



January 13, 2021

Mr. Wesley S. Pierson, City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

Re: Agreement for the Placement and Display of Public Artwork on Black Forest Aviation RE,
LLC Leasehold

Dear Mr. Pierson:

Black Forest Aviation RE, LLC (Black Forest) is the ground lease tenant at 15601 Addison Road at Addison Airport pursuant to the ground lease for the property, as shown on **Exhibit A**, by and between the Town of Addison (“City”) as Landlord and Black Forest, as Tenant, effective **December 12, 2018** (“Ground Lease”). Any capitalized term used but not defined herein shall have the same meaning given to such term in the Ground Lease.

It is our understanding the City has adopted a program for the placement of art in and on public and private locations throughout the Town of Addison. The program is administered by the City and the Addison Arbor Foundation, a 501(c)(3) nonprofit organization (“Foundation”). The City, through the Foundation, desires to erect and hold for public display certain artwork of the general likeness shown in **Exhibit B** attached hereto and incorporated herein by reference together with any appendages or accessories required for the artwork (hereinafter referred to as the “Artwork”) on Black Forest’s Demised Premises.

This letter shall serve as the mutual written agreement by and between the City and Black Forest granting the City the non-exclusive right to enter onto a portion of Black Forest’s Demised Premises to construct, install, use, inspect, repair, maintain, reconstruct, replace, and remove the Artwork pursuant to this agreement (“Agreement”) and to allow pedestrian-only access onto and through the same.

Terms and Conditions of Letter Agreement

General Terms and Conditions:

1. **Term of Agreement:** The duration of this Agreement shall be continuous, without interruption, until the Ground Lease expires or is early terminated, or if the Artwork Site is no longer required and abandoned by the City.
2. **Ownership and Title of the Artwork:** The City, through the Foundation, forever is expressly the owner and holder of title to the Artwork.
3. **Ownership and Title of the Artwork Site:** The Artwork Site remains a portion of Black Forest's Demised Premises as defined and provided for in the Ground Lease, and Black Forest is the owner and holds title to any Building Improvements made to the Demised Premises subject to Section 28 of the Ground Lease, save and except for the Artwork.
4. **Waiver of Subrogation:** For the purposes herein, Section 27 of the Ground Lease shall govern.
5. **Equitable Rights of Enforcement:** This Easement may be enforced by restraining orders and injunction (temporary or permanent) prohibiting interference and commanding compliance. Restraining order and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to or those benefited by this agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law, in equity, or otherwise. This agreement will be construed under the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. Venue for all suits, matters, claims, or proceedings hereunder lies exclusively in Dallas County, Texas. Any breach of this Agreement (that is not also a breach of the Ground Lease) shall not be deemed to be a breach of the Ground Lease.
6. **Notices:** For the purposes herein, Section 48 of the Ground Lease shall govern.
7. This Agreement does not in any way alter, amend, or modify the Ground Lease, including without limitation, the Demised Premises, Base Rent and the Adjustment of Base Rent. Should any conflict arise between this Agreement and the Ground Lease, the Ground Lease shall govern.

Black Forest's Rights, Duties, and Obligations: Black Forest, its heirs, successors, and assigns hereby agree to the following:

1. To grant the City, the Foundation, and their respective representatives and agents (including but not limited to their contractors and sub-contractors, if any) a non-exclusive right to enter onto, over, or through that certain portion of Black Forest's Demised

Premises, more specifically described in **Exhibit C** attached hereto and incorporated herein by reference (the “Artwork Site”) to construct, install, use, inspect, repair, maintain, reconstruct, replace and remove the Artwork; and to allow pedestrian- only access onto and through the same.

2. Black Forest has the right to reasonably approve, in advance, the Artwork or any material changes the City desires to be made to the Artwork or Artwork Site. Notwithstanding the foregoing, Black Forest consents to the Artwork shown in Exhibit B.
3. Black Forest hereby reserves and retains its right to use all or part of the Artwork Site in any way permitted by the Ground Lease so long as such use does not unreasonably interfere, impede, or interrupt the City’s use, enjoyment, or purpose as provided for herein.
4. Black Forest agrees to construct, at its sole cost and expense, pavement, landscaping, electricity, and foundation/base on which the Artwork will be mounted pursuant to a Design Plan approved by the City, in its reasonable discretion. Any improvements constructed by Black Forest under this Agreement shall be designed and constructed in compliance with the Ground Lease.
5. Over the Term of this Agreement, Black Forest agrees to provide, at its sole cost and expense, and without interruption over the Term, utilities (e. g. electricity, lighting, water, etc.), landscaping and landscape maintenance servicing the Artwork and Artwork Site. In the event performance by a party of any term, condition or covenant in this Agreement 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 such party, the period for performance of such term, condition or covenant shall be extended for a period equal to the period such party is so delayed or hindered.
6. Except for those improvements provided for in this Agreement, Black Forest agrees not to construct or place within the Artwork Site any buildings, unreasonable structures, fencing, or above-ground improvements without the prior written consent of the City, which consent shall not be unreasonably delayed or withheld.
7. Black Forest may utilize the Artwork Site to install, maintain, repair, and replace underground drainage, sanitary sewer, domestic water, irrigation, and other utility lines, equipment, and facilities, and reasonable landscaping without the consent of the City. If, however, such work might interfere or adversely impact the Artwork or its appendages or accessories, Black Forest agrees to first notify the City and coordinate such work with the City to mitigate any damage, interference, or adverse impact.
8. In the event Black Forest causes damage, harm, displacement, or disfigurement of the Artwork or Artwork Site, Black Forest hereby agrees to promptly reasonably restore the Artwork or the Artwork Site to substantially the same condition immediately prior to such damage, harm, displacement, or disfigurement, at its sole cost, risk, and expense.

9. Black Forest shall maintain, without interruption, all applicable liability insurance as required under Section 13 of the Ground Lease.

City's Rights, Duties, and Obligations: The City, its successors or assigns, hereby agree to the following:

1. The City has the non-exclusive right to enter on, over or through the Artwork Site to construct, install, use, inspect, repair, maintain, reconstruct, replace, and remove the Artwork from the Demised Premises.
2. The City has the right to remove, all or parts of any building, fence, or above-ground improvement, or any shrub, tree, or other growth, of any character not permitted under this Agreement that is located within the Artwork Site and which, in the judgment of the City, may endanger or in any way interfere with the construction, efficiency, or convenient and safe operation and maintenance of the Artwork or Artwork Site.
3. The City shall, at its sole cost and expense, maintain and keep the Artwork in good order, condition, and repair.
4. With at least 14 days' written notice to Black Forest, the City has the right to enter the Artwork Site to remove any encroachments including, without limitation, fencing, paving, trees and undergrowth, and other obstructions, to perform the City's rights under Section 2 above.
5. Any damage caused to Black Forest's property or Building Improvements by the City because of the construction, installation, use, inspection, repair, maintenance, reconstruction, replacement, or removal of the Artwork, shall be promptly repaired or replaced at the City's sole cost and expense.
6. To the extent reasonable and practical, the City shall manage and police the Artwork and Artwork Site as a municipal park property pursuant to Article II, Chapter 58, of the Town of Addison Code of Ordinances.
7. The City represents that it carries all applicable workmen's compensation and general liability insurance typical of a home-rule municipality in the State of Texas.

Black Forest RE, LLC appreciates this opportunity to support the Town of Addison's public art program. Please acknowledge below that the terms and conditions of this Letter Agreement are acceptable to the Town of Addison.

Sincerely,



Jonathan Hitchcock
CFO and Vice President
Black Forest Aviation, RE, LLC

Acknowledged and Agreed to

_____ Date: _____, 2021

Wesley S. Pierson, City Manager
Town of Addison

Cc:

Town of Addison, Texas
c/o Addison Airport Manager
16051 Addison Road, Suite 220
Addison, Texas 75001
Attn: Real Estate Manager
bill.dyer@addisonairport.net

Messer, Fort and McDonald PLLC
Attn. Brenda N. McDonald
6371 Preston Road, Suite 200
Frisco, Texas 75034

Exhibit A

Location of Black Forest Aviation RE, LLC Leasehold at Addison Airport, Texas



Exhibit B

General Likeness of Artwork



AIKIDO

9'X6'X6', Fabricated Bronze, Glass, Steel
Two wind-activated kinetic forms representing Aikido martial arts.
Sculptor David B. Hickman

Exhibit C

Description of Artwork Site

ART EXHIBIT AREA

BEING a tract of land situated in the Edward Cook Survey, Abstract No. 326, Dallas County, Texas, and being a part of the Final Plat of Addison Airport, an addition to the Town of Addison, Texas, according to the plat thereof recorded in Volume 2005131, Page 82 of the Map Records of Dallas County, Texas (MRDCT), and being more particularly described as follows:

BEGINNING at a point in the west line of Addison Road (variable width right-of-way), from which a 5/8-inch iron rod set with plastic cap stamped 'Sparr Surveys' at the easterly southeast corner of said Addison Airport and, the northeast corner of the remainder portion of a tract of land as described in deed to the White Rock Masonic Lodge #234 recorded in Volume 3981, Page 416 in the Deed Records of Dallas County, Texas, bears South 00 degrees 52 minutes 49 seconds East, 497.73 feet, said beginning point lying in a non-tangent circular curve to the right having a radius of 52.00 feet;

THENCE northwesterly, departing the west line of said Addison Road, along said curve to the right, through a central angle of 50 degrees 57 minutes 42 seconds an arc distance of 46.25 feet and having a chord which bears North 35 degrees 29 minutes 25 seconds West, 44.74 feet;

THENCE South 89 degrees 07 minutes 11 seconds West, 17.83 feet;

THENCE North 21 degrees 19 minutes 10 seconds West, 17.07 feet;

THENCE North 89 degrees 07 minutes 11 seconds East, 23.71 feet to the point of curvature of a non-tangent circular curve to the right having a radius of 52.00 feet;

THENCE northeasterly, along said curve to the right, through a central angle of 51 degrees 31 minutes 13 seconds an arc distance of 46.76 feet and having a chord which bears North 33 degrees 27 minutes 02 seconds East, 45.20 feet to a point in the west line of said Addison Road;

THENCE South 00 degrees 52 minutes 49 seconds East, along the west line of said Addison Road, 90.15 feet to the **POINT OF BEGINNING** and **CONTAINING** 0.046 acre of land.


Brad Sparr
Registered Professional
Land Surveyor No. 3701



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

