's Real Property Located
At 4551, 4553, And 4555 Glenn Curtiss Drive At Addison Airport, In
Exchange For Approximately .14 Acres Of Fee Simple Land Located At 4485
Glenn Curtiss Drive

## **BACKGROUND:**

Staff recommends consideration and consent to the simultaneous conveyance of a total of approximately .04 acres of the Town's real property located at 4551, 4553 and 4555 Glenn Curtiss Drive at Addison Airport in consideration of and in exchange for approximately .14 acres of fee-simple land now owned by Castlerock Interests #3, LLC, a Texas limited liability company, which is a part of what is commonly known as the Addison Airport Self Storage located at 4485 Glenn Curtiss Drive.

In May of 2014, the Town acquired the real property located at 4551, 4553 and 4555 Glenn Curtiss Drive and made it a part of its airport real estate portfolio. The three lots comprise what is known as the Addison Jet Center. South and adjacent to the Addison Jet Center is the Addison Airport Self Storage property located at 4485 Glenn Curtiss Drive. The 2005 plat identified apparent conflicting boundary lines where a portion of the Addison Airport Self Storage building improvements encroached onto the Addison Jet Center property.

In March 2016, staff was contacted by the ownership of the Addison Airport Self Storage property who explained their property was under contract to sell but that they had been advised by the title company of the encroachment and clouded title. After discussing the issue with the city attorney, it was determined it is in the Town's interest to work with the other property owner to resolve the conflicting boundaries. Staff recommends that the Town convey by deed, the encroached land, approximately .04 acres, or 1,742 square feet of land (SFL) under the existing mini-warehouse buildings to the owner of the Addison Airport Self Storage property. In exchange for this conveyance, the Town will receive in fee title approximately .14 acres, or 6,098 SFL, of paved land that now serves as the ingress/egress easement controlled by Addison Storage Lockers along the west end of their property. This ingress/egress easement currently serves as the only street entry into the Addison Jet Center properties. Consequently, in exchange for releasing the encumbered land under the buildings, the Town will receive additional land and full ownership and control of its entrance from Glenn Curtiss Drive to the Addison Jet Center properties that also abuts other airport land. No additional cash or consideration is required of either party.

To further remedy the existing circumstances, the Town and the Addison Airport Self Storage ownership agreed to replat both properties merging the properties into one replat hereinafter referred to as the <u>Addison Jet Center Addition Lots 1-4</u>, <u>Block 1</u> which will reflect the new property boundary descriptions and abandoned easements. This replat was approved by the Planning and Zoning Commission on June 17, 2016 and will be publicly recorded with Dallas County Records together with each of the two proposed Special Warranty Deeds.

There is little or no direct economic benefit to the Town as a consequence of the proposed conveyance. The Town will gain ownership of approximately 4,356 square feet of paved land, which may represent added value at some future date. More immediately, the Town and airport will gain full control and ownership of its approach to its gated entry leading into the Addison Jet Center properties.

The city attorney has approved to form each of the conveyance agreements (Special Warranty Deeds) to be executed and recorded by the respective parties for the purpose presented herein.

## **RECOMMENDATION:**

Administration recommends approval.

**Attachments** 

Aerial Map of Glenn Curtiss Drive Resolution



# TOWN OF ADDISON, TEXAS

<b>RESOLUTION NO.</b>	
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A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING THE CONVEYANCE OF .04± ACRES OF LAND TO CASTLEROCK INTERESTS #3, LLC BY SPECIAL WARRANTY DEED AND APPROVING THE RECEIPT OF .14± ACRES OF LAND FROM CASTLEROCK INTERESTS #3, LLC BY SPECIAL WARRANTY DEED; AUTHORIZING THE CITY MANAGER TO EXECUTE THE SPECIAL WARRANTY DEED CONVEYING .04± ACRES OF LAND TO CASTLEROCK INTERESTS #3, LLC; AND PROVIDING AN EFFECTIVE DATE.

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

<u>Section 1.</u> The conveyance of  $.04\pm$  acres of land to Castlerock Interests #3, LLC by special warranty deed and the receipt of  $.14\pm$  acres of land from Castlerock Interests #3, LLC, a copy of which are both attached to this Resolution as <u>Exhibit A</u>, is hereby approved. The City Manager is hereby authorized to execute the special warranty deed conveying  $.04\pm$  acres of land to Castlerock Interests #3, LLC.

**Section 2.** This Resolution shall take effect from and after its date of adoption.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this the 9<sup>th</sup> day of August, 2016.

	Todd Meier, Mayor
ATTEST:	
By:	
Laura Bell, City Secretary	
APPROVED AS TO FORM:	
By:	
Brenda N. McDonald, City Attorney	

# **EXHIBIT A**

After Recording Return To: c/o 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.

#### SPECIAL WARRANTY DEED

Date: July \_\_\_\_, 2016

Grantor: Town of Addison, Texas, a home rule municipality

Grantor's Mailing Address:

5300 Belt Line Road Dallas, Texas 75254

Grantee: Castlerock Interests #3, LLC, a Texas limited liability company

Grantee's Mailing Address:

c/o Mr. Michael S. Castleman, Jr., Managing Member 6540 Crestpoint Drive

Dallas, Texas 75254

Consideration:

Cash and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

#### Property (including any improvements):

Being a tract of land situated in the William Lomax Survey, Abstract No. 796, Dallas County, Texas, and being a part of Addison Jet Center, an addition to the Town of Addison, Texas according to the plat thereof recorded in Volume 2005072, Page 70 in the Map Records of Dallas County, Texas (MRDCT), and being more particularly described in <a href="Exhibit "A" attached hereto and incorporated herein by reference.">Exhibit "A"</a> attached hereto and incorporated herein by reference.

#### Reservations from Conveyance:

This conveyance is made and accepted subject to any and all conditions, restrictions, and/or reservations, if any, related to the hereinabove described property, to the extent, and only to the extent, that the same may still be in force and effect, shown in the record of the office of the County Clerk of

Special Warranty Deed - Page 1 of 2

Dallas County, Texas, included but not limited to Dallas County Clerk Recording #201400132167, and apparent easements.

### **Exceptions to Conveyance and Warranty:**

See Exhibit "B" attached hereto and incorporated herein.

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, successors, and assigns to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof when the claim is by, through, or under Grantor but not otherwise, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

When the context requires, singula	ar nouns and pronouns include the plural.
EXECUTED effective as of the d	ay first written above.
	TOWN OF ADDITION, Texas a home rule municipality
	By:
	Wesley S. Pierson, City Manager
STATE OF TEXAS \$  COUNTY OF DALLAS\$	
	ority, on this day personally appeared Wesley S. Pierson ubscribed to the foregoing instrument and acknowledged to and consideration therein expressed.
[SEAL] Given under my hand and seal of o	office this day of July, 2016.
Notary Public, State of Texas	My commission expires:

Special Warranty Deed - Page 2 of 2

#### **EXHIBIT A**

**BEING** a tract of land situated in the William Lomax Survey, Abstract No. 796, Dallas County, Texas, and being a part of Addison Jet Center, an addition to the Town of Addison, Texas, according to the plat thereof recorded in Volume 2005072, Page 70 in the Map Records of Dallas County, Texas (MRDCT), and being more particularly described as follows:

**BEGINNING** at a 5/8-inch iron rod set with plastic cap stamped 'Sparr Surveys' at the south corner of Lot 2 of said Addison Jet Center and lying in the west line of Tract I of the Wolfe Subdivision, an addition to the Town of Addison, Texas according to the plat thereof recorded in Volume 84108, Page 3030 MRDCT;

**THENCE** North 21 degrees 15 minutes 38 seconds West, along the southwest line of said Lot 2, 6.07 feet to a 5/8-inch iron rod set with plastic cap stamped 'Sparr Surveys';

**THENCE** North 42 degrees 54 minutes 35 seconds East, departing the southwest line of said Lot 2, 148.60 feet to a 5/8-inch iron rod set with plastic cap stamped 'Sparr Surveys';

**THENCE** North 02 degrees 05 minutes 01 seconds West, 69.57 feet to a 5/8-inch iron rod set with plastic cap stamped 'Sparr Surveys';

**THENCE** North 42 degrees 50 minutes 06 seconds East, at 2.99 feet passing the northeast line of said Lot 2 and southwest line of Lot 1 of said Addison Jet Center and, at 67.11 feet passing the northeast line of said Lot 1 and southwest line of Lot 3 of said Addison Jet Center, in all a distance of 68.77 feet to a cut 'x' set in concrete;

**THENCE** North 55 degrees 28 minutes 59 seconds East, 125.56 feet to a 5/8-inch iron rod set with plastic cap stamped 'Sparr Surveys' in the south line of Tract II as described in deed to Sidney Wicks recorded in Volume 2004171, Page 11882 in the Deed Records of Dallas County, Texas;

**THENCE** North 89 degrees 28 minutes 59 seconds East, along the south line of said Wicks tract, 0.60 feet to a 1-1/2-inch iron pipe found at the north corner of said Tract I of the Wolfe Subdivision;

**THENCE** in a south and southwest direction along the west line of said Tract I of the Wolfe Subdivision the following:

South 53 degrees 38 minutes 04 seconds West, 126.84 feet;

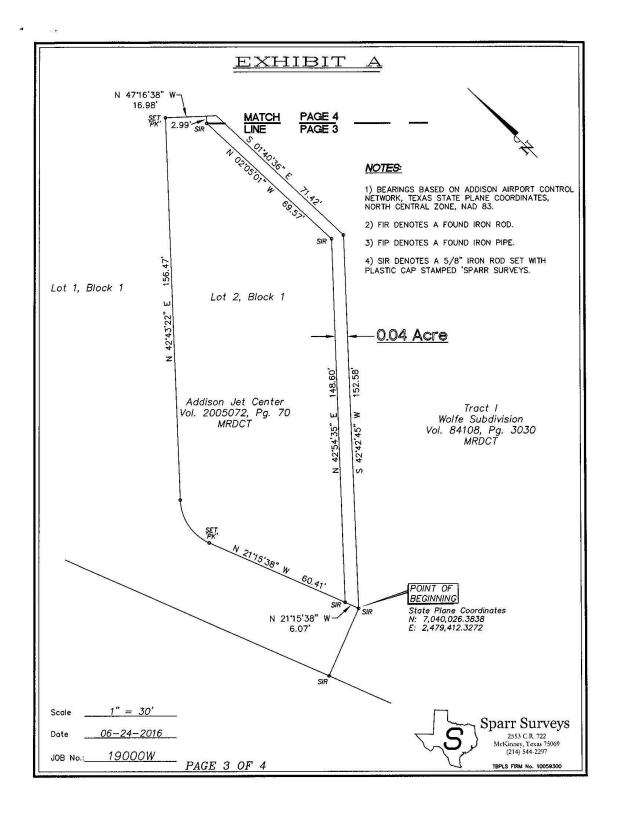
South 42 degrees 58 minutes 47 seconds West, 64.11 feet;

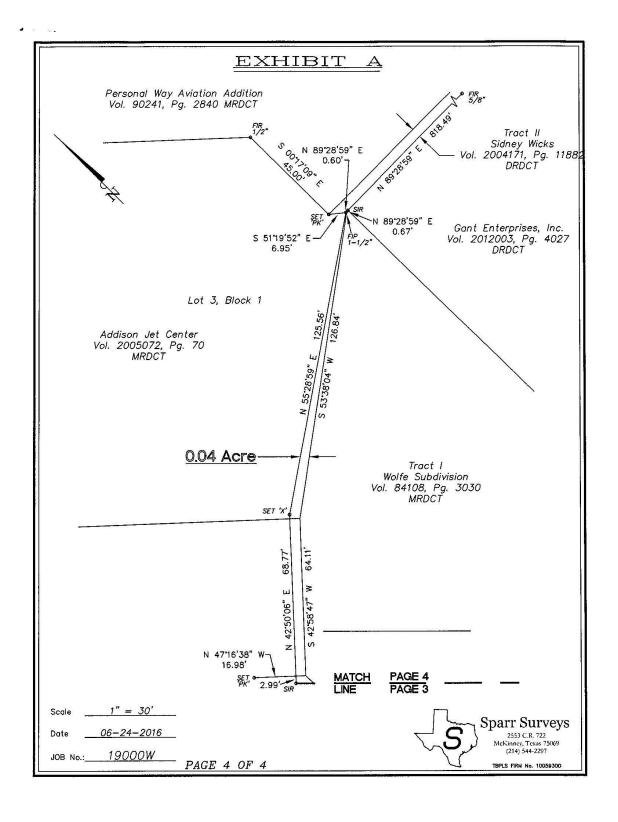
South 01 degrees 40 minutes 36 seconds East, 71.42 feet;

South 42 degrees 42 minutes 45 seconds West, 152.58 feet to the **POINT of BEGINNING** and containing 0.04 acre of land.

Brad Sparr

Registered Professional Land Surveyor No. 3701





# Exhibit "B" to Special Warranty Deed

#### **Exceptions to Conveyance**

The following matters and all terms of the documents creating or offering evidence of the matters:

- 1. Rights of tenants, as tenants only, under the following unrecorded leases or rental agreements:
  - Commercial Lease Agreement, dated December 1, 2010, as modified by an Addendum to the Commercial Lease Agreement dated August 2, 2011, by and between Hangin' Out, LLC and Starbase Aviation, LLC.
  - Being that certain unrecorded Commercial Lease Agreement dated July 20, 2010 by and between Hangin' Out L.L.C., a Texas Limited Partnership and Martinaire Aviation, LLC.
- 2. 20' easement as set out in Volume 77071, Page 630, Deed Records of Dallas County, Texas and as shown on survey dated April 23, 2014, prepared by Brad Sparr, RPLS# 3701. (located within Lot 1 along its common boundary line with Lot 3, as shown on survey dated April 23, 2014, revised May 27, 2014, prepared by Brad Sparr, RPLS# 3701).
- 3. 24' 30' Mutual Access Easement located between Lots 1, 2 and 3 as shown on plat recorded in Volume 2005072, Page 70, of the Plat Records of Dallas County, Texas; as shown on survey dated April 23, 2014, revised May 27, 2014, prepared by Brad Sparr, RPLS# 3701.
- Avigation Easement and Release as shown on plat recorded in Volume 2005072, Page 70, of the Plat Records of Dallas County, Texas; as shown on survey dated April 23, 2014, revised May 27, 2014, prepared by Brad Sparr, RPLS# 3701.
- Encroachment of chain link fence and concrete strip into or outside of the northeastern boundary
  of the land property line as shown on survey dated April 23, 2014, revised May 27, 2014,
  prepared by Brad Sparr, RPLS# 3701.

Exhibit "B" to Special Warranty Deed

After Recording Return To: c/o 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.

### SPECIAL WARRANTY DEED

Date:

July , 2016

Grantor:

Castlerock Interests #3, LLC, a Texas limited liability company

### Grantor's Mailing Address:

c/o Mr. Michael S. Castleman, Jr., Managing Member 6540 Crestpoint Drive

Dallas, Texas 75254

Grantee:

Town of Addison, Texas, a home rule municipality

#### **Grantee's Mailing Address:**

5300 Belt Line Road Dallas, Texas 75254

#### Consideration:

Cash and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

### Property (including any improvements):

Being a tract of land situated in the William Lomax Survey, Abstract No. 796, Dallas County, Texas, and being a part of Tract 1 of the Wolfe Subdivision, an addition to the Town of Addison, Texas according to the plat thereof recorded in Volume 84108, Page 3030 in the Map Records of Dallas County, Texas (MRDCT), and being more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference.

## Reservations from Conveyance:

None.

Special Page 1 of 2

### **Exceptions to Conveyance and Warranty:**

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, successors, and assigns to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof when the claim is by, through, or under Grantor but not otherwise, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

When the context requires, singular nouns and pronouns include the plural.

**EXECUTED** effective as of the day first written above.

CASTLEROCK INTERESTS #3, LLC a Texas limited liability company

Michael S. Castleman, Jr.
Managing Member

STATE OF TEXAS

COUNTY OF DALLAS

Before me, the undersigned authority, on this day personally appeared Michael S. Castleman, Jr., 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 July, 2016.
	Notary Public, State of Texas
	My commission expires:

Special Page 2 of 2

#### **EXHIBIT A**

**BEING** a tract of land situated in the William Lomax Survey, Abstract No. 796, Dallas County, Texas, and being a part of Tract I of the Wolfe Subdivision, an addition to the Town of Addison, Texas according to the plat thereof recorded in Volume 84108, Page 3030 in the Map Records of Dallas County, Texas (MRDCT), and being more particularly described as follows:

**BEGINNING** at a cut 'x' found in concrete in the north line of Glenn Curtiss, a 50 foot wide Ingress/Egress easement as established by the final plat of Addison Airport, an addition to the Town of Addison, Texas according to the plat thereof recorded in Volume 2005131, Page 82 MRDCT, said beginning point also being the southerly corner of said Wolfe Subdivision and lying on an interior line of said Addison Airport;

**THENCE** North 20 degrees 59 minutes 50 seconds West, departing the north line of said Glenn Curtiss, along the westerly line of said Wolfe Subdivision and interior line of said Addison Airport, 203.71 feet to a 5/8-inch iron rod set with plastic cap stamped 'Sparr Surveys' at the southerly southerly corner of said Addison Jet Center, an addition to the Town of Addison, Texas, according to the plat thereof recorded in Volume 2005072, Page 70 MRDCT;

**THENCE** North 68 degrees 44 minutes 22 seconds East, along the southeast line of said Addison Jet Center, 30.00 feet to a 5/8-inch iron rod set with plastic cap stamped 'Sparr Surveys' at the south corner of Lot 2 of said Addison Jet Center;

**THENCE** South 21 degrees 15 minutes 38 seconds East, departing the southeast line of said Addison Jet Center, at all times remaining 30.00 feet northeast of and parallel to the westerly line of said Wolfe Subdivision, 0.07 feet;

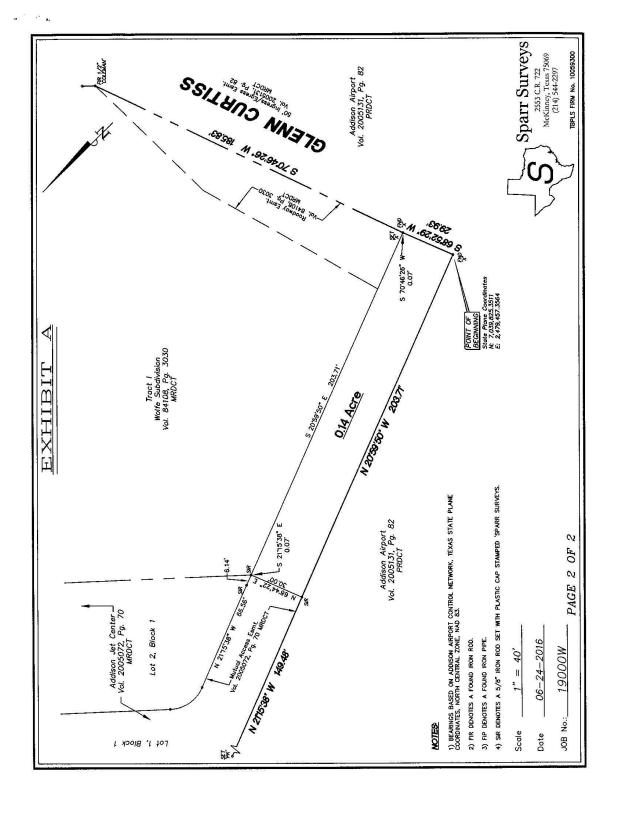
**THENCE** South 20 degrees 59 minutes 50 seconds East, at all times remaining 30.00 feet northeast of and parallel to the westerly line of said Wolfe Subdivision, 203.71 feet to a cut 'x' set in concrete in the north line of said Glenn Curtiss;

**THENCE** South 70 degrees 46 minutes 26 seconds West, along the north line of said Glenn Curtiss. 0.07 feet to a cut 'x' found in concrete;

**THENCE** South 68 degrees 52 minutes 29 seconds West, 29.93 feet to the **POINT of BEGINNING** and containing 0.14 acre of land.

Brad Sparr Registered Professional

Land Surveyor No. 3701



Al-1734 8.

**Work Session and Regular Meeting** 

Meeting Date: 08/09/2016

**Department:** Infrastructure- Development Services

# **AGENDA CAPTION:**

Consider Approval Of A Resolution Authorizing The City Manager To Enter Into A License Agreement With TN Management, LLC, For The Use Of A Portion Of The Public Sidewalk Within The Public Right-Of-Way Adjacent To The Astoria Caffe, Located At 15701 Quorum Drive, On The Corner Of Morris Avenue And Quorum Drive, For An Outdoor Dining Area.

## **BACKGROUND:**

In 2015, the City Council adopted a policy regarding the private use of the sidewalk within the public Right-of-Way in Addison Circle. This was intended to allow restaurants to utilize the sidewalk to expand their outdoor seating areas. The policy established that the City Council would consider approval of a license agreement for such uses based on the following:

- License agreements will only be considered for areas where the remaining sidewalk width would meet or exceed 5 feet in width.
- License agreements will not be considered for areas within 8 feet of a street lane designated for through traffic or within 2 feet of any on-street parking.
- License agreements will be considered based on the unique site conditions that may exist in a particular location such as, but not limited to, access to and placement of ADA required accessible pathways, pedestrian traffic volumes, impact on adjacent uses and interference with the natural flow of pedestrian traffic.
- License agreements shall include indemnity and other provisions necessary in order to adequately protect the Town as determined by staff and the City Attorney.
- The Town will charge a minimum fee of \$500.00 per year for the duration of the agreement.

Astoria Caffe and Wine Bar, located at 15701 Quorum Drive, has requested permission to use a portion of the public right-of-way to accommodate their patio. The area consists of approximately 210 square feet. The Special Use Permit for this expansion will be considered as part of a separate item on this Council agenda. Staff has reviewed the request and found it to be in compliance with the requirements listed above. The license agreement document is attached.

# **RECOMMENDATION:**

Administration recommends approval.

# **Attachments**

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# TOWN OF ADDISON, TEXAS

RESOLUTION NO.
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A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A LICENSE AGREEMENT BETWEEN THE TOWN OF ADDISON AND TN MANAGEMENT, LLC D/B/A ASTORIA CAFFE TO ALLOW USE OF THE RIGHT-OF-WAY FOR OUTDOOR PATIO SEATING, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** The License Agreement between the Town of Addison and TN Management, LLC d/b/a Astoria Caffe, to allow use of the right-of-way for outdoor patio seating, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute the agreement.

**Section 2.** This Resolution shall take effect from and after its date of adoption.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this the 9th day of August, 2016.

	Todd Meier, Mayor
ATTEST:	
By:	-
Laura Bell, City Secretary	
APPROVED AS TO FORM:	
Ву:	_
Brenda N. McDonald, City Attorney	

STATE OF TEXAS	§	
	§	LICENSE AGREEMENT
COUNTY OF DALLAS	§	

This License Agreement is entered into this \_\_\_\_\_ day of August, 2016 by and between the Town of Addison, Texas (the "City") and TN Management, LLC.

# RECITALS:

**WHEREAS**, the Town of Addison, Texas is a home rule city possessing the full power of local self-government pursuant to Article 11, Section 5 of the Texas Constitution, Section 51.072, Tex. Loc. Gov. Code, and its Home Rule Charter; and

WHEREAS, the City is authorized to control and regulate an encroachment or obstruction on a public street within the City (§ 311.001, Tex. Transp. Code) and to permit and prescribe the consideration and terms for the use of a portion of a City street or sidewalk for a private purpose if the use does not interfere with the public use of the street or sidewalk or create a dangerous condition on the street or sidewalk (§ 316.021, Tex. Transp. Code); and

**WHEREAS**, the parties hereto recognize and agree that the City's authority with respect to the public rights-of-way within the Property goes to the full width of the right-of-way and extends indefinitely upward or downward; and

**WHEREAS,** Operator desires to use a portion of the right-of-way adjacent to the restaurant, located at 15701 Quorum Drive, for outdoor dining; and

**WHEREAS**, the City and Operator desire to enter into this License Agreement to permit Operator to utilize a portion of the public right-of-way for outdoor seating to serve the patrons of 15701 Quorum Drive, provided that such complies with the Town's policy for use of the right-of-way in the Addison Circle District adopted by Resolution No. R015-038 on September 8, 2015; and

**WHEREAS,** the Addison Circle District is bounded by Airport Parkway to the North, Arapaho Road to the South, the Dallas Parkway to the East, and Addison Road to the West.

**NOW, THEREFORE,** for and in consideration of the Ten and No/100 Dollars (\$10.00), the mutual covenants and obligations set forth herein, and other good and valuable consideration, the City and Operator do hereby agree as follows:

- 1. <u>Incorporation of premises</u>. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.
- **2.** Grant of license. The City does hereby grant to Operator a revocable license to occupy that portion of the right-of-way adjacent to Operator's restaurant located at 15701 Quorum Drive and as shown on Exhibit A, attached hereto and incorporated herein (the "Licensed Area").

Operator shall occupy the License Area in full compliance at all times with all of the following conditions:

- (a) Operator shall maintain the ADA accessible pathway adjacent to Operator's restaurant;
- (b) No use of the right-of-way is permitted outside the License Area;
- (c) Within the License Area, the Operator may place only moveable items that are not attached to the pavement. Examples of such items include: tables, chairs, planters, heaters, portable lights, umbrellas, etc. as permitted by Town ordinances;
- (d) All items placed in the License Area shall be maintained in safe, neat and good physical condition; and
- (e) Operator shall provide written notice, in accordance with Section 8(c), within 24 hours of Operator's observation of a defect in the pavement or any other condition in the License Area that might pose a danger or harm to the public or persons occupying or passing through the License Area. If such defect is the result of Operator's use of the License Area, Operator shall reimburse the City for the cost of repair.
- 3. <u>Term/Fee.</u> This license granted herein shall continue in force for a period of ten (10) years from the date of execution of this License Agreement, subject to termination as set forth in paragraph 7 hereof. The fee for the license granted herein shall be Five Hundred Dollars (\$500.00) per year and shall be due and payable no later than January 31<sup>st</sup> of each calendar year. The initial fee of Five Hundred Dollars (\$500.00) shall be due at the time of the execution of this agreement and subsequent annual fees shall be payable no later than January 31 of each calendar year.

Should this license be terminated by the City in accordance with Section 7, the Town agrees to refund a pro rata share of the fee based on the number of months remaining in the year.

- 4. <u>Non-exclusive license</u>. This license is not exclusive, and is subject and subordinate to: (a) the right of the City to use the licensed area for any purpose; (b) any existing street utility, drainage or communication facility located in, on, under or upon Addison Circle; (c) all vested rights presently owned by any utility or communication company; (d) any existing license, lease, easement, or other interest heretofore granted by the City and (e) the terms and conditions of this License Agreement.
- 5. <u>Insurance</u>. Operator shall purchase and maintain during the term of this License Agreement commercial general liability insurance including personal injury liability, premises operations liability, and contractual liability, covering, but not limited to, the liability assumed under the indemnification provisions of this License Agreement, with limits of liability for bodily injury, death and property damage of not less than \$1,000,000. Coverage must be on an "occurrence" basis.

Such insurance shall: (i) be issued by a carrier which is rated "A-1" or better by A.M. Best's Key Rating Guide and licensed to do business in the State of Texas, and (ii) name the City as an additional insured and contain a waiver of subrogation endorsement in favor of the City. Certified copies of all of such policies shall be delivered to the City upon the execution of this License Agreement; provided, however, that the City, in its sole discretion and in lieu of certified copies of such policies, may permit the delivery of certificates of insurance together with the declaration page

of such policies, along with the endorsement naming the Owner as an additional insured. Each such policy shall provide that, at least 30 days prior to the cancellation, non-renewal or modification of the same, the Owner shall receive written notice of such cancellation, non-renewal or modification.

The City reserves the right to review the insurance requirements contained herein and to adjust coverages and limits when deemed necessary and prudent by the City.

- 6. <u>Indemnity</u>. Operator shall indemnify the City, its officials, officers, employees and agents against, and hold the City, its officials, officers, employees and agents harmless from, any and all liability, actions, causes of action, lawsuits, judgments, claims, damages, costs or fees, including reasonable attorney's fees and costs of defense, for any injury to or the death of any person or damage to or destruction of any property resulting from or based upon, in whole or in part, any act or omission of Operator, its officers, employees and agents under this License Agreement and any act or omission of the city, specifically including the city's negligence. The provisions of this paragraph shall survive the termination of this License Agreement.
  - **Termination.** This License may be terminated:
  - (a) By the City:
    - (i) in the event Operator fails to comply with any of the terms of this License Agreement within ten (10) days after receipt of notice by Operator from the City of such failure to comply; or
    - (ii) Operator discontinues or abandons the use of the public rights-of-way for the purposes set forth herein; or
    - (iii) upon thirty (30) days' written notice by the City to Operator;
    - (iv) at such time as Operator no longer operates the restaurant that is the subject of this License Agreement; or
  - (b) At any time by Operator upon thirty (30) days' written notice by Operator to the City.

# 8. <u>Miscellaneous</u>.

- (a) <u>Assignment</u>. The rights, duties and responsibilities hereunder shall not be assigned, conveyed or otherwise transferred by Operator without the prior written consent of the City.
- (b) <u>Force Majeure</u>. In the event either the City or Operator shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of fire, casualty, strikes, lockouts, labor trouble, inability to procure materials or supplies, failure of power, governmental authority, riots, insurrections, war or other reason of like nature, where such delay, hindrance or prevention of performance shall not be within the reasonable control of the party obligated to perform

and not be avoidable by diligence, the party so delayed shall promptly give notice to the other party, and thereupon performance of such act shall be excused for such period of delay.

(c) <u>Notices</u>. Any notice provided for herein shall be given by written instrument, personally delivered or sent by certified mail, return receipt requested, and addressed to:

To the City:

To Operator.:

Town of Addison, Texas P.O. Box 9010 Addison, Texas 75001 TN Management, LLC 15701 Quorum Drive Addison, TX 75001

Attn: City Manager Attn: Elena Arsova

- (d) <u>Governing Law; Venue</u>. This License Agreement shall be construed under, and in accordance with, the laws of the State of Texas, and all obligations of the parties created by this License Agreement are performable in Dallas County, Texas. Venue for any action under this License Agreement shall be in Dallas County, Texas.
- (e) <u>Legal Construction</u>. In case any one or more of the provisions contained in this Street License Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of the License Agreement, and this License Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been included in this License Agreement.
- (f) <u>Entire Agreement</u>. This License Agreement represents the entire and integrated agreement between the City and Operator relative to Addison Circle Signs as described herein and supersedes all prior negotiations, representations and/or agreements, either written or oral.
- (g) <u>Amendment</u>. This License may not be altered, waived, amended or extended except by an instrument in writing signed by the City and Operator.
- (h) <u>Authority to execute</u>. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this License 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.

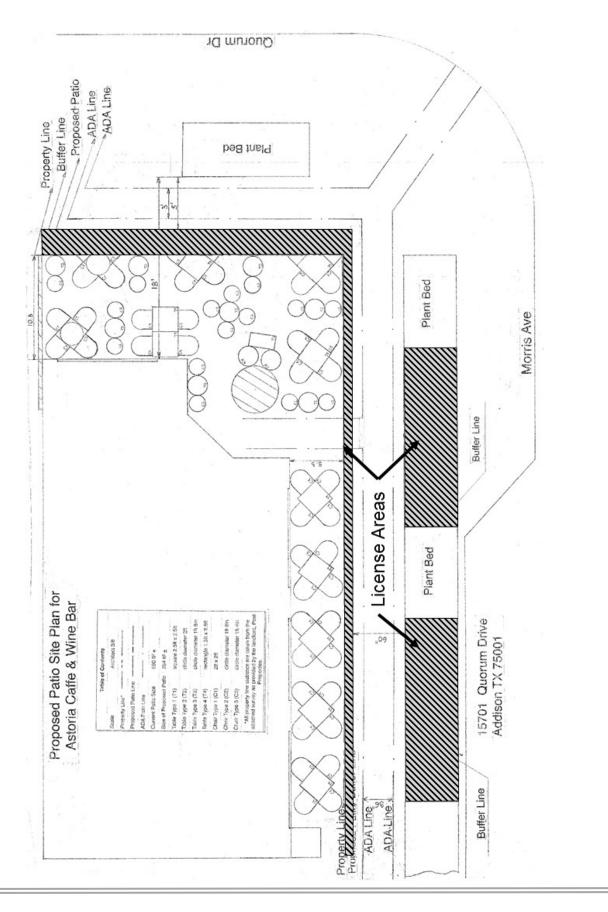
# **EXECUTED** at Dallas County, Texas on the day and year first written above.

# TOWN OF ADDISON, TEXAS

# TN Management, LLC

By:	By:
Wesley S. Pierson, City Manager	Elena Arsova
ATTEST:	
Laura Bell. City Secretary	

# **EXHIBIT A**



Al-1790 9.

**Work Session and Regular Meeting** 

**Meeting Date:** 08/09/2016

**Department:** Infrastructure- Development Services

# **AGENDA CAPTION:**

Consider A Resolution Consenting To The Renewal Of Conventional Hangar
Leases #0220-0101 (4666 Jimmy Doolittle Drive) And #0390-1103 (4540
Glenn Curtiss Drive) With Mercury Air Center Addison DBA Atlantic Aviation
For Three-Year Terms Ending On September 30, 2019.

## **BACKGROUND:**

Atlantic Aviation (Atlantic), one of two Fixed Base Operators (FBO) at Addison Airport, has been a tenant at the airport since 1982. In addition to leasing the two conventional hangars that are proposed to be renewed by this action, Atlantic also has three long-term ground leases and a fueling permit. Atlantic leases the two city-owned hangars for overflow parking for their customers and they are currently a tenant in good standing with the Airport.

Both of Atlantic's current leases expire September 18, 2016 and they are proposing that the leases' terms be extended three-years to September 30, 2019. Any redevelopment plans for Taxiway Sierra or Taxiway Tango would not occur until after the proposed lease terms end on September 30, 2019. The use of these hangars is in line with both the adopted 2013 Airport Strategic Plan and the Addison Airport FAA Master Plan Update, which was approved on July 12, 2016. Therefore, staff recommends that both leases be extended by three years, or to September 30, 2019.

The key lease terms are as follows:

# <u>Lease 0220-0101 – 4666 Jimmy Doolittle Drive (Hangar S3)</u>

Three-year lease term (September 19, 2016 through September 30, 2019)

\$6.73 psf (increased from \$6.50 psf)

\$3,701.50/month rent (increased from \$3,575/month)

Subject to annual CPI adjustments upon each anniversary date of the lease

# Lease 0390-1103 – 4540 Glenn Curtiss Drive (Hangar T5)

Three-year lease term (September 19, 2016 through September 30, 2019)

\$6.52 psf (increased from \$6.30 psf)

\$3,586.00/month rent (increased from \$3,466.67/month)

Subject to annual CPI adjustments upon each anniversary date of the lease

# **RECOMMENDATION:**

Administration recommends approval.

# **Attachments**

Resolution

## TOWN OF ADDISON, TEXAS

|--|

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A CONVENTIONAL HANGAR LEASE BETWEEN THE TOWN OF ADDISON AND MERCURY AIR CENTER – ADDISON, INC. (ALSO KNOWN AS ATLANTIC AVIATION) FOR COMMERCIAL AVIATION USE ON PROPERTY LOCATED AT 4666 JIMMY DOOLITTLE DRIVE, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, AND PROVIDING AN EFFECTIVE DATE.

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

<u>Section 1.</u> The Conventional Hangar Lease between the Town of Addison and Mercury Air Center – Addison, Inc. (also known as Atlantic Aviation) for commercial aviation use on property located at 4666 Jimmy Doolittle Drive, a copy of which is attached to this Resolution as <u>Exhibit A</u>, is hereby approved and the City Manager is authorized to execute the agreement.

**Section 2.** This Resolution shall take effect from and after its date of adoption.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this the 9<sup>th</sup> day of August, 2016.

	Todd Meier, Mayor
ATTEST:	
By: Laura Bell, City Secretary	
APPROVED AS TO FORM:	
By:	
Brenda N. McDonald, City Attorney	

## **EXHIBIT A**

STATE OF TEXAS §
COUNTY OF DALLAS §

#### ADDISON AIRPORT

#### CONVENTIONAL HANGAR LEASE

This Conventional Hangar Lease (hereinafter referred to as the "Hangar Lease" or "Agreement") is made and entered into this \_\_\_day of \_\_\_\_\_, 2016 (the "Effective Date"), by and between the <u>Town of Addison, Texas</u>, a home-ruled municipality (hereinafter referred to as the "City" or "Landlord") and <u>Mercury Air Center - Addison, Inc.</u>, a Texas corporation (hereinafter referred to as "Atlantic Aviation" or "Tenant") (Landlord and Tenant are sometimes referred to herein together as the "parties" and individually as a "party").

#### WITNESSETH:

WHEREAS, Landlord is the owner of the Addison Airport (hereinafter referred to as the "Airport") located in Dallas County, Texas; and

WHEREAS, the Airport is operated and managed for and on behalf of the City by AECOM (formally known as URS Energy & Construction, Inc.) and SAMI Management, Inc., a Texas corporation (severally and/or collectively hereinafter referred to as "Airport Manager" or "Manager"), pursuant to their respective operating agreements, as amended or modified, with the City; and

WHEREAS, the City and Tenant first entered into that certain Addison Airport Conventional Hangar Lease dated and made effective September 17, 2014 with the Expiration Date of September 18, 2016 (the "2014 Lease") whereby the City leased to Tenant the Premises (being the same as defined herein) in accordance to the terms and conditions set forth therein; and

WHEREAS, Tenant desires to continue their possession and occupancy and lease that certain hangar located within the Airport known as <a href="Hangar S-3">Hangar S-3</a> with the public address known as <a href="Hangar S-3">4666 Jimmy Doolittle Drive</a>, Addison, Texas 75001 (hereinafter referred to as the "Premises" and as more fully described in <a href="Exhibits "A", "B" and "C" attached hereto and made a part hereof">hereto and made a part hereof</a>) and Landlord desires to lease the same to Tenant for the Term as defined below; and

WHEREAS, Landlord and Tenant hereby agree to enter into this Hangar Lease under the terms and conditions set forth hereinbelow, which, upon its commencement, supersedes the 2014 Conventional Hangar Lease.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is mutually acknowledged, Landlord and Tenant hereby agree as follows:

 Lease Grant. Subject to the terms of this Lease, Landlord leases the Premises to Tenant, and Tenant leases the Premises from Landlord.

This Hangar Lease is given and entered into subject to (i) all federal, state, and local laws, statutes, constitutional provisions, charters (including the City Charter), ordinances, codes (including building and building-related codes), rules, regulations, directives, policies, permits, standards, zoning requirements, orders, grant assurances, grant agreements, court orders, opinions and decisions, and all interpretations of the foregoing, of and/or by any governmental authority, entity, department, 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), that are applicable, imposed upon, or related to, whether directly or indirectly, this Lease, the Airport, the Premises, and the use and occupancy thereof, as the same are existing or as they may be amended, modified, enacted, adopted, imposed, or superseded, and including, without limitation, any and all grant agreements or grant assurances now existing or as hereafter agreed to, adopted or imposed (collectively, "Laws," and "Law" means any of the foregoing), (ii) all restrictive covenants affecting the Premises, (iii) all restrictions, mortgages, deeds of trust, liens, easements, licenses, leases, and any other encumbrance on or matter affecting the Premises, whether recorded or not, and (iv) and all of the terms, conditions, and provisions of this Hangar Lease.

2. Term: The term hereof shall commence immediately upon the expiration of the 2014 Lease without interruption, effective September 19, 2016 (the "Commencement Date"). The term shall end on September 30, 2019 (the "Expiration Date"), unless otherwise terminated as provided for herein.

#### 3. Rental:

- A. Tenant agrees to pay to Landlord, without offset or deduction, an annual Base Rent of Forty-Four Thousand Four Hundred Eighteen and 00/100 Dollars (\$44,418.00) payable in twelve (12) equal monthly installments in the amount of Three Thousand Seven Hundred One and 50/100 Dollars (\$3,701.50). The first such monthly installment shall be due and payable on or before the Commencement Date and then on or before the first day of each calendar month thereafter during the Term. The Base Rent is subject to periodic adjustments as provided herein.
- B. Prorated Rent: If the Commencement Date is on a day other than the first day of a month, Tenant will pay Landlord as prorated rent, an amount equal to the Base Rent multiplied by the following fraction: the number of days from the Commencement Date to the first day of the following month divided by the number of days in the month in which this Lease commences. The prorated rent is due on or before the Commencement Date.
- D. Additional Rent: In addition to the Base Rent and Prorated Rent, Tenant will pay Landlord all other amounts, as provided by the attached Utility Expense Reimbursement Addendum (**Exhibit D**). All amounts payable under the Addendum are deemed to be "rent" for the purpose of this Lease.
- E. Place of Payment: Tenant will remit all amounts due Landlord under this Lease to the following person at the place stated or to such other person or place as Landlord may later designate in writing:

Addison Airport

c/o Airport Manager 16051 Addison Road, Suite #220 Addison, Texas 75001

- F. Method of Payment: Tenant must pay all rent timely without demand, deduction, or offset, except as permitted by law or this Lease. Tenant shall make payment of all rental owed by personal or corporate check, credit card or electronic transfer if acceptable to Landlord. Cash is not an acceptable form of payment of rent. If Tenant fails to timely pay any amounts due under this Lease, or if any check of Tenant is returned to Landlord by the institution on which it was drawn for insufficient funds, or if its credit card is denied more than three times in any twelve month period, Landlord, after providing written notice to Tenant, may require Tenant to pay subsequent amounts that become due under this Lease by cashier's check or money order only.
- G. Late Charges: If Landlord does not actually receive a rent payment at the designated place of payment within ten (10) days after the date it is due, Tenant will pay Landlord a late charge equal to 5% of the amount due. In this paragraph, the mailbox is not the agent for receipt by Landlord. The Late Charge is a cost associated with the collection of rent and Landlord's acceptance of a late charge does not waive Landlord's right to exercise remedies under Paragraph 24 (Remedies of Landlord) herein.

If payment of a monthly installment of rental due under this Lease is made late (after the 10th day of the month) more than once in any three (3) month period, Tenant, upon the delivery of written notice to Tenant by Landlord ("Additional Deposit Notice"), of and among all other rights and remedies available to Landlord under this Agreement, shall be required to pay to Landlord an amount equal to the then-current monthly rental installment (the "Additional Deposit") to be held and applied by Landlord as an addition to the Security Deposit delivered by Tenant and held on account by Landlord upon Tenant's execution of this Lease pursuant to subparagraph 3.H., below. If Tenant does not deliver the Additional Deposit to Landlord within ten (10) days after the delivery of the Additional Deposit Notice, such failure shall be an event of default under this Lease.

H. Security Deposit: Tenant shall deposit with Landlord, upon Tenant's execution of this Lease, the sum of One Hundred Twenty Six and 00/100 Dollars (\$126.50) which said amount shall be added to that amount now held on account by Landlord as Tenant's "Security Deposit" so the total Security Deposit shall equal the equivalent of one month's installment of the Base Rent as of the Effective Date of this Lease. Landlord and Tenant hereby acknowledge and agree that immediately prior to the Effective Date of this Hangar Lease, Landlord currently holds on account for Tenant a Security Deposit in the sum of Three Thousand Five Hundred Seventy-Five Dollars and 00/100 (\$3,575.00).

Such Security Deposit shall be equal to one monthly installment of the rent unless otherwise adjusted as provided for in Paragraph 4 below.

 If at any time during this Agreement the Security Deposit then held on account by Landlord becomes less than the prevailing monthly installment of Base Rent, Tenant will make an additional payment to Landlord so that the Security Deposit held by Landlord is increased to equal one monthly installment of Base Rent, unless otherwise adjusted as provided for in Paragraph 4 below.

- 2. Landlord shall hold such Security Deposit without interest as security for the performance by Tenant of Tenant's covenants and obligations under this Lease.
- 3. The Security Deposit is not an advance payment of rent or a measure of liquidated damages in case of default by Tenant. Upon the occurrence of any event of default, Landlord may, from time to time, without prejudice to any other remedy provided herein or provided by law, use the Security Deposit to the extent necessary to make good any arrearages of rent and any other damage, injury, expense or liability caused to Landlord by such event of default. Following any such application of the Security Deposit, Tenant shall pay to Landlord, on demand, the amount so applied in order to fully restore the Security Deposit to its required amount.
- 4. If Tenant is not then in default hereunder, such Security Deposit, less any lawful deductions by Landlord, shall be returned by Landlord to Tenant with an accounting of said deductions taken no later than thirty (30) days following the termination or expiration of this Hangar Lease. Permitted deductions from said Security Deposit may include but not be limited to: unpaid rent; unpaid utilities incurred by Tenant; unpaid service charges; damages by Tenant to the Premises (beyond normal wear) or repairs by Landlord; replacement cost of Landlord's property that was in or attached to the Premises and is missing; unreturned keys; agreed reletting charges; cost of cleaning the Premises to a broom-swept condition if required; removal of any trash or debris left in the Premises; cost of the removal and storage of Tenant's personal property left or abandoned by Tenant or otherwise disposed of by Landlord; removal of unauthorized vehicles or aircraft left on the Premises; government fees or fines against Landlord because of Tenant; late fees and other costs of collection, interest earned on unpaid balances; attorneys' fees, court costs and filing fees.
- 4. Adjustment of Rental: Effective on each anniversary after the Commencement Date (hereinafter referred to as the "Adjustment Date"), the Base Rental due under Paragraph 3 shall be adjusted as follows:
- 1. A comparison shall be made between the Consumers' Price Index-All Items for the Dallas, Texas Metropolitan Area (hereinafter referred to as the "Price Index") as it existed on the Commencement Date (the "Base Consumer Price Index") and as it exists on the first day of the calendar month preceding the then applicable Adjustment Date (the "Adjustment Index").
- 2. The Base Rent for the two (2) year period beginning with and following the then applicable Adjustment Date shall be either increased or decreased, as the case may be, by the percentage of increase or decrease in the Price Index between the Base Consumer Price Index and the then applicable Adjustment Index, but in no event shall Base Rental ever be decreased below the Base Rental set forth in Paragraph 3.
- (iii) In the event that the Price Index is unavailable for whatever reason for the computations set forth hereinabove, another index approximating the Price Index as closely as feasible shall be substituted therefor.
- 5. Use of Premises: The Premises shall be used and occupied by Tenant only for general aviation operator purposes:

- ☐ For the storage of personal or corporate aircraft storage only, which said aircraft are under the direct care, custody and control of Tenant; or
  - ✓ Commercial Aviation Use as more fully described as follows:

Storage of aircraft under Tenant's care, custody and control and for no other use without Landlord's advance written consent.

For the purpose herein, Commercial Aviation Use is defined as any operation of a business enterprise whereby its core competency is dedicated to the general aviation industry and any such business practice is providing goods, services, or facilities for a commercial aeronautical purpose (including, without limitation, any activity by the Tenant securing earning, income, compensation, [including exchange or barter of goods, and services], and/or profit from said activities, whether or not such objectives are accomplished).

Any use of the Premises other than that indicated above is not permitted at any time without the prior written consent of Landlord. The Premises shall not be used or occupied for any concession for the sale or distribution of food, drinks, tobacco products, oil, gas, petroleum products or any activity of a similar character. Tenant agrees that no aircraft, vehicle or other equipment will be left unattended at any time outside the boundaries of the Premises or within any common area of the Airport, including the safety area, operating area and/or non-obstruction area of the Airport without the prior written consent of the Airport Manager. Tenant further agrees to cooperate and coordinate with adjacent tenants and Airport Management, when necessary, to facilitate aircraft movement along nearby taxilanes especially during periods of construction, maintenance and repair of Airport facilities.

- Acceptance of Premises: Tenant acknowledges that Tenant has fully inspected the Premises and accepts the Premises as suitable for the purposes for which the same are leased in their present condition, "AS IS, WHERE IS, WITH ALL FAULTS AND PATENT AND LATENT DEFECTS". Without limiting anything in the foregoing, THERE IS NO REPRESENTATION, PROMISE, COVENANT, AGREEMENT, GUARANTY OR WARRANTY OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, CONDITION, QUALITY, SUITABILITY, MERCHANTABILITY, HABITABILITY, OR FITNESS OF THE PREMISES FOR ANY PARTICULAR PURPOSE WHATSOEVER GIVEN IN CONNECTION WITH THIS LEASE, 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.
- 7. 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 currently required for the use and occupancy of the Premises, as set forth in Paragraph 5 above.

- B. Tenant shall, at Tenant's sole cost and expense, comply at all times with all governmental laws, codes, ordinances, rules, policies, and regulations applicable to the use and occupancy of the Premises, as set forth in Paragraph 5 above, as existing or as the same may be reasonably amended or modified.
- C. Tenant shall, at Tenant's sole cost and expense, promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances caused by Tenant and arising out of the use and occupancy of the Premises, as set forth in Paragraph 5 above.
- D. Tenant shall comply with noise abatement standards at the Airport and shall notify any aircraft operator using the Premises of such standards.

### 8. Assignment and Subletting:

- A. Without the prior written consent of Landlord, Tenant shall have no power to and may not assign, sell, pledge, encumber, license, transfer, or otherwise convey (together, "assign" or "assignment") this Lease or any rights or obligation of Tenant hereunder or sublet the whole or any part of the Premises. Any such assignment or any subletting shall be null and void and may be deemed by Landlord (in Landlord's sole discretion) an event of default under Paragraph 23 (Default by Tenant) of this Lease. Any assignment or subletting shall be expressly subject to all the terms and provisions of this Lease, including the provisions of Paragraph 5 pertaining to the use of the Premises. In the event of any Landlord-approved transfer or subletting, Tenant shall not transfer Tenant's rights hereunder or sublet the Premises without first obtaining a written agreement from each such transferee or sublessee whereby each such transferee or sublessee agrees to be bound by the terms and provisions of this Hangar Lease. No such assignment or subletting shall constitute a novation. In the event of the occurrence of an event of default while the Premises are transferred or sublet, Landlord, in addition to any other remedies provided herein or by law, may, at Landlord's option, collect directly from such transferee 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 transferee or subtenant shall release Tenant from the payment or performance of Tenant's obligations hereunder. Landlord's consent to any transfer or subletting will not waive its rights, and it will not stop Landlord from exercising its rights, with respect to any other actual or proposed transfer or subletting, and Landlord's consent to any transfer will not relieve Tenant or any Guarantor of any liability to Landlord under this Lease or otherwise.
- B. Notwithstanding the foregoing, if the Use of Premises defined in Paragraph 5 above is a Commercial Aviation Use, Landlord hereby acknowledges and consents to Tenant's subletting of the Premises for the purpose of renting hangar space for aircraft storage only, provided that each sublease is 1) is made available for Landlord's review and inspection upon written request, 2) said subleases are evidenced by written agreement, signed and executed by Tenant and Subtenant and has incorporated therein and fairly states:
  - 1. each Subtenant agrees to be bound by the terms and provisions of the Hangar Lease, including the provisions of Paragraph 5 pertaining to the use of the Premises. In the event of any conflict between the terms of the Hangar Lease and the terms of the sublease, the terms of the Hangar Lease shall control;
  - 2. no such subletting shall constitute a novation.

- 3. in the event of occurrence of an event of default while the Premises are assigned or sublet, Landlord, in addition to any other remedies provided herein or by law, 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.
- 4. Subtenant shall be obligated to obtain Landlord's consent to any action as to which Tenant is obligated to obtain such consent under the Hangar Lease;
- 5. any such sublease is to automatically terminate upon termination of the Hangar Lease notwithstanding any other provision of the sublease to the contrary;
- 6. Landlord shall have no responsibility or obligation for the performance by subtenant of its obligations under the sublease;
- 7. Neither this consent, the exercise by Landlord of its rights hereunder, nor the sublease or any other instrument shall give Subtenant 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 subtenant.

Further, Tenant agrees that in no way does any sublease release Tenant from any of its covenants, agreements, liabilities and duties under the Hangar Lease; that this consent does not constitute approval by Landlord of the terms of any such sublease; nothing herein contained shall be deemed a waiver or release of any of the Landlord's rights under the Hangar 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 Hangar Lease including, without limitation, the duty to make any and all payments of rent. Any violation of any terms and conditions of the Hangar Lease by a subtenant may constitute a default under the Hangar Lease. Tenant shall provide to Landlord the names and addresses of any subtenants and the make, model, aircraft type and "N" number of any aircraft stored or located on or in the Premises.

9. Property Taxes and Assessments: Tenant shall pay any and all property taxes or assessments levied or assessed on: (i) all improvements, fixtures, equipment or personal property comprising a part of or located upon the Premises; and (ii), the leasehold estate of Tenant created hereby (hereinafter referred to as "Tenant's Taxes"). Upon the request of Landlord, Tenant shall, from time to time, furnish to Landlord "paid receipts" or other written evidence that all of Tenant's Taxes have been paid by Tenant. If any of Tenant's Taxes are included in tax statements delivered to Landlord, Tenant shall pay to Landlord that portion representing Tenant's Taxes within ten (10) days after Tenant's receipt of an invoice therefor from Landlord accompanied by evidence of Landlord's computation of the portion thereof representing Tenant's Taxes.

### 10. Maintenance and Repair of Premises:

A. Landlord shall, throughout the term hereof, except as otherwise expressly provided in this Lease and so long as Tenant is not in default of this Agreement beyond any applicable Cure Period, be responsible for all that is listed as Landlord's Responsibility in **Exhibit E** to this Agreement and incorporated herein by reference. Landlord shall, at Landlord's sole cost and expense, keep the Premises and all common facilities in compliance with all governmental laws, codes, ordinances, rules and regulations applicable hereto, except as otherwise provided in

Paragraph 7 hereof. Landlord shall not be responsible for Tenant's or any third party's equipment and personal property comprising a part of or located upon the Premises.

- B. Except as provided by subparagraph A. of this Paragraph 10, Tenant shall maintain the Premises in good order, condition and repair throughout the term of this Lease including, but not limited to, the "Tenant's Maintenance and Repair Responsibilities" itemized in <a href="Exhibit E">Exhibit E</a> to this Agreement and incorporated herein by reference. Tenant shall be responsible for any alterations, additions or improvements made by Tenant to the Premises and/or any improvements thereon. Tenant shall, throughout the term hereof, be responsible for all consumable supplies and repair of plumbing and water damage caused as a result of Tenant's failure to reasonably protect water pipes from freezing temperatures or misuse by Tenant, Tenant's employees, guests or invitees. Tenant shall be responsible for keeping the Premises free from waste and nuisance and shall, upon the expiration of the Lease Term, or any earlier termination of this Lease or repossession of the Premises by Landlord because of Tenant's default under this Lease, deliver the Premises clean and free of trash and in good condition, with all fixtures and equipment situated in or upon the Premises in the same condition as same existed on the Commencement Date, with reasonable wear and tear excepted.
- C. In the event Tenant fails to so maintain the Premises and/or the improvements, fixtures, equipment and personal property comprising a part of or located upon the Premises, Landlord shall have the right (but not the obligation) to cause all repairs or other maintenance to be made, and the reasonable costs therefor expended by Landlord plus interest thereon as provided in Paragraph 39 shall be paid by Tenant to Landlord on demand.
- D. If Tenant handles or stores flammable materials on the Premises, Tenant agrees to maintain proper safeguards with respect thereto and to comply with all requirements of Landlord's and Tenant's insurance companies and/or governmental authorities with respect to the storage, use and disposal of such materials.
- 11. Alterations, Additions and Improvements: Tenant shall not create any openings in the roof or exterior walls, or make any alterations, additions or improvements to the Premises without the prior written consent of Landlord. Landlord shall not unreasonably withhold its consent for non-structural alterations, additions or improvements. Tenant shall have the right to erect or install shelves, bins, machinery, and trade fixtures, provided that Tenant complies with all applicable governmental laws, ordinances and regulations. All alterations, additions and improvements in and to the Premises shall be performed in accordance with law and in a first-class, workmanlike manner, and Tenant shall promptly pay and discharge all costs, expenses, claims for damages, liens and any and all other liabilities and obligations which arise in connection therewith.

### 12. Insurance:

A. If the use of the Premises defined in Paragraph 5 herein is for Commercial Aviation Use, Tenant shall procure and maintain throughout the Term, without interruption, a policy or policies of insurance, at Tenant's sole cost and expense, to meet or exceed the requirements specified in the then prevailing Addison Airport Minimum Standards and Requirements for Commercial Aeronautical Service Providers (the "Airport Minimum Standards") which may be amended or modified by the City from time to time. At any time over the Term the Airport

Minimum Standards are either suspended, repealed or otherwise modified to the extent Tenant's use and occupancy of the Premises no longer require such insurance policies under the Airport Minimum Standards, Tenant shall procure and maintain throughout the Term, without interruption, the following insurance policies:

- 1. Commercial General Liability insurance against claims for bodily injury, death or property damage or destruction occurring on, in or about the Premises, with limits of liability of not less than \$1,000,000 for each occurrence, CSL/\$1,000,000 general aggregate. Coverage shall include blanket contractual liability for liability assumed under the Lease.
- Statutory limits of Workers Compensation insurance and employer's liability with limits of liability of not less than \$1,000,000.
- 3. Hangarkeepers Legal Liability insurance at limits of \$1,000,000 per occurrence is required if Tenant is engaged in maintenance, repair or servicing of aircraft belonging to any 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..
  - 4. Aircraft Liability insurance for all Tenant-owned or operated aircraft with a minimum bodily injury and property damage per occurrence limit of \$1,000,000 and \$1,000,000 for personal and advertising injury.
- B. If the use of Premises is strictly for Non-commercial Aviation Use, then Tenant shall provide over the Term without interruption the following policies of insurance: Aircraft Liability Insurance or another acceptable form of comprehensive Personal Liability Insurance with limits of liability not less than \$1,000,000 each occurrence, Combined Single Limit (CSL) bodily injury and property damage of \$1,000,000 in general aggregate.
- C. All insurance policies required under this Paragraph 12 shall be endorsed to provide the following, as applicable: (i) in all liability policies, name as additional insureds the Landlord and Manager and their officials, officers, agents, and employees; (ii) in all liability policies, provide that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of activities conducted under the permit, and that insurance applies separately to each insured against whom claim is made or suit is brought; and (iii) waiver of subrogation in favor of Landlord and Manager must be included in all liability and Workers Compensation policies. All such policies shall be issued by an insurance company authorized to do business in Texas and in the standard form approved by the Texas Department of Insurance, if required, and shall be endorsed to provide for at least 30 days' advance written notice to Landlord of a material change in or cancellation of a policy. Certificates of insurance, satisfactory to Landlord, evidencing all coverage above, shall be furnished to Landlord prior to the Commencement Date, with complete copies of policies furnished to the Landlord upon request. Landlord reserves the right to review and revise from time to time the types of insurance and limits of liability required herein.

### 13. Casualty Damage or Destruction:

- A. In case of any damage to or destruction of the buildings, structures, fixtures and equipment on the Premises, or any part thereof, Tenant shall promptly give written notice to Landlord, generally describing the nature and extent of such damage and/or destruction.
- If the Premises (excluding Tenant's fixtures, furniture, equipment, personal property and leasehold improvements made by or on behalf of Tenant or any assignee, subtenant or other occupant of the Premises) should be substantially, totally, or partially destroyed or damaged by fire, tornado or other casualty, this Lease shall not terminate, but Landlord may, at Landlord's sole option and at Landlord's sole cost, expense and risk, proceed forthwith and use reasonable diligence to rebuild or repair the Premises (other than Tenant's fixtures, furniture, equipment, personal property and leasehold improvements made by or on behalf of Tenant or any permitted assignee, subtenant or other occupant or user of the Premises) to substantially the condition in which it existed prior to such destruction or damage; provided, however, that if Landlord elects not to rebuild or repair such damage or destruction, then this Lease shall terminate and rent shall be abated for the unexpired portion of this Lease, effective from the date of actual receipt by Landlord of the written notification of the damage from Tenant. If Landlord elects to rebuild or repair the Premises and the Premises is untenantable in whole or in part following such destruction or damage and during such period of rebuilding or repair, the rent payable hereunder shall be equitably adjusted for that period which it is untenantable. However, if the destruction was caused by the negligence, gross negligence, or willful or wanton act or omission of Tenant, its officers, employees, agents, subtenants, licensees, contractors, subcontractors, or invitees, rent shall not be abated and Tenant shall have the continuing obligation to pay rent during the period of such rebuilding or repair.
- C. Landlord's election to pay for the cost of the repair or rebuilding of the Premises or any part thereof shall not extend beyond or exceed the proceeds of any casualty or property damage insurance payable and actually collected in connection with such damage or destruction. All insurance proceeds, if any, payable on account of such damage or destruction shall be held and retained by Landlord (whether or not such repair or rebuilding occurs or this Lease terminates).

### 14. Condemnation:

- A. If, during the term hereof, any part of the Premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, or is sold to a condemning authority under threat of condemnation, and after such taking by or sale to said condemning authority the remainder of the Premises is not susceptible to efficient and economic occupation and operation by Tenant, this Lease shall automatically terminate as of the date said condemning authority takes possession of the Premises, and Landlord shall refund to Tenant any prepaid but unaccrued rental less any sum then owing by Tenant to Landlord.
- B. If, after such taking by or sale to said condemning authority, the remainder of the Premises is susceptible to efficient and economic occupation and operation by Tenant, this Lease shall not terminate but the rental due hereunder shall be adjusted so that Tenant shall be required to pay for the remainder of the term hereof the sum obtained by multiplying each monthly rental installment due hereunder by a fraction, the numerator of which shall be the number of square feet remaining in the Premises after the taking by or sale to said condemning authority and the denominator of which shall be the square footage originally contained in the Premises. The rental adjustment called for herein shall either not commence or be suspended until said condemning

authority actually takes possession of the condemned portion of the Premises. All other terms and provisions shall remain unchanged unless otherwise provided for herein.

C. Landlord shall receive the entire award or payment from any condemnation and Tenant shall have no claim to that award or for the value to Landlord of any unexpired term of this Lease; provided, however, that Tenant shall have the right to appear in any Condemnation proceeding or action to negotiate, prosecute and adjust any claim attributable to loss or damage to Tenant's trade fixtures and removable personal property, removal or relocation costs, and any loss to Tenant resulting from the unexpired portion of the Lease Term. If this Lease is not terminated pursuant to subparagraph A of this Paragraph, Landlord shall repair damage to the Premises caused by the condemnation (excluding Tenant's fixtures, furniture, equipment, personal property and leasehold improvements made by or on behalf of Tenant or any permitted assignee, subtenant or other occupant of the Premises), except that (i) Landlord shall not be obligated to repair any damage for which Tenant has been reimbursed by the condemning authority; and (ii) if the condemnation damages or payments received by Landlord are not sufficient to pay for such repair, Landlord shall have the right to terminate this Lease.

### 15. Utilities:

A. The party designated below will pay for the following utility charges serving the Premises and any connection/disconnection charges for the utilities. (Check or mark all that apply)

	N/A	Landlord	Tenant	Provided by Landlord & Reimbursed By Tenant (See Exhibit D)
1. Water				<b>√</b>
2. Sewer				1
3. Electric		0		1
4. Gas			1	D
5. Telephone/Data	0	0	1	0
6. Trash	0		1	
7. Cable	0		1	0
8, All Other		0	1	

- B. All utilities to be provided by Landlord and reimbursed by Tenant as indicated above shall be pursuant to <a href="Exhibit D">Exhibit D</a> <a href="Utility Expense Reimbursement Addendum">Utility Expense Reimbursement Addendum</a> attached hereto and incorporated herein by reference.
- C. The responsible party may select or change the utility service provider from time to time over the term of the Lease and the party designated above shall be responsible, at its sole cost and expense, for obtaining all utility connections at or for the Premises. If Tenant is the responsible party for obtaining any of the utility connections at or for the Premises, any access or alterations to the Premises or to the Airport necessary may be made only with Landlord's prior consent and at Tenant's sole expense. Should Landlord incur any liability for utility or connection charges for which Tenant is responsible to pay and Landlord pays such amount, Tenant will immediately upon written notice from Landlord reimburse Landlord such amount. Failure to reimburse Landlord as required upon notice is an event of default under this Lease.
- D. Prior to executing this Lease Tenant should, at its sole costs and expense, determine whether all necessary utilities are available to the Premises and are adequate for Tenant's intended use.
- E. Landlord shall in no event be liable or responsible for any cessation or interruption in any utility services to the Premises.

### 16. Common Facilities:

A. So long as Tenant is not in default hereunder beyond any applicable Cure Period, Tenant and Tenant's employees, agents, servants, customers and other invitees shall have the non-exclusive right to use all common facilities, improvements, equipment and services which may now exist or which may hereafter be provided by Landlord for the accommodation and convenience of Landlord's customers and tenants, including landing and takeoff facilities, means of ingress and egress to the Premises, other Airport installations, and all other reasonable services which may be

provided without charge from time to time by Landlord in operating the Airport ("Common Facilities"). All such Common Facilities shall at all times be under the exclusive control and management of Landlord and may be rearranged, modified, changed or terminated from time to time at Landlord's sole discretion.

- B. Tenant hereby acknowledges the existence of a certain unrecorded ingress/egress easement crossing the leased premises as shown and depicted in **Exhibit B** Property Survey (the "Access Easement"). Tenant further acknowledges the purpose of this easement is for vehicular and pedestrian access to and from the Airport Common Facilities by Landlord's authorized users (and their employees, guests and other invitees) via what is commonly known as Airport Gate 4. Tenant shall not at any time block, interfere or otherwise impede the use or access to this easement and/or Airport Gate 4 by any such authorized user of the Airport Common Facilities. Landlord reserves the right to remove or cause to be removed and impounded or confiscated, at Tenant's sole cost and expense, any obstruction (including any vehicle or other type of tool or equipment) belonging to or otherwise placed by Tenant, Tenant's employees, guests or invitees contributing to the blockage, unsafe passage or unfretted use and access of the Access Easement as intended by Landlord. Tenant's failure to grant unrestricted and safe passage across the Access Easement by Landlord's authorized users of the Airport Common Facilities after receipt of written notice from Landlord is an event of default under this Lease and Landlord may, at its sole discretion, terminate this Lease without further notice or action by Landlord other than that required by law.
- Special Events: Landlord may sponsor certain special events, including, but not limited to, air shows to be conducted on portions of the Airport, which may limit or obstruct access to the Premises and/or to the Airport ("Special Events"). As a material inducement to Landlord to enter into this Lease, and notwithstanding anything to the contrary contained herein, Tenant, on behalf of Tenant and on behalf of all directors, officers, shareholders, partners, principals, employees, agents, contractors, subtenants, licensees or concessionaires of Tenant, and on behalf of any other party claiming any right to use the Leased Premises by, through or under Tenant, hereby: (i) agrees that Landlord has the right to sponsor any or all Special Events and to allow use of portions of the Airport therefor even if the same limits or obstructs access to the Premises and/or to the Airport; (ii) releases, waives and discharges Landlord and Manager, and their respective officials, officers, employees and agents, from all liability for any loss, damage, cost, expense or claim arising or resulting from or pertaining to the limitation or obstruction of access to the Leased Premises and/or to the Airport from the conduct of Special Events and/or activities relating or pertaining thereto including, without limitation, death, injury to person or property or loss of business or revenue (the "Released Claims"); (iii) covenants not to sue the Landlord or Manager or their respective officials, officers, employees and agents (whether in their official or private capacities) for any Released Claims; (iv) agrees that the terms contained in this Paragraph are intended and shall be construed to be as broad and inclusive as possible under the laws of the State of Texas; and (v) agrees that if any portion of this Paragraph is held to be invalid or unenforceable, the remainder of this Paragraph shall not be affected thereby, but shall continue in full force and effect.
- 18. Rules and Regulations: Landlord has adopted Minimum Standards and Rules and Regulations (hereinafter referred to as the "Rules and Regulations") which shall govern Tenant's use of and conduct on the Premises and all Common Facilities, a copy of which has been or will be furnished to Tenant. The Rules and Regulations are incorporated by reference as if written verbatim

herein, and Tenant agrees to comply fully at all times with them. Landlord shall have the right to amend, modify and alter the Rules and Regulations from time to time in a reasonable manner for the purpose of assuring the safety, welfare and convenience of Landlord, Tenant and all other Tenants and customers of the Airport.

- 19. Signs and Equipment: After first securing Landlord's approval, Tenant shall have the right from time to time to install signs depicting Tenant's name and to operate radio, communications, meteorological, aerial navigation and other equipment and facilities in or on the Premises that may be reasonably necessary for the operation of Tenant's business, provided such signs and equipment are installed and maintained in compliance with all applicable governmental laws, rules, policies, and regulations, and all reasonable changes to such rules, policies and regulations, including the Town of Addison's sign ordinance, and do not interfere with the operation of any navigation facilities or Airport communications (including, without limitation, navigation facilities or Airport communications used or operated by the Federal Aviation Administration).
- 20. Landlord's Right of Entry: Landlord and Landlord's authorized representatives shall have the right, during normal business hours, to enter the Premises: (i) to inspect the general condition and state of repair thereof, (ii) to make repairs permitted under this Lease, (iii) to show the Premises to any prospective tenant, purchaser, or lender, or (iv) for any other reasonable and lawful purpose. During the final one hundred eighty (180) days of the term hereof, Landlord and Landlord's authorized representatives shall have the right to erect and maintain on or about the Premises customary signs advertising the Premises for lease.

### 21. Indemnity and Exculpation and Release:

- A. <u>Exculpation.</u> 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 subparagraph 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 subparagraph 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 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 Premises under express or implied invitation of Tenant or any Tenant Persons, or arising out of the use or occupation of the 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 PREMISES, WHETHER DIRECTLY OR INDIRECTLY, (COLLECTIVELY FOR PURPOSES OF THIS SUBPARAGRAPH B, "DAMAGES"), THAT RESULT FROM, RELATE TO, OR ARISE OUT OF, IN WHOLE OR IN PART, (I) ANY CONDITION OF THE 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 PREMISES UNDER EXPRESS OR IMPLIED INVITATION OF TENANT DURING THE LEASE TERM (COLLECTIVELY, "TENANT PERSONS"), (II) ANY CONSTRUCTION ON OR REPAIR TO THE PREMISES, OR THE 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 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. However, Tenant's liability under this clause shall be reduced by that portion of the total amount of the Damages (excluding defense fees and costs) equal to the Addison Person or Addison Persons', or Manager Person or Manager Persons', (as the case may be) proportionate share of the negligence, or conduct that would give rise to strict liability of any kind, that caused the loss. Likewise, Tenant's liability for any Addison Person's or any Manager Person's defense costs and attorneys' fees shall be reduced by that portion of the defense costs and attorneys' fees equal to Addison Person or Addison Persons', or Manager Person or Manager Persons', (as the case may be) proportionate share of the negligence, or conduct that would give rise to strict liability of any kind, that caused the loss.

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.

Release. TENANT HEREBY RELEASES THE TOWN OF ADDISON, TEXAS AND ALL OTHER ADDISON PERSONS (AS THE TERM "ADDISON PERSONS" IS DEFINED IN SUBPARAGRAPH B. OF THIS PARAGRAPH 21) AND AIRPORT MANAGER AND ALL OTHER MANAGER PERSONS (AS THE TERM "MANAGER PERSONS" IS DEFINED IN SUBPARAGRAPH B. OF THIS PARAGRAPH 21) 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 SUBPARAGRAPH B. OF THIS PARAGRAPH 21) FOR (I) ANY DEATH OR INJURY TO ANY PERSON OR PERSONS OR DAMAGE TO OR DESTRUCTION OF PROPERTY OF ANY KIND RESULTING FROM THE 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 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 PARAGRAPH 21 SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS LEASE AGREEMENT

### 22. Environmental Compliance:

No Storage or Disposal: Tenant shall not install, store, use, treat, transport, A. discharge or dispose (or permit or acquiesce in the installation, storage, use, treatment, transportation, discharge or disposal by Tenant, its agents, employees, independent contractors, or subtenants) on the Premises or any portion of the Common Facilities, 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, the Comprehensive Environmental Response Compensation and Liability Act, 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, laws, rules or regulation, or which, even if not so regulated may or could pose a hazard to the health and safety of the occupants of the 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 applicable law; or (ii) in any manner which is prohibited or deemed unsafe under applicable law. (The substances referred to in (a), (b), (c) or (d) are collectively referred to hereinafter as "Hazardous Materials").

### B. Cleanup Laws; Tenant's Indemnity Obligation:

- Tenant shall, at Tenant's sole cost and expense, comply with any presently existing 1. or hereafter enacted laws, and all reasonable rules, standards, regulations, or policies relating to Hazardous Materials (collectively, "Cleanup Laws"). In furtherance and not in limitation of the foregoing, Tenant shall, at Tenant's sole cost and 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 Premises and/or any portion of the Common Facilities 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 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 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 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.
- 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 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. HOWEVER, TENANT'S LIABILITY UNDER THIS CLAUSE SHALL BE REDUCED BY THAT PORTION OF THE TOTAL AMOUNT OF THE DAMAGES (EXCLUDING DEFENSE FEES AND COSTS) EQUAL TO THE ADDISON PERSON OR ADDISON PERSONS', OR MANAGER PERSON OR MANAGER PERSONS', (AS THE CASE MAY BE) PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, THAT CAUSED THE LOSS. LIKEWISE, TENANT'S LIABILITY FOR ANY ADDISON PERSON'S OR ANY MANAGER PERSON'S DEFENSE COSTS AND ATTORNEYS' FEES SHALL BE REDUCED BY THAT PORTION OF THE DEFENSE COSTS AND ATTORNEYS' FEES EQUAL TO ADDISON PERSON OR Addison Persons', or Manager Person or Manager Persons', (as the case may be) PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, THAT CAUSED THE LOSS.

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 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. Environmental Notices: Tenant shall promptly supply Landlord ad 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.** Survival: Tenant's obligations and liability pursuant to the terms of this Paragraph 22 shall survive the expiration or earlier termination of this Lease.
- 23. Default by Tenant: The following events shall be deemed to be events of default by Tenant under this Lease:
- A. Failure of Tenant to pay any installment of rent, or to pay or cause to be paid taxes (to the extent Tenant is obligated to pay or cause same to be paid), utilities, insurance premiums, or any other sum payable to Landlord hereunder on the date that same is due, and such failure shall continue thereafter for a period of ten (10) days and such failure shall not be cured within ten (10) days after written notice thereof to Tenant.

- B. Failure of Tenant to comply with any term, condition or covenant of this Lease, other than the payment of rent or other sum of money, and such failure shall not be cured within thirty (30) days after written notice thereof to Tenant.
- C. Tenant shall fail to deliver the Additional Deposit to Landlord within ten (10) days after the delivery by Landlord to Tenant of the Additional Deposit Notice.
- D. Insolvency, the making of a transfer in fraud of creditors, or the making of an assignment for the benefit of creditors by Tenant or any guarantor of Tenant's obligations.
- E. Filing of a petition under any Paragraph or chapter of the National Bankruptcy Act, as amended, or under any similar law or statute of the United States or any state thereof by Tenant or any guarantor of Tenant's obligations, or adjudication as a bankrupt or insolvent in proceedings filed against Tenant or such guarantor.
- F. Appointment of a receiver or trustee for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations.
- G. Abandonment by Tenant of any substantial portion of the Premises or cessation of use of the Premises for the purposes leased.
- 24. Remedies of Landlord: Upon the occurrence of any of the events of default listed in Paragraph 23, Landlord shall have the option to pursue any one or more of the following remedies without notice or demand whatsoever:
- A. Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord. If Tenant fails to surrender the Premises, Landlord may, without prejudice to any other remedy which Landlord may have for possession of the Premises or arrearages in rent and without further notice or demand, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim for damages therefor. Tenant shall pay to Landlord on demand the amount of all loss and damages which Landlord may suffer by reason of such termination, whether through inability to relet the Premises on satisfactory terms or otherwise.
- B. Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord. If Tenant fails to so surrender the Premises, Landlord may, without prejudice to any other remedy which Landlord may have for possession of the Premises or arrearages in rent and without further notice or demand, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim for damages therefor. Tenant shall pay to Landlord on the date of such termination damages in any amount equal to the excess, if any, of the total amount of all monthly rental and other amounts to be paid by Tenant to Landlord hereunder for the period which would otherwise have constituted the unexpired portion of the term of this Lease over the then fair market rental value of the Premises for such unexpired portion of the term of this Lease.

C. Enter upon and take possession of the Premises without terminating this Lease and without being liable for prosecution or for any claim for damages therefor, and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof. Landlord may (but shall not be required to) relet the Premises and receive the rent therefor. Tenant agrees to pay to Landlord monthly or on demand from time to time any deficiency that may arise by reason of any such reletting. In determining the amount of such deficiency, brokerage commissions, attorneys' fees, remodeling expenses and other costs of reletting shall be subtracted from the amount of rent received under such reletting.

Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the terms, conditions and covenants herein contained. If any of Tenant's property ("Tenant Property") remains upon the Premises upon the expiration of the Lease term or any earlier termination of this Lease or any repossession of the Premises by Landlord because of Tenant's default under this Lease, Landlord shall have the right to remove such Tenant Property from the Premises and store such Tenant Property, and Tenant shall be obligated to reimburse Landlord for all of the costs incurred by Landlord in removing and storing such Tenant Property. Landlord shall not be required to release any Tenant Property to Tenant until Tenant has paid Landlord all costs incurred by Landlord in removing and storing such Tenant Property and all other amounts owed by Tenant to Landlord pursuant to this Lease, including, without limitation, unpaid rental and costs incurred by Landlord to repair the Premises.

- 25. Default by Landlord: No default by Landlord hereunder shall constitute an eviction or disturbance of Tenant's use and possession of the Premises or render Landlord liable for damages or entitle Tenant to be relieved from any of Tenant's obligations hereunder (including the obligation to pay rent) or grant Tenant any right of deduction, abatement, set-off or recoupment or entitle Tenant to take any action whatsoever with regard to the Premises or Landlord until thirty (30) days after Tenant has given Landlord written notice specifically setting forth such default by Landlord, and Landlord has failed to cure such default within said thirty (30) day period, or in the event such default cannot be cured within said thirty (30) day period then within an additional reasonable period of time so long as Landlord has commenced curative action within said thirty (30) day period and thereafter is diligently attempting to cure such default. If any mortgagee of Landlord has given Tenant its address for notices and specifically requests such notice, Tenant agrees to give the notice required hereinabove to such mortgagee at the time Tenant gives same to Landlord, and to accept curative action, if any, undertaken by such mortgagee as if such curative action had been taken by Landlord.
- 26. Waiver of Subrogation: Each party hereto waives any and every claim which arises or may arise in such party's favor against the other party hereto during the term of this Lease for any and all loss of, or damage to, any of such party's property located within or upon, or constituting a part of the Premises, which loss or damage is covered by valid and collectible fire and extended coverage insurance policies, to the extent that such loss or damage is recoverable under such insurance policies. Such mutual waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Lease with respect to any loss of, or damage to, property of the parties hereto. Inasmuch as such mutual waivers will preclude the

assignment of any aforesaid claim by way of subrogation or otherwise to an insurance company (or any other person), each party hereby agrees immediately to give to each insurance company which has issued to such party policies of fire and extended coverage insurance, written notice of the terms of such mutual waivers, and to cause such insurance policies to be properly endorsed, if necessary, to prevent the invalidation of such insurance coverages by reason of such waivers.

- 27. Title to Improvements: The Town of Addison, Texas, solely owns the Premises. Any and all improvements made to the Premises by Tenant shall become the property of Landlord upon the expiration or termination of this Lease; provided, however: (i) if Tenant is not then in default hereunder, Tenant shall have the right to remove all personal property, equipment, or trade fixtures owned by Tenant from the Premises, but Tenant shall be required to repair any damage to the Premises caused by such removal in a good and workmanlike manner and at Tenant's sole cost and expense; and (ii) Landlord may elect to require Tenant to remove all improvements made to the Premises by Tenant and restore the Premises to the condition in which the same existed on the Commencement Date hereof, in which event Tenant shall promptly perform such removal and restoration in a good and workmanlike manner and at Tenant's sole cost and expense. If Tenant fails or refuses to remove any or all of Tenant's personal property, equipment, and trade fixtures from the Premises on or before the date of the termination of this Lease, the items which Tenant has failed or refused to remove: (i) shall be considered abandoned by Tenant, (ii) shall become the property of Landlord, and (iii) may be disposed of by Landlord in any manner desired by Landlord in Landlord's unfettered discretion.
- 28. Mechanics' and Materialmen's Liens: TENANT AGREES TO DEFEND, INDEMNIFY AND HOLD LANDLORD HARMLESS OF AND FROM ALL LIABILITY ARISING OUT OF THE FILING OF ANY MECHANICS' OR MATERIALMEN'S LIENS AGAINST THE PREMISES BY REASON OF ANY ACT OR OMISSION OF TENANT OR ANYONE CLAIMING UNDER TENANT, AND LANDLORD, AT LANDLORD'S OPTION, MAY SATISFY SUCH LIENS AND COLLECT THE AMOUNT EXPENDED FROM TENANT TOGETHER WITH INTEREST THEREON AS PROVIDED IN PARAGRAPH 39 AS ADDITIONAL RENT; PROVIDED, HOWEVER, THAT LANDLORD SHALL NOT SO SATISFY SUCH LIENS UNTIL THIRTY (30) DAYS AFTER WRITTEN NOTIFICATION TO TENANT OF LANDLORD'S INTENTION TO DO SO AND TENANT'S FAILURE DURING SUCH THIRTY (30) DAY PERIOD TO BOND SUCH LIENS OR ESCROW FUNDS WITH APPROPRIATE PARTIES TO PROTECT LANDLORD'S INTEREST IN THE PREMISES.
- 29. Title: Tenant accepts the Premises subject to: (i) the Addison Airport Minimum Standards and Requirements For Commercial Aeronautical Service Providers adopted March 1, 2004 as amended or modified from time to time, and the prevailing Addison Airport Rules and Regulations; (ii) easements and rights-of-way; and (iii) zoning ordinances and other ordinances, laws, statutes or regulations now in effect or hereafter promulgated by any governmental authority having jurisdiction over the Premises.
- 30. Quiet Enjoyment and Subordination: Landlord covenants, represents and warrants that Landlord has full right and power to execute and perform this Lease and to grant the estate demised herein, and that Tenant, upon payment of the rents herein reserved, and performance of the terms, conditions, covenants and agreements herein contained, shall peaceably and quietly

have, hold and enjoy the Premises during the full term of this Lease; provided, however, that Tenant accepts this Lease subject and subordinate to any recorded mortgage, deed of trust or other lien presently existing upon the Premises. Landlord further is hereby irrevocably vested with full power and authority by Tenant to subordinate Tenant's interest hereunder to any mortgage, deed of trust or other lien now existing or hereafter placed on the Premises or to declare this Lease prior and superior to any mortgage, deed of trust or other lien now existing or hereafter placed on the Premises. Tenant agrees upon demand to execute such further instruments subordinating this Lease as Landlord may request, provided such subordination shall be upon the express conditions that (i) this Lease shall be recognized by the mortgagee and that all of the rights of Tenant shall remain in full force and effect during the full term of this Lease so long as Tenant pays and performs all of the duties and obligations of Tenant under this Lease; and (ii) in the event of foreclosure or any enforcement of any such mortgage, deed of trust or other lien, the rights of Tenant hereunder shall expressly survive and this Lease shall in all respects continue in full force and effect so long as Tenant shall fully perform all Tenant's obligations under this Lease. Tenant also agrees upon demand to execute further instruments declaring this Lease prior and superior to any mortgage, deed of trust or other lien and specifically providing that this Lease shall survive any foreclosure of such mortgage, deed of trust or other lien. Upon any foreclosure of any mortgage, deed of trust or other lien now existing or hereafter placed on the Premises, Tenant agrees to attorn to and recognize as landlord hereunder, the purchaser of Landlord's interest in the Premises at any foreclosure sale pursuant to any such mortgage, deed of trust or other lien, if Tenant is required to do so by the applicable party.

- 31. Access and Egress: Landlord reserves, and Tenant hereby grants to Landlord, the full and unrestricted access to and egress from that portion of the Premises on which buildings are not located for Landlord, its tenants, employees, guests, patrons, invitees, contractors, suppliers of materials, furnishers of services, its or their equipment, vehicles, machinery and other property, and Manager, its officers, employees and agents, without charge to Landlord or to said persons or entities.
- 32. Rent on Net Return Basis: It is intended that the rent provided for in this Lease shall be an absolutely net return to Landlord for the term of this Lease, free of any loss, expenses or charges with respect to the Premises including, without limitation, maintenance, repairs, replacement, insurance, taxes and assessments, and this Lease shall be construed in accordance with such intention.
- 33. Holding Over: Should Tenant, or any of Tenant's successors in interest fail to surrender the Premises, or any part thereof, on the expiration of the term of this Lease, such holding over shall constitute a tenancy from month to month only terminable at any time by either Landlord or Tenant after thirty (30) days' prior written notice to the other, at a monthly rental equal to one hundred fifty percent (150%) of the rent paid for the last month of the term of this Lease.
- 34. Waiver of Default: No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Lease shall be deemed to be a waiver of any subsequent default or breach of the same or any other term, condition or covenant contained herein.
- 35. Release of Landlord Upon Transfer: All of Landlord's personal liability for the performance of the terms and provisions of this Lease (except for any liability accruing prior to such

transfer) shall terminate upon a transfer of the Premises by Landlord, provided that the obligations of Landlord under this Lease are covenants running with the land and shall be binding upon the transferee of Landlord's interest in this Lease and the Premises.

- 36. Attorneys' Fees: If, on account of any breach or default by Landlord or Tenant of their respective obligations under this Lease, it shall become necessary for the other to employ an attorney to enforce or defend any of such party's rights or remedies hereunder, and should such party prevail, such party shall be entitled to collect reasonable attorneys' fees incurred in such connection from the other party.
- 37. Financial Information: Tenant agrees that Tenant will from time to time, upon the written request of Landlord during the term of this Lease furnish to Landlord such credit and banking references as Landlord may reasonably request.

### 38. Estoppel Certificates:

- A. Tenant agrees that from time to time, upon not less than thirty (30) days' prior written request by Landlord, Tenant will deliver to Landlord a statement in writing certifying: (i) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease as modified is in full force and effect and stating the modifications); (ii) the dates to which rent and other charges have been paid; (iii) Landlord is not in default under any term or provision of this Lease or if in default the nature thereof in detail in accordance with an exhibit attached thereto; (iv) that, if requested by Landlord, Tenant will not pay rent more than one (1) month in advance and that this Lease will not be amended without notice to Landlord's mortgagee and that the same will not be terminated without the same notice required by the Lease to be furnished to Landlord also being furnished to Landlord's mortgagee and Landlord's mortgagee fails to cure such default within the curative period allowed Landlord under this Lease; and (v) any other information pertaining to Landlord, Tenant, this Lease or the Premises reasonably requested by Landlord.
- B. Landlord agrees that from time to time, upon not less than thirty (30) days' prior written request by Tenant, Landlord will deliver to Tenant a statement in writing certifying: (i) that this Lease is unmodified and in full force and effect (or if there have been modifications, that the lease as modified is in full force and effect and stating the modifications); (ii) the dates to which rent and other charges have been paid; and/or (iii) Tenant is not in default under any term or provision of this Lease or if in default the nature thereof in detail in accordance with an exhibit attached thereto.
- 39. Interest on Tenant's Obligations and Manner of Payment: All monetary obligations of Tenant to Landlord under this Lease remaining unpaid ten (10) days after the due date of the same (if no due date has been established under other provisions hereof, the "due date" shall be the date upon which Landlord demands payment from Tenant in writing) shall bear interest per annum at the greater of ten percent (10%) or the highest non-usurious rate then allowed by law from and after said tenth (10th) day until paid. If more than twice during the term of the Lease Tenant's personal or corporate check is not paid by the bank on which it is drawn for whatever reason, Landlord may require by giving written notice to Tenant that the payment of all future monetary obligations of Tenant under this Lease are to be made on or before the due date by cashier's check, certified check or money order, and the delivery of Tenant's personal or corporate check will no

longer constitute payment of such monetary obligations. Any acceptance by Landlord of a personal or corporate check after such notice shall not be deemed or construed as a waiver or estoppel of Landlord to require other payments as required by said notice.

- Landlord's Lien: In addition to the constitutional and statutory Landlord's liens, TENANT HEREBY GRANTS TO LANDLORD A SECURITY INTEREST TO SECURE PAYMENT OF ALL RENT DUE HEREUNDER FROM TENANT, UPON ALL GOODS, WARES, EQUIPMENT, FIXTURES, FURNITURE AND OTHER PERSONAL PROPERTY OWNED BY TENANT AND SITUATED IN OR UPON THE PREMISES, TOGETHER WITH THE PROCEEDS FROM THE SALE OR LEASE THEREOF. Such property shall not be removed without the consent of Landlord until all arrearages in rent then due to Landlord hereunder shall have been paid and discharged. Upon Tenant's failure to pay rent due within ten (10) days after the due date, Landlord may, in addition to any other remedies provided herein or by law, enter upon the Premises and take possession of any and all goods, wares, equipment, fixtures, furniture and other personal property owned by Tenant and situated on the Premises without liability for trespass or conversion, and sell the same at public or private sale with or without having such property at the sale, after giving Tenant reasonable notice of the time and place of any such sale. Landlord has no right to and has no security interest in and may not take possession of any property which may be situated on the Premises but which is not owned by Tenant, including but not limited to property which may be owned by another and leased and/or loaned to Tenant. Unless otherwise required by law, notice to Tenant of such sale shall be deemed sufficient if given in the manner prescribed in this Lease at least thirty (30) days before the time of the sale. Any public sale made under this paragraph shall be deemed to have been conducted in a commercially reasonable manner if held in the Premises or where the property is located, after the time, place and method of sale and a general description of the types of property to be sold have been advertised in a daily newspaper published in Dallas County, Texas, for five (5) consecutive days before the date of the sale. Landlord or Landlord's assigns may purchase at a public sale and, unless prohibited by law, at a private sale. The proceeds from any disposition dealt with in this paragraph, less any and all expenses connected with the taking of possession, holding and selling of the property including reasonable attorneys' fees and legal expenses), shall be applied as a credit against the indebtedness secured by the security interest granted herein. Any surplus shall be paid to Tenant or as otherwise required by law, and Tenant shall pay any deficiency forthwith. Upon request by Landlord, Tenant agrees to execute and deliver to Landlord financing statements in form sufficient to perfect the security interest of Landlord in the aforementioned property and proceeds thereof under the provisions of the Texas Business and Commerce Code. The constitutional and statutory liens for rent are expressly reserved; the security interest herein granted is in addition and supplementary thereto.
- 41. Corporate Execution: If Tenant is a corporation or if this Lease shall be assigned by Tenant to a corporation or if Tenant sublets all or a portion of the Premises to a corporation, such corporation hereby agrees to execute and deliver to Landlord from time to time during the term of this Lease such instruments as Landlord may reasonably request to evidence: (i) the authority of such corporation to transact business good standing with the State of Texas; and (ii) the authority of the officers of such corporation to execute this Lease or other documents in connection with this Lease.

- 42. Joint and Several Liability: If more than one person or entity is defined as Tenant in this Lease, all of the duties, obligations, promises, covenants and agreements contained in this Lease to be paid and performed by Tenant shall be the joint and several obligation of all persons or entities defined as Tenant. Each person or entity defined as Tenant agrees that Landlord, in Landlord's sole discretion, may: (i) institute or bring suit against them, jointly and severally, or against any one or more of them; (ii) compromise or settle with any one or more of them for such consideration as Landlord may deem proper; and (iii) release one or more of them from liability hereunder, and that no such action by Landlord shall impair or affect Landlord's rights to collect costs, expenses, losses or damages incurred or suffered by Landlord from the other persons or entities defined as Tenant, or any of them, not so sued, compromised, settled with or released.
- 43. Certificate of Occupancy: Tenant may, prior to the commencement of the term of this Lease, apply for a Certificate of Occupancy to be issued by the Town of Addison. If for any reason, beyond the reasonable control of Tenant, Tenant is unable to secure a Certificate of Occupancy within thirty (30) days of said Commencement Date, Tenant may terminate this Lease provided Tenant has given Landlord written notice of all deficiencies preventing the issuance of said Certificate of Occupancy in favor of Tenant and Landlord fails to cure or otherwise resolve the deficiency(ies) within ten (10) business days of Landlord's receipt of Tenant's written notice. Nothing herein contained shall obligate Landlord to install any additional electrical wiring, plumbing or plumbing fixtures, or other fixtures or equipment or any other improvements whatsoever which are not presently existing in the Premises, or which have not been expressly agreed upon by Landlord in writing.
- 44. Independent Contractor: It is understood and agreed that in leasing and operating the Premises, Tenant is acting as an independent contractor and is not acting as agent, partner, joint venturer or employee of Landlord.
- 45. Force Majeure: In the event performance by Landlord of any term, condition or covenant in this Lease is delayed or prevented by an 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 hindered.
- 46. Exhibits: All exhibits, attachments, annexed instruments and addenda referred to herein shall be considered a part hereof for all purposes with the same force and effect as if copied verbatim herein.
- 47. Use of Language: Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural, unless the context otherwise requires.
- 48. Captions: The captions or headings or paragraphs in this Lease are inserted for convenience only, and shall not be considered in construing the provisions hereof if any question of intent should arise.
- 49. Successors: The terms, conditions and covenants contained in this Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto and their respective

successors in interest and legal representatives except as otherwise herein expressly provided. All rights, powers, privileges, immunities and duties of Landlord under this Lease including, but not limited to, any notices required or permitted to be delivered by Landlord to Tenant hereunder may, at Landlord's option, be exercised or performed by Landlord's agent or attorney.

- **50.** Severability: If any provision in this Lease should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Lease shall not be affected thereby.
- 51. Notices: Any notice or document required to be delivered hereunder may be delivered in person or shall be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage prepaid as registered or certified mail (return receipt requested is optional by sender), addressed to the parties at the addresses indicated below, or at such other addresses as may have theretofore been specified by written notice delivered in accordance herewith.

### TO LANDLORD:

Mercury Air Center - Addison, Inc., 4400 Glenn Curtiss Drive Addison, TX 75001

Attn:

Town of Addison, Texas c/o Airport Manager 16051 Addison Road, Suite 220 Addison, Texas 75001 Attn: Real Estate Manager

and

Town of Addison, Texas 5300 Beltline Road Dallas, TX 75001-9010

	200		
T:41			
Title:			

TO TENANT:

- 52. Fees or Commissions: Each party hereto hereby covenants and agrees with the other that such party shall be solely responsible for the payment of any brokers', agents' or finders' fees or commissions agreed to by such party arising from the execution of this Lease or the performance of the terms and provisions contained herein, AND SUCH PARTY AGREES TO INDEMNIFY AND HOLD THE OTHER PARTY HARMLESS FROM THE PAYMENT OF ANY SUCH FEES OR COMMISSIONS.
- 53. Counterparts: This Lease may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.
- 54. Governing Law and Venue: This Lease and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas, and with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement; and Landlord and Tenant both irrevocably agree that venue for any dispute concerning this Lease or any

of the transactions contemplated herein shall be in any court of competent jurisdiction in Dallas County, Texas.

- 55. No Recording: Tenant agrees that Tenant will not record this Lease in the real property records of Dallas County, Texas, without first securing the prior written consent of Landlord, which may be withheld at Landlord's sole discretion. However, Tenant agrees upon the written request of Landlord to execute, acknowledge and deliver to Landlord a short-form lease in recordable form.
- **56. Diagram:** The diagram of the Airport attached hereto as **Exhibit C** merely evidences existing or contemplated improvements. By attaching such diagram as an exhibit to this Lease, Landlord is in no way contracting or bound to maintain or construct improvements exactly as shown thereon or prohibited from making additional or different improvements.
- 57. Time of Essence: Time is of the essence in the payment and performance of the duties and obligations imposed upon Tenant by the terms and conditions of this Lease.
- 58. Survival: All duties and obligations imposed upon Tenant by the terms and conditions of this Lease shall survive the termination or expiration of this Lease until paid or performed.

### 59. Special Conditions:

Intentionally left blank

Paragraphs and Exhibits A through E attached hereto and made a part hereof, together with the premises to this Lease set forth above which are incorporated herein, and any other documents incorporated herein (including, without limitation, the Rules and Regulations), embodies the entire agreement between Landlord and Tenant and supersedes all prior agreements and understandings, whether written or oral, and all contemporaneous oral agreements and understandings relating to the subject matter hereof. Except as otherwise specifically provided herein, no agreement hereafter made shall be effective to change, modify, discharge or effect an abandonment of this Lease, in whole or in part, unless such agreement is in writing and signed by or on behalf of the party against whom enforcement of the change, modification, discharge or abandonment is sought.

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

TENANT:	LANDLORD:
By: Mercury Air Center - Addison, Inc.	Town of Addison, Texas  By:
Printed Name: Louis T. Pepper	Wesley S. Pierson, City Manager
Title: President and CEO	

Disclosure of Representation by SAMI Management, Inc.: SAMI and its brokers and salespersons are licensed and regulated by the Texas Real Estate Commission (TREC). SAMI is performing professional services pursuant to a written agreement with the Town of Addison and, among other things, represents the Town of Addison as the owner's agent for Addison Airport in Addison, Texas. SAMI is available to help and assist any prospective tenant and is obligated to treat them ethically and fairly. By law and by contract it cannot represent tenants or prospective tenants and must place the interests of the Town of Addison first. A tenant or prospective tenant should not tell the owner's agent anything the tenant or prospective tenant would not want the Town of Addison to know because the owner's agent must disclose to the owner any material information known to the owner's agent. Furthermore, in respect of the relationship of the parties, SAMI and its brokers and salespersons decline to serve as an intermediary between owner and tenant or prospective tenant. For further information, contact SAMI Management, Inc. at <a href="mailto:bill.dyer@samingmt.com">bill.dyer@samingmt.com</a> or 972-392-4856. A copy of Information about Brokerage Services as approved by Texas Real Estate Commission is available upon request.

### EXHIBIT A

### **Legal Description of Lease Premises**

### PROPERTY # 0220 BUILDING # S3

**BEING** a tract of land situated in the Edward Cook Survey, Abstract No. 326, in the Town of Addison, Dallas County, Texas, being located on the Addison Municipal Airport, and being more particularly described as follows:

**COMMENCING** at a "PK" nail set at the intersection of the east line of Tract 1 as described in the unrecorded Ground Lease #0200-3502 to Turbine Aircraft Service, with the south line of Jimmy Doolittle Drive (Unrecorded 60 foot right-of-way);

**THENCE** N 68º19'44" E, along the south line of said Jimmy Doolittle Drive, 112.95 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys" at the **POINT of BEGINNING**;

**THENCE** N 68º19'44" E, continuing along the south line of said Jimmy Doolittle Drive, 135.89 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys";

**THENCE** S 21º40'16" E, departing the south line of said Jimmy Doolittle Drive, 136.47 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys";

THENCE S 68º40'30" W, 5.49 feet to a cut "V" set, and lying in a non-tangent circular curve to the right having a radius of 92.00 feet;

**THENCE** southwesterly, along said curve to the right, through a central angle of 06°33′17″, an arc distance of 10.53 feet and having a chord which bears \$ 07°01′28″ W, 10.52 feet to a "PK" nail set at the point of reverse curvature of a circular curve to the left having a radius of 268.50 feet;

**THENCE** southwesterly, along said curve to the left, through a central angle of 11º45'42", an arc distance of 55.13 feet and having a chord which bears S 05º29'32" W, 55.03 feet to a "PK" nail set in the north line of Taxiway Sierra;

THENCE S 68°36'46" W, along the north line of said Taxiway Sierra, 96.04 feet to a "PK" nail set;

THENCE N 21º13'44" W, departing the north line of Taxiway Sierra, 52.03 feet to a "PK" nail set;

**THENCE** S 68º46'16" W, 20.85 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys";

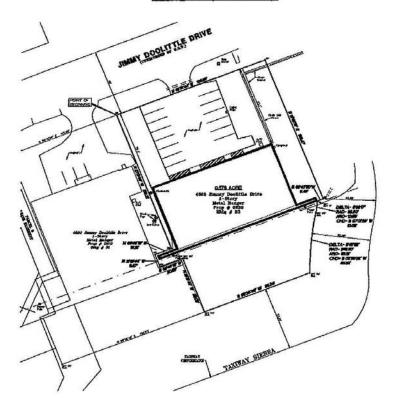
THENCE N 21º13'44" W, 11.87 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys":

**THENCE** N 68º46'16" E, 15.16 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys":

THENCE N 21º13'44" W, 130.21 feet to the POINT OF BEGINNING and containing 0.578 acre of land;

### **EXHIBIT B**

### **Property Survey**

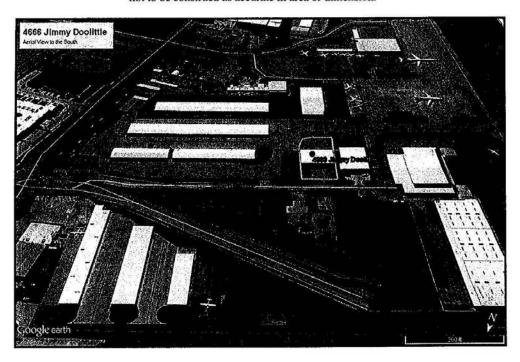


Taxiway Sierra has an Object Free Area (OFA) 57' from either side of the taxilane centerline. To the east and south-east of the Subject Property, the Object Free Zone reduces to 50' from either side of the taxilane centerline. At know no time are aircraft, vehicles or equipment to be left unattended or parked within the OFA. See Airport Rules and Regulations for more information.

### EXHIBIT C

### Aerial View of Leased Premises

Below is a depiction of the proximity of the Leased Premises for informational purposes only and is not to be construed as accurate in area or dimension.



CONVENTIONAL HANGAR LEASE - Exhibits

### EXHIBIT D

### Utility Expense Reimbursement Addendum

ADDENDUM TO THE CONVENTIONAL HANGAR LEASE AGREEMENT BETWEEN THE TOWN OF ADDISON AND MERCURY AIR CENTER-ADDISON, INC. CONCERNING THE LEASED PREMISES AT 4666 JIMMY DOOLITTLE ROAD AT ADDISON AIRPORT, ADDISON, DALLAS COUNTY, TEXAS 75001

In addition to the Base Rent stated in the Lease, Tenant will pay Landlord as Additional Rent the following utility services described in this addendum. Tenant will pay the Additional Rent each month in arrears when or before the next Base Rent monthly installment is due:

- Electrical Services: Direct Energy ESI ID: 443720007238936/Meter #113356990LG
- Water & Sewer: Town of Addison Account: <u>550/408901</u> Meter #<u>04770670</u>

Each month Landlord shall assess Tenant for all direct utility costs for these utilities, including taxes, fees and other related costs billed and paid for by Landlord for the preceding billing cycle that exclusively serve the Premises. Landlord agrees to reasonably cooperate with Tenant in the event Tenant should desire to inquire, protest or appeal the charges being assessed by the utility service provider. To this end, and at Tenant's expense, Tenant shall give Landlord prior written notice of any such protest or appeal, and resolution thereof.

Landlord agrees not to assess any rebilling or administrative service fees for utility costs covered under this addendum. Tenant's failure to pay all Additional Rent as required by the Lease and/or this Addendum is considered an event of default pursuant to Section 23.A. of the Lease.

### EXHIBIT E

## 4666 Jimmy Doolittle Drive

# Maintenance and Repair Responsibilities

	Landlord	Tenant
Ground Maintenance		100
Building & Gate Locksmithing & Security	Maintains all public access gates	All, as required by Tenant's use and all Laws, including ordinances, rules and regulations. All doors and gates leading to Airport Operations Area are to be kept secured at all times.
Fencing	Landlord maintains Airport perimeter fence (damage to such fence caused by or resulting from any of Tenant's, or its guests' and invitees, acts or omissions shall be paid for by Tenant)	All other fencing upon the Premises, if any, is Tenant's responsibility.
Landscape & Lawn Care	All turf, beds and planters within the Premises	
Landscape Irrigation	Minimum requirements by City ordinance	
Pavement - Parking	Structural repairs and reconstruction	Regular sweeping and snow removal. Any damage other than that resulting from normal wear and tear. Painting and striping as required for intended use or required by ordinance or otherwise by Landlord with Landlord's prior written consent.
Pavement - Ramp	Structural repairs and reconstruction	Regular sweeping and snow removal. Any damage other than that resulting from normal wear and tear. Painting and striping as required for intended use, safe operations or as required by Landlord and with Landlord's prior written

## CONVENTIONAL HANGAR LEASE - Exhibits

	Landlord	Tenant
Trash Dumpster	Dumpster location or location changes at the sole discretion and direction of the Landlord.	Tenant to manage and maintain and pay for service. Must be kept on Premises unless otherwise approved in advance by Landlord
Trash Dumpster screening, if required	Landlord is responsible for constructing screening, if required.	Maintained at Tenant's sole cost and expense.
Building Shell		
Garage Overhead & Service Doors	Major repairs and replacement if required at sole discretion of Landlord.	General preventive maintenance and basic service and repair. Examples of general preventive maintenance and basic service and repair would be servicing, maintaining or repairing springs, cables, rollers, latch & lock
Hangar Doors	Major repairs and replacement if required at sole discretion of Landlord	General preventive maintenance and basic service – including cleaning floor tracks.
Hangar Floor	Major repairs and replacement if required at sole discretion of Landlord.	General preventive maintenance, sweeping, cleaning and safety markings as required by Landlord. Examples include cleaning floors of oils and chemical materials that may cause permanent damage to floor surface sucl as stains or pecling of floor coating.
Building & Hangar Insulation, if existing	Major repairs and replacement if required at sole discretion of Landlord.	General preventive maintenance, repair and replacement where required.
Painting and cleaning of building exterior	Performed by Landlord at Landlord's sole expense and discretion.	General preventive maintenance, repair and replacement where required.
Repairs to exterior siding building, fascia, trim, etc.	Performed by Landlord at Landlord's sole expense and discretion	General preventive maintenance, repair and replacement where required.
Window and Glass Curtain Walls	Major repairs and replacement when required at sole discretion of Landlord.	General preventive maintenance, repair and replacement where required.
Roof	Major repairs and replacement when required at sole discretion of Landlord.	No penetrations without Landlord's prior written approval.
Roof rain-gutters and	Major repair and replace as required.	General preventive maintenance, repair and replacement where required.

	Landlord	Tenant
downspouts		
Interior - Finish-out		
Interior Doors	Major repairs and replacement when required at sole discretion of Landlord.	General preventive maintenance, repair and replacement where required.
All Interior and Exterior door locks (electronic or keyed)	Any lock changes or lock system changes must be approved by Landlord in advance. Maintain copies of access keys provided by Tenant.	General preventive maintenance, repair and replacement where required. Copies of access keys to be provided to Landlord with instruction and codes provided for any electronic locking systems.
Office/shop space flooring and floor cover	Major repairs and replacement at sole discretion of Landlord.	Major repair and replacement with Landlord's prior consent. General preventive maintenance, cleaning of all floor surfaces (carpet, tile and tile grout) repair and replacement where required.
Painting Interior – Office and shop space		Repainting similar to existing condition. Major change in color, texture and material must be with Landlord's prior written consent. General preventive maintenance, cleaning, repair and replacement where required.
Painting Interior – Hangar space	Repainting similar to existing condition at sole discretion of the Landlord.	Any change in color, texture and material must be with Landlord's prior written consent. General preventive maintenance, cleaning, repair and replacement where required.
Walls & Ceilings	Major repairs and replacement at sole discretion of Landlord.	Repainting or repairing similar to existing condition. Major change in color, texture and material must be with Landlord's prior written consent. General preventive maintenance, cleaning, repair and replacement where required. Applicable to office area only.
Building Systems		
Air Compressor		Tenant's full responsibility.
Electrical Systems	Major repairs, replacement or modifications at sole discretion of Landlord. General maintenance and repair.	Replacement or material change only with Landlord's prior written consent. Inform Landlord of any electrical issues or needed modifications
Exterior Lighting &	Major repairs and replacement at sole discretion of Landlord. Landlord to	Replacement or material change only with Landlord's prior written

	Landlord	Tenant
maintenance	replace bulbs as necessary.	consent.
Office and interior lighting	Major repairs and replacement of fixtures at sole discretion of Landlord.	Tenant to replace bulbs and lamps as necessary with similar bulb and lamp types.
Hangar light repair and replacement	Major repairs and replacement at sole discretion of Landlord. Landlord to replace bulbs as necessary.	Replacement or material change only with Landlord's prior written consent.
HVAC	Major repairs and replacement at sole discretion of Landlord. Filter changes and major repair of equipment.	General maintenance and repair. Replacement or material change only with Landlord's prior written consent. Examples of general maintenance and repair are; routine services, preventive maintenance, thermostat battery replacement and additional refrigerant as needed.
Window a/c units, if any	Major repairs and replacement at sole discretion of Landlord.	General maintenance and repair. Replacement or material change only with Landlord's prior written consent.
Plumbing systems	Major repairs and replacement at sole discretion of Landlord.	General maintenance and repair. Replacement or material change only with Landlord's prior written consent.
Water heater	Replacement at Landlord's sole discretion.	General maintenance and repair. Replacement with Landlord's prior written consent.
Storm water drains	Major repairs and replacement and general maintenance.	Damage caused by or resulting from acts of Tenant, Tenant's employees, guests or invitees shall be paid for by Tenant.
Grease Traps	Landlord to have inspected and serviced upon tenant move-in.	Tenant's full responsibility.
Tapping into Fire Main for fire suppression systems	Must be approved by Landlord in advance.	Tenant's full responsibility with Landlord's prior written consent.
Other:		

### TOWN OF ADDISON, TEXAS

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A CONVENTIONAL HANGAR LEASE BETWEEN THE TOWN OF ADDISON AND MERCURY AIR CENTER – ADDISON, INC. (ALSO KNOWN AS ATLANTIC AVIATION) FOR COMMERCIAL AVIATION USE ON PROPERTY LOCATED AT 4540 GLENN CURTISS DRIVE, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, AND PROVIDING AN EFFECTIVE DATE.

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

<u>Section 1.</u> The Conventional Hangar Lease between the Town of Addison and Mercury Air Center – Addison, Inc. (also known as Atlantic Aviation) for commercial aviation use on property located at 4540 Glenn Curtiss Drive, a copy of which is attached to this Resolution as <u>Exhibit A</u>, is hereby approved and the City Manager is authorized to execute the agreement.

**Section 2.** This Resolution shall take effect from and after its date of adoption.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this the 9<sup>th</sup> day of August, 2016.

	Todd Meier, Mayor
ATTEST:	
By: Laura Bell, City Secretary	
APPROVED AS TO FORM:	
By:	
Brenda N. McDonald, City Attorney	

### **EXHIBIT A**

STATE OF TEXAS
COUNTY OF DALLAS

### ADDISON AIRPORT

### CONVENTIONAL HANGAR LEASE

This Conventional Hangar Lease (hereinafter referred to as the "Hangar Lease" or "Agreement") is made and entered into this <a href="day of">day of</a>, 2016 (the "Effective Date"), by and between the <a href="Town of Addison, Texas">Town of Addison, Texas</a>, a home-ruled municipality (hereinafter referred to as the "City" or "Landlord") and <a href="Mercury Air Center">Mercury Air Center — Addison Inc.</a>, a Texas corporation (hereinafter referred to as "Atlantic Aviation" or "Tenant") (Landlord and Tenant are sometimes referred to herein together as the "parties" and individually as a "party").

### WITNESSETH:

WHEREAS, Landlord is the owner of the Addison Airport (hereinafter referred to as the "Airport") located in Dallas County, Texas; and

WHEREAS, the Airport is operated and managed for and on behalf of the City by AECOM (formally known as URS Energy & Construction, Inc.) and SAMI Management, Inc., a Texas corporation (severally and/or collectively hereinafter referred to as "Airport Manager" or "Manager"), pursuant to their respective operating agreements, as amended or modified, with the City; and

WHEREAS, the City and Tenant first entered into that certain Addison Airport Conventional Hangar Lease dated made effective April 1, 2015 with the Expiration Date of September 18, 2016 (the "2015 Lease") whereby the City leased to Tenant the Premises (being the same as defined herein) in accordance to the terms and conditions set forth therein; and

WHEREAS, Tenant desires to continue their possession and occupancy and lease that certain hangar located within the Airport known as Jet Hangar T5-11, Property #0390 with the public address known as 4540 Glenn Curtiss Drive, Addison, Texas 75001 (hereinafter referred to as the "Premises" and more fully described in <a href="Exhibits "A", "B" and "C" attached hereto and made a part hereof">Exhibits "A", "B" and "C"</a> attached hereto and made a part hereof) and Landlord desires to lease the same to Tenant for the Term as defined below; and

WHEREAS, Landlord and Tenant hereby agree to enter into this Hangar Lease under the terms and conditions set forth hereinbelow, which, upon its commencement, supersedes the 2015 Conventional Hangar Lease.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is mutually acknowledged, Landlord and Tenant hereby agree as follows:

 Lease Grant. Subject to the terms of this Lease, Landlord leases the Premises to Tenant, and Tenant leases the Premises from Landlord.

This Hangar Lease is given and entered into subject to (i) all federal, state, and local laws, statutes, constitutional provisions, charters (including the City Charter), ordinances, codes (including building and building-related codes), rules, regulations, directives, policies, permits, standards, zoning requirements, orders, grant assurances, grant agreements, court orders, opinions and decisions, and all interpretations of the foregoing, of and/or by any governmental authority, entity, department, 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), that are applicable, imposed upon, or related to, whether directly or indirectly, this Lease, the Airport, the Premises, and the use and occupancy thereof, as the same are existing or as they may be amended, modified, enacted, adopted, imposed, or superseded, and including, without limitation, any and all grant agreements or grant assurances now existing or as hereafter agreed to, adopted or imposed (collectively, "Laws," and "Law" means any of the foregoing), (ii) all restrictive covenants affecting the Premises, (iii) all restrictions, mortgages, deeds of trust, liens, easements, licenses, leases, and any other encumbrance on or matter affecting the Premises, whether recorded or not, and (iv) and all of the terms, conditions, and provisions of this Hangar Lease.

2. Term: The term hereof shall commence immediately upon the expiration of the 2015 Lease without interruption, effective September 19, 2016 (the "Commencement Date"). The term shall end on <u>September 30, 2019</u> (the "Expiration Date"), unless otherwise terminated as provided for herein.

### 3. Rental:

- A. Tenant agrees to pay to Landlord, without offset or deduction, an annual Base Rent of Forty-Three Thousand Thirty-Two and 00/100 Dollars (\$43,032.00) payable in twelve (12) equal monthly installments in the amount of Three Thousand Five- Hundred Eighty-Six and 00/100 Dollars (\$3,586.00). The first such monthly installment shall be due and payable on or before the Commencement Date and then on or before the first day of each calendar month thereafter during the Term. The Base Rent is subject to periodic adjustments as provided herein.
- B. **Prorated Rent**: If the Commencement Date is on a day other than the first day of a month, Tenant will pay Landlord as prorated rent, an amount equal to the Base Rent multiplied by the following fraction: the number of days from the Commencement Date to the first day of the following month divided by the number of days in the month in which this Lease commences. The prorated rent is due on or before the Commencement Date.
- D. Additional Rent: In addition to the Base Rent and Prorated Rent, Tenant will pay Landlord all other amounts, as provided by the attached Utility Expense Reimbursement Addendum (Exhibit D). All amounts payable under the Addendum are deemed to be "rent" for the purpose of this Lease.
- E. Place of Payment: Tenant will remit all amounts due Landlord under this Lease to the following person at the place stated or to such other person or place as Landlord may later designate in writing:

Addison Airport

c/o Airport Manager 16051 Addison Road, Suite #220 Addison, Texas 75001

- F. Method of Payment: Tenant must pay all rent timely without demand, deduction, or offset, except as permitted by law or this Lease. Tenant shall make payment of all rental owed by personal or corporate check, credit card or electronic transfer if acceptable to Landlord. Cash is not an acceptable form of payment of rent. If Tenant fails to timely pay any amounts due under this Lease, or if any check of Tenant is returned to Landlord by the institution on which it was drawn for insufficient funds, or if its credit card is denied more than three times in any twelve month period, Landlord, after providing written notice to Tenant, may require Tenant to pay subsequent amounts that become due under this Lease by cashier's check or money order only.
- G. Late Charges: If Landlord does not actually receive a rent payment at the designated place of payment within ten (10) days after the date it is due, Tenant will pay Landlord a late charge equal to 5% of the amount due. In this paragraph, the mailbox is not the agent for receipt by Landlord. The Late Charge is a cost associated with the collection of rent and Landlord's acceptance of a late charge does not waive Landlord's right to exercise remedies under Paragraph 24 (Remedies of Landlord) herein.

If payment of a monthly installment of rental due under this Lease is made late (after the 10th day of the month) more than once in any three (3) month period, Tenant, upon the delivery of written notice to Tenant by Landlord ("Additional Deposit Notice"), of and among all other rights and remedies available to Landlord under this Agreement, shall be required to pay to Landlord an amount equal to the then-current monthly rental installment (the "Additional Deposit") to be held and applied by Landlord as an addition to the Security Deposit delivered by Tenant and held on account by Landlord upon Tenant's execution of this Lease pursuant to subparagraph 3.H., below. If Tenant does not deliver the Additional Deposit to Landlord within ten (10) days after the delivery of the Additional Deposit Notice, such failure shall be an event of default under this Lease.

H. Security Deposit: Tenant shall deposit with Landlord, upon Tenant's execution of this Lease, the sum of One Hundred Nineteen and 33/100 Dollars (\$119.33) which said amount shall be added to that amount now held on account by Landlord as Tenant's "Security Deposit" so the total Security Deposit shall equal the equivalent of one month's installment of the Base Rent as of the Effective Date of this Lease. Landlord and Tenant hereby acknowledge and agree that as of the Effective Date of this Hangar Lease, Landlord currently holds on account for Tenant a Security Deposit in the sum of Three Thousand Four Hundred Sixty-Six and 67/100 Dollars (\$3.466.67).

Such Security Deposit shall be equal to one monthly installment of the rent unless otherwise adjusted as provided for in Paragraph 4 below.

- 1. If at any time during this Agreement the Security Deposit then held on account by Landlord becomes less than the prevailing monthly installment of Base Rent, Tenant will make an additional payment to Landlord so that the Security Deposit held by Landlord is increased to equal one monthly installment of Base Rent, unless otherwise adjusted as provided for in Paragraph 4 below.
- Landlord shall hold such Security Deposit without interest as security for the performance by Tenant of Tenant's covenants and obligations under this Lease.

- 3. The Security Deposit is not an advance payment of rent or a measure of liquidated damages in case of default by Tenant. Upon the occurrence of any event of default, Landlord may, from time to time, without prejudice to any other remedy provided herein or provided by law, use the Security Deposit to the extent necessary to make good any arrearages of rent and any other damage, injury, expense or liability caused to Landlord by such event of default. Following any such application of the Security Deposit, Tenant shall pay to Landlord, on demand, the amount so applied in order to fully restore the Security Deposit to its required amount.
- 4. If Tenant is not then in default hereunder, such Security Deposit, less any lawful deductions by Landlord, shall be returned by Landlord to Tenant with an accounting of said deductions taken no later than thirty (30) days following the termination or expiration of this Hangar Lease. Permitted deductions from said Security Deposit may include but not be limited to: unpaid rent; unpaid utilities incurred by Tenant; unpaid service charges; damages by Tenant to the Premises (beyond normal wear) or repairs by Landlord; replacement cost of Landlord's property that was in or attached to the Premises and is missing; unreturned keys; agreed reletting charges; cost of cleaning the Premises to a broom-swept condition if required; removal of any trash or debris left in the Premises; cost of the removal and storage of Tenant's personal property left or abandoned by Tenant or otherwise disposed of by Landlord; removal of unauthorized vehicles or aircraft left on the Premises; government fees or fines against Landlord because of Tenant; late fees and other costs of collection, interest earned on unpaid balances; attorneys' fees, court costs and filing fees.
- 4. Adjustment of Rental: Effective on each anniversary after the Commencement Date (hereinafter referred to as the "Adjustment Date"), the Base Rental due under Paragraph 3 shall be adjusted as follows:
- 1. A comparison shall be made between the Consumers' Price Index-All Items for the Dallas, Texas Metropolitan Area (hereinafter referred to as the "Price Index") as it existed on the Commencement Date (the "Base Consumer Price Index") and as it exists on the first day of the calendar month preceding the then applicable Adjustment Date (the "Adjustment Index").
- 2. The Base Rent for the two (2) year period beginning with and following the then applicable Adjustment Date shall be either increased or decreased, as the case may be, by the percentage of increase or decrease in the Price Index between the Base Consumer Price Index and the then applicable Adjustment Index, but in no event shall Base Rental ever be decreased below the Base Rental set forth in Paragraph 3.
- (iii) In the event that the Price Index is unavailable for whatever reason for the computations set forth hereinabove, another index approximating the Price Index as closely as feasible shall be substituted therefor.
- 5. Use of Premises: The Premises shall be used and occupied by Tenant only for general aviation operator purposes:
- For the storage of personal or corporate aircraft storage only, which said aircraft are under the direct care, custody and control of Tenant; or

✓ Commercial Aviation Use as more fully described as follows:

Storage of aircraft under Tenant's care, custody and control and for no other use without Landlord's advance written consent.

For the purpose herein, Commercial Aviation Use is defined as any operation of a business enterprise whereby its core competency is dedicated to the general aviation industry and any such business practice is providing goods, services, or facilities for a commercial aeronautical purpose (including, without limitation, any activity by the Tenant securing earning, income, compensation, [including exchange or barter of goods, and services], and/or profit from said activities, whether or not such objectives are accomplished).

Any use of the Premises other than that indicated above is not permitted at any time without the prior written consent of Landlord. The Premises shall not be used or occupied for any concession for the sale or distribution of food, drinks, tobacco products, oil, gas, petroleum products or any activity of a similar character. Tenant agrees that no aircraft, vehicle or other equipment will be left unattended at any time outside the boundaries of the Premises or within any common area of the Airport, including the safety area, operating area and/or non-obstruction area of the Airport without the prior written consent of the Airport Manager. Tenant further agrees to cooperate and coordinate with adjacent tenants and Airport Management, when necessary, to facilitate aircraft movement along nearby taxilanes especially during periods of construction, maintenance and repair of Airport facilities.

- 6. Acceptance of Premises: Tenant acknowledges that Tenant has fully inspected the Premises and accepts the Premises as suitable for the purposes for which the same are leased in their present condition, "AS IS, WHERE IS, WITH ALL FAULTS AND PATENT AND LATENT DEFECTS". Without limiting anything in the foregoing, THERE IS NO REPRESENTATION, PROMISE, COVENANT, AGREEMENT, GUARANTY OR WARRANTY OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, OF THE CONDITION, QUALITY, SUITABILITY, MERCHANTABILITY, HABITABILITY, OR FITNESS OF THE PREMISES FOR ANY PARTICULAR PURPOSE WHATSOEVER GIVEN IN CONNECTION WITH THIS LEASE, 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.
- 7. 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 currently required for the use and occupancy of the Premises, as set forth in Paragraph 5 above.
- B. Tenant shall, at Tenant's sole cost and expense, comply at all times with all governmental laws, codes, ordinances, rules, policies, and regulations applicable to the use and

CONVENTIONAL HANGAR LEASE - Page 5

occupancy of the Premises, as set forth in Paragraph 5 above, as existing or as the same may be reasonably amended or modified.

- C. Tenant shall, at Tenant's sole cost and expense, promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances caused by Tenant and arising out of the use and occupancy of the Premises, as set forth in Paragraph 5 above.
- D. Tenant shall comply with noise abatement standards at the Airport and shall notify any aircraft operator using the Premises of such standards.

### 8. Assignment and Subletting:

- A. Without the prior written consent of Landlord, Tenant shall have no power to and may not assign, sell, pledge, encumber, license, transfer, or otherwise convey (together, "assign" or "assignment") this Lease or any rights or obligation of Tenant hereunder or sublet the whole or any part of the Premises. Any such assignment or any subletting shall be null and void and may be deemed by Landlord (in Landlord's sole discretion) an event of default under Paragraph 23 (Default by Tenant) of this Lease. Any assignment or subletting shall be expressly subject to all the terms and provisions of this Lease, including the provisions of Paragraph 5 pertaining to the use of the Premises. In the event of any Landlord-approved transfer or subletting, Tenant shall not transfer Tenant's rights hereunder or sublet the Premises without first obtaining a written agreement from each such transferee or sublessee whereby each such transferee or sublessee agrees to be bound by the terms and provisions of this Hangar Lease. No such assignment or subletting shall constitute a novation. In the event of the occurrence of an event of default while the Premises are transferred or sublet, Landlord, in addition to any other remedies provided herein or by law, may, at Landlord's option, collect directly from such transferee 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 transferee or subtenant shall release Tenant from the payment or performance of Tenant's obligations hereunder. Landlord's consent to any transfer or subletting will not waive its rights, and it will not stop Landlord from exercising its rights, with respect to any other actual or proposed transfer or subletting, and Landlord's consent to any transfer will not relieve Tenant or any Guarantor of any liability to Landlord under this Lease or otherwise.
- B. Notwithstanding the foregoing, if the Use of Premises defined in Paragraph 5 above is a Commercial Aviation Use, Landlord hereby acknowledges and consents to Tenant's subletting of the Premises for the purpose of renting hangar space for aircraft storage only, provided that each sublease is 1) is made available for Landlord's review and inspection upon written request, 2) said subleases are evidenced by written agreement, signed and executed by Tenant and Subtenant and has incorporated therein and fairly states:
  - 1. each Subtenant agrees to be bound by the terms and provisions of the Hangar Lease, including the provisions of Paragraph 5 pertaining to the use of the Premises. In the event of any conflict between the terms of the Hangar Lease and the terms of the sublease, the terms of the Hangar Lease shall control;
  - 2. no such subletting shall constitute a novation.

- 3. in the event of occurrence of an event of default while the Premises are assigned or sublet, Landlord, in addition to any other remedies provided herein or by law, 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.
- 4. Subtenant shall be obligated to obtain Landlord's consent to any action as to which Tenant is obligated to obtain such consent under the Hangar Lease;
- 5. any such sublease is to automatically terminate upon termination of the Hangar Lease notwithstanding any other provision of the sublease to the contrary;
- 6. Landlord shall have no responsibility or obligation for the performance by subtenant of its obligations under the sublease;
- 7. Neither this consent, the exercise by Landlord of its rights hereunder, nor the sublease or any other instrument shall give Subtenant 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 subtenant.

Further, Tenant agrees that in no way does any sublease release Tenant from any of its covenants, agreements, liabilities and duties under the Hangar Lease; that this consent does not constitute approval by Landlord of the terms of any such sublease; nothing herein contained shall be deemed a waiver or release of any of the Landlord's rights under the Hangar 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 Hangar Lease including, without limitation, the duty to make any and all payments of rent. Any violation of any terms and conditions of the Hangar Lease by a subtenant may constitute a default under the Hangar Lease. Tenant shall provide to Landlord the names and addresses of any subtenants and the make, model, aircraft type and "N" number of any aircraft stored or located on or in the Premises.

9. Property Taxes and Assessments: Tenant shall pay any and all property taxes or assessments levied or assessed on: (i) all improvements, fixtures, equipment or personal property comprising a part of or located upon the Premises; and (ii), the leasehold estate of Tenant created hereby (hereinafter referred to as "Tenant's Taxes"). Upon the request of Landlord, Tenant shall, from time to time, furnish to Landlord "paid receipts" or other written evidence that all of Tenant's Taxes have been paid by Tenant. If any of Tenant's Taxes are included in tax statements delivered to Landlord, Tenant shall pay to Landlord that portion representing Tenant's Taxes within ten (10) days after Tenant's receipt of an invoice therefor from Landlord accompanied by evidence of Landlord's computation of the portion thereof representing Tenant's Taxes.

#### 10. Maintenance and Repair of Premises:

A. Landlord shall, throughout the term hereof, except as otherwise expressly provided in this Lease and so long as Tenant is not in default of this Agreement beyond any applicable Cure Period, be responsible for all that is listed as Landlord's Responsibility in **Exhibit E** to this Agreement and incorporated herein by reference. Landlord shall, at Landlord's sole cost and expense, keep the Premises and all common facilities in compliance with all governmental laws, codes, ordinances, rules and regulations applicable hereto, except as otherwise provided in

Paragraph 7 hereof. Landlord shall not be responsible for Tenant's or any third party's equipment and personal property comprising a part of or located upon the Premises.

- B. Except as provided by subparagraph A. of this Paragraph 10, Tenant shall maintain the Premises in good order, condition and repair throughout the term of this Lease including, but not limited to, the "Tenant's Maintenance and Repair Responsibilities" itemized in **Exhibit E** to this Agreement and incorporated herein by reference. Tenant shall be responsible for any alterations, additions or improvements made by Tenant to the Premises and/or any improvements thereon. Tenant shall, throughout the term hereof, be responsible for all consumable supplies and repair of plumbing and water damage caused as a result of Tenant's failure to reasonably protect water pipes from freezing temperatures or misuse by Tenant, Tenant's employees, guests or invitees. Tenant shall be responsible for keeping the Premises free from waste and nuisance and shall, upon the expiration of the Lease Term, or any earlier termination of this Lease or repossession of the Premises by Landlord because of Tenant's default under this Lease, deliver the Premises clean and free of trash and in good condition, with all fixtures and equipment situated in or upon the Premises in the same condition as same existed on the Commencement Date, with reasonable wear and tear excepted.
- C. In the event Tenant fails to so maintain the Premises and/or the improvements, fixtures, equipment and personal property comprising a part of or located upon the Premises, Landlord shall have the right (but not the obligation) to cause all repairs or other maintenance to be made, and the reasonable costs therefor expended by Landlord plus interest thereon as provided in Paragraph 39 shall be paid by Tenant to Landlord on demand.
- D. If Tenant handles or stores flammable materials on the Premises, Tenant agrees to maintain proper safeguards with respect thereto and to comply with all requirements of Landlord's and Tenant's insurance companies and/or governmental authorities with respect to the storage, use and disposal of such materials.
- 11. Alterations, Additions and Improvements: Tenant shall not create any openings in the roof or exterior walls, or make any alterations, additions or improvements to the Premises without the prior written consent of Landlord. Landlord shall not unreasonably withhold its consent for non-structural alterations, additions or improvements. Tenant shall have the right to erect or install shelves, bins, machinery, and trade fixtures, provided that Tenant complies with all applicable governmental laws, ordinances and regulations. All alterations, additions and improvements in and to the Premises shall be performed in accordance with law and in a first-class, workmanlike manner, and Tenant shall promptly pay and discharge all costs, expenses, claims for damages, liens and any and all other liabilities and obligations which arise in connection therewith.

#### 12. Insurance:

A. If the use of the Premises defined in Paragraph 5 herein is for Commercial Aviation Use, Tenant shall procure and maintain throughout the Term, without interruption, a policy or policies of insurance, at Tenant's sole cost and expense, to meet or exceed the requirements specified in the then prevailing Addison Airport Minimum Standards and Requirements for Commercial Aeronautical Service Providers (the "Airport Minimum Standards") which may be amended or modified by the City from time to time. At any time over the Term the Airport

Minimum Standards are either suspended, repealed or otherwise modified to the extent Tenant's use and occupancy of the Premises no longer require such insurance policies under the Airport Minimum Standards, Tenant shall procure and maintain throughout the Term, without interruption, the following insurance policies:

- 1. Commercial General Liability insurance against claims for bodily injury, death or property damage or destruction occurring on, in or about the Premises, with limits of liability of not less than \$1,000,000 for each occurrence, CSL/\$1,000,000 general aggregate. Coverage shall include blanket contractual liability for liability assumed under the Lease.
- Statutory limits of Workers Compensation insurance and employer's liability with limits of liability of not less than \$1,000,000.
- 3. Hangarkeepers Legal Liability insurance at limits of \$1,000,000 per occurrence is required if Tenant is engaged in maintenance, repair or servicing of aircraft belonging to any 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.
- 4. Aircraft Liability insurance for all Tenant-owned or operated aircraft with a minimum bodily injury and property damage per occurrence limit of \$1,000,000 and \$1,000,000 for personal and advertising injury.
- B. If the use of Premises is strictly for Non-commercial Aviation Use, then Tenant shall provide over the Term without interruption the following policies of insurance: Aircraft Liability Insurance or another acceptable form of comprehensive Personal Liability Insurance with limits of liability not less than \$1,000,000 each occurrence, Combined Single Limit (CSL) bodily injury and property damage of \$1,000,000 in general aggregate.
- C. All insurance policies required under this Paragraph 12 shall be endorsed to provide the following, as applicable: (i) in all liability policies, name as additional insureds the Landlord and Manager and their officials, officers, agents, and employees; (ii) in all liability policies, provide that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of activities conducted under the permit, and that insurance applies separately to each insured against whom claim is made or suit is brought; and (iii) waiver of subrogation in favor of Landlord and Manager must be included in all liability and Workers Compensation policies. All such policies shall be issued by an insurance company authorized to do business in Texas and in the standard form approved by the Texas Department of Insurance, if required, and shall be endorsed to provide for at least 30 days' advance written notice to Landlord of a material change in or cancellation of a policy. Certificates of insurance, satisfactory to Landlord, evidencing all coverage above, shall be furnished to Landlord prior to the Commencement Date, with complete copies of policies furnished to the Landlord upon request. Landlord reserves the right to review and revise from time to time the types of insurance and limits of liability required herein.

### 13. Casualty Damage or Destruction:

- A. In case of any damage to or destruction of the buildings, structures, fixtures and equipment on the Premises, or any part thereof, Tenant shall promptly give written notice to Landlord, generally describing the nature and extent of such damage and/or destruction.
- If the Premises (excluding Tenant's fixtures, furniture, equipment, personal property and leasehold improvements made by or on behalf of Tenant or any assignee, subtenant or other occupant of the Premises) should be substantially, totally, or partially destroyed or damaged by fire, tornado or other casualty, this Lease shall not terminate, but Landlord may, at Landlord's sole option and at Landlord's sole cost, expense and risk, proceed forthwith and use reasonable diligence to rebuild or repair the Premises (other than Tenant's fixtures, furniture, equipment, personal property and leasehold improvements made by or on behalf of Tenant or any permitted assignee, subtenant or other occupant or user of the Premises) to substantially the condition in which it existed prior to such destruction or damage; provided, however, that if Landlord elects not to rebuild or repair such damage or destruction, then this Lease shall terminate and rent shall be abated for the unexpired portion of this Lease, effective from the date of actual receipt by Landlord of the written notification of the damage from Tenant. If Landlord elects to rebuild or repair the Premises and the Premises is untenantable in whole or in part following such destruction or damage and during such period of rebuilding or repair, the rent payable hereunder shall be equitably adjusted for that period which it is untenantable. However, if the destruction was caused by the negligence, gross negligence, or willful or wanton act or omission of Tenant, its officers, employees, agents, subtenants, licensees, contractors, subcontractors, or invitees, rent shall not be abated and Tenant shall have the continuing obligation to pay rent during the period of such rebuilding or repair.
- C. Landlord's election to pay for the cost of the repair or rebuilding of the Premises or any part thereof shall not extend beyond or exceed the proceeds of any casualty or property damage insurance payable and actually collected in connection with such damage or destruction. All insurance proceeds, if any, payable on account of such damage or destruction shall be held and retained by Landlord (whether or not such repair or rebuilding occurs or this Lease terminates).

### 14. Condemnation:

- A. If, during the term hereof, any part of the Premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, or is sold to a condemning authority under threat of condemnation, and after such taking by or sale to said condemning authority the remainder of the Premises is not susceptible to efficient and economic occupation and operation by Tenant, this Lease shall automatically terminate as of the date said condemning authority takes possession of the Premises, and Landlord shall refund to Tenant any prepaid but unaccrued rental less any sum then owing by Tenant to Landlord.
- B. If, after such taking by or sale to said condemning authority, the remainder of the Premises is susceptible to efficient and economic occupation and operation by Tenant, this Lease shall not terminate but the rental due hereunder shall be adjusted so that Tenant shall be required to pay for the remainder of the term hereof the sum obtained by multiplying each monthly rental installment due hereunder by a fraction, the numerator of which shall be the number of square feet remaining in the Premises after the taking by or sale to said condemning authority and the denominator of which shall be the square footage originally contained in the Premises. The rental adjustment called for herein shall either not commence or be suspended until said condemning

authority actually takes possession of the condemned portion of the Premises. All other terms and provisions shall remain unchanged unless otherwise provided for herein.

C. Landlord shall receive the entire award or payment from any condemnation and Tenant shall have no claim to that award or for the value to Landlord of any unexpired term of this Lease; provided, however, that Tenant shall have the right to appear in any Condemnation proceeding or action to negotiate, prosecute and adjust any claim attributable to loss or damage to Tenant's trade fixtures and removable personal property, removal or relocation costs, and any loss to Tenant resulting from the unexpired portion of the Lease Term. If this Lease is not terminated pursuant to subparagraph A of this Paragraph, Landlord shall repair damage to the Premises caused by the condemnation (excluding Tenant's fixtures, furniture, equipment, personal property and leasehold improvements made by or on behalf of Tenant or any permitted assignee, subtenant or other occupant of the Premises), except that (i) Landlord shall not be obligated to repair any damage for which Tenant has been reimbursed by the condemning authority; and (ii) if the condemnation damages or payments received by Landlord are not sufficient to pay for such repair, Landlord shall have the right to terminate this Lease.

#### 15. Utilities:

A. The party designated below will pay for the following utility charges serving the Premises and any connection/disconnection charges for the utilities. (Check or mark all that apply):

	N/A	Landlord	Tenant	Provided by Landlord & Reimbursed By Tenant (See Exhibit D)
1. Water	3			√
2. Sewer	J		0	V
3. Electric			D	√
4. Gas	ב		<b>√</b>	Ū
5. Telephone/Data	3		V	0
6. Trash			V	0
7. Cable	כ		V	
8. All Other			V	0

- B. All utilities to be provided by Landlord and reimbursed by Tenant as indicated above shall be pursuant to **Exhibit D Utility Expense Reimbursement Addendum** attached hereto and incorporated herein by reference.
- C. The responsible party may select or change the utility service provider from time to time over the term of the Lease and the party designated above shall be responsible, at its sole cost and expense, for obtaining all utility connections at or for the Premises. If Tenant is the responsible party for obtaining any of the utility connections at or for the Premises, any access or alterations to the Premises or to the Airport necessary may be made only with Landlord's prior consent and at Tenant's sole expense. Should Landlord incur any liability for utility or connection charges for which Tenant is responsible to pay and Landlord pays such amount, Tenant will immediately upon

written notice from Landlord reimburse Landlord such amount. Failure to reimburse Landlord as required upon notice is an event of default under this Lease.

- D. Prior to executing this Lease Tenant should, at its sole costs and expense, determine whether all necessary utilities are available to the Premises and are adequate for Tenant's intended use.
- E. Landlord shall in no event be liable or responsible for any cessation or interruption in any utility services to the Premises.

#### 16. Common Facilities:

- A. So long as Tenant is not in default hereunder beyond any applicable Cure Period, Tenant and Tenant's employees, agents, servants, customers and other invitees shall have the non-exclusive right to use all common facilities, improvements, equipment and services which may now exist or which may hereafter be provided by Landlord for the accommodation and convenience of Landlord's customers and tenants, including landing and takeoff facilities, means of ingress and egress to the Premises, other Airport installations, and all other reasonable services which may be provided without charge from time to time by Landlord in operating the Airport ("Common Facilities"). All such Common Facilities shall at all times be under the exclusive control and management of Landlord and may be rearranged, modified, changed or terminated from time to time at Landlord's sole discretion.
- B. Tenant hereby acknowledges the existence of a certain unrecorded ingress/egress easement crossing the leased premises as shown and depicted in <a href="Exhibit B Property Survey">Exhibit B Property Survey</a> (the "Access Easement"). Tenant further acknowledges the purpose of this easement is for vehicular and pedestrian access to and from the Airport Common Facilities by Landlord's authorized users (and their employees, guests and other invitees) via what is commonly known as Airport Gate 4. Tenant shall not at any time block, interfere or otherwise impede the use or access to this easement and/or Airport Gate 4 by any such authorized user of the Airport Common Facilities. Landlord reserves the right to remove or cause to be removed and impounded or confiscated, at Tenant's sole cost and expense, any obstruction (including any vehicle or other type of tool or equipment) belonging to or otherwise placed by Tenant, Tenant's employees, guests or invitees contributing to the blockage, unsafe passage or unfretted use and access of the Access Easement as intended by Landlord. Tenant's failure to grant unrestricted and safe passage across the Access Easement by Landlord's authorized users of the Airport Common Facilities after receipt of written notice from Landlord is an event of default under this Lease and Landlord may, at its sole discretion, terminate this Lease without further notice or action by Landlord other than that required by law.
- 17. Special Events: Landlord may sponsor certain special events, including, but not limited to, air shows to be conducted on portions of the Airport, which may limit or obstruct access to the Premises and/or to the Airport ("Special Events"). As a material inducement to Landlord to enter into this Lease, and notwithstanding anything to the contrary contained herein, Tenant, on behalf of Tenant and on behalf of all directors, officers, shareholders, partners, principals, employees, agents, contractors, subtenants, licensees or concessionaires of Tenant, and on behalf of any other party claiming any right to use the Leased Premises by, through or under Tenant, hereby: (i) agrees that Landlord has the right to sponsor any or all Special Events and to allow use of portions of the Airport therefor even if the same limits or obstructs access to the Premises and/or to

the Airport; (ii) releases, waives and discharges Landlord and Manager, and their respective officials, officers, employees and agents, from all liability for any loss, damage, cost, expense or claim arising or resulting from or pertaining to the limitation or obstruction of access to the Leased Premises and/or to the Airport from the conduct of Special Events and/or activities relating or pertaining thereto including, without limitation, death, injury to person or property or loss of business or revenue (the "Released Claims"); (iii) covenants not to sue the Landlord or Manager or their respective officials, officers, employees and agents (whether in their official or private capacities) for any Released Claims; (iv) agrees that the terms contained in this Paragraph are intended and shall be construed to be as broad and inclusive as possible under the laws of the State of Texas; and (v) agrees that if any portion of this Paragraph is held to be invalid or unenforceable, the remainder of this Paragraph shall not be affected thereby, but shall continue in full force and

- Regulations (hereinafter referred to as the "Rules and Regulations") which shall govern Tenant's use of and conduct on the Premises and all Common Facilities, a copy of which has been or will be furnished to Tenant. The Rules and Regulations are incorporated by reference as if written verbatim herein, and Tenant agrees to comply fully at all times with them. Landlord shall have the right to amend, modify and alter the Rules and Regulations from time to time in a reasonable manner for the purpose of assuring the safety, welfare and convenience of Landlord, Tenant and all other Tenants and customers of the Airport.
- 19. Signs and Equipment: After first securing Landlord's approval, Tenant shall have the right from time to time to install signs depicting Tenant's name and to operate radio, communications, meteorological, aerial navigation and other equipment and facilities in or on the Premises that may be reasonably necessary for the operation of Tenant's business, provided such signs and equipment are installed and maintained in compliance with all applicable governmental laws, rules, policies, and regulations, and all reasonable changes to such rules, policies and regulations, including the Town of Addison's sign ordinance, and do not interfere with the operation of any navigation facilities or Airport communications (including, without limitation, navigation facilities or Airport communications used or operated by the Federal Aviation Administration).
- 20. Landlord's Right of Entry: Landlord and Landlord's authorized representatives shall have the right, during normal business hours, to enter the Premises: (i) to inspect the general condition and state of repair thereof, (ii) to make repairs permitted under this Lease, (iii) to show the Premises to any prospective tenant, purchaser, or lender, or (iv) for any other reasonable and lawful purpose. During the final one hundred eighty (180) days of the term hereof, Landlord and Landlord's authorized representatives shall have the right to erect and maintain on or about the Premises customary signs advertising the Premises for lease.

#### 21. Indemnity and Exculpation and Release:

A. <u>Exculpation</u>. 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 subparagraph 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 subparagraph 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 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 Premises under express or implied invitation of Tenant or any Tenant Persons, or arising out of the use or occupation of the Premises by Tenant or by any Tenant Persons, in the performance of Tenant's obligations hereunder.

Tenant's Indemnity Obligation. TENANT AGREES TO AND SHALL FULLY DEFEND (WITH COUNSEL REASONABLY ACCEPTABLE TO LANDLORD), INDEMNIFY AND HOLD HARMLESS (1) 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 Premises, whether directly or indirectly, (COLLECTIVELY FOR PURPOSES OF THIS SUBPARAGRAPH B, "DAMAGES"), THAT RESULT FROM, RELATE TO, OR ARISE OUT OF, IN WHOLE OR IN PART, (I) ANY CONDITION OF THE 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 PREMISES UNDER EXPRESS OR IMPLIED INVITATION OF TENANT DURING THE LEASE TERM (COLLECTIVELY, "TENANT PERSONS"), (II) ANY CONSTRUCTION ON OR REPAIR TO THE PREMISES, OR THE 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 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. However, Tenant's liability under this clause shall be reduced by that portion of the total amount of the Damages (excluding defense fees and costs) equal to the Addison Person or Addison Persons', or Manager Person or Manager Persons', (as the case may be) proportionate share of the negligence, or conduct that would give rise to strict liability of any kind, that caused the loss. Likewise, Tenant's liability for any Addison Person's or any Manager Person's defense costs and attorneys' fees shall be reduced by that portion of the defense costs and attorneys' fees equal to Addison Person or Addison Persons', or Manager Person or Manager Persons', (as the case may be) proportionate share of the negligence, or conduct that would give rise to strict liability of any kind, that caused the loss.

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.

Release. TENANT HEREBY RELEASES THE TOWN OF ADDISON, TEXAS AND ALL OTHER ADDISON PERSONS (AS THE TERM "ADDISON PERSONS" IS DEFINED IN SUBPARAGRAPH B. OF THIS PARAGRAPH 21) AND AIRPORT MANAGER AND ALL OTHER MANAGER PERSONS (AS THE TERM "MANAGER PERSONS" IS DEFINED IN SUBPARAGRAPH B. OF THIS PARAGRAPH 21) 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 SUBPARAGRAPH B. OF THIS PARAGRAPH 21) FOR (I) ANY DEATH OR INJURY TO ANY PERSON OR PERSONS OR DAMAGE TO OR DESTRUCTION OF PROPERTY OF ANY KIND RESULTING FROM THE 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 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 PARAGRAPH 21 SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS LEASE AGREEMENT

#### 22. Environmental Compliance:

A. No Storage or Disposal: Tenant shall not install, store, use, treat, transport, discharge or dispose (or permit or acquiesce in the installation, storage, use, treatment, transportation, discharge or disposal by Tenant, its agents, employees, independent contractors, or

CONVENTIONAL HANGAR LEASE - Page 15

subtenants) on the Premises or any portion of the Common Facilities, 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, the Comprehensive Environmental Response Compensation and Liability Act, 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, laws, rules or regulation, or which, even if not so regulated may or could pose a hazard to the health and safety of the occupants of the 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 applicable law; or (ii) in any manner which is prohibited or deemed unsafe under applicable law. (The substances referred to in (a), (b), (c) or (d) are collectively referred to hereinafter as "Hazardous Materials").

### B. Cleanup Laws; Tenant's Indemnity Obligation:

- Tenant shall, at Tenant's sole cost and expense, comply with any presently existing 1. or hereafter enacted laws, and all reasonable rules, standards, regulations, or policies relating to Hazardous Materials (collectively, "Cleanup Laws"). In furtherance and not in limitation of the foregoing, Tenant shall, at Tenant's sole cost and 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 Premises and/or any portion of the Common Facilities 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 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 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 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 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. However, Tenant's liability under this clause shall be reduced by that portion of the total amount of the Damages (excluding defense fees and costs) equal to the Addison Person or Addison Persons', or Manager Person or Manager Persons', (as the case may be) proportionate share of the negligence, or conduct that would give rise to strict liability of any kind, that caused the loss. Likewise, Tenant's liability for any Addison Person's or any Manager Person's defense costs and attorneys' fees shall be reduced by that portion of the defense costs and attorneys' fees equal to Addison Person or Addison Persons', or Manager Person or Manager Persons', (as the case may be) proportionate share of the negligence, or conduct that would give rise to strict liability of any kind, that caused the loss.

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 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. Environmental Notices: Tenant shall promptly supply Landlord ad 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. Survival: Tenant's obligations and liability pursuant to the terms of this Paragraph 22 shall survive the expiration or earlier termination of this Lease.
- 23. Default by Tenant: The following events shall be deemed to be events of default by Tenant under this Lease:
- A. Failure of Tenant to pay any installment of rent, or to pay or cause to be paid taxes (to the extent Tenant is obligated to pay or cause same to be paid), utilities, insurance premiums, or any other sum payable to Landlord hereunder on the date that same is due, and such failure shall continue thereafter for a period of ten (10) days and such failure shall not be cured within ten (10) days after written notice thereof to Tenant.
- B. Failure of Tenant to comply with any term, condition or covenant of this Lease, other than the payment of rent or other sum of money, and such failure shall not be cured within thirty (30) days after written notice thereof to Tenant.
- C. Tenant shall fail to deliver the Additional Deposit to Landlord within ten (10) days after the delivery by Landlord to Tenant of the Additional Deposit Notice.
- D. Insolvency, the making of a transfer in fraud of creditors, or the making of an assignment for the benefit of creditors by Tenant or any guarantor of Tenant's obligations.
- E. Filing of a petition under any Paragraph or chapter of the National Bankruptcy Act, as amended, or under any similar law or statute of the United States or any state thereof by Tenant or any guarantor of Tenant's obligations, or adjudication as a bankrupt or insolvent in proceedings filed against Tenant or such guarantor.
- F. Appointment of a receiver or trustee for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations.
- G. Abandonment by Tenant of any substantial portion of the Premises or cessation of use of the Premises for the purposes leased.
- 24. Remedies of Landlord: Upon the occurrence of any of the events of default listed in Paragraph 23, Landlord shall have the option to pursue any one or more of the following remedies without notice or demand whatsoever:
- A. Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord. If Tenant fails to surrender the Premises, Landlord may, without prejudice to any other remedy which Landlord may have for possession of the Premises or arrearages in rent and without further notice or demand, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim for damages therefor. Tenant shall pay to Landlord on demand the amount of all loss and damages which Landlord may suffer by reason of such termination, whether through inability to relet the Premises on satisfactory terms or otherwise.

- B. Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord. If Tenant fails to so surrender the Premises, Landlord may, without prejudice to any other remedy which Landlord may have for possession of the Premises or arrearages in rent and without further notice or demand, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim for damages therefor. Tenant shall pay to Landlord on the date of such termination damages in any amount equal to the excess, if any, of the total amount of all monthly rental and other amounts to be paid by Tenant to Landlord hereunder for the period which would otherwise have constituted the unexpired portion of the term of this Lease over the then fair market rental value of the Premises for such unexpired portion of the term of this Lease.
- C. Enter upon and take possession of the Premises without terminating this Lease and without being liable for prosecution or for any claim for damages therefor, and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof. Landlord may (but shall not be required to) relet the Premises and receive the rent therefor. Tenant agrees to pay to Landlord monthly or on demand from time to time any deficiency that may arise by reason of any such reletting. In determining the amount of such deficiency, brokerage commissions, attorneys' fees, remodeling expenses and other costs of reletting shall be subtracted from the amount of rent received under such reletting.

Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the terms, conditions and covenants herein contained. If any of Tenant's property ("Tenant Property") remains upon the Premises upon the expiration of the Lease term or any earlier termination of this Lease or any repossession of the Premises by Landlord because of Tenant's default under this Lease, Landlord shall have the right to remove such Tenant Property from the Premises and store such Tenant Property, and Tenant shall be obligated to reimburse Landlord for all of the costs incurred by Landlord in removing and storing such Tenant Property. Landlord shall not be required to release any Tenant Property to Tenant until Tenant has paid Landlord all costs incurred by Landlord in removing and storing such Tenant Property and all other amounts owed by Tenant to Landlord pursuant to this Lease, including, without limitation, unpaid rental and costs incurred by Landlord to repair the Premises.

25. Default by Landlord: No default by Landlord hereunder shall constitute an eviction or disturbance of Tenant's use and possession of the Premises or render Landlord liable for damages or entitle Tenant to be relieved from any of Tenant's obligations hereunder (including the obligation to pay rent) or grant Tenant any right of deduction, abatement, set-off or recoupment or entitle Tenant to take any action whatsoever with regard to the Premises or Landlord until thirty (30) days after Tenant has given Landlord written notice specifically setting forth such default by Landlord, and Landlord has failed to cure such default within said thirty (30) day period, or in the event such default cannot be cured within said thirty (30) day period then within an additional reasonable period of time so long as Landlord has commenced curative action within said thirty (30) day period and thereafter is diligently attempting to cure such default. If any mortgagee of Landlord has given Tenant its address for notices and specifically requests such notice, Tenant agrees to give

the notice required hereinabove to such mortgagee at the time Tenant gives same to Landlord, and to accept curative action, if any, undertaken by such mortgagee as if such curative action had been taken by Landlord.

- 26. Waiver of Subrogation: Each party hereto waives any and every claim which arises or may arise in such party's favor against the other party hereto during the term of this Lease for any and all loss of, or damage to, any of such party's property located within or upon, or constituting a part of the Premises, which loss or damage is covered by valid and collectible fire and extended coverage insurance policies, to the extent that such loss or damage is recoverable under such insurance policies. Such mutual waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Lease with respect to any loss of, or damage to, property of the parties hereto. Inasmuch as such mutual waivers will preclude the assignment of any aforesaid claim by way of subrogation or otherwise to an insurance company (or any other person), each party hereby agrees immediately to give to each insurance company which has issued to such party policies of fire and extended coverage insurance, written notice of the terms of such mutual waivers, and to cause such insurance policies to be properly endorsed, if necessary, to prevent the invalidation of such insurance coverages by reason of such waivers.
- 27. Title to Improvements: The Town of Addison, Texas, solely owns the Premises. Any and all improvements made to the Premises by Tenant shall become the property of Landlord upon the expiration or termination of this Lease; provided, however: (i) if Tenant is not then in default hereunder, Tenant shall have the right to remove all personal property, equipment, or trade fixtures owned by Tenant from the Premises, but Tenant shall be required to repair any damage to the Premises caused by such removal in a good and workmanlike manner and at Tenant's sole cost and expense; and (ii) Landlord may elect to require Tenant to remove all improvements made to the Premises by Tenant and restore the Premises to the condition in which the same existed on the Commencement Date hereof, in which event Tenant shall promptly perform such removal and restoration in a good and workmanlike manner and at Tenant's sole cost and expense. If Tenant fails or refuses to remove any or all of Tenant's personal property, equipment, and trade fixtures from the Premises on or before the date of the termination of this Lease, the items which Tenant has failed or refused to remove: (i) shall be considered abandoned by Tenant, (ii) shall become the property of Landlord, and (iii) may be disposed of by Landlord in any manner desired by Landlord in Landlord's unfettered discretion.
- 28. Mechanics' and Materialmen's Liens: TENANT AGREES TO DEFEND, INDEMNIFY AND HOLD LANDLORD HARMLESS OF AND FROM ALL LIABILITY ARISING OUT OF THE FILING OF ANY MECHANICS' OR MATERIALMEN'S LIENS AGAINST THE PREMISES BY REASON OF ANY ACT OR OMISSION OF TENANT OR ANYONE CLAIMING UNDER TENANT, AND LANDLORD, AT LANDLORD'S OPTION, MAY SATISFY SUCH LIENS AND COLLECT THE AMOUNT EXPENDED FROM TENANT TOGETHER WITH INTEREST THEREON AS PROVIDED IN PARAGRAPH 39 AS ADDITIONAL RENT; PROVIDED, HOWEVER, THAT LANDLORD SHALL NOT SO SATISFY SUCH LIENS UNTIL THIRTY (30) DAYS AFTER WRITTEN NOTIFICATION TO TENANT OF LANDLORD'S INTENTION TO DO SO AND TENANT'S FAILURE DURING SUCH THIRTY (30) DAY PERIOD TO BOND SUCH LIENS OR ESCROW FUNDS WITH APPROPRIATE PARTIES TO PROTECT LANDLORD'S INTEREST IN THE PREMISES.

- 29. Title: Tenant accepts the Premises subject to: (i) the Addison Airport Minimum Standards and Requirements For Commercial Aeronautical Service Providers adopted March 1, 2004 as amended or modified from time to time, and the prevailing Addison Airport Rules and Regulations; (ii) easements and rights-of-way; and (iii) zoning ordinances and other ordinances, laws, statutes or regulations now in effect or hereafter promulgated by any governmental authority having jurisdiction over the Premises.
- Quiet Enjoyment and Subordination: Landlord covenants, represents and warrants that Landlord has full right and power to execute and perform this Lease and to grant the estate demised herein, and that Tenant, upon payment of the rents herein reserved, and performance of the terms, conditions, covenants and agreements herein contained, shall peaceably and quietly have, hold and enjoy the Premises during the full term of this Lease; provided, however, that Tenant accepts this Lease subject and subordinate to any recorded mortgage, deed of trust or other lien presently existing upon the Premises. Landlord further is hereby irrevocably vested with full power and authority by Tenant to subordinate Tenant's interest hereunder to any mortgage, deed of trust or other lien now existing or hereafter placed on the Premises or to declare this Lease prior and superior to any mortgage, deed of trust or other lien now existing or hereafter placed on the Premises. Tenant agrees upon demand to execute such further instruments subordinating this Lease as Landlord may request, provided such subordination shall be upon the express conditions that (i) this Lease shall be recognized by the mortgagee and that all of the rights of Tenant shall remain in full force and effect during the full term of this Lease so long as Tenant pays and performs all of the duties and obligations of Tenant under this Lease; and (ii) in the event of foreclosure or any enforcement of any such mortgage, deed of trust or other lien, the rights of Tenant hereunder shall expressly survive and this Lease shall in all respects continue in full force and effect so long as Tenant shall fully perform all Tenant's obligations under this Lease. Tenant also agrees upon demand to execute further instruments declaring this Lease prior and superior to any mortgage, deed of trust or other lien and specifically providing that this Lease shall survive any foreclosure of such mortgage, deed of trust or other lien. Upon any foreclosure of any mortgage, deed of trust or other lien now existing or hereafter placed on the Premises, Tenant agrees to attorn to and recognize as landlord hereunder, the purchaser of Landlord's interest in the Premises at any foreclosure sale pursuant to any such mortgage, deed of trust or other lien, if Tenant is required to do so by the applicable party.
- 31. Access and Egress: Landlord reserves, and Tenant hereby grants to Landlord, the full and unrestricted access to and egress from that portion of the Premises on which buildings are not located for Landlord, its tenants, employees, guests, patrons, invitees, contractors, suppliers of materials, furnishers of services, its or their equipment, vehicles, machinery and other property, and Manager, its officers, employees and agents, without charge to Landlord or to said persons or entities.
- 32. Rent on Net Return Basis: It is intended that the rent provided for in this Lease shall be an absolutely net return to Landlord for the term of this Lease, free of any loss, expenses or charges with respect to the Premises including, without limitation, maintenance, repairs, replacement, insurance, taxes and assessments, and this Lease shall be construed in accordance with such intention.

- 33. Holding Over: Should Tenant, or any of Tenant's successors in interest fail to surrender the Premises, or any part thereof, on the expiration of the term of this Lease, such holding over shall constitute a tenancy from month to month only terminable at any time by either Landlord or Tenant after thirty (30) days' prior written notice to the other, at a monthly rental equal to one hundred fifty percent (150%) of the rent paid for the last month of the term of this Lease.
- 34. Waiver of Default: No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Lease shall be deemed to be a waiver of any subsequent default or breach of the same or any other term, condition or covenant contained herein.
- 35. Release of Landlord Upon Transfer: All of Landlord's personal liability for the performance of the terms and provisions of this Lease (except for any liability accruing prior to such transfer) shall terminate upon a transfer of the Premises by Landlord, provided that the obligations of Landlord under this Lease are covenants running with the land and shall be binding upon the transferee of Landlord's interest in this Lease and the Premises.
- 36. Attorneys' Fees: If, on account of any breach or default by Landlord or Tenant of their respective obligations under this Lease, it shall become necessary for the other to employ an attorney to enforce or defend any of such party's rights or remedies hereunder, and should such party prevail, such party shall be entitled to collect reasonable attorneys' fees incurred in such connection from the other party.
- 37. Financial Information: Tenant agrees that Tenant will from time to time, upon the written request of Landlord during the term of this Lease furnish to Landlord such credit and banking references as Landlord may reasonably request.

#### 38. Estoppel Certificates:

- A. Tenant agrees that from time to time, upon not less than thirty (30) days' prior written request by Landlord, Tenant will deliver to Landlord a statement in writing certifying; (i) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease as modified is in full force and effect and stating the modifications); (ii) the dates to which rent and other charges have been paid; (iii) Landlord is not in default under any term or provision of this Lease or if in default the nature thereof in detail in accordance with an exhibit attached thereto; (iv) that, if requested by Landlord, Tenant will not pay rent more than one (1) month in advance and that this Lease will not be amended without notice to Landlord's mortgagee and that the same will not be terminated without the same notice required by the Lease to be furnished to Landlord also being furnished to Landlord's mortgagee and Landlord's mortgagee fails to cure such default within the curative period allowed Landlord under this Lease; and (v) any other information pertaining to Landlord, Tenant, this Lease or the Premises reasonably requested by Landlord.
- B. Landlord agrees that from time to time, upon not less than thirty (30) days' prior written request by Tenant, Landlord will deliver to Tenant a statement in writing certifying: (i) that this Lease is unmodified and in full force and effect (or if there have been modifications, that the lease as modified is in full force and effect and stating the modifications); (ii) the dates to which rent

and other charges have been paid; and/or (iii) Tenant is not in default under any term or provision of this Lease or if in default the nature thereof in detail in accordance with an exhibit attached thereto.

- 39. Interest on Tenant's Obligations and Manner of Payment: All monetary obligations of Tenant to Landlord under this Lease remaining unpaid ten (10) days after the due date of the same (if no due date has been established under other provisions hereof, the "due date" shall be the date upon which Landlord demands payment from Tenant in writing) shall bear interest per annum at the greater of ten percent (10%) or the highest non-usurious rate then allowed by law from and after said tenth (10th) day until paid. If more than twice during the term of the Lease Tenant's personal or corporate check is not paid by the bank on which it is drawn for whatever reason, Landlord may require by giving written notice to Tenant that the payment of all future monetary obligations of Tenant under this Lease are to be made on or before the due date by cashier's check, certified check or money order, and the delivery of Tenant's personal or corporate check will no longer constitute payment of such monetary obligations. Any acceptance by Landlord of a personal or corporate check after such notice shall not be deemed or construed as a waiver or estoppel of Landlord to require other payments as required by said notice.
- Landlord's Lien: In addition to the constitutional and statutory Landlord's liens, TENANT HEREBY GRANTS TO LANDLORD A SECURITY INTEREST TO SECURE PAYMENT OF ALL RENT DUE HEREUNDER FROM TENANT, UPON ALL GOODS, WARES, EQUIPMENT, FIXTURES, FURNITURE AND OTHER PERSONAL PROPERTY OWNED BY TENANT AND SITUATED IN OR UPON THE PREMISES, TOGETHER WITH THE PROCEEDS FROM THE SALE OR LEASE THEREOF. Such property shall not be removed without the consent of Landlord until all arrearages in rent then due to Landlord hereunder shall have been paid and discharged. Upon Tenant's failure to pay rent due within ten (10) days after the due date, Landlord may, in addition to any other remedies provided herein or by law, enter upon the Premises and take possession of any and all goods, wares, equipment, fixtures, furniture and other personal property owned by Tenant and situated on the Premises without liability for trespass or conversion, and sell the same at public or private sale with or without having such property at the sale, after giving Tenant reasonable notice of the time and place of any such sale. Landlord has no right to and has no security interest in and may not take possession of any property which may be situated on the Premises but which is not owned by Tenant, including but not limited to property which may be owned by another and leased and/or loaned to Tenant. Unless otherwise required by law, notice to Tenant of such sale shall be deemed sufficient if given in the manner prescribed in this Lease at least thirty (30) days before the time of the sale. Any public sale made under this paragraph shall be deemed to have been conducted in a commercially reasonable manner if held in the Premises or where the property is located, after the time, place and method of sale and a general description of the types of property to be sold have been advertised in a daily newspaper published in Dallas County, Texas, for five (5) consecutive days before the date of the sale. Landlord or Landlord's assigns may purchase at a public sale and, unless prohibited by law, at a private sale. The proceeds from any disposition dealt with in this paragraph, less any and all expenses connected with the taking of possession, holding and selling of the property including reasonable attorneys' fees and legal expenses), shall be applied as a credit against the indebtedness secured by the security interest granted herein. Any surplus shall be paid to Tenant or as otherwise required by law, and Tenant shall pay any deficiency forthwith. Upon request by Landlord, Tenant agrees to execute and deliver to Landlord financing statements in form sufficient to perfect the security interest of Landlord in the aforementioned property and proceeds

thereof under the provisions of the Texas Business and Commerce Code. The constitutional and statutory liens for rent are expressly reserved; the security interest herein granted is in addition and supplementary thereto.

- 41. Corporate Execution: If Tenant is a corporation or if this Lease shall be assigned by Tenant to a corporation or if Tenant sublets all or a portion of the Premises to a corporation, such corporation hereby agrees to execute and deliver to Landlord from time to time during the term of this Lease such instruments as Landlord may reasonably request to evidence: (i) the authority of such corporation to transact business good standing with the State of Texas; and (ii) the authority of the officers of such corporation to execute this Lease or other documents in connection with this Lease.
- 42. Joint and Several Liability: If more than one person or entity is defined as Tenant in this Lease, all of the duties, obligations, promises, covenants and agreements contained in this Lease to be paid and performed by Tenant shall be the joint and several obligation of all persons or entities defined as Tenant. Each person or entity defined as Tenant agrees that Landlord, in Landlord's sole discretion, may: (i) institute or bring suit against them, jointly and severally, or against any one or more of them; (ii) compromise or settle with any one or more of them for such consideration as Landlord may deem proper; and (iii) release one or more of them from liability hereunder, and that no such action by Landlord shall impair or affect Landlord's rights to collect costs, expenses, losses or damages incurred or suffered by Landlord from the other persons or entities defined as Tenant, or any of them, not so sued, compromised, settled with or released.
- 43. Certificate of Occupancy: Tenant may, prior to the commencement of the term of this Lease, apply for a Certificate of Occupancy to be issued by the Town of Addison. If for any reason, beyond the reasonable control of Tenant, Tenant is unable to secure a Certificate of Occupancy within thirty (30) days of said Commencement Date, Tenant may terminate this Lease provided Tenant has given Landlord written notice of all deficiencies preventing the issuance of said Certificate of Occupancy in favor of Tenant and Landlord fails to cure or otherwise resolve the deficiency(ies) within ten (10) business days of Landlord's receipt of Tenant's written notice. Nothing herein contained shall obligate Landlord to install any additional electrical wiring, plumbing or plumbing fixtures, or other fixtures or equipment or any other improvements whatsoever which are not presently existing in the Premises, or which have not been expressly agreed upon by Landlord in writing.
- 44. Independent Contractor: It is understood and agreed that in leasing and operating the Premises, Tenant is acting as an independent contractor and is not acting as agent, partner, joint venturer or employee of Landlord.
- 45. Force Majeure: In the event performance by Landlord of any term, condition or covenant in this Lease is delayed or prevented by an 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 hindered.

- 46. Exhibits: All exhibits, attachments, annexed instruments and addenda referred to herein shall be considered a part hereof for all purposes with the same force and effect as if copied verbatim herein.
- 47. Use of Language: Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural, unless the context otherwise requires.
- **48.** Captions: The captions or headings or paragraphs in this Lease are inserted for convenience only, and shall not be considered in construing the provisions hereof if any question of intent should arise.
- 49. Successors: The terms, conditions and covenants contained in this Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto and their respective successors in interest and legal representatives except as otherwise herein expressly provided. All rights, powers, privileges, immunities and duties of Landlord under this Lease including, but not limited to, any notices required or permitted to be delivered by Landlord to Tenant hereunder may, at Landlord's option, be exercised or performed by Landlord's agent or attorney.
- 50. Severability: If any provision in this Lease should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Lease shall not be affected thereby.
- 51. Notices: Any notice or document required to be delivered hereunder may be delivered in person or shall be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage prepaid as registered or certified mail (return receipt requested is optional by sender), addressed to the parties at the addresses indicated below, or at such other addresses as may have theretofore been specified by written notice delivered in accordance herewith.

### TO LANDLORD:

Town of Addison, Texas c/o Airport Manager 16051 Addison Road, Suite 220 Addison, Texas 75001 Attn: Real Estate Manager

and

Town of Addison, Texas 5300 Beltline Road Dallas, TX 75001-9010

#### TO TENANT:

Mercury Air Center – Addison Inc. 4400 Glenn Curtiss Drive Addison, TX 75001

Attn: Josh Yahoudy

Title: General Manager

52. Fees or Commissions: Each party hereto hereby covenants and agrees with the other that such party shall be solely responsible for the payment of any brokers', agents' or finders' fees or commissions agreed to by such party arising from the execution of this Lease or the

performance of the terms and provisions contained herein, AND SUCH PARTY AGREES TO INDEMNIFY AND HOLD THE OTHER PARTY HARMLESS FROM THE PAYMENT OF ANY SUCH FEES OR COMMISSIONS.

- 53. Counterparts: This Lease may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.
- 54. Governing Law and Venue: This Lease and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas, and with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement; and Landlord and Tenant both irrevocably agree that venue for any dispute concerning this Lease or any of the transactions contemplated herein shall be in any court of competent jurisdiction in Dallas County, Texas.
- 55. No Recording: Tenant agrees that Tenant will not record this Lease in the real property records of Dallas County, Texas, without first securing the prior written consent of Landlord, which may be withheld at Landlord's sole discretion. However, Tenant agrees upon the written request of Landlord to execute, acknowledge and deliver to Landlord a short-form lease in recordable form.
- 56. Diagram: The diagram of the Airport attached hereto as <u>Exhibit C</u> merely evidences existing or contemplated improvements. By attaching such diagram as an exhibit to this Lease, Landlord is in no way contracting or bound to maintain or construct improvements exactly as shown thereon or prohibited from making additional or different improvements.
- 57. Time of Essence: Time is of the essence in the payment and performance of the duties and obligations imposed upon Tenant by the terms and conditions of this Lease.
- 58. Survival: All duties and obligations imposed upon Tenant by the terms and conditions of this Lease shall survive the termination or expiration of this Lease until paid or performed.
- 59. Special Conditions: Tenant hereby acknowledges and agrees the Leased Premises are to be used expressly for the purpose of the storage of aircraft in connection with and in part of Tenant's primary business operations at Addison Airport. Tenant, its guest or invitees' vehicles shall not be left parked and unattended anywhere on the Leased Premises other than wholly inside the hangar (no off-street parking is available to or included within the Leased Premises). The Leased Premises is subject to a shared apron easement with adjacent properties. No aircraft is to be left unattended on the aircraft apron in front of the hangar on the Leased Premises or, anywhere else in near proximity of the Leased Premises where said aircraft could interfere with the movement-at-will of other aircraft and users of Addison Airport.
- 60. Entire Agreement and Amendments: This Lease, consisting of sixty (60) Paragraphs and Exhibits A through E attached hereto and made a part hereof, together with the premises to this Lease set forth above which are incorporated herein, and any other documents

CONVENTIONAL HANGAR LEASE - Page 26

incorporated herein (including, without limitation, the Rules and Regulations), embodies the entire agreement between Landlord and Tenant and supersedes all prior agreements and understandings, whether written or oral, and all contemporaneous oral agreements and understandings relating to the subject matter hereof. Except as otherwise specifically provided herein, no agreement hereafter made shall be effective to change, modify, discharge or effect an abandonment of this Lease, in whole or in part, unless such agreement is in writing and signed by or on behalf of the party against whom enforcement of the change, modification, discharge or abandonment is sought.

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

TENANT:

LANDLORD:

Mercury Air Center - Addison Inc.

Town of Addison, Texas

By: Josephy

Wesley S. Pierson, City Manager

Title: President and CEO

Printed Name: Louis T.

Disclosure of Representation by SAMI Management, Inc.: SAMI and its brokers and salespersons are licensed and regulated by the Texas Real Estate Commission (TREC). SAMI is performing professional services pursuant to a written agreement with the Town of Addison and, among other things, represents the Town of Addison as the owner's agent for Addison Airport in Addison, Texas. SAMI is available to help and assist any prospective tenant and is obligated to treat them ethically and fairly. By law and by contract it cannot represent tenants or prospective tenants and must place the interests of the Town of Addison first. A tenant or prospective tenant should not tell the owner's agent anything the tenant or prospective tenant would not want the Town of Addison to know because the owner's agent must disclose to the owner any material information known to the owner's agent. Furthermore, in respect of the relationship of the parties, SAMI and its brokers and salespersons decline to serve as an intermediary between owner and tenant or prospective tenant. For further information, contact SAMI Management, Inc. at bill.dyer@samimgmt.com or 972-392-4856. A copy of Information about Brokerage Services as approved by Texas Real Estate Commission is available upon request.

### EXHIBIT A

### Legal Description of the Premises

4540 Glenn Curtiss Drive, Addison Airport, Addison, Texas 75001

Whereas a true and correct Legal Description of the Premises is currently not available, Landlord and Tenant mutually agree the Premises are located at 4540 Glenn Curtiss Drive, Addison, Dallas County, Texas 75001, also sometimes referred to as Property 0390 in the Airport Manager's records and as #T5-11 in the FAA approved Airport Layout Plan (ALP) and as further described in **Exhibit C** hereto.

CONVENTIONAL HANGAR LEASE - Exhibits

### EXHIBIT B

### **Property Survey**

Whereas a true and correct boundary survey is currently not available describing the Premises, Landlord and Tenant mutually agree the Premises are located at 4540 Glenn Curtiss Drive, Addison, Dallas County, Texas 75001, also sometimes referred to as Property 0390 in the Airport Manager's records and as #T5-11 in the FAA approved Airport Layout Plan (ALP) and as further described in Exhibit C hereto.

## **EXHIBIT C**

# Aerial Depiction of the Premises

Below is a depiction of the proximity of the Premises for informational purposes only and is not to be construed as accurate in area or dimension.



Figure 1: Red line shows approximate lease boundary. Green shaded depicts access easement area

CONVENTIONAL HANGAR LEASE - Exhibits

### **EXHIBIT D**

### Utility Expense Reimbursement Addendum

ADDENDUM TO THE CONVENTIONAL HANGAR LEASE AGREEMENT BETWEEN TOWN OF ADDISON (LANDLORD) AND MERCURY AIR CENTER – ADDISON, INC. (TENANT) CONCERNING THE LEASED PREMISES AT 4540 GLENN CURTISS DRIVE, ADDISON AIRPORT, ADDISON, DALLAS COUNTY, TEXAS 75001

In addition to the Base Rent stated in the Lease, Tenant will pay Landlord as Additional Rent the following utility services described in this addendum. Tenant will pay the Additional Rent each month in arrears when or before the next Base Rent monthly installment is due:

- Electrical Services: Direct Energy ESI ID: 10443720008492359 Meter #113358168LG
- Water & Sewer: Town of Addison Account: 98205 Meter #07489888
- Gas Service: Atmos Energy Account: 3046181325 Meter# 022500168C

Each month Landlord shall assess Tenant for all direct utility costs for these utilities, including taxes, fees and other related costs billed and paid for by Landlord for the preceding billing cycle that exclusively serve the Premises. Landlord agrees to reasonably cooperate with Tenant in the event Tenant should desire to inquire, protest or appeal the charges being assessed by the utility service provider. To this end, and at Tenant's expense, Tenant shall give Landlord prior written notice of any such protest or appeal, and resolution thereof.

Landlord agrees not to assess any rebilling or administrative service fees for utility costs covered under this addendum. Tenant's failure to pay all Additional Rent as required by the Lease and/or this Addendum is considered an event of default pursuant to Section 23.A. of the Lease.

CONVENTIONAL HANGAR LEASE - Exhibits

### **EXHIBIT E**

### 4540 Glenn Curtiss Drive Addison, Texas

## Maintenance and Repair Responsibilities

	Landlord	Tenant	Comment
Ground Maintenance			
Building & Gate Locksmithing & Security	Maintains all public access gates	All, as required by Tenant's use and all Laws, including ordinances, rules and regulations. All doors and gates leading to Airport Operations Area are to be kept secured at all times.	
Fencing	Landlord maintains Airport perimeter fence (damage to such fence caused by or resulting from any of Tenant's, or its guests' and invitees, acts or omissions shall be paid for by Tenant)	All other fencing upon the Premises, if any, is Tenant's responsibility.	<u> </u>
Landscape & Lawn Care	All turf, beds and planters within the Premises		
Landscape Irrigation	Minimum requirements by City ordinance	1.00	
Pavement - Parking	Structural repairs and reconstruction	Regular sweeping and snow removal. Any damage other than that resulting from normal wear and tear. Painting and striping as required for intended use or required by ordinance or otherwise by Landlord with Landlord's prior written consent.	

CONVENTIONAL HANGAR LEASE

Page 32 of 37

	<u>Landlord</u>	Tenant	Comment
Pavement - Ramp	Structural repairs and reconstruction	Regular sweeping and snow removal. Any damage other than that resulting from normal wear and tear. Painting and striping as required for intended use, safe operations or as required by Landlord and with Landlord's prior written	
Trash Dumpster	Dumpster location or location changes at the sole discretion and direction of the Landlord.	Tenant to manage and maintain and pay for service. Must be kept on Premises unless otherwise approved in advance by Landlord	
Trash Dumpster screening, if required	Landlord is responsible for constructing screening, if required.	Maintained at Tenant's sole cost and expense.	
Building Shell		** **	7000
Garage Overhead & Service Doors	Major repairs and replacement if required at sole discretion of Landlord.	General preventive maintenance and basic service and repair.  Examples of general preventive maintenance and basic service and repair would be servicing, maintaining or repairing springs, cables, rollers, latch & lock	(damage caused by or resulting from Tenant, Tenant's employees, or its guests' and invitees, acts or omissions shall be paid for by Tenant)
Hangar Doors	Major repairs and replacement if required at sole discretion of Landlord	General preventive maintenance and basic service – including cleaning floor tracks.	(damage caused by or resulting from Tenant, Tenant's employees, or its guests' and invitees, acts or omissions shall be paid for by Tenant)
Hangar Floor	Major repairs and replacement if required at sole discretion of Landlord.	General preventive maintenance, sweeping, cleaning and safety markings as required by Landlord. Examples include cleaning floors of oils and chemical materials that may cause permanent damage to floor surface such as stains or peeling of floor coating.	(damage caused by or resulting from Tenant, Tenant's employees, or its guests' and invitees, acts or omissions shall be paid for by Tenant)
Building & Hangar	Major repairs and replacement if required at sole discretion of	General preventive maintenance, repair and replacement	(damage caused by or resulting from Tenant,

CONVENTIONAL HANGAR LEASE

	Landlord	Tenant	Comment
Insulation, if existing	Landlord.	where required.	Tenant's employees, or its guests' and invitees, acts or omissions shall be paid for by Tenant)
Painting and cleaning of building exterior	Performed by Landlord at Landlord's sole expense and discretion.	General preventive maintenance, repair and replacement where required.	(damage caused by or resulting from Tenant, Tenant's employees, or its guests' and invitees, acts or omissions shall be paid for by Tenant)
Repairs to exterior siding building, fascia, trim, etc.	Performed by Landlord at Landlord's sole expense and discretion	General preventive maintenance, repair and replacement where required.	(damage caused by or resulting from Tenant, Tenant's employees, or its guests' and invitees, acts or omissions shall be paid for by Tenant)
Window and Glass Curtain Walls	Major repairs and replacement when required at sole discretion of Landlord.	General preventive maintenance, repair and replacement where required.	(damage caused by or resulting from Tenant, Tenant's employees, or its guests' and invitees, acts or omissions shall be paid for by Tenant)
Roof	Major repairs and replacement when required at sole discretion of Landlord.	No penetrations without Landlord's prior written approval.	5.58%
Roof rain-gutters and downspouts	Major repair and replace as required.	General preventive maintenance, repair and replacement where required.	1
Interior - Finish-out			
Interior Doors	Major repairs and replacement when required at sole discretion of Landlord.	General preventive maintenance, repair and replacement where required.	(damage caused by or resulting from Tenant, Tenant's employees, or its

CONVENTIONAL HANGAR LEASE

	Landlord	Tenant	Comment
		5	guests' and invitees, acts or omissions shall be paid for by Tenant)
All Interior and Exterior door locks (electronic or keyed)	Any lock changes or lock system changes must be approved by Landlord in advance. Maintain copies of access keys provided by Tenant.	General preventive maintenance, repair and replacement where required. Copies of access keys to be provided to Landlord with instruction and codes provided for any electronic locking systems.	(damage caused by or resulting from Tenant, Tenant's employees, or its guests' and invitees, acts or omissions shall be paid for by Tenant)
Office/shop space flooring and floor cover	Major repairs and replacement at sole discretion of Landford.	Major repair and replacement with Landlord's prior consent. General preventive maintenance, cleaning of all floor surfaces (carpet, tile and tile grout) repair and replacement where required.	(damage caused by or resulting from Tenant, Tenant's employees, or its guests' and invitees, acts or omissions shall be paid for by Tenant)
Painting Interior – Office and shop space		Repainting similar to existing condition. Major change in color, texture and material must be with Landlord's prior written consent. General preventive maintenance, cleaning, repair and replacement where required.	(damage caused by or resulting from Tenant, Tenant's employees, or its guests' and invitees, acts or omissions shall be paid for by Tenant)
Painting Interior – Hangar space	Repainting similar to existing condition at sole discretion of the Landlord.	Any change in color, texture and material must be with Landlord's prior written consent. General preventive maintenance, cleaning, repair and replacement where required.	(damage caused by or resulting from Tenant, Tenant's employees, or its guests' and invitees, acts or omissions shall be paid for by Tenant)
Walls & Ceilings	Major repairs and replacement at sole discretion of Landlord.	Repainting or repairing similar to existing condition. Major change in color, texture and material must be with Landlord's prior written consent. General preventive maintenance, cleaning, repair and replacement where required. Applicable to office area only.	(damage caused by or resulting from Tenant, Tenant's employees, or its guests' and invitees, acts or omissions shall be paid for

	Landlord	Tenant	Comment
			by Tenant)
Building Systems		9000	
Air Compressor		Tenant's full responsibility.	
Electrical Systems	Major repairs, replacement or modifications at sole discretion of Landlord. General maintenance and repair.	Replacement or material change only with Landlord's prior written consent. Inform Landlord of any electrical issues or needed modifications.	(damage caused by or resulting from Tenant, Tenant's employees, or its guests' and invitees, acts or omissions shall be paid for by Tenant)
Exterior Lighting & maintenance	Major repairs and replacement at sole discretion of Landlord.  Landlord to replace bulbs as necessary,	Replacement or material change only with Landlord's prior written consent.	
Office and interior lighting	Major repairs and replacement of fixtures at sole discretion of Landlord.	Tenant to replace bulbs and lamps as necessary with similar bulb and lamp types.	(damage caused by or resulting from Tenant, Tenant's employees, or its guests' and invitees, acts o omissions shall be paid for by Tenant)
Hangar light repair and replacement	Major repairs and replacement at sole discretion of Landlord. Landlord to replace bulbs as necessary.	Replacement or material change only with Landlord's prior written consent.	(damage caused by or resulting from Tenant, Tenant's employees, or its guests' and invitees, acts o omissions shall be paid for by Tenant)
HVAC	Major repairs and replacement at sole discretion of Landlord. Filter changes and major repair of equipment.	General maintenance and repair. Replacement or material change only with Landlord's prior written consent. Examples of general maintenance and repair are; routine services, preventive maintenance, thermostat battery replacement and additional refrigerant as needed.	(damage caused by or resulting from Tenant, Tenant's employees, or its guests' and invitees, acts or omissions shall be paid for by Tenant)

CONVENTIONAL HANGAR LEASE

	Landlord	Tenant	Comment
Window a/c units, if any	Major repairs and replacement at sole discretion of Landlord.	General maintenance and repair. Replacement or material change only with Landlord's prior written consent.	(damage caused by or resulting from Tenant, Tenant's employees, or its guests' and invitees, acts or omissions shall be paid for by Tenant)
Plumbing systems	Major repairs and replacement at sole discretion of Landlord.	General maintenance and repair. Replacement or material change only with Landlord's prior written consent.	(damage caused by or resulting from Tenant, Tenant's employees, or its guests' and invitees, acts or omissions shall be paid for by Tenant)
Water heater	Replacement at Landlord's sole discretion.	General maintenance and repair. Replacement with Landlord's prior written consent.	
Storm water drains	Major repairs and replacement and general maintenance.	Damage caused by or resulting from acts of Tenant, Tenant's employees, guests or invitees shall be paid for by Tenant.	(damage caused by or resulting from Tenant, Tenant's employees, or its guests' and invitees, acts or omissions shall be paid for by Tenant)
Grease Traps	Landlord to have inspected and serviced upon tenant move-in.	Tenant's full responsibility.	Ifany
Tapping into Fire Main for fire suppression systems	Must be approved by Landlord in advance.	Tenant's full responsibility with Landlord's prior written consent.	
Other:			

AI-1785 10.

**Work Session and Regular Meeting** 

**Meeting Date:** 08/09/2016 **Department:** City Manager

### **AGENDA CAPTION:**

Hold A Public Hearing, Discussion And Consider Action On An Ordinance Rezoning Approximately 18.2 Acres Of Land Located At 14345 Dallas Parkway, The Former Site Of The Ewing Auto Dealership, From I-1, Industrial-1, To A Planned Development District Allowing For Office And Other Commercial Uses And Establishing Development Standards Including A Minimum Building Height. Case 1737-Z/14345 Dallas Parkway.

### **BACKGROUND:**

The properties located at 14345 Dallas Parkway are currently zoned I-1, Industrial-1. This zoning designation provides for a wide variety of low-density uses. This is not in keeping with the guidance provided in the Comprehensive Land Use Plan which calls for high-density office buildings along the Dallas North Tollway corridor. The proposed Planned Development would bring the use of this property in line with the Comprehensive Land Use Plan and the adjacent uses along this corridor.

The Addison Planning and Zoning Commission, meeting in regular session on June 21, 2016, voted to recommend approval of this item:

Voting Aye: Ennis, Griggs, Robbins, Robinson

Voting Nay: Schaeffer, Smith

Absent: Morgan

Speakers at the public hearing:

For: none On: none

Against: Mary Hutchinson, Ewing Enterprises LP, Ewing 8, JV, Gail O. Ewing 1996

Trust, 6455 Dallas Parkway, Plano, TX

The attached staff report provides background on this case as presented to the Planning and Zoning Commission and to the City Council at the July Council Meeting. Since that time, staff has met with the main property owner as well as a potential developer. In an attempt to address their concerns about the feasibility of the zoning requirements in today's market, staff has revised the requirements of the proposed Planned Development (PD). These requirements have been adjusted to reflect the requirements of the Tollway Center PD. Whereas the Tollway Center PD requirements were established graphically based on an approved site plan and building elevations, this PD is not approving a specific development. Therefore, these requirements are being

established in narrative form through text. Any future development will have to abide by the requirements set in the text of the PD.

The following changes have been included:

## **Minimum Building Height:**

Originally, the proposed Planned Development required a minimum building height of 8 stories. This was established so that the scale of development on this property would be in keeping with the height of the surrounding development which ranges from 8-12 stories. Tollway Center is 6 stories with a seventh floor lounge area. The proposed Planned Development has been revised to require a minimum building height of 5 stories.

## Parking:

Originally, the proposed Planned Development required that a minimum of 80% of the parking be provided through structured parking. This was intended to insure efficient use of the land so as to not utilize valuable Tollway fronting property for surface parking lots. This would also be in keeping with the surrounding development which provides the vast majority of parking within parking structures. Staff has revised the proposed Planned Development to require a minimum of 65% structured parking. For properties within the PD which may have multi-phased development, the first phase may provide a minimum of 62.7% structured parking so long as subsequent phases result in a combined total of not less than 65%. This mirrors the parking requirement for the Tollway Center. Phase I provides 62.7% structured parking. Had phase 2 been constructed as originally intended, it would have resulted in a 65.3% structured parking.

Additionally, the PD has been revised to allow for steel guard cables on the first floor if screened with landscaping. This also reflects Tollway Center.

## **Exterior Appearance:**

Originally, the Planned Development did not include stucco in the definition of masonry. This would have limited the use of stucco to not more than 20% of each façade. This mirrors the Town's standard language regarding exterior appearance in Planned Developments, though the Town has often approved the inclusion of stucco for various project, including Tollway Center. Staff has revised the proposed PD to include stucco in the definition of masonry allowing it be used without limit.

Staff believes that these changes address the property owner's and the potential developer's concerns about their ability to meet the zoning requirements given current market conditions.

### **RECOMMENDATION:**

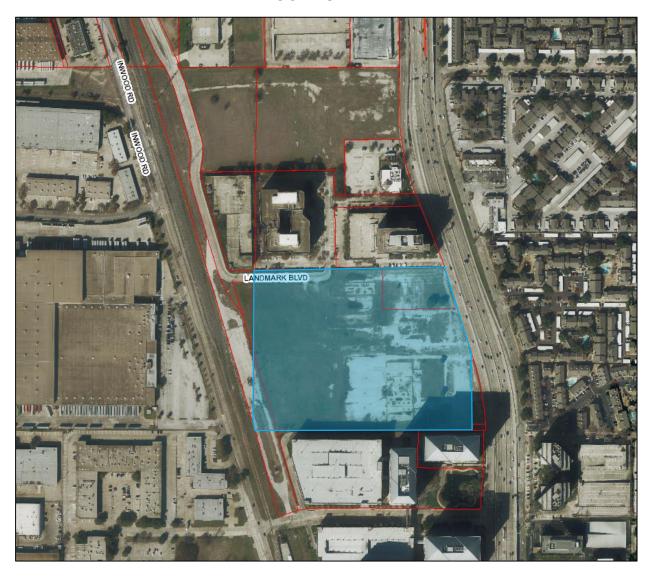
Administration recommends approval.

1737-Z Staff Report
Comprehensive Plan Excerpt
Ordinance

# 1737-Z

**PUBLIC HEARING** Case 1737-Z/14345 Dallas Parkway. Public hearing, discussion, and take action on a recommendation regarding an ordinance changing the zoning of approximately 18.2 acres of land located at 14345 Dallas Parkway, from I-1, Industrial-1, to a Planned Development District allowing for office and other commercial uses and establishing development standards including a minimum building height.

### **LOCATION MAP**





June 17, 2016

#### STAFF REPORT

RE: Case 1737-Z/14345 Dallas Parkway

LOCATION: 14345 Dallas Parkway

REQUEST: Approval of an ordinance rezoning the property

from I-1, Industrial-1, to a PD, Planned Development, for office and other commercial

uses.

APPLICANT: Town of Addison, represented by Mr. Charles Goff

**DISCUSSION:** 

Background: Though vacant now, this site was previously the Ewing automotive dealership. The site was zoned Industrial-1 by Ordinance 66, which is the original zoning ordinance for the Town of Addison that was adopted in 1965. The property has been vacant for approximately 20 years. Several years ago, a small portion of the site was subdivided and sold to a separate owner for a retail development that never occurred. The smaller site is about 1.5 acres and the larger tract is 16.25 acres. There is also a portion of a third tract owned by Oncor in Addison with overhead transmission lines that would be part of this rezoning request. The site had poor access until the Town extended Landmark Boulevard down to this property several years ago. The Town intends for Landmark to be extended east to Dallas Parkway in the future as part of a development on this site.

The property is bounded by the Princeton and Wellington office buildings to the north, Dallas Parkway and the Tollway, in Dallas, to the east; the International Plaza office development to the south, in Farmers Branch; and Oncor utilities and rail road corridor to the west, in Farmers Branch. The adjacent office buildings range from 9-12 stories with mostly structured parking.

Recently, there have been a number of developer inquiries about the site regarding low-density office buildings, limited service hotels, and self-storage. The City Council has directed staff to pursue rezoning these properties in order to require high-density office development consistent with other properties in this area along the Tollway corridor.

<u>Comprehensive Plan</u>: The Town's Comprehensive Plan provides guidance generally for properties along the Tollway and calls out these two properties specifically. In the chapter regarding office uses, it states:

[T]he Town should protect its remaining available Tollway corridor tracts. High-density office buildings are very valuable to the Town because they bring high ad valorem values to the tax base and lots of employees, which drive the retail/restaurant/hotel economy. The Tollway corridor is the only location in Addison that can attract high density office buildings. The Town needs to protect the four remaining sites on the Tollway corridor [...]. There is always pressure on the Town to let developers build what they can finance and build at the moment, but the Town has to think long-term and protect its most valuable land assets. (Page 79-80)

The Comprehensive Plan also conducted a Land Use Analysis for every property in Town. This site falls within Sector Two. The assessment summary states:

The future for this site is uncertain, and the Industrial-1 zoning allows a wide variety of uses. The Town should work with the owner on a Planned Development zoning that would allow flexibility, but protect the Town against Industrial uses being located on this prime piece of property in Addison's high-density office corridor. (Page 208-209)

<u>Proposed Planned Development</u>: In order to preserve this site for high-density office development, staff is proposing to rezone the property to a Planned Development. The proposed Planned Development would mirror many of the Commerical-1 district regulations with a few modifications.

<u>Proposed Uses</u>: The new Planned Development would require that the primary use of the property be for office building(s). Additionally, any use allowed within the Commerical-1 zoning district would be allowed as a secondary use. Hotels, restaurants, and the sale of alcoholic beverages for on-premises consumption in conjunction with a restaurant would also be allowed as secondary uses upon the issuance of a Special Use Permit. Secondary uses could not occupy more than 30% of the floor area for buildings within the development.

<u>Development Standards</u>: The following development standards would apply to buildings on the site:

*Building Setbacks.* The Planned Development would use the Commerical-1 district standard, which requires a 25-foot setback from the street and has no minimum side or rear yard setbacks.

Height. The Planned Development would establish a minimum building height of 8 stories and a maximum building height of 12 stories. This is consistent with the adjacent office developments. Building height is limited because the site falls under the approach surface for Addison Airport.

<u>Parking</u>: Parking would be required in accordance with the Commerical-1 standards. For office, this would require 1 space per 300 square feet. It is very likely that the market would necessitate that an office developer provide parking far in excess of that. Additionally, there would be a shared parking allowance to permit uses to share parking if a parking study can be provided to show that the parking can be shared without negative impact. This would be reviewed by the Town's Zoning Administrator and could result in fewer parking spaces than required by the ordinance. To ensure efficient use of land,

staff is also proposing that a minimum of 80% of the parking be provided in a structured parking garage as opposed to surface lots.

<u>Exterior Appearance</u>: The Planned Development standards would require that all structures be constructed of 80% masonry, which can include brick, stone, glass and split face concrete masonry units. A maximum of three materials will be permitted per building.

<u>Landscaping</u>: The landscaping on the site would need to comply with the Town's landscaping regulations, including the requirements for 20% site landscaping coverage, perimeter screening, and interior plantings.

<u>Screening of Mechanical Equipment and Service Areas</u>: For this Planned Development, mechanical equipment would be required to be roof mounted and screened from view of all public areas. Loading, service, and trash storage areas will also need to be screened from public areas.

### RECOMMENDATION: APPROVAL

The Comprehensive Plan directs the Town to protect the remaining sites along the Dallas North Tollway for high-density office buildings. The site's current Industrial-1 zoning designation allows for a wide variety of uses that are not appropriate for this corridor. Additionally, the Industrial-1 district allows for very low-density development, far below what has been developed around this site. The proposed Planned Development requirements would ensure that the property gets used for an office development that is in keeping with the highest and best use of the property and the character of the adjacent properties.



# <u>Case 1737-Z/14345 Dallas Parkway</u> June 21, 2016

### **COMMISSION FINDINGS:**

The Addison Planning and Zoning Commission, meeting in regular session on June 21 2016, voted to recommend approval of an ordinance changing the zoning of approximately 18.2 acres of land located at 14345 Dallas Parkway, from I-1, Industrial-1, to a Planned Development District allowing for office and other commercial uses and establishing development standards including a minimum building height, subject to no conditions.

Voting Aye: Ennis, Griggs, Robbins, Robinson

Voting Nay: Schaeffer, Smith

Absent: Morgan

### SPEAKERS AT THE PUBLIC HEARING:

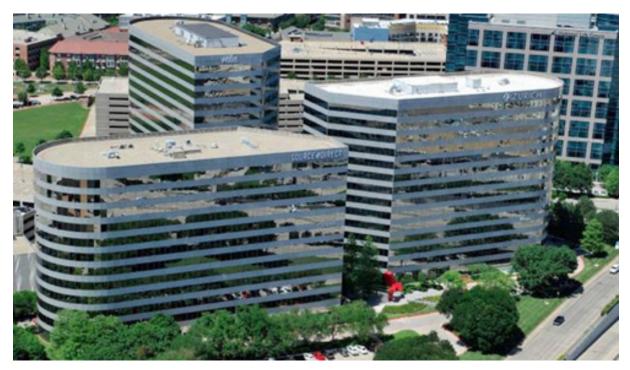
For: none On: none

Against: Mary Hutchison, Ewing Enterprises LP, Ewing 8, JV, Gail O. Ewing 1996

Trust, 6455 Dallas Parkway, Plano, TX



# LAND USE - OFFICE



The Colonnade, one of Addison's signature office complexes.

### A JOBS CENTER

Addison is an employment center for the North Dallas Corridor, and office buildings are its predominant commercial land use. It's central location in the North Dallas Corridor has allowed it to develop as an area where companies and corporations, both small and large, want to be. It borders the western edge of the North Dallas Tollway for a length of 7.07 miles, about half-way between Interstate 635 and the President George Bush Tollway. The convenient location allows the Town to welcome around 100,000 white-collar executives and office employees to Addison every day to support its restaurants and hotels.

# A GREAT INVENTORY

Addison is home to 101 Class A and B buildings totaling 10,255,758 square feet of space, which is more office space than downtown Fort Worth. There is a space in Addison to fit every tenant, as office buildings range in size from 2,500 square-feet on Broadway to 1,028,444 square feet in the three building Colonnade complex. The Town has been fortunate in that its office space has not been dominated by one industry or one type of tenants, such as telecom or energy tenants. It's tenant base is very diverse, which has allowed occupancy to stay stable and not suffer the highs and lows of an industry goes through a boom and bust

The Town's tenant base is comprised of 30% professional, scientific, and technical services. Retail trade, Hospitality, Real Estate, and Administrative Support make up most of the other tenants, with each of those industries having about an 11% share of the Town's businesses.

In addition. Addison's office tenant base dominated by small companies that occupy



The Mary Kay Corporation headquarters, located on the Dallas Parkway.

between 5,000 and 20,000 square feet. The majority of Addison's office buildings are multitenant buildings which may house several hundred tenants. However, the Mary Kay building, one of the largest buildings in Town at 545,900, is home to just one tenant—the Mary Kay Corporation. The Town is also home to several other large corporations. Bank of America has a credit card processing facility in the Hallmark Center I and II buildings which employs 3,400 people. Mary Kay Corporation has 1,070 employees, and the National Default Exchange Management Corporation employs 566 people. Several other companies have between 300 and 500 employees.

Realtors and office leasing agents generally rate buildings in three categories or classes. While there is not an agreed-upon standard in the industry for classifying buildings, *Square Feet, a Real Estate Blog,* defines them by the following characteristics:

CLASS A. These building represent the highest quality buildings in their market. They are generally the best looking buildings with the best construction, and possess high quality building infrastructure. Class A buildings are also well-located, have good access, and are professionally managed. As a result, they attract the highest quality tenants and command the highest rents.

CLASS B. This is the next notch down. Class B buildings are generally a little older, but still have good quality management and tenants. Often times, value-added investors target the buildings as investments since they well located Class B buildings can be returned to their Class A glory through renovations such as façade and common area improvements. Class B buildings should generally not be functionally obsolete and should be well maintained.

CLASS C. The lowest classification of office building and space is Class C. These are older buildings (usually more than 20 years old), and are located in less desirable areas and are in need of extensive renovation. Architecturally, these buildings are the least desirable and building infrastructure and technology is out-dated. As a result, Class C buildings have the lowest rental rate, take the longest time to lease, and are often targeted as re-development opportunities.

The Tollway location allowed Addison to attract developers who built Class A buildings at relatively high densities, with the tallest building in Town being Phase III of the Colonnade at 16 stories. Most of Addison's office building inventory was constructed during the 1980s and '90s, which means the buildings are fairly new. The office building inventory is dominated by Class A space, with 61% of the Town's office square footage rated as Class A. Class B space comprises 38% of the inventory, and Class C space comprises 1%. The

central location and abundance of Class A space has allowed Addison to maintain a healthy office occupancy rate of around 80%, even during economic downturns.



The Atrium at the Colonnade.

Addison's office buildings cluster along the major commercial corridors, and thus fall into eleven different "neighborhoods." The neighborhoods are shown in the map attached to the office inventory. The high-density corridor for office uses is the Dallas North Tollway. Addison has 20 high-density buildings along the Tollway, and it has four available sites to accommodate additional buildings. The three neighborhoods that abut the Tollway: North Tollway Corridor (#4), North Quorum (#7) and South Quorum (#8) have the highest number of buildings and the largest buildings, with over 2 million square feet of office space in each neighborhood. These neighborhoods are home to most of Addison's national and international office tenants such as Hilton, General Electric, and Rexel. The rest of the neighborhoods have smaller buildings and cater more to local tenants.

# STAYING COMPETITIVE

Through the boom years of the 1980s and '90s, the Town relied on office brokers and realtors to bring tenants to Addison. However, beginning in the late 1990s, cities around Addison began to make use of the Development Corporation Act, which was passed by the Texas legislature in 1979. It allowed communities to enact 4A/4B corporations that would levy a portion of their sales taxes for economic development purposes. Addison, had joined the Dallas Area Rapid Transit Authority (DART) in 1983, and it was already assessing a portion of its sales tax to mass transit, so it was not eligible to create a 4A/4B corporation. Other cities to the north of Addison, such as Frisco, Allen, and McKinney, were not in DART, so they were eligible to create 4A/4B corporations that raised large amounts of money to lure new businesses and office tenants to their cities. The original intent of the legislation was to allow cities to lure businesses from other states into Texas. However, the non-DART cities began using the funds to lure tenants from Addison, Plano, Dallas, and other DART-member cities. The DART member cities persuaded the Texas Legislature that the Development Corporation Act was not



Two Addison Circle, one of Addison's newest buildings.

fair to all cities, so in 1987, residents of the State of Texas approved an amendment to the State Constitution that gave birth to Chapter 380 of the Local Government Code. This move was led by communities with a population of 500,000+ (such as Dallas and Houston) that were not allowed to participate in the Development Corporation Act. Many smaller communities (like Addison) came on board with the lobbying efforts because Chapter 380 programs gave them an additional tool to support economic development projects, and Chapter 380 programs did not need a local referendum for approval.

Addison made limited use of 380 agreements until 2011 when the City Council determined that Addison should create an Economic Development Fund and hire an Economic Development Director to create standards for incentive eligibility and manage the disbursement of funds. During 2012, the Town approved agreements that brought nine new companies to Addison, generated 960 new jobs, and absorbed approximately 250,000 square feet of office space. In addition, the Economic Development Director worked with the developers of the Village on the Parkway to craft a performance-based incentive that brought two quality anchor tenants, as well as other retailers, to the shopping center.

# ADDISON'S OFFICE FUTURE

The City Council and staff recognize that Addison must constantly compete with surrounding cities for office employees because well-paid employees drive the Town's other businesses such as retail and restaurants. A wealth of jobs in the community also drives people to want to live in Addison so they can live close to where they work. Living close to work will become even more attractive in the future as gasoline prices and time spent commuting continue to increase. In addition, Corporate headquarters

and other offices draw hotel customers to the city who want to be close to our businesses to call on them.

Addison has traditionally been home to small traditional office businesses, but recently it has seen the range of office uses expand. USAA opened a Call Center in the Two Addison Circle building in Addison Circle, and the Methodist Medical Pavilion, currently under construction adjacent to the Methodist Hospital at 17101 Dallas Parkway, will be the Town's first medical office building. Preleasing for the 80,000 square-foot building has gone very well, and the building expects to open in April of 2013 with full occupancy. The Town hopes that as the hospital and adjacent office building expand their operations, it will encourage other medical office uses to open in the area. The Town has already seen some of that expansion, as some smaller existing lease spaces have been re-leased to medical supply businesses.

Addison's office building land use is important and as much a part of the Town's identity as its restaurants and landscaping. Now that the buildings are built, it is important to maintain the quality and keep them as full as possible. There are many avenues the Town can pursue to keep the buildings full. It can make sure that the quality of the buildings stays high through enforcement of building maintenance and landscaping codes. It can continue to market the Town and offer strategic incentives to bring large office tenants to Addison. It can continue to expand the range of office uses by encouraging newer types of office uses such as call centers and medical offices.

In addition, the Town should protect its remaining available Tollway corridor tracts. High-density office buildings are very valuable to the Town

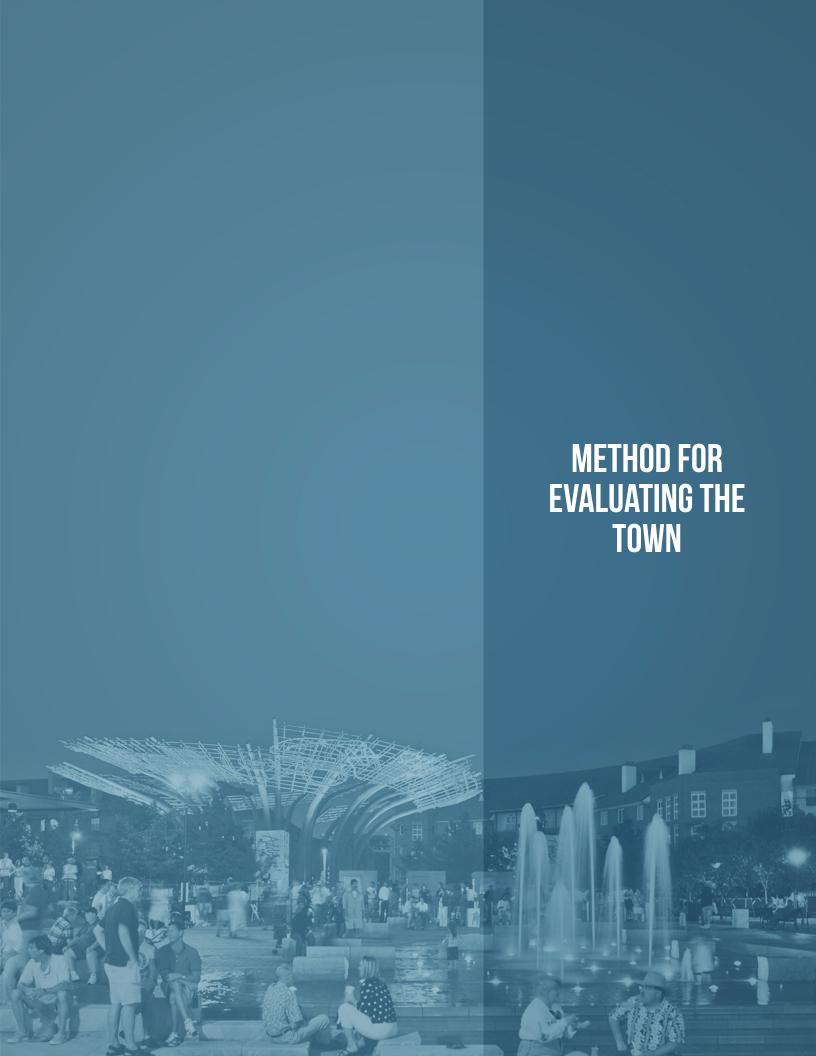
because they bring high ad valorem values to the tax base and lots of employees, which drive the retail/ restaurant/hotel economy. The Tollway corridor is the only location in Addison that can attract highdensity office buildings. The Town needs to protect the four remaining sites on the Tollway corridor and resist pressure to let those valuable sites be re-zoned for non-commercial uses such as multifamily. There is always pressure on the Town to let developers build what they can finance and build at the moment, but the Town has to think long-term and protect its most valuable land assets.

#### **GOAL:**

Recognize that office buildings are a valuable land use asset for the Town and take steps to keep them competitive through code enforcement and Economic **Development efforts.** 

### **OBJECTIVES:**

- 1. Maintain the quality of buildings through code enforcement efforts aimed at keeping buildings maintained and attractively landscaped.
- 2. Continue Economic **Development** efforts to keep Addison competitive with other communities and allow it to compete for large and small tenants.
- 3. Continue to foster variety among office tenants by encouraging other types of office uses such as call centers and medical offices.



# METHODOLOGY FOR EVALUATING THE TOWN

In April of 2012, the Mayor charged the Planning and Zoning Commission with studying, analyzing, revising where appropriate, and reporting/delivering back to the Council an updated and current version of Addison's Comprehensive Land Use Plan. Last published in 1991 and only updated occasionally since then, the Plan as it is now structured is out of date to the point of being not useful for most purposes. It does provide a useful benchmark, however, for the Commission to add historical perspective to its discussions.

The Commission reviewed the 1991 plan, touring the Town, reviewing Comprehensive Plans produced by other municipalities, and journeying to other cities to see, first hand, excellent mixed use development examples. Afterward, the P&Z began structuring its task and deciding upon the method to be used to draw conclusions about how Addison could improve the "Highest and Best" use of its resources.

After much discussion, the Commission developed a methodology which looked at the Town in three ways. It examined other successful communities—communities that thrive through all economic cycles and are consistently places where businesses thrive and people desire to live and shop. It determined that successful communities shared many of the same traits or characteristics. The Commission summarized those traits, and labeled them the Attributes of Success. It then determined that those attributes should be measured for all Categories of Land Use across the Town's entire Geography.

ATTRIBUTES OF SUCCESS - A set of attributes agreed upon and prioritized by the Commission

as a whole. The attributes identify and define the factors the Commission measured when evaluating a land use within the Town. The Commission believes that every use, regardless of its age, location, or place in the Town's hierarchy of land uses, should have the following traits in order to be a successful and productive use of land:

COMPETITIVE—The Town's businesses, neighborhoods, and facilities are viable in the marketplace. They compete effectively against similar land uses in other metroplex cities. Addison is known as a Town that "does things right," and it enjoys a good image in the metroplex for being efficiently—managed, fiscally-responsible, and visionary. The Town's private sector benefits from the Town's marketing, and businesses should manage and market their operations in a way that supports the Town's brand and good reputation.

SAFE—All sites are designed and improved with an eye toward providing a safe environment. Building and fire codes are adhered to during construction and on an on-going basis. Sites are provided with adequate lighting, and landscaping that is designed to maximize visual accessibility by those both within and around the site.

**FUNCTIONAL**—Land uses are supported by adequate utilities such as water, sewer, and technology infrastructure. Functional facilities, such as parking lots and drives, are attractively landscaped, in good repair and have adequate capacity to move traffic. Street signs

make it easy to get around and allow people to know when they are in the Town, and how they get from one place to another.

VISUALLY APPEALING—Any site, along with all buildings on it, is attractive, well-maintained and clean, with good quality architecture and construction on new structures, and older structures preserved, remodeled or refurbished. All sites are as free as possible of unattractive overhead utility lines, and have landscaping that is appropriate for the location and use. Signage is tasteful, scaled to match the building, and used for identification of a business, not advertising. In addition, aesthetically pleasing signs identify Addison when entering or leaving the Town.

SUPPORTED WITH AMENITIES—Land uses and facilities in Addison enjoy a close proximity to services and amenities such as retail stores, restaurants, recreational amenities, and entertainment. Sporting events and the cultural arts, such as museums and theatre, are available either in Addison or close by.

### ENVIRONMENTALLY RESPONSIBLE -

New buildings and sites are designed with energy conservation in mind. LEED and other "green" standards are not re- quired by the Town, but developers are encouraged to think carefully about their use of resources both in the construction and on-going operation of buildings. Existing buildings do all they can to conserve water and energy. All sites utilize native and/or drought-tolerant plants in the landscaping, and effective and well-monitored irrigation systems are provided on all sites.

WALKABLE—All land uses and facilities should

provide users the ability to walk from one use to another, and to navigate neighborhoods on foot or on a bicycle. Residential and Commercial uses provide the ability to walk between businesses. Trails and parks allow citizens to walk or ride a bicycle from one place to another throughout the entire town, and commercial facilities provide the ability for their employees to walk at lunch, and walk or bicycle to and from work.

CATEGORIES OF USE - Each square foot of land in Addison, from the smallest parcel to the airport, is used in a variety of ways—from single-family residential to corporate office. The Town itself is a large landowner, and it uses its land in a variety of ways in order to provide parks and facilities for its citizens. The Land Use Categories used in the Comprehensive Plan are:

Single-Family Residential
Multi-Family Residential
Retail
Office/Commercial
Industrial
Airport
Mixed Use
Parks, Trails, and Open Space
Community Facilities
Schools and Education
Arts and Cultural Facilities
Transportation Network
Utilities

As land is a finite resource in Addison, it is important to consider and evaluate the Town's current and projected use of each of its land resources while asking the question "Is this the best...?"

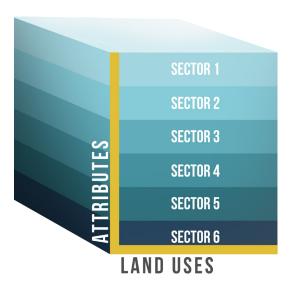
# Addison Planning Sectors



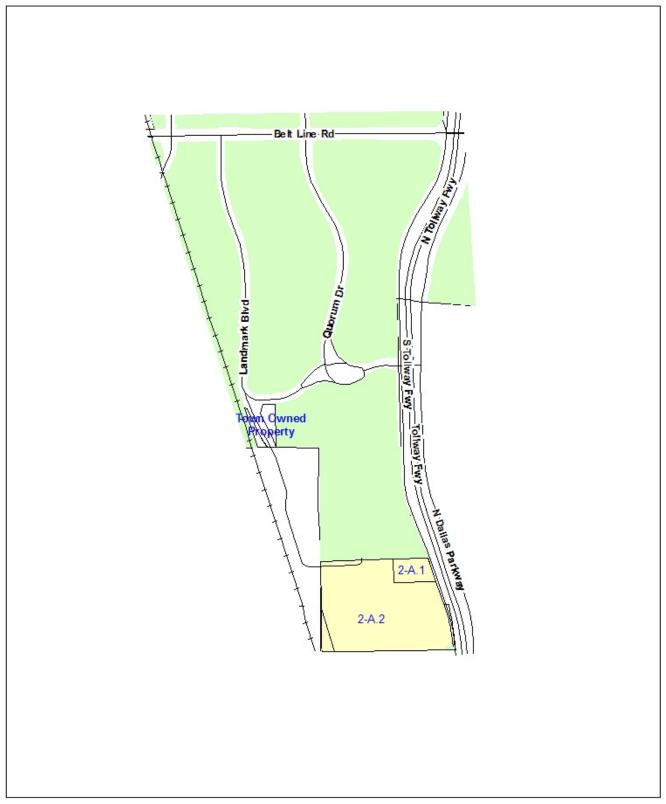
GEOGRAPHY - While Addison is only 4.35 square miles in area, it is a considerable task to evaluate each parcel individually. The current Town budget divides the Town into six geographic sectors. Each Sector has its own unique identity and distinguishing characteristics. The Commission utilized the Sector delineations in order to make the assessment of every parcel in Town a more manageable task. The assessments will be kept manageable by using a simple green, yellow, red color coding. Green will delineate successful parcels, yellow will indicate parcels that are beginning to be less successful, and Red will indicate parcels that are not performing at a level that is positive for that particular tract and an asset to the community.

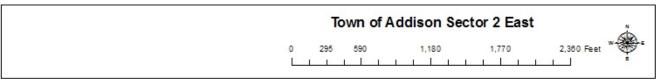
The three categories used for evaluating the Town's land uses can be illustrated in a 3-dimensional matrix which depicts the interrelationship among the Attributes, the Categories of Land Use, and the six Sectors of the Town's geography.

A key role of the Plan is to present a comprehensive town-wide analysis and framework to guide the coordination of many separate incremental development decisions. Once adopted by the Town Council, the Plan becomes an official policy of the Town and many day-to-day actions of the Town's elected and appointed officials can be guided by the policies of the Comprehensive Plan. It can help guide management decisions made across all departments, and can serve as a basis for the Town's capital improvements program.



# **SECTOR 2**







Acreage, Parcel 2-A.1: 1.49 acres Zoning, Parcel 2-A.1: Industrial-1

Owner, Parcel 2-A.1: Mody Group, Ltd.

Acreage, Parcel 2-A.2: 16.23 acres Zoning, Parcel 2-A.1: Industrial-1

Owner, Parcel 2-A.1: Ewing Enterprises Limited PS

# Discussion:

This is Addison's largest undeveloped parcel abutting the Tollway. It was formerly the site of the Ewing automobile dealerships, and still carries the Industrial-1 zoning it carried when it held the dealerships. A portion of the tract (Parcel 2-B.1), was sold to the owners of the Modia Home Theater stores, who planned to locate a home theater store on the site. The site was hampered by poor access, but the Landmark Extension gave it access on the west side of the property. The site is located within the noise contours for the Addison Airport.

# **ATTRIBUTES OF SUCCESS MATRIX**

# 14345 DALLAS PARKWAY

2-A

ATTRIBUTES	COMMENTS	SCORE
Competitive	This is a raw land site that has not been developed, so while it has great potential, it is not competitive with adjacent sites in the South Quorum area.	
Safe	Site does not have development and does not have traffic. It is safe.	
Functional	The site is not functional at present, as it is a raw land site.	
Visually Appealing	The site is not visually appealing at present. It does not have trees or grass, and there are slabs of concrete left on the site from when it served as a car dealership.	
Supported with Amenities	The site is on Addison's southern border, so it is not within walking distance of the business amenities on Belt Line Road or in the south Quorum area. However, those amenities are a short driving distance from this site.	
Environmentally Responsible	The site is environmentally responsible at present. If it were to redevelop, it is likely the future developer would likely add additional trees.	
Walkable	The site is not developed. It fronts directly on the Tollway, and there is no sidewalk. Therefore, it is not walkable.	
Overall Assessment	The future for this site is uncertain, and the Industrial-1 zoning allows a wide variety of uses. The Town should work with the owner on a Planned Development zoning that would allow flexibility, but protect the Town against Industrial uses being located on this prime piece of property in Addison's high-density office corridor.	

### TOWN OF ADDISON, TEXAS

ORDINANCE NO.	
---------------	--

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, CREATING PLANNED DEVELOPMENT DISTRICT \_\_\_\_\_\_ FOR HIGH DENSITY OFFICE DEVELOPMENT ON APPROXIMATELY 18.2 ACRES OF PROPERTY LOCATED AT 14345 DALLAS PARKWAY; PROVIDING A PENALTY NOT TO EXCEED TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00); AND PROVIDING FOR SAVINGS, SEVERABILITY AND AN EFFECTIVE DATE.

**WHEREAS,** at a meeting held on June 21, 2016, the Planning and Zoning Commission considered and made a recommendation on a request for a Planned Development District (Case No. 1737-Z); and

**WHEREAS**, this change of zoning is in accordance with the adopted Comprehensive Plan of the Town of Addison, as amended; and

**WHEREAS,** after due deliberations and consideration of the recommendations of the Planning and Zoning Commission, the information received at a public hearing; and other relevant information and materials, the City Council of the Town of Addison, Texas finds that this amendment promotes the general welfare and safety of this community.

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

**Section 1**. The recitals and findings set forth above are hereby found to be true and correct and incorporated as if fully set forth herein.

<u>Section 2</u>. Planned Development District \_\_\_\_ is hereby established for the 18.2 acres of property located within the Town of Addison at 14345 Dallas Parkway and more specifically described in Exhibit A attached hereto and incorporated herein (the "Property"), to allow high density office development in accordance with the Development Standards contained in Exhibit B an attached hereto and incorporated herein.

Section 3. Prior to and as a condition of the issuance of a building or any other permit for (i) any development. or (ii) the construction, erection, alteration, extension, placement or locating of any building, structure, infrastructure element, or improvement whatsoever, within the Property or any portion thereof, a development plan for the same must be approved by the Planning and Zoning Commission and by the City Council in accordance with Article XV, Section 5 of the Zoning Ordinance, as amended. A development plan (whether submitted for the entire Property or for a portion thereof) must comply with the standards, terms and conditions of this Ordinance, the Zoning Ordinance, and all other applicable ordinances, laws, rules, regulations, codes and standards of the City and any other governmental entity or agency having jurisdiction over the

Property or applicable portion thereof. Development, occupancy, and use of the Property or portion thereof which is covered by or the subject of a development plan must comply in all respects with the development plan. Upon approval of a development plan by the City Council, the same shall be incorporated into and made a part of this Ordinance for all purposes.

- <u>Section 4.</u> The creation of Planned Development District \_\_\_\_\_ has been made in accordance with the comprehensive plan of the City for the purpose of promoting the health, safety and welfare of the community, and with consideration of the reasonable suitability for the particular use and with a view of conserving the value of the buildings and encouraging the most appropriate use of land within the community.
- **Section 5.** That the provisions of the Town of Addison Code of Ordinances, as amended, shall remain in full force and effect save and except as amended by this ordinance.
- <u>Section 6</u>. That any person, firm, corporation, or other business entity violating any of the provisions or terms of this Ordinance shall, in accordance with Article XXVIII (Penalty for Violation) of the Zoning Ordinance, be fined, upon conviction, in an amount of not more than Two Thousand and No/100 Dollars (\$2,000.00), and a separate offense shall be deemed committed each day during or on which a violation occurs or continues.
- <u>Section 7</u>. The provisions of this Ordinance are severable, and should any section, subsection, paragraph, sentence, phrase or word of this Ordinance, or application thereof to any person, firm, corporation or other business entity or any circumstance, be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of the remaining or other parts or portions of this Ordinance, and the City Council hereby declares that it would have passed such remaining parts or portions of this Ordinance despite such unconstitutionality, illegality, or invalidity, which remaining portions shall remain in full force and effect.
- <u>Section 8</u>. That all ordinances of the City in conflict with the provisions of this Ordinance be, and the same are hereby repealed, and all other ordinances of the City not in conflict with the provisions of this Ordinance shall remain in full force and effect.
- **Section 9**. This Ordinance shall become effective from and after its passage and approval and after publication as may be required by law or by the City Charter or ordinance

**PASSED AND APPROVED** BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, on this the  $12^{\text{th}}$  day of July, 2016.

ATTEST:	Todd Meier, Mayor
Laura Bell, City Secretary	
CASE NO: 1737-Z/14345 Dallas Parkway	
APPROVED AS TO FORM:	
Brenda N. McDonald, City Attorney	
PUBLISHED ON:	

### **EXHIBIT A: PROPERTY DESCRIPTION**

A Planned Development district is hereby established for the 18.2 acres of property located generally at 14345 Dallas Parkway comprising of the portion of 4 properties within the Town of Addison and identified as the following:

- Lot 1, Block 1 of the S. Finley Ewing, Jr, Addition Inst. No. D200101557407 D. R. D. C. T.
- The portion of Lot 2, Block 1 of the S. Finley Ewing, Jr, Addition Inst. No. D200101557407 D. R. D. C. T. located within the boundaries of the Town of Addison.
- The portion of Tract 2 of the S. Finley Ewing Jr. Addition Vol. 73093, PG. 1346 D. R. D. C. T. located within the boundaries of the Town of Addison.
- The portion of the D.P. & L. Co. 100 foot Right-of-Way located within the boundaries of the Town of Addison.

#### EXHIBIT B: DEVELOPMENT STANDARDS

# 1. Purpose.

The purpose of this Planned Development District (the "PD District," "Planned Development District," or "district") is to accommodate high density office development along the Dallas North Tollway Corridor. The Property will be developed in accordance with all of the standards, terms and conditions of this Ordinance (the "Ordinance"). These Planned Development conditions are incorporated into and made a part of the Ordinance for all purposes. Development, occupancy, and use of the Property and any portion thereof shall comply with development conditions set forth herein, with the Ordinance, with all applicable provisions of the Zoning Ordinance of the Town of Addison, Texas (the "City") (the same being Appendix A - Zoning of the Code of Ordinances of the City, and as it may be amended or superseded (the "Zoning Ordinance") and with all other applicable ordinances, laws, rules, regulations, standards, and codes of the City and any other governmental entity or agency having jurisdiction over the Property or applicable portion thereof.

- 2. Definitions, Interpretations.
  - A. Unless otherwise stated, the definitions and interpretations in the Zoning Ordinance apply to this Ordinance and the development conditions set forth herein.
- 3. Uses.
  - A. Authorized Uses/ Prohibited Uses. Only those uses identified herein as permitted uses, special uses, or accessory uses are authorized uses (subject to the terms, conditions and provisions of this Ordinance) within the Property. All other uses are expressly prohibited.
  - B. Permitted Primary Uses. The primary use of the Property must be:
    - (1). Office building(s)
  - C. Permitted Secondary Uses may not occupy greater than 30% of the floor area of all structures. The following are permitted as secondary uses within the Property:
    - (1). All uses permitted within Commercial-1 District, as amended
    - (2). Hotel (upon the issuance of a Special Use Permit)
    - (3). Restaurant (upon the issuance of a Special Use Permit)
    - (4). Sale of alcoholic beverages for on-premises consumption in conjunction with a restaurant (upon the issuance of a Special Use Permit)
  - D. Accessory Uses. The following are permitted as accessory uses within the Property:
    - (1). Parking and parking structures
    - (2). Other uses customarily incidental and subordinate to permitted uses and any special uses

# 5. Development Standards

A. Development, occupancy, and use of the Property shall comply with the development standards set forth in the following Table A:

# **Table A: Development Standards**

**Building Setbacks** As required in the Commerical-1 District

zoning regulations, as amended.

**Minimum Building Height** 5 stories

Maximum Building Height 12 stories, upon approval from the

Federal Aviation Administration (FAA)

B. Miscellaneous development standards:

(1). Minimum Building Height requirement does not apply to any parking structure.

### 6. Parking

- A. *Generally*. Off-street parking must be provided for the appropriate building use classification according to the ratios listed in the Commercial-1 District Zoning regulations, as amended.
- B. Shared parking. Uses may join in establishing shared parking areas if it can be demonstrated that the parking for two or more specific uses occurs at alternating time periods or that the parking can be shared without any negative impacts on or adjacent to the property. Required parking shall be determined based on parking demand for the peak parking period as determined by a parking analysis study approved by the City's Zoning Administrator.
- C. Parking structure. A minimum of 65% of any parking must be provided in structured parking. For a multi-phased development within the same property, the first phase may provide a minimum of 62.7% structured parking provided that the subsequent phases result in a combined minimum of 65%. Parking structure ramps shall not be express on the façade of the parking structure fronting or visible from public streets or adjacent properties. Steel parking structures and steel guard cables on the structure's facades are prohibited above the ground floor. Steel guard cables may be used on the ground floor if screened with landscaping.

# 7. Exterior Appearance

A. Materials:

- (1). At least 80 percent of the exterior walls of all structures shall be of masonry construction.
- (2). For purposes of this planned development district, "masonry construction" includes, but is not limited to brick, stone, cultured stone, stucco, glazing and plate glass, and split face concrete masonry units. An applicant, however, may submit a design for construction of parking structures that employs alternative construction materials for exterior cladding with an application for a development plan. The alternative may be approved by the city upon determination that such construction will result in an appearance that is compatible with surrounding buildings and the overall character of the district.
- (3). No more than 15% of each exterior wall fronting or visible from public streets (including above grade parking structures) shall use accent materials such as architectural metal paneling, tile, and fiber cement siding (e.g. hardi-material).
- (4). No more than 40% of exterior cladding of all walls not fronting on, or not visible from, public areas (including above grade parking structures) shall use accent materials such as architectural metal paneling, tile, and fiber cement siding (e.g. hardi-material).
- (5). The exterior cladding (excluding glass and roofing materials) of all buildings, (including above grade parking structures) shall be composed of not more than three materials.
- (6). The following materials are prohibited as primary cladding materials:
  - i. Aluminum siding or cladding
  - ii. Fiberboard or Masonite siding
  - iii. Wood roof shingles
  - iv. Unfinished concrete block (architecturally finished concrete block is permitted as a cladding material)
- (7). The following materials are prohibited as primary roofing materials:
  - i. Wood roof shingle
  - ii. Composite shingles with less than a 50-year life
- B. *Walls*. Walls attached to buildings shall be developed as architectural extensions of the building, constructed of the same material and in the same style.

#### 8. Landscape.

A. Landscaping within the Property shall comply with the standards contained in the Town of Addison Code of Ordinances, as amended.

# 9. Screening

A. Mechanical equipment shall be mounted on the roof and be screened from view from all public streets and adjacent properties and located to minimize noise intrusion off

each lot. The required screening must be architecturally compatible with the building design.

B. Loading, service, and trash storage areas shall be screened from all public streets and adjacent properties. Refuse containers must be placed on a designed, reinforced concrete pad, including drive approach. The required screening must be composed of the same exterior materials as the buildings or through the use of masonry walls, ornamental fence (80 percent opaque), evergreen landscape material, or combination thereof.

Al-1784 11.

Work Session and Regular Meeting

**Meeting Date:** 08/09/2016 **Department:** City Manager

# **AGENDA CAPTION:**

Hold A Public Hearing, Discussion And Consider Approval Of An Ordinance That Rezones Approximately 39.4 Acres Of Property Located At Trinity Christian Academy At 17001 Addison Road, Which Is Currently Zoned R-1, Residential-1, With A Special Use Permit For A Private School And Approximately 1.74 Acres Of Property Located At The Northwest Corner Of Addison Road And Sojourn Drive, Also Known As 4350 Sojourn Drive, Which Is Currently Zoned PD, Planned Development, In Order To Create A New Planned Development District Allowing A Private School and Approving A Concept Plan and Development Standards, On Application From Trinity Christian Academy. Case 1738/Z/Trinity Christian Academy.

### **BACKGROUND:**

**COMMISSION FINDINGS:** 

The Addison Planning and Zoning Commission, meeting in regular session on May 17 2016, voted to recommend approval of an ordinance changing the zoning on property located at 17001 Addison Road, which is currently zoned R-1, Residential,-1 with a special use permit for a private school, and property located at 4350 Sojourn Drive, which is currently zoned PD, Planned Development, in order to create a new Planned Development District allowing a private school and approving a concept plan and development standards, subject to the following condition:

• The applicant shall provide a traffic management plan to the Town for review and approval by the Zoning Administrator and shall abide by the provisions of the traffic management plan.

Voting Aye: Ennis, Griggs, Morgan, Robbins, Robinson, Schaeffer

Voting Nay: none Absent: Smith

# SPEAKERS AT THE PUBLIC HEARING:

For: none On: none

Against: Jim Halter, 17055 Windward Lane

Additional information regarding this item can be found in the attached staff report.

# **RECOMMENDATION:**

Administration recommends approval.

# **Attachments**

1738-Z Staff Report 1738-Z Plans Ordinance

# 1738-Z

**PUBLIC HEARING** Case 1738-Z/Trinity Christian Academy. Public hearing, discussion, and take action on a recommendation regarding an ordinance rezoning approximately 39.4 acres of property located at 17001 Addison Road, which is currently zoned R-1, Residential-1, with a special use permit for a private school and approximately 1.74 acres of property located at 4350 Sojourn Drive, which property is zoned PD, Planned Development, in order to create a new Planned Development District allowing a private school and approving a concept plan and development standards.

### **LOCATION MAP**





May 13, 2016

#### STAFF REPORT

RE: Case 1738-Z/Trinity Christian Academy

LOCATION: 17001 Addison Road

REQUEST: Approval of an ordinance rezoning the property

from R-1, Residential-1, with a special use permit for a private school to a new PD (Planned

Development) for a private school.

APPLICANT: Trinity Christian Academy, represented by Mr. Bill

Dahlstrom

### **DISCUSSION:**

<u>Background</u>: Trinity Christian Academy opened in Addison in 1976. At that time, the property was zoned Restindetial-1 and a special use permit for a private school was approved. Over the years, as TCA expanded or altered their campus plan, new special use permits have been approved to accommodate TCA's growth into what exists currently on the site today. More recently, TCA's growth required that they expand to a second parcel further west on Sojourn Drive for certain athletic facilities. Trinity Christian has recently completed a visioning process to revise their campus master plan. The primary focus of the campus master plan is to modernize facilities and improve the function of the campus. Very little growth above the current enrollment of approximately 1,500 students is contemplated. Any growth would be limited to a possible future Pre-K program of up to 80 students.

<u>Proposed Conceptual Plan</u>: The proposed conceptual plan features several important elements. First, the proposed plan calls for the creation of a distinct entry to the campus located on Sojourn Drive. Several of the existing buildings are shown to be removed and replaced with new buildings to house campus administration, the visual arts department, the chapel, middle school and dining hall. These new buildings surround the campus commons open space. This will serve as the primary gathering point for the campus and can host certain events such as commencement. The upper school, performing arts center and lower school are slated to remain with only minor modifications.

The plan calls for a new consolidated athletic center to move most of the athletic activities back to the campus from the parcel further west on Sojourn. The existing stadium will be expanded along the west side and become the home field side with a press box. Along with this, the speakers, which are currently on the east side of the stadium facing west, will be relocated and face east in the future. This will reduce the noise level directed towards the residential neighborhood immediately west of the campus. The property to the south of Sojourn is contemplated to become tennis courts.

The concept plan improves both parking and traffic circulation onto and within the campus. A new ring road is contemplated along the western edge of the consolidated athletic center and stadium. Additional parking is provided through the construction of a 3 level parking structure on the north side of the campus as well as with new surface parking lots along Addison Road and Sojourn. This pushes all parking to the perimeter of the campus allowing a pedestrian only environment within the campus and creates sufficient queuing areas for student pickup within the parking lots.

<u>Proposed Uses</u>: The new Planned Development will allow for a private school as well as accessory uses typical of school campuses including recreation space and facilities and surface and structured parking. Up to 8,000 square feet of portable school buildings are proposed to be permitted only in order to accommodate the construction contemplated in the proposed concept plan. All other use of portable school buildings will require a special use permit.

<u>Development Standards</u>: The following development standards would apply to buildings on the site:

Building Setbacks. Because of the campus setting and number of buildings, staff is proposing to create a permissible building zone in place of a traditional building setback requirement. The permissible building zone is shown on the concept plan. Buildings and other improvements can be located anywhere within this zone.

Height. The maximum building height is 3 stories and 60 feet as measured to the midpoint of the roof. Architectural features comprising of less than ten percent of the floor area may extend up an additional 15 feet.

Lot Coverage. The maximum lot coverage for structures on the site is proposed to be 70%

Maximum Allowable Building Area. The maximum allowable building areas, not including the parking structure, is proposed to be 585,000 square feet.

<u>Parking</u>: There is currently no parking requirement on the property. This PD proposes to establish the following parking standards.

#### (1). School.

- a. Lower School. (1.5 per lower school classroom) One and one-half spaces per every lower school classroom.
- b. Middle School. (3.5 per middle school classroom) Three and one-half spaces per every middle school classroom.
- c. Upper School. (9.5 per upper school classroom) Nine and one-half spaces per every upper school classroom.
- (2). Soccer fields, baseball fields, and stadiums. (1 per 4 seats) One space per every four seats.
- (3). Theaters, auditoriums, gymnasiums and field houses. (1 per 3 seats) One space per every three seats.

Addison did not previously have a requirement for parking at schools. The proposed standards are pulled from the City of Dallas' parking requirements. The other two standards are consistent with Addison's requirements for the listed uses. Additionally, staff is proposing a shared parking provision to permit the sharing of parking among the various uses on the campus, if a parking study can be provided to show that the parking can be shared without negatively impacts. This would be reviewed by the Town's zoning administrator and could result in fewer parking spaces than required by the ordinance.

There are currently 842 spaces provided on the site. The concept plan proposes a total of 1024. Specific parking requirements will be assessed when development plan approval is requested, but the proposed amount should be more than adequate to meet the requirements.

The Planned Development standards will require that any parking structure be constructed in accordance with Addison's standard provision that ramps not be expressed on the façade of the structure and that steel structures and steel guard cables on the facades are prohibited.

<u>Exterior Appearance</u>: The façade of all structures on the site will be regulated by the Planned Development district text. Buildings will be constructed of 80 percent masonry which can include brick, stone, stucco, glass and split face concrete masonry units. A maximum of three materials will be permitted per building.

<u>Landscaping</u>: The landscaping must comply with the Town's landscaping regulations, including the 20% site landscaping coverage, perimeter screening and interior plantings.

<u>Screening of Mechanical Equipment and Service Areas</u>: For this Planned Development, mechanical equipment shall be screened from view of all public areas. Loading, service and trash storage areas will also need to be screened from public areas.

<u>Lighting and Speaker Requirements</u>: The Planned Development language would require that as the west side of the stadium is improved that the speakers be relocated accordingly and face east. Any change in the current lighting would need to be approved by the zoning administrator. Lighting for the tennis courts on the south side of Sojourn would be limited to 60 feet in height and be directed and shielded to shine only onto the courts. The tennis court lights would also be required to be turned off no later than 10pm and not operate on Sundays.

<u>Traffic Impact Analysis</u>: The applicant was required to study the impact that this development will have on the roadway network currently and in the long term (2030). As part of the analysis, a traffic management plan for managing the morning drop-off and afternoon pick-up operations was included. Kimley-Horn conducted the analysis which was reviewed by Town staff in conjunction with Cobb-Fendley. Because of the very minimal enrollment increase, it was found that the plan can be successfully incorporated into the surrounding roadway network. Given the additional on-site queuing capacity provided in the plan, traffic on Addison Road and Sojourn Drive will be improved since the Middle School operations currently backs up into the street.

The Traffic Impact Analysis did recommend that a police officer continue to be present to direct traffic on Addison Road during pick-up and drop-off times.

#### RECOMMENDATION: APPROVAL WITH A CONDITION

Trinity Christian Academy has been a valuable asset to the Town of Addison and in many ways as grown with the Town. The proposed campus master plan marks an important next step in the school's continued development. The proposed changes improve both the aesthetics and operations of the campus and will be an enhancement to both the property and the Town. This is a long term plan with no immediate timetable for construction. As funding allows, Trinity Christian Academy will come back for development plan approval for the construction of the specific elements of the concept plan in accordance with the standards approved for the Planned Development district. Staff recommends approval of the request with one condition.

• The applicant shall provide a traffic management plan to the Town for review and approval by the zoning administrator and shall abide by the provisions of the traffic management plan.

# **Land Use Analysis**

# Attributes of Success Matrix

# **Trinity Christian Academy (17001 Addison Road)**

1736-Z

Attribute	Comment	Score
Competitive	Trinity Christian is a very successful and competitive private school in the north Dallas area. These improvements will enable them to continue to compete.	
Safe	Several of the improvements contemplated in the plan will improve the safety of the campus.	
Functional	The concept plan improves the functionality of the campus.	
Visually Appealing	The concept plan and PD standards will increase the visual appeal of the campus with additional landscaping and attractive new buildings.	
Supported with Amenities	Trinity Christian is a high quality private school campus with the amenities within the campus to support the school	
Environmentally Responsible	This is an infill redevelopment site and represents an environmentally responsible development pattern.	
Walkable	The campus will be walkable.	
Overall Assessment	The proposal marks an important next step in the school's continued development. The proposed changes improve both the aesthetics and operations of the campus and will enhance the property and this area Town.	





Case 1738-Z/Trinity Christian Academy May 17, 2016

#### COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on May 17 2016, voted to recommend approval of ordinance changing the zoning on property located at 17001 Addison Road, which is currently zoned R-1, Residential,-1 with a special use permit for a private school, and property located at 4350 Sojourn Drive, which is currently zoned PD, Planned Development, in order to create a new Planned Development District allowing a private school and approving a concept plan and development standards, subject to the following condition:

 The applicant shall provide a traffic management plan to the Town for review and approval by the Zoning Administrator and shall abide by the provisions of the traffic management plan.

Voting Aye: Ennis, Griggs, Morgan, Robbins, Robinson, Schaeffer

Voting Nay: none Absent: Smith

### SPEAKERS AT THE PUBLIC HEARING:

For: none On: none

Against: Jim Halter, 17055 Windward Lane

#### **Charles Goff**

From:

Bob Percival < Monday, April 11, 2016 3:49 PM

Sent:

To:

Charles Goff

Cc:

Gary McIntyre; Laura Simmons; Shannon Crouch (public); shea ddelph

tergerson

Subject:

TCA Master Plan

Mr. Goff,

On behalf of the Addison Place Homeowners Association Board of Directors, I wish to express our full support of Trinity Christian Academy's master plan for redevelopment, which includes the redirection of the public audio system and the location of the road from Sojourn into Trinity Christian property adjacent to the Tom Landry football stadium.

**Bob Percival** 

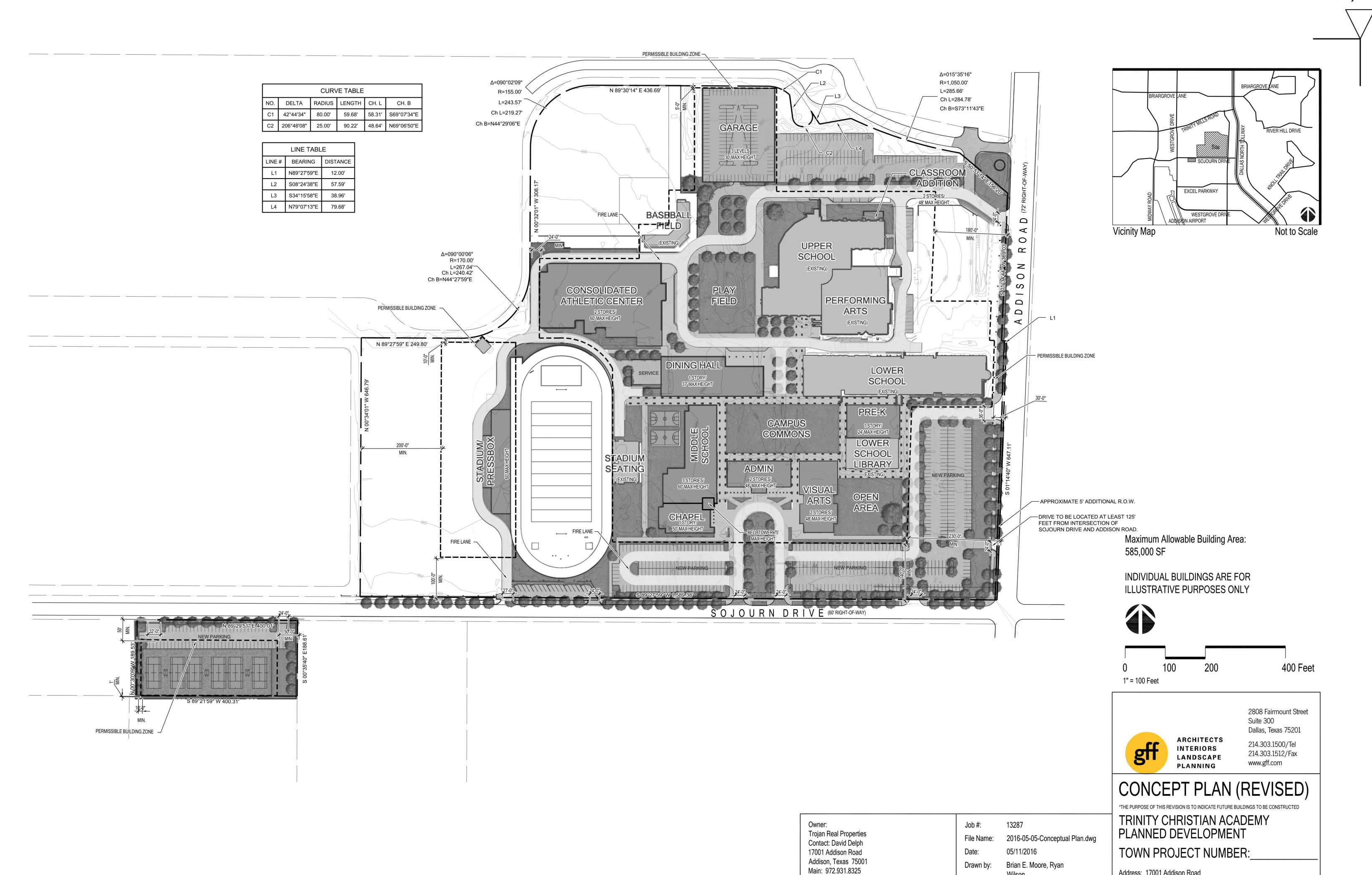
President

Addison Place Homeowners Association

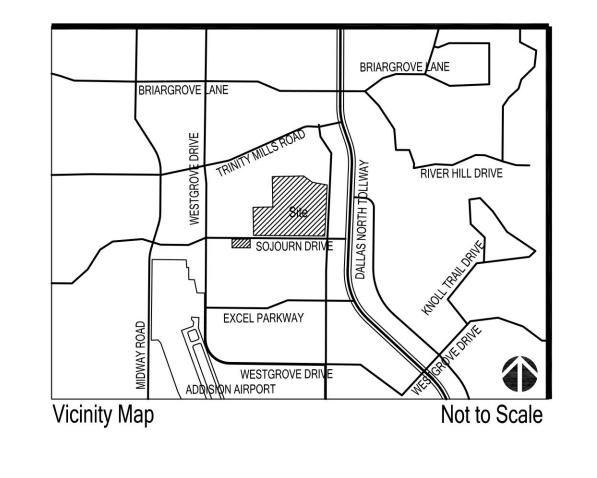
Address: 17001 Addison Road

41.06 Acres 1,788,573.6 sf

Addison, Texas

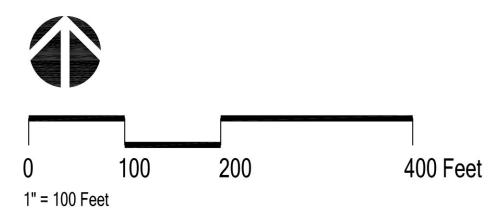


ddelph@trinitychristian.com











ARCHITECTS INTERIORS LANDSCAPE **PLANNING** 

2808 Fairmount Street Suite 300 Dallas, Texas 75201 214.303.1500/Tel

214.303.1512/Fax www.gff.com

**EXISTING PLAN** TRINITY CHRISTIAN ACADEMY PLANNED DEVELOPMENT

Address: 17001 Addison Road 41.06 Acres

Trojan Real Properties Contact: David Delph 17001 Addison Road Addison, Texas 75001 Main: 972.931.8325 ddelph@trinitychristian.com

13287 Job #:

2016-04-14-Existing Plan.psd 04/14/16 Date:

Brian E. Moore, Ryan Drawn by:

Addison, Texas

#### TOWN OF ADDISON, TEXAS

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, CREATING PLANNED DEVELOPMENT DISTRICT \_\_\_\_\_\_ FOR A PRIVATE SCHOOL WITH MODIFIED DEVELOPMENT STANDARDS ON APPROXIMATELY 41.13 ACRES OF PROPERTY LOCATED AT 17001 ADDISON ROAD; PROVIDING A PENALTY NOT TO EXCEED TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00) FOR EACH DAY A VIOLATION CONTINUES; AND PROVIDING FOR SAVINGS, SEVERABILITY AND AN EFFECTIVE DATE.

**WHEREAS,** at a meeting held on May 17, 2016, the Planning and Zoning Commission considered and made a recommendation on a request for a Planned Development District (Case No. 1738-Z); and

**WHEREAS**, this change of zoning is in accordance with the adopted Comprehensive Plan of the Town of Addison, as amended; and

**WHEREAS**, after due deliberations and consideration of the recommendations of the Planning and Zoning Commission, the information received at a public hearing; and other relevant information and materials, the City Council of the Town of Addison, Texas finds that this amendment promotes the general welfare and safety of this community.

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

- **Section 1**. The recitals and findings set forth above are hereby found to be true and correct and incorporated as if fully set forth herein.
- <u>Section 2</u>. Planned Development District \_\_\_\_ is hereby established for the 41.13 acres of property located at 17001 Addison Road and more specifically described in <u>Exhibit A</u> attached hereto and incorporated herein (the "Property"), to allow a private school and master plan for the Trinity Christian Academy campus developed in accordance with the Development Standards contained in <u>Exhibit B</u> an attached hereto and incorporated herein and in accordance with the following conditions:
  - 1. The applicant shall provide a traffic management plan for the Town for review and approval by the Zoning Administrator and shall abide by the provisions of the traffic management plan.
- **Section 3**. Development and use of the Property must substantially comply with the Concept Plan shown in **Exhibit C** attached hereto and incorporated herein.
- **Section 4**. Development of the Property for a private school may be undertaken in phases. For the purposes of this ordinance, structures, uses, and accessory uses existing on the

Ordinance No.	
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effective date of this Ordinance which are not in compliance with the concept plan or these development standards are considered conforming and may remain until the development of their respective phases. The existing structures are shown in the Existing Site Plan contained in **Exhibit D** attached hereto and incorporated herein. Existing portable school buildings shall be allowed by right and shall be removed within 60 days of the issuance of a Certificate of Occupancy for the relevant phase. Failure to remove an existing portable school building as required herein shall be considered a violation of this Ordinance and the owner shall be subject to the penalty prescribed in Section 8.

Section 5. Prior to and as a condition of the issuance of a building or any other permit for (i) any development. or (ii) the construction, erection, alteration, extension, placement or locating of any building, structure, infrastructure element, or improvement whatsoever, within the Property or any portion thereof, a development plan for the same must be approved by the Planning and Zoning Commission and by the City Council in accordance with Article XV, Section 5 of the Zoning Ordinance, as amended. A development plan (whether submitted for the entire Property or for a portion thereof) must comply with the Concept Plan, the standards, terms and conditions of this Ordinance, the Zoning Ordinance, and all other applicable ordinances, laws, rules, regulations, codes and standards of the City and any other governmental entity or agency having jurisdiction over the Property or applicable portion thereof. Development, occupancy, and use of the Property or portion thereof which is covered by or the subject of a development plan must comply in all respects with the development plan. Upon approval of a development plan by the City Council, the same shall be incorporated into and made a part of this Ordinance for all purposes.

<u>Section 6.</u> The creation of Planned Development District \_\_\_\_\_ has been made in accordance with the comprehensive plan of the City for the purpose of promoting the health, safety and welfare of the community, and with consideration of the reasonable suitability for the particular use and with a view of conserving the value of the buildings and encouraging the most appropriate use of land within the community.

**Section 7.** That the provisions of the Town of Addison Code of Ordinances, as amended, shall remain in full force and effect save and except as amended by this ordinance.

Section 8. That any person, firm, corporation, or other business entity violating any of the provisions or terms of this Ordinance shall, in accordance with Article XXVIII (Penalty for Violation) of the Zoning Ordinance, be fined, upon conviction, in an amount of not more than Two Thousand and No/100 Dollars (\$2,000.00), and a separate offense shall be deemed committed each day during or on which a violation occurs or continues.

Section 9. The provisions of this Ordinance are severable, and should any section, subsection, paragraph, sentence, phrase or word of this Ordinance, or application thereof to any person, firm, corporation or other business entity or any circumstance, be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of the remaining or other parts or portions of this Ordinance, and the City Council hereby declares that it would have passed such remaining parts or portions of this Ordinance despite such unconstitutionality, illegality, or invalidity, which remaining portions shall remain in full force and effect.

Ordinance No	
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Case No. 1738-Z/Trinity Christian Academy

<u>Section 10</u>. That all ordinances of the City in conflict with the provisions of this Ordinance be, and the same are hereby repealed, and all other ordinances of the City not in conflict with the provisions of this Ordinance shall remain in full force and effect.

<u>Section 11</u>. This Ordinance shall become effective from and after its passage and approval and after publication as may be required by law or by the City Charter or ordinance

**PASSED AND APPROVED** BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, on this the 14<sup>th</sup> day of June, 2016.

ATTEST:	Todd Meier, Mayor	
Laura Bell, City Secretary	_	
CASE NO: 1738-Z/Trinity Christ	tian Academy	
APPROVED AS TO FORM:		
Brenda N. McDonald, City Attorn	ney	
PUBLISHED ON:		

#### **EXHIBIT A: PROPERTY DESCRIPTION**

#### **NORTH - PROPERTY DESCRIPTION**

STATE OF TEXAS §
COUNTY OF DALLAS §

BEING a tract of land situated in the L. NOBELS SURVEY, ABSTRACT NO. 1098 and the E. SHEPPARD SURVEY, ABSTRACT NO. 1361, City of Addison, Dallas County, Texas and being all of the same tracts of land described in deed to Trojan Real Properties, Inc., recorded in Instrument No. 20070460310, Official Public Records, Dallas County, Texas (O.P.R.D.C.T.), and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod with plastic cap stamped "huit zollar" found for corner, said iron rod being the northeast corner of Lot 1, Block A, Trinity Christian Academy and being situated in the westerly right-of-way line of Addison Road (72' right-of-way, at this point);

THENCE South 01 deg 34 min 44 sec West, along the westerly right-of-way line of said Addison Road, a distance of 369.03 feet to a 1/2 inch iron rod found for corner;

THENCE North 89 deg 27 min 59 sec East, continuing along said westerly right-of-way line, a distance of 12.00 feet to a 1/2 inch iron rod found for corner;

THENCE South 01 deg 14 min 40 sec West, continuing along the westerly right-of-way line of said Addison Road, a distance of 647.11 feet to a MAG nail with shiner set for corner at the intersection of the westerly right-of-way line of said Addison Road and the northerly right-of-way line of Sojourn Road (60' right-of-way);

THENCE South 89 deg 27 min 59 sec West, departing the westerly right-of-way line of said Addison Road and along the northerly right-of-way line of said Sojourn Road, a distance of 1,589.38 feet to a point for corner from which a 1/2 inch iron rod found bears North 30 deg 10 min 22 sec West, a distance of 0.61 feet, said point being the southeast corner of Addison Place Addition, an addition to the Town of Addison, Dallas County, Texas according to the plat thereof recorded in Volume 82038, Page 1386, Deed Records, Dallas County, Texas;

THENCE North 00 deg 34 min 01 sec West, departing the northerly right-of-way line of said Sojourn Road and along the east line of said Addition Place Addition, a distance of 646.79 feet to a 1/2 inch iron rod with red plastic cap stamped "W.A.I." set for corner, said iron rod being situated in the southerly line of Lot 2, The Dominion Addition, an addition to the Town of Addison, Dallas County, Texas according to the plat thereof recorded in Volume 95102, Page 2238, Deed Records, Dallas County, Texas;

THENCE along the southerly and easterly line of said Lot 2 the following:

North 89 deg 27 min 59 sec East, a distance of 249.80 feet to an "X" cut in concrete set for corner and the beginning of a curve to the left having a radius of 170.00 feet, a central

Ordinance No	
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angle of 90 deg 00 min 06 sec, a chord bearing of North 44 deg 27 min 59 sec East and a chord length of 240.42 feet;

Along said curve to the left, an arc distance of 267.04 feet to a 1/2 inch iron rod with red plastic cap stamped "W.A.I." set for corner;

North 00 deg 32 min 01 sec West, a distance of 308.17 feet to a 1/2 inch iron rod with red plastic cap stamped "W.A.I." set for corner and the beginning of a curve to the right having a radius of 155.00 feet, a central angle of 90 deg 02 min 09 sec, a chord bearing of North 44 deg 29 min 06 sec East and a chord length of 219.27 feet;

Along said curve to the right, an arc distance of 243.57 feet to a 1/2 inch irin rod with plastic cap stamped "huit zollar" found for corner;

North 89 deg 30 min 14 sec East, a distance of 436.69 feet to a 1/2 inch iron rod found for corner and the beginning of a non-tangent curve to the right having a radius of 80.00 feet, a central angle of 42 deg 44 min 34 sec, a chord bearing of South 69 deg 07 min 34 sec East and a chord length of 58.31 feet;

Along said non-tangent curve to the right, an arc distance of 59.68 feet to a 1/2 inch iron rod with plastic cap stamped "huit zollar" found for corner;

South 08 deg 24 min 38 sec East, a distance of 57.59 feet to a 1/2 inch iron rod found for corner and the beginning of a curve to the left having a radius of 25.00 feet, a central angle of 206 deg 46 min 08 sec, a chord bearing of North 69 deg 06 min 50 sec East and a chord length of 48.64 feet;

Along said curve to the left, an arc distance of 90.22 feet to a 1/2 inch iron rod with plastic cap stamped "huit zollar" found for corner, said iron rod being situated in the westerly line of Lot 1 of said The Dominion Addition;

THENCE along the westerly and southerly lines of said Lot 1, the following:

South 34 deg 15 min 58 sec East, a distance of 38.96 feet to a 1/2 inch iron rod with plastic cap stamped "huit zollar" found for corner;

North 79 deg 07 min 13 sec East, a distance of 79.68 feet to a 1/2 inch iron rod with plastic cap stamped "huit zollar" found for corner and the beginning of a non-tangent curve to the left having a radius of 1,050.00 feet, a central angle of 15 deg 35 min 16 sec, a chord bearing of South 73 deg 11 min 43 sec East and a chord length of 284.78 feet;

Along said non-tangent curve to the left, an arc distance of 285.66 feet to a 1/2 inch iron rod with plastic cap stamped "huit zollar" found for corner;

South 50 deg 51 min 14 sec East, a distance of 156.20 feet to the POINT OF BEGINNING.

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CONTAINING within these metes and bounds 39.326 acres or 1,713,019 square feet of land, more or less.

Bearings shown hereon are based upon an on-the-ground Survey performed in the field on the 15th day of April, 2015, utilizing a G.P.S. measurement (NAD 83, grid) of South 01 deg 34 min 44 sec West (Plat - South 02 deg 22 min 55 sec West), along the west right-of-way line of Addison Road, recorded in Document No. 200600311786, O.P.R.D.C.T.

#### **SOUTH - PROPERTY DESCRIPTION**

# STATE OF TEXAS § COUNTY OF DALLAS §

BEING a tract of land situated in the LEVI NOBLES SURVEY, ABSTRACT NO. 1098, City of Addison, Dallas County, Texas and being all of Lot 1, Block A, Dallas Gymnastics Center, an addition to the City of Addison, Dallas County, Texas according to the plat thereof reecorded in Volume 98073, Page 0025, Deed Records, Dallas County, Texas and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod found for the northeast corner of said Lot 1, Block A, said iron rod also being situated in the south right-of-way line of Sojourn Drive;

THENCE South 00 deg 35 min 40 sec East, departing said south right-of-way line and along the east line of said Lot 1, Block A, a distance of 188.61 feet to a 1/2 inch iron rod with red plastic cap stamped "W.A.I." set for corner;

THENCE South 89 deg 21 min 59 sec West, departing the east line and along the south line of said Lot 1, Block A, a distance of 400.31 feet to a point for corner from which a 1/2 inch iron rod found bears South 58 deg 37 min 55 sec West, a distance of 0.37 feet;

THENCE North 00 deg 30 min 09 sec West, departing the south line and along the west line of said Lot 1, Block A, a distance of 189.53 feet to an "X" cut in concrete found for corner and being situated in the south right-of-way line of said Sojourn Drive, same being the north line of said Lot 1, Block A;

THENCE North 89 deg 29 min 51 sec East, along the north line of said Lot 1, Block A and the south right-of-way line of said Sojourn Drive, a distance of 400.01 feet to the POINT OF BEGINNING.

CONTAINING within these metes and bounds 1.737 acres or 75,657 square feet of land, more or less.

Bearings shown hereon are based upon an on-the-ground Survey performed in the field on the 21st day of April, 2016, utilizing a G.P.S. measurement (NAD 83, grid) of South 01 deg 34 min

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#### EXHIBIT B: DEVELOPMENT STANDARDS

#### 1. Purpose.

The purpose of this Planned Development District (the "PD District," "Planned Development District," or "district") is to accommodate the development of a private school and master plan for the Trinity Christian Academy campus in phases. The Property will be developed in accordance with all of the standards, terms and conditions of this Ordinance (the "Ordinance"). These Planned Development conditions are incorporated into and made a part of the Ordinance for all purposes. Development, occupancy, and use of the Property and any portion thereof shall comply with development conditions set forth herein, with the Ordinance, with all applicable provisions of the Zoning Ordinance of the Town of Addison, Texas (the "City") (the same being Appendix A - Zoning Ordinance") and with all other applicable ordinances, laws, rules, regulations, standards. and codes of the City and any other governmental entity or agency having jurisdiction over the Property or applicable portion thereof.

#### 2. Definitions, Interpretations.

A. Unless otherwise stated, the definitions and interpretations in the Zoning Ordinance apply to this Ordinance and the development conditions set forth herein.

#### B. Definitions:

- a. LOWER SCHOOL means pre-kindergarten through fourth grade.
- b. MIDDLE SCHOOL means fifth grade through eighth grade.
- c. UPPER SCHOOL means ninth grade through twelfth grade.

#### 3. Phasing.

A. Development of the Property for a private school may be undertaken in phases. For the purposes of this PD, structures, uses, and accessory uses existing on the effective date of this Ordinance (shown in **Exhibit D** – Existing Site Plan) which are not in compliance with the concept plan are considered conforming and may remain until the development of their respective phases.

#### 4. Uses.

A. Authorized Uses/ Prohibited Uses. Only those uses identified herein as permitted uses, special uses, or accessory uses are authorized uses (subject to the terms, conditions and provisions of this Ordinance) within the Property. All other uses are expressly prohibited.

Ordinance	No.	
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#### B. Permitted Uses.

- (1). Private schools, including, but not limited to the "school facility" use as defined in Article XXX of the Zoning Ordinance
- (2). Existing portable school buildings shall be allowed by right and shall be removed within 60 days of the issuance of a Certificate of Occupancy for the relevant phase; any other portable building shall be allowed only upon the issuance of a Special Use Permit.
- C. Accessory Uses. The following are permitted as accessory uses within the Property:
  - (1). Recreation space and facilities
  - (2). Parking and parking structures
  - (3). Other uses customarily incidental and subordinate to permitted uses and any special uses

#### 5. Development Standards

A. Development, occupancy, and use of the Property shall comply with the development standards set forth in the following Table A:

Table A: Development Standards	
<b>Building Setbacks</b>	Building setbacks within the property are shown as the permissible building zone on the Concept Plan in Exhibit C.
Maximum Building Height	3 stories / 60 feet as measured to the midpoint of the roof
Maximum Lot Coverage	70%
Maximum Allowable Building Area	585,000 square feet

#### B. Miscellaneous development standards:

- (1). Lot coverage. The area of above ground parking structures is included in the lot coverage calculation.
- (2). Height. Architectural features including, but not limited to, turrets, spires and towers may exceed the maximum building height provided that any such structure is no more than 15 feet higher than the maximum permitted height and has a floor plan which is ten percent or less of the ground floor area of the building of which it is a part of.
- (3). Maximum Allowable Building Area. Parking structures or covered walkways are not included in the maximum allowable building area calculation.

Ordinance No.	
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#### 6. Parking

- A. *Generally*. Off-street parking must be provided for the appropriate building use classification according to the following ratios:
  - (1). School.
    - a. Lower School. (1.5 per lower school classroom) One and one-half spaces per every lower school classroom.
    - b. Middle School. (3.5 per middle school classroom) Three and one-half spaces per every middle school classroom.
    - c. Upper School. (9.5 per upper school classroom) Nine and one-half spaces per every upper school classroom.
  - (2). Soccer fields, baseball fields, and stadiums. (1 per 4 seats) One space per every four seats.
  - (3). Theaters, auditoriums, gymnasiums and field houses. (1 per 3 seats) One space per every three seats.
- B. Shared parking. Uses may join in establishing shared parking areas if it can be demonstrated that the parking for two or more specific uses occurs at alternating time periods or that the parking can be shared without any negative impacts on or adjacent to the property. Required parking shall be determined based on parking demand for the peak parking period as determined by a parking analysis study approved by the City's Zoning Administrator.
- C. *Parking garages*. Parking garage ramps shall not be express on the façade of the parking structure fronting or visible from public streets or adjacent properties. Steel parking garages and steel guard cables on the garage facades are prohibited.

#### 7. Exterior Appearance

#### A. Materials:

- (1). At least 80 percent of the exterior walls of all structures shall be of masonry construction.
- (2). For purposes of this planned development district, "masonry construction" includes, but is not limited to brick, stone, cultured stone, glazing and plate glass, three-coat stucco, and split face concrete masonry units. An applicant, however, may submit a design for construction of parking structures that employs alternative construction materials for exterior cladding with an application for a development plan. The alternative may be approved by the city upon determination that such construction will result in an appearance that is compatible with surrounding buildings and the overall character of the district.
- (3). No more than 15% of each exterior wall fronting or visible from public streets (including above grade parking structures) shall use accent materials such as stucco, architectural metal paneling, tile, and fiber cement siding (e.g. hardi-material).

Ordinance No.	
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- (4). No more than 40% of exterior cladding of all walls not fronting on, or not visible from, public areas (including above grade parking structures) shall use accent materials such as stucco, architectural metal paneling, tile, and fiber cement siding (e.g. hardi-material).
- (5). The exterior cladding (excluding glass and roofing materials) of all buildings, (including above grade parking structures) shall be composed of not more than three materials.
- (6). The following materials are prohibited as primary cladding materials:
  - i. Aluminum siding or cladding
  - ii. Fiberboard or Masonite siding
  - iii. Wood roof shingles
  - iv. Unfinished concrete block (architecturally finished concrete block is permitted as a cladding material)
- (7). The following materials are prohibited as primary roofing materials:
  - i. Wood roof shingle
  - ii. Composite shingles with less than a 50-year life
- (8). All balcony and stairway walking surfaces shall be constructed of noncombustible materials. The structural elements may be constructed of noncombustible materials or decay-resistant wood or as required by the Building Code. All handrails and guardrails shall be constructed of noncombustible materials.
- B. Windows. Glass is to be clear or tinted, not reflective.
- C. *Walls*. Walls attached to buildings shall be developed as architectural extensions of the building, constructed of the same material and in the same style.

#### 8. Landscape.

A. Landscaping within the Property shall comply with the standards contained in the Town of Addison Code of Ordinances, as amended.

#### 9. Screening

- A. Mechanical equipment shall be screened from view from all public streets and adjacent properties and located to minimize noise intrusion off each lot. The required screening must be composed of the same exterior materials as the buildings on the lot, or through the use of masonry walls, ornamental fence (80 percent opaque), evergreen landscape material, or combination thereof.
- B. Loading, service, and trash storage areas shall be screened from all public streets and adjacent properties. Refuse containers must be placed on a designed, reinforced concrete pad, including drive approach. The required screening must be composed of

Ordinance No.	
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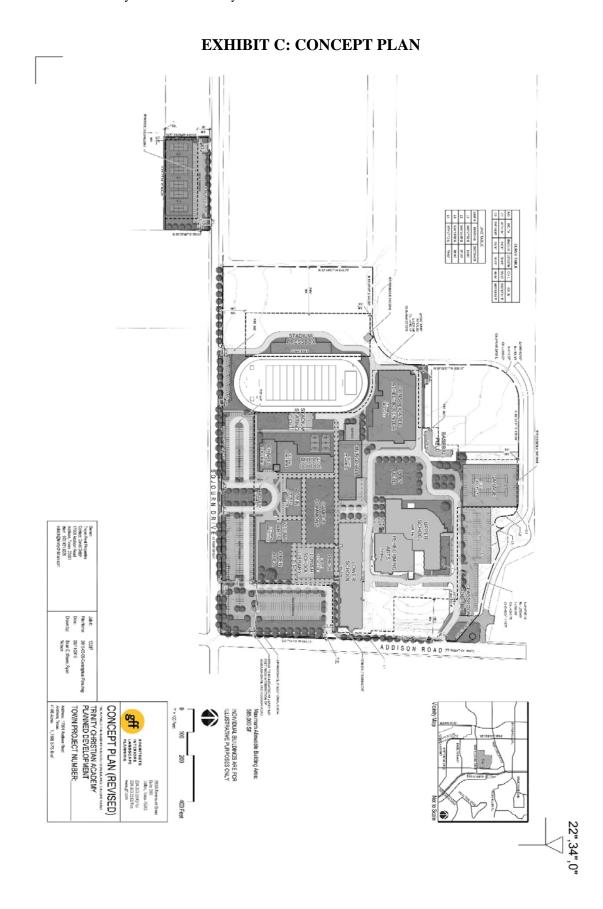
the same exterior materials as the buildings or through the use of masonry walls, ornamental fence (80 percent opaque), evergreen landscape material, or combination thereof.

C. Roof-mounted mechanical elements must be screened from view from all public streets and adjacent properties. Screening must be architecturally compatible with the building design.

#### 10. Miscellaneous Requirements

- A. Athletic Field Improvements. Location of structures and improvements such as dugouts, bleachers, backstops, benches, and other similar athletic improvements may be relocated anywhere within the permissible building zone of the Property to accommodate other proposed improvements.
- B. Speakers. Upon construction of the proposed press box and bleachers for the football field, speakers for the football field shall be removed from their current location on the east side of the football field and shall then be located on the west side of the football field and oriented towards the east.
- C. Additional athletic lighting may be installed upon approval of the Zoning Administrator. If the Zoning Administrator denies additional athletic lighting, the applicant may appeal to the City Council. The City Council may not approve additional athletic lighting prior to a public hearing held not sooner than 10 days after written notice is provided to property owners within 200 feet of the area of the request.
- D. Lighting for tennis courts shall not exceed 60' in height. Fixtures shall be shielded and directed onto courts. Lighting shall be turned off no later than 10 p.m. on Monday Saturday, with no lighting operations on Sunday.

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### EXHBIT D: EXISTING SITE PLAN



Al-1777 12.

Work Session and Regular Meeting

Meeting Date: 08/09/2016

**Department:** Infrastructure- Development Services

#### **AGENDA CAPTION:**

Hold A Public Hearing, Discuss And Consider Approval of An Ordinance Rezoning
The Property Located At 5290 Belt Line Road, Suite 114 In The Prestonwood
Place Shopping Center On The Southeast Corner Of Belt Line Road And
Montfort Drive, Which Is Currently Zoned LR, Local Retail, By Approving A
New Special Use Permit For A Restaurant And A New Special Use Permit For
The Sale Of Alcoholic Beverages For On-Premises Consumption Only. Case
1743-SUP/Pho Bowl.

#### **BACKGROUND:**

The Addison Planning and Zoning Commission, meeting in regular session on July 19, 2016, voted to recommend approval of an ordinance changing the zoning on property located at 5290 Belt Line Road Suite 114 by approving a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption, subject to the following condition:

• The applicant shall not use any terms or graphic depictions relating to alcoholic beverages in exterior signage.

Voting Aye: Griggs, Morgan, Robbins, Robinson, Schaeffer, Smith

Voting Nay: none Absent: Ennis

SPEAKERS AT THE PUBLIC HEARING: none

Please refer to the attached staff report for additional information on this case.

#### **RECOMMENDATION:**

Administration recommends approval.

#### **Attachments**

1743-SUP Staff Report 1743-SUP Plans Resolution

# 1743-SUP

**PUBLIC HEARING** Case 1743-SUP/Pho Bowl. Public hearing, discussion, and take action on a recommendation regarding an ordinance changing the zoning on property located at 5290 Belt Line Road, Suite 114, which property is currently zoned LR, Local Retail, by approving a new Special Use Permit for a restaurant and a new Special Use Permit for the sale of alcoholic beverages for on-premises consumption only.

#### **LOCATION MAP**





July 15, 2016

#### STAFF REPORT

RE: Case 1743-SUP/Pho Bowl

LOCATION: 5290 Belt Line Road Suite 114

REQUEST: Approval of a new Special Use Permit for a

restaurant and a new Special Use Permit for the sale of alcoholic beverages for on-premises

consumption only

APPLICANT: Pho Bowl represented by Salina Pham

**DISCUSSION:** 

<u>Background</u>: This leased space is part of the Prestonwood Place retail center at the corner of Belt Line Road and Montfort Drive, and is zoned Local Retail. This suite first received SUP approval in 1996 for a restaurant named Mattito's Café Mexicano. Most recently, this space was occupied by India West, which closed about a year ago. The previous tenant occupied approximately 5,825 square feet, including a small patio. The property owner is subdividing the large existing space into two restaurant spaces. The adjacent space has been occupied by Gyu-Kaku, which the Commission and Council recently approved.

<u>Proposed Plan</u>: The tenant for the second space is proposed to be Pho Bowl (pronounced "fuh" bowl). This is a Vietnamese fusion concept with another location in Deep Ellum. Pho is a type of Vietnamese noodle soup. The menu will also feature other Asian inspired dishes.

Pho Bowl will occupy 2,400 square feet of interior space and a 144 square foot patio with total seating for 78.

<u>Facades</u>: The applicant is proposing to adjust the front façade slightly to relocate the entryway and add a patio, but will use stucco to be consistent with the look of the rest of the center.

<u>Parking</u>: The restaurant is mostly utilizing space from a previous restaurant tenant. They are proposing to adjust the front wall slightly and add a small patio. This increases the restaurant square footage by 144 square feet. This necessitates 2 additional parking spaces, which can be accommodated within the center.

<u>Landscaping</u>: The Parks Department will assess the condition of the landscaping during the construction process. Any deficiencies will need to be corrected prior to the issuance of a certificate of occupancy.

#### RECOMMENDATION: APPROVAL WITH CONDITION

Pho Bowl appears to be a quality restaurant and is a new concept to Addison. This should be a good fit for the center. Staff recommends approval subject to the following condition:

• The applicant shall not use any terms or graphic depictions that relate to alcoholic beverages in any exterior signage.



## **Land Use Analysis**

## Attributes of Success Matrix

## Pho Bowl, 5290 Belt Line Road, Suite 114

1743-SUP

Attribute	Comment	Score
Competitive	This is a competitive corner and this concept has a successful tract record.	
Safe	This development is safe.	
Functional	The floor plan is a good design and appears functional.	
Visually Appealing	The front façade is being altered slightly, but will be consistent with the rest of the center.	
Supported with Amenities	The site is a good location for restaurants, retail, and other support services.	
Environmentally Responsible	Reoccupying a vacant space is an environmentally responsible development pattern.	
Walkable	The sidewalks adjacent to this property are narrow and immediately back of curb with no good connections through the parking lot.	
Overall Assessment	This new concept will be a positive addition to the Town.	





Case 1743-SUP/Pho Bowl July 19, 2016

#### **COMMISSION FINDINGS:**

The Addison Planning and Zoning Commission, meeting in regular session on July 19, 2016, voted to recommend approval of ordinance changing the zoning on property located at 5290 Belt Line Road Suite 114 by approving a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption, subject to the following condition:

 The applicant shall not use any terms or graphic depictions relating to alcoholic beverages in exterior signage.

Voting Aye: Griggs, Morgan, Robbins, Robinson, Schaeffer, Smith

Voting Nay: none Absent: Ennis

#### SPEAKERS AT THE PUBLIC HEARING:

For: none On: none Against: none





© 2016 CBRE, Inc. This information has been obtained from sources believed reliable. We have not verified it and make no guarantee, warranty or representation about it. Any projections, opinions, assumptions or estimates used are for example only and do not represent the current or future performance of the property. You and your advisors should conduct a careful, independent investigation of the property to determine to your satisfaction the suitability of the property for your needs. PLAN LAST UPDATED 2/2/2016

# SITE PLAN

# Prestonwood Place

ADDISON, TX

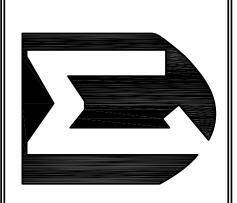
LOT 1		
SUITE	TENANT	SF
102A	Chipotle	2,582
102B	SOHO / Okeano's By Avener	1,443
103	AVAILABLE	1,300
105	i Fratelli Pizza	1,112
104	Foto Spa	1,275
100	Pollo Tropical	3,722
108	Addison Cafe	2,000
110	The Great Outdoors	2,300
112	La Madeleine	5,840
113	Pho Bowl	1,852
114	Gyu Kaku	3,351
116	Cafe Gecko	2,440
118	Sunstone Yoga Sport	4,500
122	AVAILABLE	8,125
124	Castle Nail Spa	2,300
132	Momo's Pasta	3,000
134	Planned Parenthood	3,000
136	AVAILABLE	3,000
138	AVAILABLE	3,000
142	Vernon's Grille	3,500
144	Chow Thai Restaurant	3,500
150	Logan's	5,200
150B	AVAILABLE	1,800
152	AVAILABLE	1,984
156	Orange Theory Fitness	1,517
158	Orange Theory Fitness	999
168	SMART Learning Center	29,755
	(operating but available 2017)	

## 2ND FLOOR

168B	not available	32,853
LOT 2 SUITE	TENANT	SF
1	El Fenix	8,700
2	Twin Peaks	7,174
3	DeMassi's Buffet	7,397
4	Flying Saucer	5,500

ucr.com





EVER DESIGN & BUILD CORP.

2515 FABENS RD, Dallas TX 75229 TEL: 972.484.3500 FAX: 972.426.7095

> PHO BOWL RESTAURANT 5290 BELTLINE RD, STE 114

CHECKED BY:

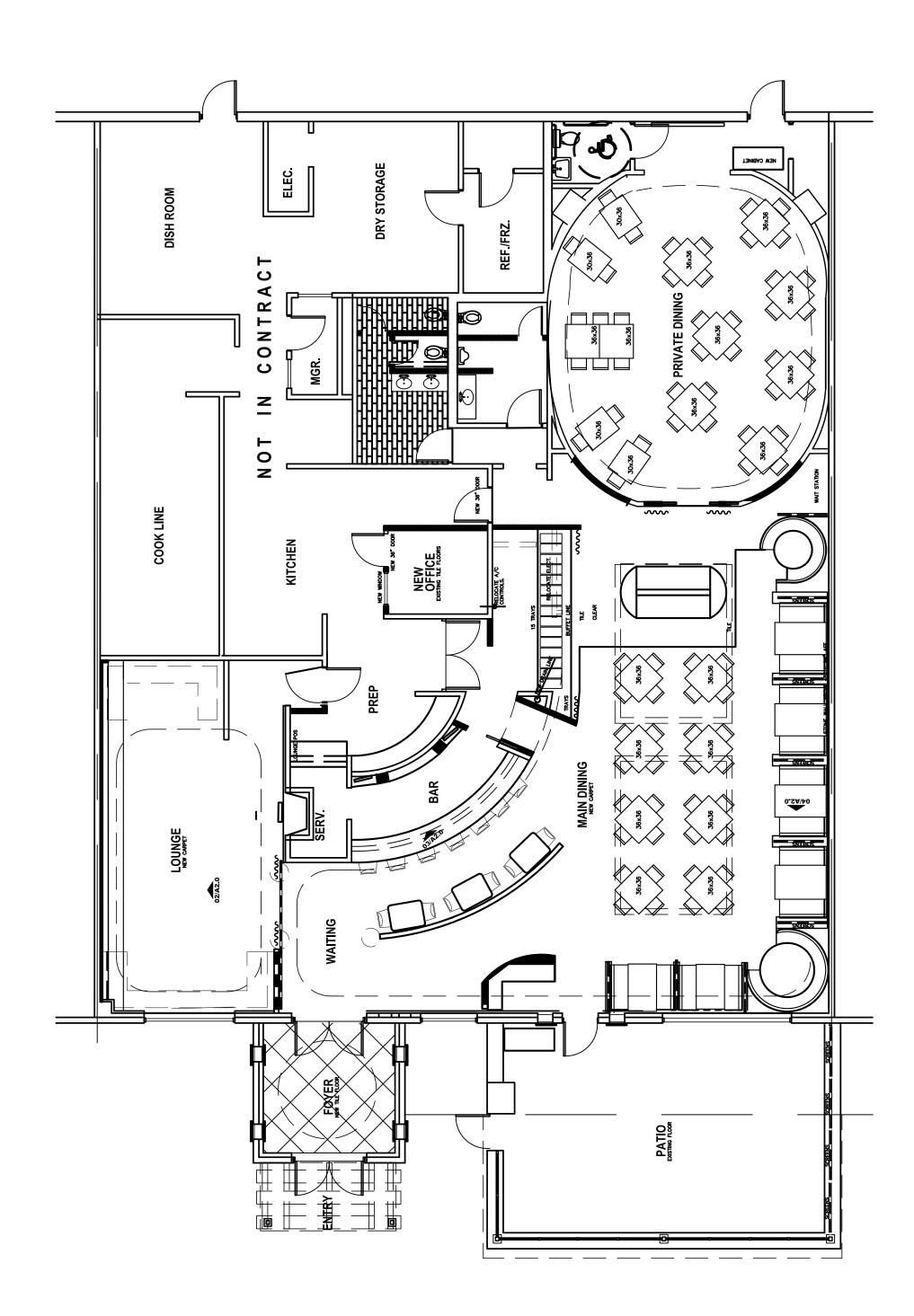
DATE: 06.21.2016

REVISIONS:

PROJECT NO.:

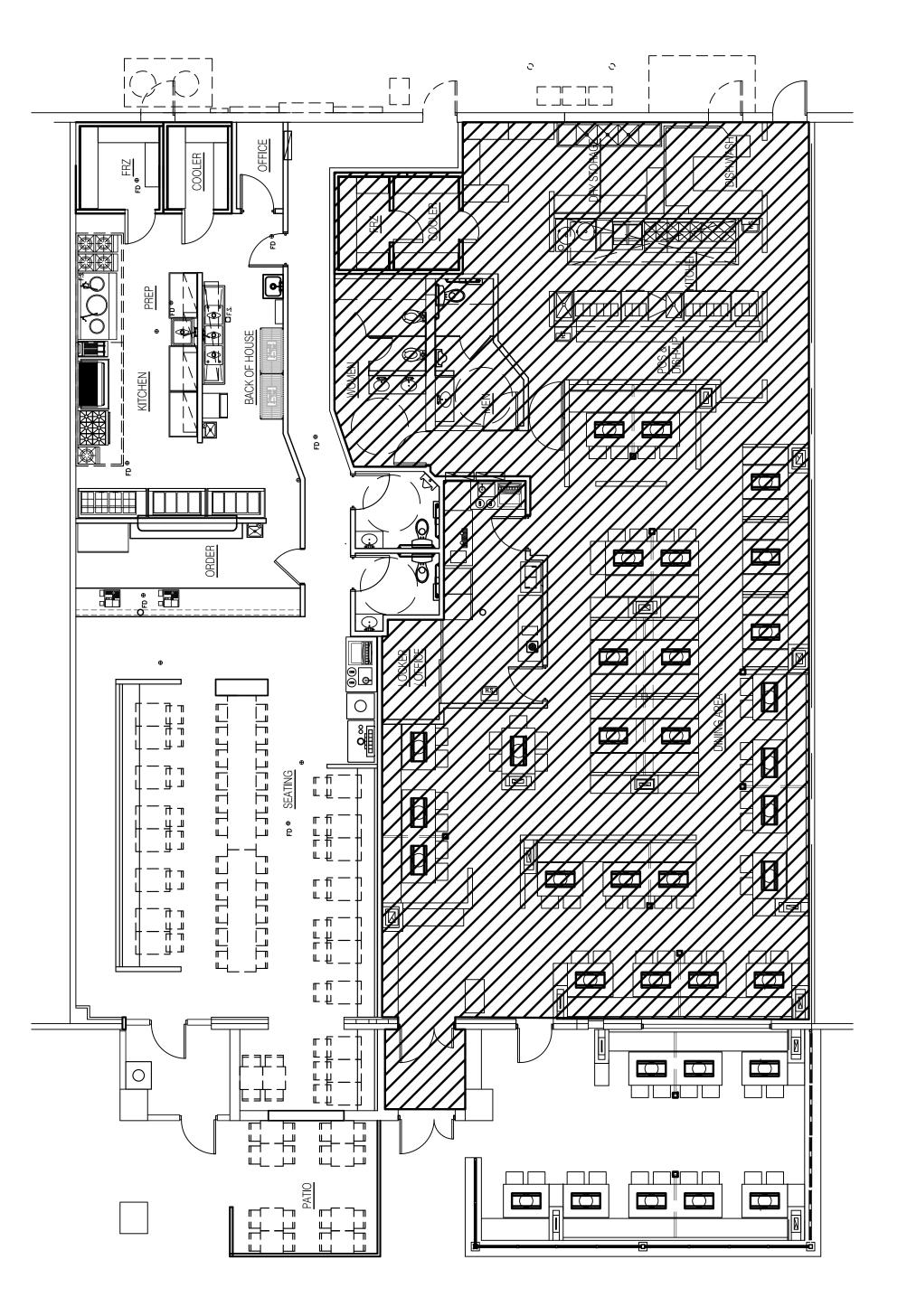
SHEET NO.:

DRAWN BY:





SQUARE FOOTAGE PATIO : 524.1 S.F.



PHO BOWL FLOOR PLAN

SCALE: NTS

PHO BAWL INTERIOR: 2,400.1 S.F.

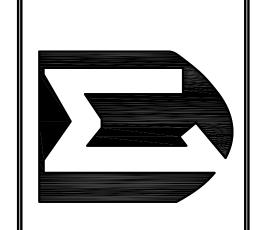
GYU KA KU FLOOR PLAN

SCALE: NTS

GYU KA KU INTERIOR: 2,900 S.F.
GYU KA KU PATIO: 524.1 S.F.



TOTAL SQUARE FOOTAGE : 5,824.1 S.F.



EVER DESIGN & BUILD CORP.

2515 FABENS RD, Dallas TX 75229 TEL: 972.484.3500 FAX: 972.426.7095

PHO BOWL
5290 BELTLINE RD, STE 114&115 A
TEXAS75254

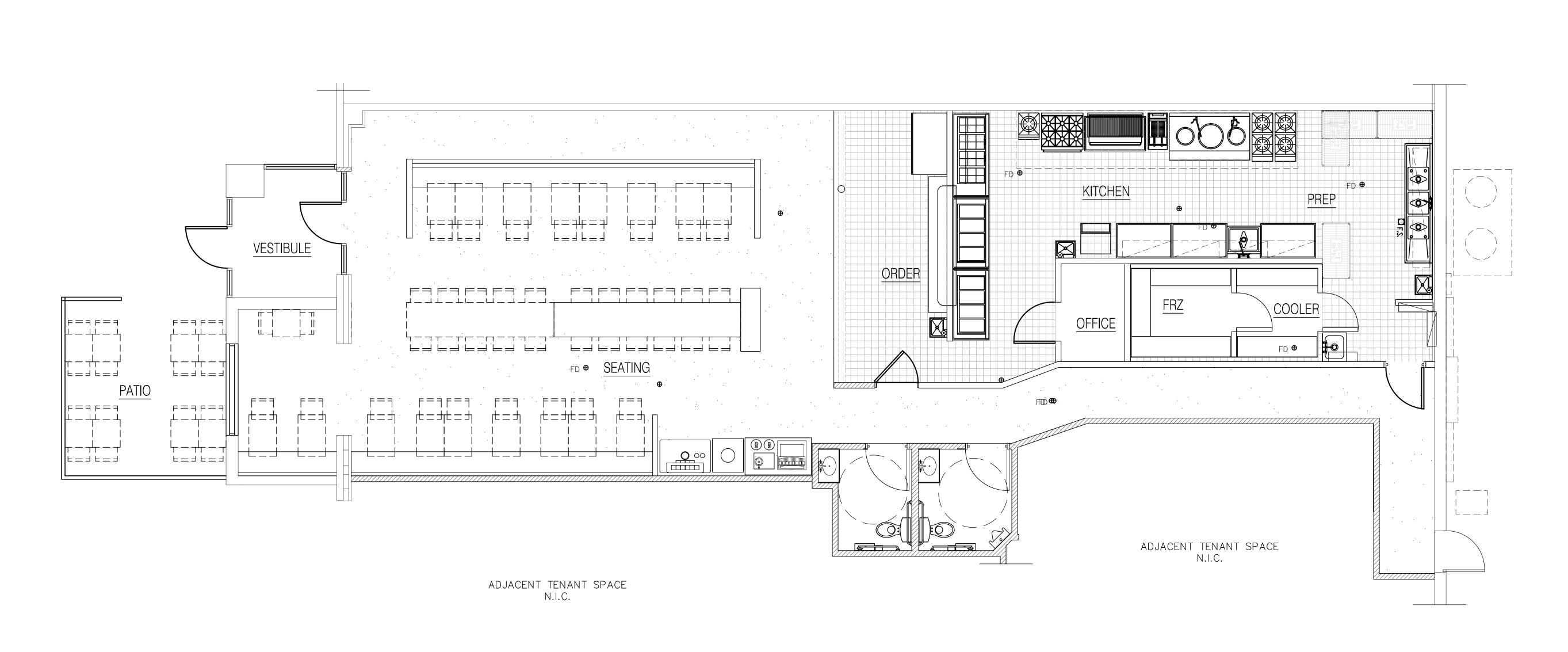
CHECKED BY: JL

DATE: 06.21.06

REVISIONS:

PROJECT NO.:

SHEET NO.:

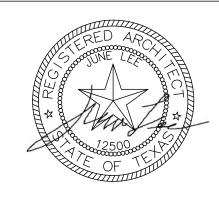


EVER DESIGN & BUILD CORP.

2515 FABENS RD, Dallas TX 75229 TEL: 972.484.3500 FAX: 972.426.7095

J. Lee, Architect
6822 Winding Rose Trail
Dallas, TX 75252

Phone 469-235-6196 FAX 972-248-6401 Email: junelee41@yahoo.com



PHO BOWL 5290 BELTLINE RD, STE114 ADDISON, TEXAS75254

DRAWN BY: KS

CHECKED BY: JL

DATE: 01/26/2016

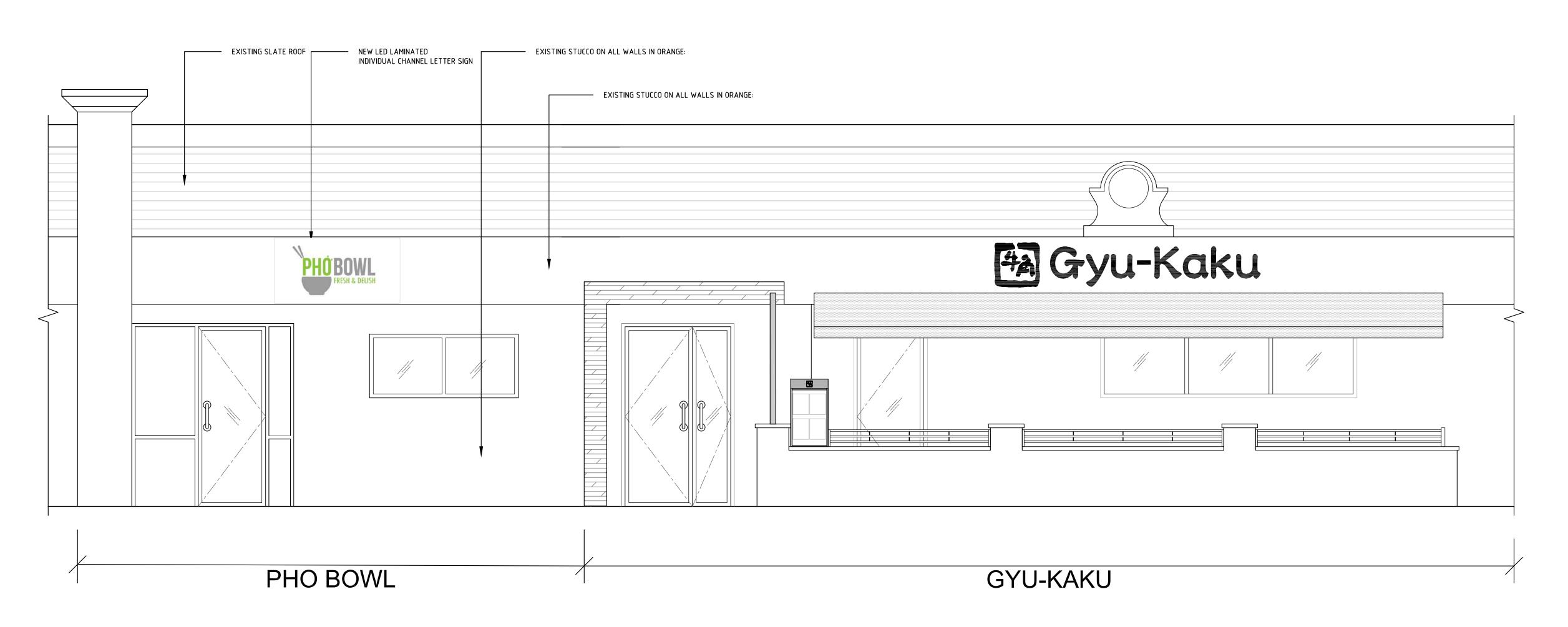
REVISIONS: 2/22/2016

PROJECT NO.:

SHEET NO.:

FLOOR PLAN

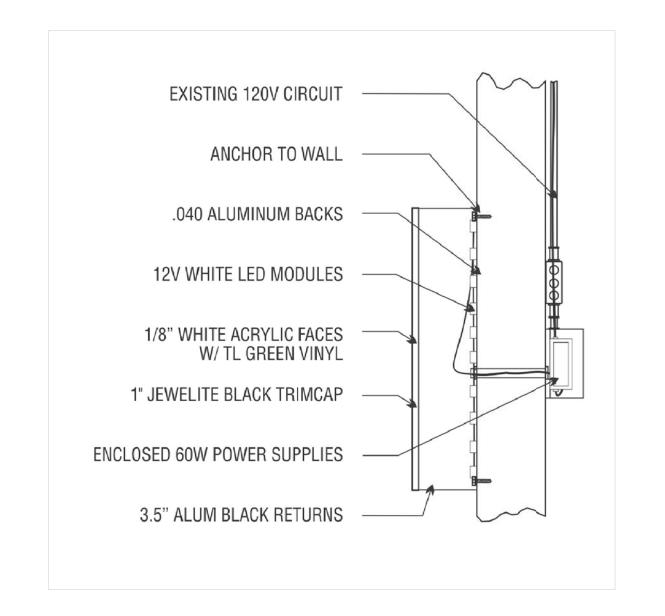
SCALE: 1/4" = 1'-0"



1.1 FRONT VIEW
A-4.1 SCALE: 3/8"=1'-0"

1. FACADE DETAILS









J. Lee, Architect
6822 Winding Rose Trail
Dallas, TX 75252

Phone 469-235-6196 FAX 972-248-6401 Email: junelee41@yahoo.com

> FILO DOVVL 5290 BELTLINE RD, STE114, ADDISON, TEXAS75254

DRAWN BY:

MK

CHECKED BY:

JL

DATE:

06/22/2016

REVISIONS:

TITLE:

FACADE AND

SIGNAGE DETAILS

PROJECT NO.:

SHEET NO.:

AS NOTED

A401

#### TOWN OF ADDISON, TEXAS

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE TO GRANT SPECIAL USE PERMITS FOR A RESTAURANT AND THE SALE OF ALCOHOLIC BEVERAGES FOR ON-PREMISES CONSUMPTION, ON APPLICATION FROM PHO BOWL, FOR PROPERTY LOCATED AT 5290 BELT LINE ROAD SUITE 114; PROVIDING A PENALTY NOT TO EXCEED TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00) FOR EACH OFFENSE AND A SEPARATE OFFENSE SHALL BE DEEMED COMMITTED EACH DAY DURING OR ON WHICH A VIOLATION OCCURS OR CONTINUES; SAVINGS, NO SEVERABILITY AND AN EFFECTIVE DATE.

**WHEREAS**, the property located at 5290 Belt Line Road is part of the Prestonwood Place retail center and is zoned LR - Local Retail; and

**WHEREAS**, after due deliberations and consideration of the recommendation of the Planning and Zoning Commission, the information received at a public hearing, and other relevant information and materials, the City Council of the Town of Addison, Texas finds that this ordinance promotes the general welfare and safety of this community.

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

**Section 1.** That the recitals and findings set forth above are hereby found to be true and correct and incorporated as if fully set forth herein.

<u>Section 2</u>. That a Special Use Permit authorizing a restaurant and a Special Use Permit authorizing the sale of alcoholic beverages for on-premises consumption only, on the property located at 5290 Belt Line Road Suite 114, are hereby granted subject to the following conditions:

- (a) Prior to the issuance of a Certificate of Occupancy, said Property shall be improved in accordance with the site plan, floor plan, and the elevation drawings, which are attached hereto as **Exhibit A** and made a part hereof for all purposes.
- (b) The Special Use Permit granted herein for a restaurant with the sale of alcoholic beverages for on-premises consumption only shall be limited to that particular area designated on the final site plan as encompassing a total area not to exceed 2,544 square feet.
- (c) No signs advertising sale of alcoholic beverages shall be permitted other than those authorized under the Liquor Control Act of the State of Texas, and any sign ordinance of the Town of Addison, Texas.

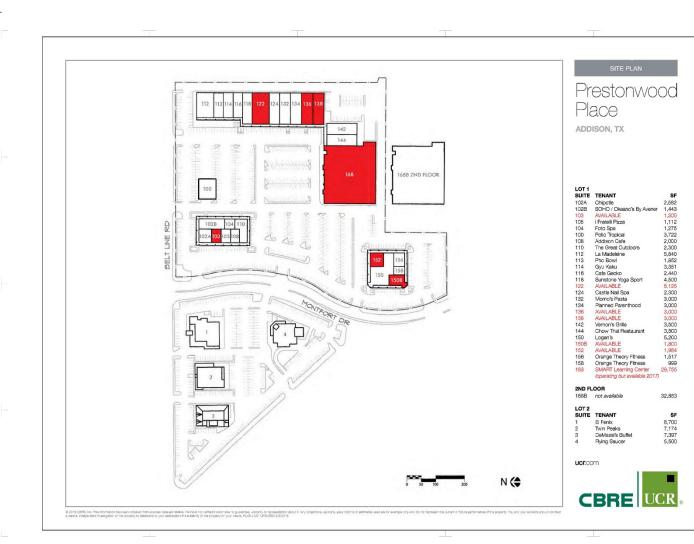
Ordinance No

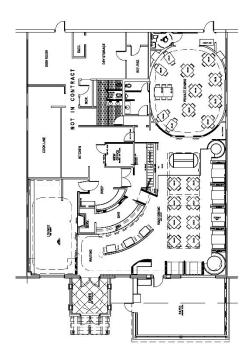
- (d) The sale of alcoholic beverages under this Special Use Permit shall be permitted in restaurants. Restaurants are hereby defined as establishments which receive at least sixty percent (60%) of their gross revenues from the sale of food.
- (e) Said establishment shall make available to the city or its agents, during reasonable hours its bookkeeping records for inspection, if required, by the city to insure that the conditions of subparagraph (d) above are being met.
- (f)If the property for which these Special Use Permits are granted is not used for the purposes for which said permits were granted within one (1) year after the adoption of this ordinance, the City Council may authorize hearings to be held for the purpose of considering a change of zoning and repeal of the Special Use Permits granted herein.
- (g)If a license or permit to sell alcoholic beverages on property covered by this Special Use Permit is revoked, terminated or cancelled by proper authorities, the City Council may authorize hearings to be held for the purpose of considering a change of zoning repeal of the Special Use Permits granted herein.
- (h)The establishment shall not use the term "bar", "tavern", or any other terms or graphic depictions that relate to the sale of alcoholic beverages on any signs visible from the exterior of the premises.
- <u>Section 4.</u> That any person, firm, or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Comprehensive Zoning Ordinance of the city, as heretofore amended, and upon conviction shall be punished by a fine set in accordance with Chapter 1, General Provisions, Section 1.10, General penalty for violations of Code; continuing violations, of the Code of Ordinances for the Town of Addison.
- Section 5. That it is the intention of the City Council that this ordinance be considered in its entirety, as one ordinance, and should any portion of this ordinance be held to be void or unconstitutional, then said ordinance shall be void in its entirety, and the City Council would not have adopted said ordinance if any part or portion of said ordinance should be held to be unconstitutional or void.
- **Section 6.** That all ordinances of the City in conflict with the provisions of this ordinance be, and the same are hereby repealed and all other ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.
- <u>Section 7</u>. That this Ordinance shall become effective from and after its passage and approval and after publication as may be required by law or by the City Charter or ordinance.

Ordinance No.	

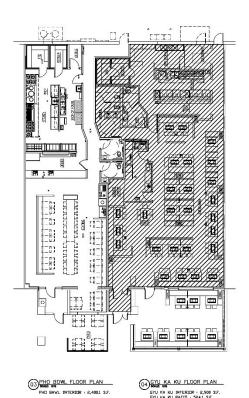
**PASSED AND APPROVED** BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, on this the 9th day of August, 2016.

ATTEST:	Todd Meier, Mayor
Laura Bell, City Secretary	
CASE NO: 1743-SUP/Gyu-Kaku	
APPROVED AS TO FORM:	
Brenda N. McDonald, City Attorney	
PUBLISHED ON:	



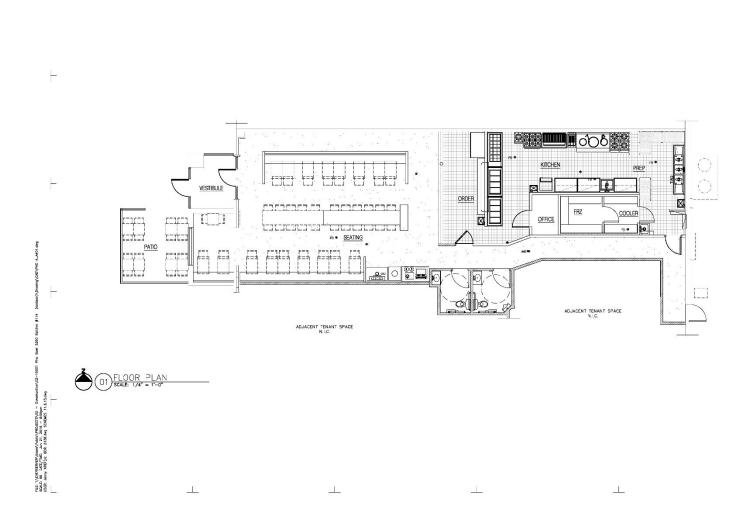


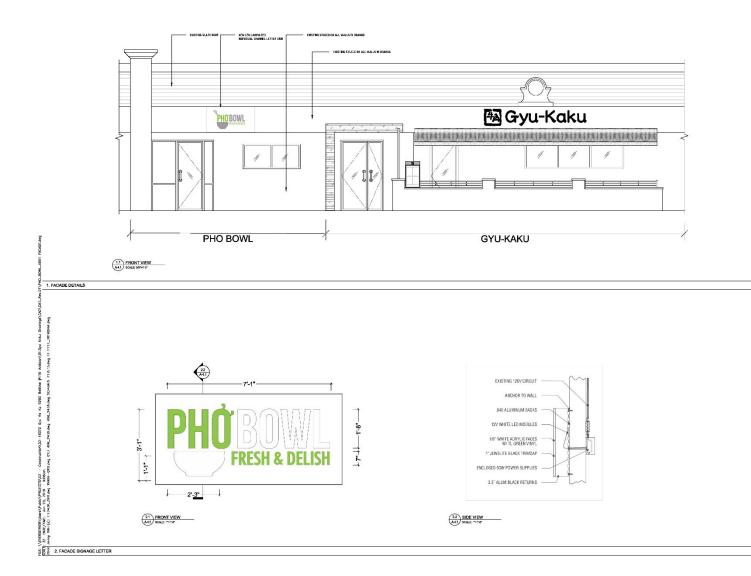












Al-1776 13.

**Work Session and Regular Meeting** 

Meeting Date: 08/09/2016

**Department:** Infrastructure- Development Services

#### **AGENDA CAPTION:**

Consider Approval of A Resolution For The Appointments To The Inwood Road Corridor Special Area Study Advisory Committee.

#### **BACKGROUND:**

At its June 14, 2016 meeting, the City Council approved a contract with Gensler to conduct a special area study for the Inwood Road corridor. Part of the study process includes working with an advisory committee. This committee will assist staff and the consultants to review the study area, create development alternatives and select a preferred redevelopment plan that will then be presented to the City Council for consideration. Staff proposes that the Committee be made up of seven business representatives and seven residents to be appointed by the Council. Each Council Member has the opportunity to appoint one business representative and one resident.

This resolution will formally adopt the appointments to the committee.

#### **RECOMMENDATION:**

Administration recommends approval.

#### **Attachments**

#### Resolution

#### TOWN OF ADDISON, TEXAS

RESOI	UTION	NO.	
ILLOUI		110.	

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS CREATING THE INWOOD ROAD CORRIDOR SPECIAL AREA STUDY COMMITTEE.

**WHEREAS,** in February of 2016, the City Council Town of Addison selected the Inwood Road corridor as a special study area which includes approximately 60 acres and is bounded by Belt Line Road to the north, Inwood Road to the east, the city limit line to the west and the city limit line to the south; and

**WHEREAS**, in an effort to stimulate public participation, the City Council desires to create a committee to provide input to the consultants retained to conduct the special area study.

# NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

<u>Section 1</u>. The City Council hereby creates the Inwood Road Corridor Special Area Study Committee to provide input regarding the Inwood Road corridor special area study. The Committee will be made up of not more than 14 individuals appointed by the City Council. Committee members shall be either residents of Addison, Addison business owners or their representatives, owners of property within the special area study or their representatives, or employees of Addison businesses. The Committee shall be advisory in nature and shall be dissolved upon adoption of the Inwood Road Corridor Special Study.

Section 2. This resolution shall be effective from and after the date of passage.

**DULY PASSED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS,** this the 9<sup>th</sup> day of August, 2016.

ATTEST:	Todd Meier, Mayor	
Laura Bell, City Secretary  APPROVED AS TO FORM:		
Brenda N. McDonald, City Attorney		

RESOLUTION NO.

OFFICE OF THE CITY SECRETARY

Page 1 of 1

Al-1787 14.

**Work Session and Regular Meeting** 

Meeting Date: 08/09/2016

**Department:** Infrastructure- Development Services

# **AGENDA CAPTION:**

Present, Discuss, And Consider An Ordinance <u>Granting A Meritorious Exception</u> <u>For A Vehicular Sign Located At Misfit Industries At 4122 Billy Mitchell Drive.</u>

#### **BACKGROUND:**

Misfit Industries is located at 4122 Billy Mitchell Drive. This business designs and fabricates motorcycles. The business has an 83 foot long truck and trailer used to transport motorcycles and other equipment. This is currently parked in nine parking spaces immediately adjacent to the right-of-way (see attached photos). The truck and trailer include branding for the business and is considered a vehicular sign. Vehicular signs are subject to the following regulations under Addison's Sign Code.

# Sec. 62-145. - Certain vehicular signs.

- (a) Vehicular signs may be attached to the following vehicles:
- 1. Vehicles of the town.
- 2. Vehicles owned and operated by another governmental entity.
  - (b) Further, vehicular signs are permitted provided that:
- 1. The primary purpose of the vehicle on which the vehicular sign is located is not for display of the sign;
- 2. The signs are painted upon or applied directly to an integral part of the vehicle:
- 3. The vehicle on which a vehicular sign is located is in operating condition, currently registered and licensed to operate on public streets, and actively used in the daily function of the business to which such sign relates;
- 4. The vehicle on which a vehicular sign is located is not used primarily as static displays advertising a product or service; and
- 5. The vehicle on which the vehicular sign is located, when on the premises of the business to which such sign relates, shall be parked out of view from the public right-of-way. If this is not possible due to the configuration of the site, then the vehicle on which the vehicular sign is located must be parked as far away as reasonably possible from the public right-of-way.

In December 2015, the Town's Property Standards staff conducted a proactive sweep of the Town for vehicular signs. Since that time, staff has visited repeatedly with Misfit Industries about their vehicular sign and the Town's requirements. The building on this property extends up to the rear property line, and therefore it is not possible to park the vehicle completely out of view from the public right-of-way. Staff has instructed the business to park the truck and trailer on either side of the building to be in compliance with the Town's requirements.

The business has stated that the ramp on the west side of the building is too steep for the trailer to use and that parking the trailer to the east of the building would block access to their dumpster. The business is requesting a meritorious exception from the requirement of Sec. 62-145 (b) (5) that the vehicular sign be parked out of view of the public right-of-way or as far away as reasonably possible from the public right-of-way. They would like permission to park the vehicular sign in its current location immediately adjacent to the public right-of-way.

The code states that "the Council may consider appeals on the basis that such regulations and/or standards, will, by reason of exceptional circumstances or surroundings, constitute a practical difficulty or unnecessary hardship or on the basis that the proposed improvement although falling under the definition of a 'sign,' constitutes art that makes a positive contribution to the visual environment."

#### **RECOMMENDATION:**

Administration recommends denial.

In visiting with this business, staff has requested that they show that the grade on the west side of the building is too steep to accommodate the trailer. To date, the business has declined to do so. The dumpster on the east side of the property could be relocated. The dumpster has been placed elsewhere on this property in the past. This would allow the trailer to be parked on the east side of the building in compliance with the requirements of the code. In staff's opinion, the property owner has not proven that a hardship exists to justify the meritorious exception.

Additionally, the trailer is currently placed in nine parking spaces. Allowing it to stay in this location would effectively block access to these spaces which are required by the zoning standards for this property. Furthermore, staff believes that approval of a meritorious exception for this property could establish a precedent where other property owners would expect similar treatment regarding placement for their vehicular signage.

#### **Attachments**

Meritorious Exception Package









Al-1780 15.

Work Session and Regular Meeting

Meeting Date: 08/09/2016

Department: Finance

#### **AGENDA CAPTION:**

Present, Discuss, And Consider A Resolution <u>Establishing A Potential Maximum Property Tax Rate Of 0.59 Cents Per \$100 Of Property Valuation For The Town's Fiscal Year Beginning October 1, 2016 And Ending September 30, 2017, And Designating Dates For Public Hearings Regarding The Proposed Budget And Proposed Tax Rate For The 2016-2017 Fiscal Year.</u>

#### **BACKGROUND:**

The State's Truth-in-Taxation law requires that there be a record vote on a proposed Not-To-Exceed tax rate for the upcoming fiscal year (2016/2017). This rate is not the final adopted rate. The record vote on a proposed Not-to-Exceed rate will be on August 9, 2016 at 7:30 pm in Council Chambers.

The State's Truth-in-Taxation law also requires calculation and publication of each taxing entity's effective tax and rollback tax rates. The effective rate, the rate needed to raise the same amount of property tax revenue for the Town from the same properties in FY2016, is \$0.545760 per \$100 of valuation. The rollback rate, the highest tax rate that the Town may adopt before voters are entitled to petition for an election to limit the rate to the rollback rate, is \$0.566192 per \$100 of valuation. These rates will be published in the August 12, 2016 edition of the Dallas Morning News: NeighborsGo. Included with this agenda item is a copy of the publication notice.

The City Manager's proposed budget assumes a property tax rate of \$0.564131, which exceeds the effective tax rate. Should the Council consider a rate higher than the effective rate, the Truth-in-Taxation law requires a vote of record, publication of the result of the vote of record and two public hearings. Whatever tax rate Council adopts for next year's budget, that rate can be no higher than the potential maximum tax rate established by the vote of record, although it can be less than that rate.

The tax rate public hearings are scheduled for August 30, 2016 and September 6, 2016 at 7:30 pm in Council Chambers. Also, there is a public hearing on the proposed budget on September 6, 2016 at 7:30 pm in Council Chambers. The final vote on the tax rate and adoption of the budget will be on September 13, 2016 in Council Chambers at 7:30 pm.

#### **RECOMMENDATION:**

Administration recommends adoption of a potential maximum tax rate of 0.59 cents per \$100 of property valuation.

Atta	chm	ents
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Resolution
Public Notice

#### TOWN OF ADDISON, TEXAS

# RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS PROPOSING A POTENTIAL MAXIMUM PROPERTY TAX RATE OF \$0.590000 PER \$100 OF TAXABLE VALUE FOR THE TOWN'S FISCAL YEAR BEGINNING OCTOBER 1, 2016 AND ENDING SEPTEMBER 30, 2017; PROVIDING THAT A PUBLIC HEARING ON THE PROPOSED TAX RATE WILL BE CONDUCTED AT MEETINGS OF THE CITY COUNCIL TO BE HELD ON AUGUST 30, 2016 AND SEPTEMBER 6, 2016, EACH COMMENCING AT 7:30 P.M., AT ADDISON TOWN HALL, COUNCIL CHAMBERS, 5300 BELT LINE ROAD, DALLAS, TEXAS 75254; SCHEDULING A VOTE ON THE PROPERTY TAX RATE FOR THE SAID 2016-2017 FISCAL YEAR AT A COUNCIL MEETING TO BE HELD ON SEPTEMBER 13, 2016 COMMENCING AT 7:30 P.M. AT THE SAID ADDISON TOWN HALL, SUCH DATE AND TIME SUBJECT TO CHANGE AS THE COUNCIL MAY DETERMINE; SCHEDULING A PUBLIC HEARING ON THE PROPOSED BUDGET OF THE TOWN FOR SAID 2016/2017 FISCAL YEAR AT A COUNCIL MEETING TO BE HELD ON SEPTEMBER 6, 2016, COMMENCING AT 7:30 P.M., AT THE SAID ADDISON TOWN HALL; PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the City Council of the Town of Addison, Texas (the "City") is in the process of evaluating and establishing a budget and a property tax rate for its fiscal year that begins October 1, 2016 and ends September 30, 2017; and

**WHEREAS**, Section 26.05(d) of the Texas Tax Code (the "Code") provides in part that the governing body of a municipality may not adopt a tax rate that exceeds the lower of the rollback tax rate or the effective tax rate until the governing body has held two public hearings on the proposed tax rate; and

**WHEREAS**, Section 26.06(b) of the Code specifies certain information to be included in the notice of such public hearings, including the date, time and location of each of the public hearings, the percentage by which the proposed tax rate exceeds the lower of the rollback tax rate or the effective tax rate, and the names of all members of the governing body, showing how each voted on the proposal to consider the tax increase (or if a member is absent, indicating the absence); and

**WHEREAS**, the City's tax assessor/collector, being the Dallas County Tax Assessor/Collector, has calculated the City's effective tax rate to be \$0.545760 and the rollback tax rate to be \$0.566192, and each of those rates have been published in accordance with State law; and

**WHEREAS**, this Resolution, among other things, proposes a property tax rate for the City's fiscal year beginning October 1, 2016 and ending September 30, 2017 that exceeds the lower of the said effective tax rate and the rollback tax rate.

# NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

**Section 1.** A property tax rate of \$0.590000 per \$100 of tax value is proposed for the City's fiscal year beginning October 1, 2016 and ending September 30, 2017 (the "2016-2017 Fiscal Year").

The City Council will hold and conduct two public hearings on this proposed tax rate. The first public hearing will be held on August 30, 2016 at 7:30 p.m. and the second public hearing will be held on September 6, 2016 at 7:30 p.m. Each public hearing will be held and conducted at Addison Town Hall, Council Chambers, 5300 Belt Line Road, Dallas, Texas 75254. Notice of each of the said meetings and public hearings will be published and posted in accordance with law.

**Section 2.** The adoption of the property tax rate for the 2016-2017 Fiscal Year is scheduled to be considered by the City Council at a meeting of the City Council to be held on September 13, 2016, commencing at 7:30 p.m., at Addison Town Hall, Council Chambers, 5300 Belt Line Road, Dallas, Texas 75254. The said meeting date and time for consideration of the adoption of the property tax rate are subject to change as the Council may determine, and such change may be made by the Council by motion or otherwise, and without amending this Resolution.

**Section 3**. The City Council will hold and conduct a public hearing on the proposed budget for the City for the 2016-2017 Fiscal Year on September 13, 2016 commencing at 7:30 p.m. at Addison Town Hall, Council Chambers, 5300 Belt Line Road, Dallas, Texas 75254. Notice of the said meeting and public hearing will be published and posted in accordance with law.

**Section 4**. The above and foregoing recitals are true and correct and are incorporated into and made a part of this Resolution.

**Section 5**. This Resolution shall take effect upon its passage and approval.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this 9th day of August, 2016.

AYES: NAYS:	ABSENCES:
	Todd Meier, Mayor
ATTEST:	APPROVED AS TO FORM:
Ву:	By:
Laura Bell, City Secretary	Brenda N. McDonald, City Attorney

# NOTICE OF 2016 TAX YEAR PROPOSED PROPERTY TAX RATE FOR TOWN OF ADDISON TEXAS

A tax rate of \$0.564131 per \$100 valuation has been proposed for adoption by the governing body of Town of Addison Texas. This rate exceeds the lower of the effective or rollback tax rate, and state law requires that two public hearings be held by the governing body before adopting the proposed tax rate.

The governing body of Town of Addison Texas proposes to use revenue attributable to the tax rate increase for the purpose of maintenance and operations necessary to provide the same service level as prior year.

PROPOSED TAX RATE	\$0.564131 per \$100
PRECEDING YEAR'S TAX RATE	\$0.579150 per \$100
EFFECTIVE TAX RATE	\$0.545760 per \$100
ROLLBACK TAX RATE	\$0.566192 per \$100

The effective tax rate is the total tax rate needed to raise the same amount of property tax revenue for Town of Addison Texas from the same properties in both the 2015 tax year and the 2016 tax year.

The rollback tax rate is the highest tax rate that Town of Addison Texas may adopt before voters are entitled to petition for an election to limit the rate that may be approved to the rollback rate.

YOUR TAXES OWED UNDER ANY OF THE ABOVE RATES CAN BE CALCULATED AS FOLLOWS:

property tax amount= (rate) x (taxable value of your property)/100

For assistance or detailed information about tax calculations, please contact:

John R. Ames, PCC CTA
Dallas County Tax Assessor/Collector
5350 Belt Line Road, Addison, TX
214-653-7100
TNTHelp@dallascounty.org
www.dallascounty.org

You are urged to attend and express your views at the following public hearings on the proposed tax rate:

First Hearing: August 30, 2016 at 7:30pm at 5300 Belt Line Road, Addison TX.

Second Hearing: September 6, 2016 at 7:30pm at 5300 Belt Line Road, Addison TX.

Al-1791 16.

**Work Session and Regular Meeting** 

Meeting Date: 08/09/2016

Department: Council

### **AGENDA CAPTION:**

Discuss And Consider Action Regarding **Sponsorship Of Addison Residents And/Or Employees For The 28th Class Of Leadership Metrocrest.** 

# **BACKGROUND:**

Through a series of all-day sessions conducted once per month from September through May, Leadership Metrocrest class members participate in various leadership development and community education programs focusing on current civic issues. Subject areas include city government, economic development, transportation, community services, and other relevant topics. Attached is the scholarship matrix that City Council approved in 2012 for determining the sponsorship level of Addison Residents to the Leadership Metrocrest program.

Staff is requesting direction from Council regarding nominations for the 28th Leadership Metrocrest class.

#### RECOMMENDATION:

Staff requests direction from Council regarding nominations for the 28th class of Leadership Metrocrest.

#### **Attachments**

Scholarship Matrix



# Town of Addison's Scholarship Matrix for Residents Participating in Leadership Metrocrest

Addison Board or Organization	Percentage of Scholarship Offered	Leadership Metrocrest Fee	ToA's Contribution
Council Member or P&Z Member	100%	\$1,000	\$1,000
Citizen Academy Graduate	80%	\$1,000	\$800
Volunteer for Arbor Foundation, Addison Addvocates, Water Tower Theatre	70%	\$1,000	\$700
Addison Residency greater than 5 years	50%	\$1,000	\$500
Addison Residency 4 years or less	25%	\$1,000	\$250

The scholarship received will be at the highest level that a resident qualifies.

AI-1775 17.

**Work Session and Regular Meeting** 

**Meeting Date:** 08/09/2016 **Department:** City Secretary

# **AGENDA CAPTION:**

Discuss And Consider Action Related To The <u>Function And Purpose Of The</u> Finance Committee.

#### **BACKGROUND:**

The bylaws of the Council Finance Committee require that members of the committee be appointed annually each June. Members are chosen by the Council during discussions regarding Council Liaison appointments. From June 2015 to June 2016 the following Councilmembers served on the committee, Mayor Meier, Councilmember Hughes and Councilmember Wilcox.

At the June 28, 2016 Council Meeting, this item was discussed and a motion to reappoint the three current Finance Committee members and bring the item back for additional discussion regarding the function and purpose of the Finance Committee. The current committee members would continue to serve until the Council decides otherwise, either through the appointment of other Councilmembers or dissolution of the Finance Committee.

### **RECOMMENDATION:**

N/A

#### **Attachments**

# Committee Bylaws

#### **PURPOSE**

To assist the **City Council** in fulfilling its responsibilities pertaining to the Town's finances in accordance with the City Charter, Code of Ordinances, and applicable laws and regulations. The City Council will, at least one time each year, review whether or not the Finance Committee should be continued, with such review to occur at the first meeting in June or as soon thereafter as practicable.

#### **RESPONSIBILITIES**

The **Finance** Committee shall serve solely in an advisory capacity to the City Council. Among other matters that may be requested from time to time by the Council, the Finance Committee may review and make recommendations to the City Council regarding the following matters:

- quarterly financial reports prepared by the Town's chief financial officer that have been or are to be provided to the City Council;
- the Town's comprehensive financial annual report, the annual audit of the Town's finances, and the Town auditor's management letter or report on internal control, prior to their presentation and submission to the City Council;
- the long term debt capacity of the Town;
- engagement or re-engagement of one or more independent accounting firms to audit the financial statements for the then-current fiscal year or to provide other audit-related services; and
- the adequacy and implementation of any internal audit function.

Review and recommendations regarding the foregoing shall be informed by the financial policies, rules, and regulations of the Town, and by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) framework as applicable. The Committee shall provide regular reports to the City Council of the activities of the Committee.

It is anticipated that a process will be established to allow reporting by Town employees and third-party contractors of suspected financial fraud within the Town, and that such reporting will be made to the City Attorney. The City Attorney will provide a monthly summary to the chair of the Finance Committee of any reports received.

#### COMPOSITION

The **Finance** Committee will consist of three members of the City Council. It is anticipated that members will be appointed to the Committee at the first regular meeting of the City Council in June of each year or as soon thereafter as practicable. Committee membership will be for a period of one year, subject to the member's removal, resignation, or termination of the member's position as a member of the City Council. Members currently serving on the Finance Committee at the time these guidelines are approved by the City Council shall, subject to their removal, resignation, or termination of the member's position as a member of the City Council, continue to serve as members of the Committee until, and may be reappointed to the Committee at, the first regular meeting in June 2015 or as soon thereafter as practicable.

Each member is to be nominated by the Mayor, and the Council will consider each nomination and vote to approve or disapprove the same. It is the intent of these guidelines that each Committee member be financially literate, with members, if available on the Council, having a demonstrated financial background such as in banking, accounting, and/or finance.

The City Council will make a determination each year as to whether or not the Committee should be continued, which determination shall be made at the first regular meeting of the City Council in June of each year or as soon thereafter as practicable and prior to the Council's annual appointment of Committee members.

The Committee may be terminated or discontinued by the City Council at any time and for any reason or for no reason, at which time the membership of each then-current member shall terminate.

#### **MEETINGS**

The **Finance** Committee will meet at least quarterly (each quarterly meeting being a regular meeting), and may convene additional meetings as it deems appropriate. Such meetings will be on dates and at times as approved by all of the member of the Committee. All Committee members are expected to attend each meeting, in person or via tele- or video-conference, but it is understood that a member may miss a meeting for illness or emergency (as reasonably determined by the Committee member), and may otherwise be excused from a meeting by the Committee. The Committee may invite members of management, auditors or others to attend meetings and provide pertinent information, as necessary. Meeting agendas will be prepared and provided in advance to members, along with appropriate briefing materials.

A quorum of the Committee shall consist of a majority of the entire membership of the Committee. The affirmative vote of a majority of the members of the Committee present at a Committee meeting shall be necessary to adopt or approve any matter or to take any action.

Al-1757 18.

**Work Session and Regular Meeting** 

**Meeting Date:** 08/09/2016 **Department:** City Manager

# **AGENDA CAPTION:**

Discussion And Consider Action Related To The <u>Mayor's Private Use Of The Town</u> <u>Newsletter Email Distribution List</u>.

# **BACKGROUND:**

Councilmember Jim Duffy and Councilmember Paul Walden requested that the City Council have a discussion to consider Mayor Todd Meier's private use of the Town newsletter email distribution list.On June 28, 2016, the City Council voted 6-0-1 to allow the Mayor to have access to the Town newsletter email distribution list for the limited purpose of a one time per week newsletter.

# **RECOMMENDATION:**

N/A

AI-1803 19.

**Work Session and Regular Meeting** 

Meeting Date: 08/09/2016

Department: Council

### **AGENDA CAPTION:**

Discuss And Consider Action Related To The Mayor's Request To Provide A Link And/Or Directions In The Staff-Produced Weekly Town Newsletter To The Mayor-Produced Weekly Mayor's Newsletter; To Receive An Updated Email Subscription List From The Town On A Weekly Basis; And To Access Other Town Databases For The Purpose Of Distributing The Mayor's Weekly Newsletter.

#### **BACKGROUND:**

Mayor Todd Meier requested that the Addison City Council discuss and consider the following requests as they pertain to the staff-produced weekly Town newsletter:

- That a link be added to the staff's weekly newsletter to the Mayor's website at Addisonmayorsnewsletter.com.
- That a notice be placed in the staff-produced Town newsletter providing directions to the Addison Mayor's weekly newsletter.
- That the Mayor be provided the updated email subscription list to the Town of Addison's staff newsletter each week with the new subscribers and those that have requests to unsubscribe, so designated on the data file.
- That the Mayor have access to the following data bases for the purpose of distributing the Mayor's weekly newsletter:
  - The postal mailing and email addresses for all of the Town's water utility customers sorted by residential or commercial user; and
  - The postal mailing and email addresses of all of the Addison businesses that have filed for and received their annual Addison business registration.

#### **RECOMMENDATION:**

N/A